

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160505

Docket: A-372-15

Citation: 2016 FCA 141

**CORAM: TRUDEL J.A.
WEBB J.A.
SCOTT J.A.**

BETWEEN:

ROSEMARY ANNE HOOD

Applicant

and

**ATTORNEY GENERAL OF CANADA,
CANADIAN FOOD INSPECTION AGENCY,
PUBLIC HEALTH AGENCY OF CANADA,
PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE CANADA
EMPLOYMENT AND SKILLS DEVELOPMENT CANADA-LABOUR**

Respondents

Motion in writing disposed of without the appearance of the parties.

Order delivered at Ottawa, Ontario, on May 5, 2016.

**REASONS FOR ORDER BY:
CONCURRED IN BY:**

**SCOTT J.A.
TRUDEL J.A.
WEBB J.A.**

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Respondents

REASONS FOR ORDER

SCOTT J.A.

[1] The respondent, the Attorney General of Canada (the AG), seeks the preliminary dismissal of this application for judicial review of a decision of the Appeal Division of the Social Security Tribunal of Canada (AD-SST) filed pursuant to paragraph 28(1)(g) of the *Federal*

Courts Act RSC, 1985, c F-7 (the Act) on the basis that said application has no reasonable chance of success, and constitutes an abuse of process.

[2] The AG's motion is made in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the Rules).

[3] The application concerns a decision of the AD-SST dated July 21, 2015 wherein Tribunal Member Mark Borer (Member Borer), after reviewing the available grounds of appeal provided by section 58(1) of the *Department of Employment and Social Development Act*, S.C. 1985, c.34, (the DESDA) determined that the applicant had failed to identify any reviewable errors in the General Division of the Social and Security Tribunal of Canada (GD-SST) decision of March 9, 2015 and therefore dismissed her application for leave to appeal.

[4] The GD-SST had dismissed Ms. Hood's application challenging the finding of the Canada Employment Insurance Commission (CEIC) qualifying the applicant's severance pay as "earnings" pursuant to subsection 35(2) of the *Employment Insurance Regulations* SOR/96-332 (the Regulations).

[5] The respondents argue that this application should be dismissed primarily because the application has no chance of success, it constitutes an abuse of process and this Court lacks jurisdiction to hear the matter.

[6] In the respondents' view, this Court does not have jurisdiction since the impugned decision is specifically excluded from the group of decision listed in paragraph 28(1)(g) of the Act. The impugned decision was a refusal to grant leave to appeal made under section 58 of the DESDA. If their assertion is correct in law, there is no need to address their other submissions, i.e. that the application has no chance of success and constitutes an abuse of process.

[7] The applicant, in response to the motion, filed an affidavit with attachments containing 85 pages wherein she describes in detail all the events underlying her termination and the ensuing recourses she has undertaken to seek redress.

[8] The applicant disputes the motion on the basis that it violates section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. She claims that it is this Court's duty to remedy her *de facto* termination and that the SST decisions are a downstream effect of the employer's discriminatory treatment and consequently it is this Court's duty to provide redress.

[9] The other arguments presented by the applicant do not address the issue of abuse of process or jurisdiction of this Court.

Analysis

[10] As mentioned by Mainville J.A. in *Lessard-Gauvin v. Canada (Attorney General)* 2013 FCA 147, 453 N.R. 380 at paragraph 8, the standard for preliminary dismissal is high. It must be

plain and obvious that the application has no reasonable chance of success and that it is bound to fail.

[11] With these principles in mind, I am satisfied that it is plain and obvious that this Court has no jurisdiction to entertain the application for judicial review of a decision refusing leave pursuant to section 58(1) of the DESDA as it is expressly excluded by section 28(1)(g) of the Act:

28(1) The Federal Court of Appeal has jurisdiction to hear and determine applications for judicial review made in respect of any of the following federal boards, commissions or other tribunals:

...

(g) the Appeal Division of the Social Security Tribunal established under section 44 of the Department of Employment and Social Development Act, unless the decision is made under subsection 57(2) or section 58 of that Act or relates to an appeal brought under subsection 53(3) of that Act or an appeal respecting a decision relating to further time to make a request under subsection 52(2) of that Act, section 81 of the Canada Pension Plan, section 27.1 of the Old Age Security Act or section 112 of the Employment Insurance Act;

28(1) La Cour d'appel fédérale a compétence pour connaître des demandes de contrôle judiciaire visant les offices fédéraux suivants :

[...]

g) la division d'appel du Tribunal de la sécurité sociale, constitué par l'article 44 de la Loi sur le ministère de l'Emploi et du Développement social, sauf dans le cas d'une décision qui est rendue au titre du paragraphe 57(2) ou de l'article 58 de cette loi ou qui vise soit un appel interjeté au titre du paragraphe 53(3) de cette loi, soit un appel concernant une décision relative au délai supplémentaire visée au paragraphe 52(2) de cette loi, à l'article 81 du Régime de pensions du Canada, à l'article 27.1 de la Loi sur la sécurité de la vieillesse ou à l'article 112 de la Loi sur l'assurance-emploi;

[12] The Federal Court of Appeal is a statutory court. The Act or some other federal statute must confer jurisdiction for the court to be properly seized of a matter. It is not the case in this instance.

[13] For these reasons, I propose that this motion for dismissal be granted, that the Notice of Application be struck out with costs.

"A.F. Scott"

J.A.

"I agree.

Johanne Trudel J.A."

"I agree.

Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-372-15

STYLE OF CAUSE:

ROSEMARY ANNE HOOD v.
ATTORNEY GENERAL OF
CANADA,, CANADIAN FOOD
INSPECTION AGENCY,, PUBLIC
HEALTH AGENCY OF
CANADA,, PROFESSIONAL
INSTITUTE OF THE PUBLIC
SERVICE CANADA
EMPLOYMENT AND SKILLS
DEVELOPMENT CANADA-
LABOUR

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

SCOTT J.A.

CONCURRED IN BY:

TRUDEL J.A.
WEBB J.A.

DATED:

MAY 5, 2016

WRITTEN REPRESENTATIONS BY:

ROSEMARY HOOD

FOR THE APPLICANT

MEGAN RILEY

FOR THE RESPONDENT
ATTORNEY GENERAL OF
CANADA

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENTS
ATTORNEY GENERAL OF
CANADA,