Federal Court of Appeal | Cour d'appel fédérale

Date: 20170202

Docket: A-489-14
A-213-15

Citation: 2017 FCA 24

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

Docket: A-489-14

BETWEEN:

WAYNE ROBBINS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: A-213-15

AND BETWEEN:

WAYNE ROBBINS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Edmonton, Alberta, on February 2, 2017.

Judgment delivered from the Bench at Edmonton, Alberta, on February 2, 2017.

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Edmonton, Alberta, on February 2, 2017).

STRATAS J.A.

[1] Mr. Robbins maintains that he is entitled to additional Disabled Contributor's Child Benefits. He is entitled to additional benefits if he submitted an application in 1997 for disability benefits identifying his children. He says he did.

[2] Before us are two decisions. The import of each is that an application identifying his children was not made in 1997 and so Mr. Robbins is not entitled to additional benefits.

[3] Specifically, two matters are before us:

- *An appeal (file A-489-14).* Mr. Robbins seeks to set aside the judgment dated July 11, 2014 of the Federal Court (*per* O'Keefe J.): 2014 FC 689. The Federal Court dismissed an application for judicial review brought by Mr. Robbins (file A-489-14). In that judicial review, Mr. Robbins sought to quash a decision of a legislation officer made under subsection 66(4) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8. The legislation officer found that Mr. Robbins had not applied for disability benefits in 1997 identifying his children and so no administrative error had been made when Mr. Robbins was denied additional Disabled Contributor's Child Benefits. He found no direct evidence of the application nor did he find any corroborating evidence of the sort one would have

expected had an error been made. Further, he found that Mr. Robbins' behaviour surrounding his 1999 application (summarized at p. 50 of the Appeal Book) was inconsistent with his later claim he had applied in 1997.

- *An application for judicial review (file A-213-15).* In this application, Mr. Robbins seeks to quash a decision dated October 16, 2014 of the Social Security Tribunal–Appeal Division. The issue before the Appeal Division was whether Mr. Robbins had submitted an application for disability benefits in 1997 identifying his children. This issue came before the Appeal Division as a result of an earlier judgment of this Court: *Robbins v. Canada (Attorney General)*, 2010 FCA 85. The Appeal Division received the Federal Court's judgment and reasons, mentioned above—to the effect that the finding that Mr. Robbins had not applied in 1997 for disability benefits identifying his children—and invited written submissions from the parties. The Appeal Division decided on the basis of the written submissions that the issue whether the Applicant had applied in 1997 for disability benefits identifying his children had been finally decided by the Federal Court.

[4] As is apparent from the summary above, the appeal and the application for judicial review are closely linked. Thus, we deal with both these matters in this single set of reasons. A copy of these reasons shall be placed in each court file.

[5] In the case of the appeal from the judgment of the Federal Court, we are to determine whether the Federal Court chose the proper standard of review and then to assess whether we agree with its review of the legislation officer's decision: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-46. The legislation officer's decision was primarily a fact-based one calling for reasonableness review: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 53. Thus, the Federal Court engaged in reasonableness review. The Federal Court found that the legislation officer's decision was reasonable. The Federal Court's analysis was very careful and laudably detailed.

[6] In our view, the Federal Court properly chose reasonableness as the standard of review and rightly held that the legislation officer's decision was reasonable. On these matters, we substantially agree with the Federal Court's reasons.

[7] Before us, Mr. Robbins takes issue with some aspects of the legislation officer's investigation of the matter. On the whole, we agree with the Federal Court's finding (at para. 62) that the investigation was "very thorough," as is evidenced by the detailed description of office procedures when an application is received and the consideration of possible postal disruption.

[8] Mr. Robbins submits that some of the material the legislation officer relied upon, such as observation sheets written by Ms. Ashbey, were hearsay. The officer was entitled to rely on contemporaneous notes and routine office records as part of his investigation.

[9] During argument, Mr. Robbins raised issues concerning the decision of the legislation officer based to some extent on hypotheticals and information not before us. We can only assess the reasonableness of the legislation officer's decision based on the material in the appeal book filed in our court.

[10] Turning to the decision of the Appeal Tribunal, Mr. Robbins makes two main submissions: it is substantively wrong, indefensible or unacceptable and it is vitiated by procedural unfairness. We shall deal with his submissions in that order.

[11] On the substance of the Appeal Tribunal's decision, we note that the Appeal Tribunal was to consider a fact-based issue: whether in 1997 Mr. Robbins had submitted a disability application identifying his children. Normally, for the reasons set out in paragraph 5, above, the standard of review for such a decision would be reasonableness. However, the Appeal Tribunal did not deal with that issue on its merits. It found that it had nothing to decide: the Federal Court's judgment decided the matter.

[12] We are inclined to hold that that finding is subject to reasonableness review: see, *e.g.*, *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52, [2011] 3 S.C.R. 422. It is largely a fact-based assessment as to whether a finding in an earlier proceeding has resolved an issue in a later proceeding and whether it should nevertheless exercise its discretion to consider the matter afresh. Factual and discretionary matters attract reasonableness review: *Dunsmuir*, above, at para. 53.

[13] However, in the circumstances of this case, we need not determine the standard of review: the Appeal Tribunal's decision not to deal with the issue on its merits is either unreasonable or wrong.

[14] Contrary to the view of the Appeal Tribunal, the Federal Court's judgment did not foreclose it from dealing with the issue on its merits. The Federal Court decided only that the legislation officer's finding on the issue was reasonable, not that it was correct. Theoretically, the Appeal Tribunal—charged with dealing with the issue on its merits—could have disagreed with the legislation officer and could have decided differently based on the record before it.

[15] This, however, is not dispositive of the judicial review. It must be recalled that a reviewing court's consideration of a judicial review consists of up to three analytical stages: resolving any preliminary and procedural issues, reviewing the substantive and procedural merits of the administrator's decision and finally, if necessary, considering whether a remedy should be granted and, if so, what sort of remedy: *Budlakoti v. Canada (Citizenship and Immigration)*, 2015 FCA 139, 473 N.R. 283 at paras. 28-30. Although the Appeal Tribunal's decision fails to pass muster under substantive review, we must still consider the issue of remedies.

[16] Mr. Robbins seeks the quashing of the Appeal Tribunal's decision. This, like all judicial review remedies, is discretionary: *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6. After considering the matter with due care, weighing all interests and the particular circumstances of the case, the Court may decline to grant a remedy.

[17] An important factor in exercising our remedial discretion is whether a quashing of the decision of the Appeal Division would have any practical significance: *MiningWatch*, above, and see, e.g., *Community Panel of the Adams Lake Indian Band v. Adams Lake Band*, 2011 FCA 37, 419 N.R. 385. In circumstances where the administrator could not reasonably reach a different decision, sending the matter back would have no practical significance and so a remedy should not be granted: *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299, 341 D.L.R. (4th) 710 at paras. 44-46. On the other hand, if an administrator could conceivably reach a different, reasonable decision, it is appropriate to quash and send the matter back to the administrator as the merits-decider: *Lemus v. Canada (Citizenship and Immigration)*, 2014 FCA 114, 372 D.L.R. (4th) 567 at para. 38. Here, caution must be exercised and any doubt resolved in favour of sending the matter back: *Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326 at p. 361. It must be remembered that the administrator, not the reviewing court, is the merits-decider: *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, 479 N.R. 189 at para. 23; *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297 at paras. 16-19.

[18] In this case, in our view, setting aside the Appeal Tribunal's decision and sending the matter back for redetermination would have no practical significance. Considering that factor and all of the relevant circumstances of this case, we exercise our discretion against granting that remedy.

[19] Here, if the matter were sent back to the Appeal Tribunal for redetermination, there is no doubt as to the outcome. It is apparent that the Appeal Tribunal had the benefit of the legislation

officer's work and decision before it: see paras. 12-13 of its decision. On the basis of the entire record before the Appeal Tribunal, we conclude that the Appeal Tribunal could only reasonably find that an application for disability benefits identifying the children was not received in 1997. As well, even though the Federal Court's judgment is not binding on the Appeal Tribunal, its reasoning in support of its judgment leaves no doubt on the matter. In short, the constellation of evidence in this case leads a rational decision-maker to only one finding. Thus, we decline to send this matter back for redetermination.

[20] As mentioned above, Mr. Robbins makes a second submission against the decision of the Appeal Tribunal. He submits that the Appeal Tribunal committed procedural unfairness: it decided the matter only on the basis of written materials.

[21] Given the nature of the issues, the evidence before the Appeal Tribunal and the circumstances of this case, we reject the submission. The Appeal Tribunal is entitled to decide matters without a hearing (*i.e.*, decide only on a written record and written submissions): section 43 of the *Social Security Tribunal Regulations*, SOR/2013-60. It is entitled to some leeway in making that sort of procedural choice, in part because its choice is often based upon its appreciation of the issues, the evidence before it and the circumstances of the case: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193 at para. 27; *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 at para. 89. Finally, we note that by law the Appeal Tribunal "must conduct its proceedings as informally and quickly as the considerations of fairness and natural justice permit": para. 3(1)(*a*) of the *Social Security Tribunal Regulations*.

[22] Even if we afforded the Appeal Tribunal no leeway and assessed its decision to proceed on the basis of written material with exactitude, we are satisfied that Mr. Robbins had a full opportunity to offer evidence and make submissions and that an oral hearing would not have changed the result: *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, 111 D.L.R. (4th) 1. At the hearing, Mr. Robbins fairly conceded that he would have largely reiterated what was in the written material.

[23] Therefore, we will dismiss the appeal and the application for judicial review. At the hearing, the respondent fairly declined to seek its costs in these matters. Therefore, we will order no costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-489-14 and A-213-15

APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE JOHN O'KEEFE OF THE FEDERAL COURT DATED JULY 11, 2014, DOCKET NO. T-2237-12 AND THE FINAL DECISION OF THE SOCIAL SECURITY TRIBUNAL-APPEAL DIVISION DATED OCTOBER 16, 2014, FILE NO. CP27185

DOCKET:	A-489-14
STYLE OF CAUSE:	WAYNE ROBBINS v. ATTORNEY GENERAL OF CANADA
DOCKET:	A-213-15
STYLE OF CAUSE:	WAYNE ROBBINS v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	EDMONTON, ALBERTA
DATE OF HEARING:	FEBRUARY 2, 2017
REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. WEBB J.A. SCOTT J.A.
DELIVERED FROM THE BENCH BY:	STRATAS J.A.

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