

Date: 20020918

Docket: A-644-00

Neutral citation: 2002 FCA 333

**CORAM: DESJARDINS J.A.
NOËL J.A.
NADON J.A.**

BETWEEN:

LOUIS DESROCHERS

**Appellant
(Plaintiff)**

and

ATTORNEY GENERAL OF CANADA

**Respondent
(Defendant)**

Hearing held at Montréal, Quebec, on September 10, 2002.

Judgment rendered at Ottawa, Ontario, on September 18, 2002.

REASONS FOR JUDGMENT:

NADON J.A.

CONCURRED IN BY:

**DESJARDINS J.A.
NOËL J.A.**

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REASONS FOR JUDGMENT

NADON J.A.

[1] This appeal is from the judgment by Blais J. of the Trial Division on April 13, 2000, and arises from a decision by Correctional Service Canada dated June 17, 1994, to dismiss the appellant, a Corrections officer at the Drummond Institution since 1987, for insubordination.

[2] In August 1994 the appellant filed a grievance against his employer's decision under s. 91(1)(b) of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 ("the Act"). As his grievance was dismissed the appellant asked that it be referred to adjudication pursuant to s. 92(1)(b) of the Act. On January 16, 1998, after a 17-day hearing, the adjudicator Marguerite-Marie Galipeau dismissed the appellant's grievance.

[3] The adjudicator concluded that the employer had established to her satisfaction that the appellant's acts and omissions, namely his negative attitude, his repeated absenteeism and his failure to provide medical certificates to justify his many absences constituted misconduct which the employer was justified in penalizing. The adjudicator further concluded that the penalty chosen by the employer was proper in view of all the circumstances, including the appellant's disciplinary record.

[4] On August 4, 1998, the appellant filed an application for judicial review of the adjudicator's decision. On April 13, 2000, Blais J. of the Trial Division concluded that his application for review should be dismissed.

[5] First, after noting that the adjudicator had undertaken a careful and detailed review of the evidence and had made findings of fact which were based largely on the credibility of the many witnesses she had heard, Blais J. said that in his opinion the findings of fact made by the adjudicator were not in any way unreasonable.

[6] Secondly, Blais J. considered the appellant's argument that the adjudicator had prevented him from presenting evidence of the harassment which he felt he had suffered at the hands of his superiors. Although in his opinion the adjudicator did not have jurisdiction to decide whether there had been [TRANSLATION] "harassment", Blais J. noted that the appellant was completely free to challenge the credibility of the witnesses called by the respondent in order to show that his dismissal was unjustified.

[7] Finally, Blais J. rejected the appellant's argument that the adjudicator's decision denying him an adjournment so he could consult a number of documents filed at the hearing by the respondent was a breach of the rules of natural justice. In Blais J.'s view, as the hearing had lasted for 17 days over a period of about a year, it was hard to see why the appellant had not had time to examine the documents in question. Further, Blais J. felt that the appellant had not shown that the documents in respect of which he was seeking an adjournment were likely to have influenced the adjudicator.

[8] The appellant submitted that the adjudicator and Blais J. made a number of errors which warrant intervention by this Court. In the appellant's submission, the following errors were made:

- (1) despite insufficient evidence to justify his dismissal, the adjudicator and Blais J. supported the employer's position;

- (2) although evidence of misconduct was presented, the penalty chosen by the employer was clearly too severe;
- (3) the adjudicator refused to allow him to present evidence of the harassment he had suffered, and Blais J. refused to intervene;
- (4) the adjudicator refused to grant him an adjournment so he could study the many documents filed by the respondent at the hearing, and Blais J. refused to intervene.

[9] The appellant had the burden of persuading this Court that Blais J. had committed an error when he dismissed the application for judicial review. He was unable to meet that burden.

[10] After correctly concluding, in my opinion, that in view of the adjudicator's expertise the applicable standard of review was that of restraint, Blais J. indicated that he would not intervene unless the appellant could show that the adjudicator had erred in law or had made findings of fact which could be described as patently unreasonable. As the appellant was unable to persuade him that such errors were made by the adjudicator, Blais J. dismissed his application for judicial review.

[11] In my opinion, what the appellant was asking Blais J. to do was precisely what he is asking this Court to do in the appeal at bar, namely to reconsider the evidence that was before the adjudicator so as to arrive at a different conclusion. Faced with contradictory testimony, the adjudicator preferred the version of the respondent's witnesses to that of the appellant in several significant respects. The adjudicator made a careful review of the evidence and there is no basis for this Court to conclude that she made an error when she preferred the version of the facts put forward by the respondent. In my opinion, the evidence regarding the appellant's misconduct was overwhelming, and consequently the adjudicator's conclusion on this point is in no way surprising, nor was her conclusion that dismissal was the proper penalty. At the very least, these conclusions can in no way be described as unreasonable. Blais J. came to this conclusion and this Court clearly cannot intervene.

[12] As to the other errors which the appellant alleged were made by the adjudicator and Blais J., I see no error in the comments by Blais J. on the question of harassment and the adjudicator's refusal to adjourn the hearing in order to allow the appellant to study the documents filed by the respondent at the hearing.

[13] I would dismiss the appeal with costs.

“Marc Nadon”

Judge

I concur.

Alice Desjardins

I concur.

Marc Noël

Certified true translation

Suzanne M. Gauthier, C. Tr., LL.L.

FEDERAL COURT OF CANADA
TRIAL DIVISION

SOLICITORS OF RECORD

FILE: A-644-00

STYLE OF CAUSE: Louis Desrochers
v.
Attorney General of Canada

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 10, 2002

REASONS: Nadon J.A.

CONCURRED IN BY: Desjardins J.A.
Noël J.A.

DATE OF REASONS: September 18, 2002

APPEARANCES:

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