

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180504

Docket: A-414-16

Citation: 2018 FCA 88

**CORAM: DAWSON J.A.
WOODS J.A.
LASKIN J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

MARGARET HAYDON

Respondent

Heard at Ottawa, Ontario, on April 17, 2018.

Judgment delivered at Ottawa, Ontario, on May 4, 2018.

REASONS FOR JUDGMENT BY:

LASKIN J.A.

CONCURRED IN BY:

**DAWSON J.A.
WOODS J.A.**

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REASONS FOR JUDGMENT

LASKIN J.A.

[1] The Attorney General of Canada applies for judicial review of the decision of a labour adjudicator (2016 PSLREB 89). On a redetermination ordered by the Federal Court (2014 FC 246), the adjudicator allowed the grievance of Dr. Margaret Haydon against the termination of her employment as a senior drug evaluator in the Veterinary Drugs Directorate of Health Canada, and substituted a suspension of 20 days. He left it to the parties to try to resolve the issue of the appropriate remedy in light of his determination of the appropriate disciplinary

sanction, but retained jurisdiction if they were unable to agree. The parties were unable to agree. A further hearing before the adjudicator on remedy is now scheduled for July 2018.

[2] The Attorney General seeks to set aside the adjudicator's decision on three grounds: that (1) the adjudicator denied procedural fairness by failing to afford the Attorney General an opportunity to make submissions on the appropriate remedy, (2) the adjudicator failed to comply with the order of the Federal Court by failing to afford the parties an opportunity to make submissions on remedy and (3) the substitution of a suspension for termination was unreasonable because the employment relationship was unsalvageable.

[3] Despite the length of time that proceedings in relation to Dr. Haydon's employment have been ongoing, in my view this application is premature. Deciding it now, before proceedings before the adjudicator are concluded, would be inconsistent with the rule of administrative law that, absent exceptional circumstances, parties may not proceed to the court system until the administrative process has run its course (*Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61 at paras. 30-33, [2011] 2 F.C.R. 332). As the Court stated in *C.B. Powell* (at para. 32), this rule "prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway." It also ensures that the court has the benefit of the administrative decision-maker's findings.

[4] In his decision, the adjudicator framed the retention of jurisdiction as follows (at para. 113):

I will retain jurisdiction to address any issues relating to the implementation of this determination of the appropriate disciplinary sanction. I did not hear submissions from the parties on the appropriate remedy should the termination grievance be allowed and a lesser penalty substituted. I will leave the issue of the appropriate remedy to the parties to resolve. I will retain jurisdiction for 120 days in case the parties are unable to reach an agreement.

[5] His order contained the following provision (at para. 119): “I retain jurisdiction for a period of 120 days to address any issues relating to the implementation of this decision.”

[6] The administrative process will therefore not be complete until the adjudicator has exercised or declined to exercise the jurisdiction that he retained. Depending on what the adjudicator decides concerning the scope of that jurisdiction and its appropriate exercise, the issues raised by the Attorney General in this application may fall away, leaving no need for judicial determination.

[7] For example, if the adjudicator concludes that his jurisdiction extends to ordering pay in lieu of reinstatement, and he makes an order of that kind, the Attorney General’s concerns about returning Dr. Haydon to an unsalvageable employment relationship may disappear. If issues remain between the parties, and one or other of the parties then seeks judicial review, the Court will have the benefit of the adjudicator’s findings and perspective as expressed in his further decision. Applying the rule set out in *C.B. Powell* will also avoid the spectre of having to decide multiple applications addressing the same dispute.

[8] For these reasons, I would dismiss this application as premature. I would do so without prejudice to the Attorney General's entitlement to raise the grounds that she now raises (along with any other proper grounds) in a further judicial review application after the proceedings before the adjudicator are concluded. In all of the circumstances, I would leave the parties to bear their own costs.

"J.B. Laskin"

J.A.

"I agree.

Eleanor R. Dawson J.A."

"I agree.

J. Woods J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-414-16

**(APPLICATION FOR JUDICIAL REVIEW OF A DECISION (2016 PSLREB 89)
RENDERED BY MR. IAN MACKENZIE, ADJUDICATOR OF PUBLIC SERVICE
LABOUR RELATIONS BOARD, DATED SEPTEMBER 22, 2016)**

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. MARGARET
HAYDON

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 17, 2018

REASONS FOR JUDGMENT BY: LASKIN J.A.

CONCURRED IN BY: DAWSON J.A.
WOODS J.A.

DATED: MAY 4, 2018

APPEARANCES:

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