

Federal Court of Appeal



Cour d'appel fédérale

Date: 20030414

Docket: A-111-02

Citation: 2003 FCA 188

**CORAM: LÉTOURNEAU J.A.
NADON J.A.
PELLETIER J.A.**

BETWEEN:

CHARLOTTE RHÉAUME

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on April 2, 2003.

Judgment delivered at Ottawa, Ontario, on April 14, 2003.

REASONS FOR JUDGMENT BY:

NADON J.A.

CONCURRED IN BY:

**LÉTOURNEAU J.A.
PELLETIER J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20030414

Docket: A-111-02

Citation: 2003 FCA 188

CORAM: LÉTOURNEAU J.A.
NADON J.A.
PELLETIER J.A.

BETWEEN:

CHARLOTTE RHÉAUME

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

NADON J.A.

[1] This is an appeal from a decision by Justice Rouleau of the Trial Division dated January 29, 2002, dismissing the appellant's application for judicial review of an adjudicator's decision, dated November 27, 2000, rendered by Adjudicator Jean-Pierre Tessier.

[2] The adjudicator, who was sitting pursuant to section 92 of the *Public Service Staff Relations Act*, R.S., c. P-35 (the Act), rejected the appellant's grievance, filed on February 2,

1998, to the effect that her employer had unlawfully withheld the wages and benefits that she had earned during the period from April 1, 1991, to August 2, 1993 (the period at issue). According to the adjudicator, the grievance was time-barred, having been filed after the deadline set out in clause M-38-10 of the Agreement between the Treasury Board and the Public Service Alliance of Canada, namely, within the 25 days following the day on which the employee first had knowledge of the act or omission giving rise to the grievance.

[3] According to the adjudicator, the evidence left no doubt that the appellant knew, no later than July 16, 1993, that her employer had no intention of remunerating her for the period at issue. In support of that finding, the adjudicator relied on the following three items of evidence, among others:

1. a letter from the appellant to her employer dated December 6, 1991, in which she stated that she would be without income as of January 1, 1991;
2. a grievance filed by the appellant on January 22, 1991, in which she asks, among other things, that her employer [TRANSLATION] “pay her an amount of money equivalent to all of the lost wages and associated benefits retroactively to April 1, 1991”; and
3. a letter dated July 11, 1996, in which the Sun Life Assurance Company of Canada, the appellant’s disability insurer, refuses to compensate the appellant for the period from 1991 to 1993 on the grounds that, as of April 1, 1991, she was capable of returning to work.

[4] Because the appellant's grievance had been filed on February 2, 1998, the adjudicator concluded that it was time-barred.

[5] Dissatisfied with this decision, the appellant filed an application for judicial review with the Trial Division of this Court, raising the following four issues:

1. Did the adjudicator contravene the *audi alteram partem* rule by refusing to hear the plaintiff's objections to the employer's declinatory exceptions and so infringe the plaintiff's right to be heard?
2. Did the adjudicator err in disposing of the grievance without hearing any evidence from the employer about the non-payment of her salary, her status and the existence of an actual offer of employment?
3. Did the adjudicator render a decision on an erroneous finding of fact made in a capricious manner or without regard for the material before him, and did he refuse to exercise his jurisdiction by not considering the substance of the grievance, namely the "constructive dismissal" or the salary entitlement of the plaintiff?
4. Did the adjudicator fail to observe the rules of natural justice by refusing to admit in evidence two documents submitted by the plaintiff?

[6] Justice Rouleau began by rejecting the appellant's submission that the adjudicator had contravened the *audi alteram partem* rule by refusing to hear the plaintiff's objections to the employer's declinatory exceptions. Since it could clearly be seen from the adjudicator's decision that the appellant had been given an opportunity to make representations, Justice Rouleau held that the rules of natural justice had been observed.

[7] Next, the judge held that the adjudicator had not failed to observe the rules of natural justice by refusing to admit in evidence two documents filed by the appellant. According to the judge, because assessing the relevance of the evidence fell within the adjudicator's jurisdiction, it was open to him to refuse to admit some of the evidence. His decision, in this case, to exclude the two documents filed by the appellant could not be considered patently unreasonable. In any case, because the documents in question addressed the merits of the case only, they were, according to the judge, completely irrelevant to the adjudicator's decision regarding the period of limitation.

[8] As for the second and third issues, the judge concluded that he could not intervene because the adjudicator's decision was not patently unreasonable. More specifically, the judge held that the adjudicator had not exceeded his jurisdiction in hearing the respondent's oral evidence concerning the account of the meeting of February 4, 1991, between the appellant and the employer's representatives, Marc Millard and Joanne Desjardins. The judge also held that the adjudicator had not erred in finding that the appellant knew, by July 16, 1993, at the latest, that

her employer did not intend to pay her salary for the period at issue and that, accordingly, the grievance was time-barred.

[9] According to Justice Rouleau, because subsection 71(3) of the Board's Rules of Procedure and clause M-38.10 of the collective agreement between the Treasury Board and the Public Service Alliance provided that a grievance had to be filed within the 25 days following the day on which the employee first had knowledge or was notified of the act or omission giving rise to the grievance, the adjudicator's decision could not have been patently unreasonable.

[10] Whatever the appellant's arguments might be, whether illness or constructive dismissal, according to the judge, there was no doubt that the record clearly showed that the appellant was aware as of 1991 that she would not be receiving a salary as of April 1, 1991.

[11] For these reasons, the judge dismissed the appellant's application for judicial review.

[12] The appellant raises two issues before this Court:

1. Did the trial judge err in finding that the adjudicator's refusal to admit in evidence two documents that she had filed at the hearing did not constitute a patently unreasonable error?
2. Did the trial judge err in finding that the adjudicator had correctly decided that the grievance was time-barred?

[13] As for the first issue, I am of the view that because the documents filed by the appellant dealt only with the substance of the grievance, Justice Rouleau committed no error.

[14] As for the second issues, I am satisfied, as was Justice Rouleau, that the appellant was aware as of 1991 that her employer had no intention of paying her salary during the period at issue. A comparison of the grievances filed by the appellant on January 22, 1992, and February 2, 1998, is persuasive on this point. I am therefore of the view that neither the adjudicator nor the judge erred in ruling that the appellant's grievance was time-barred.

[15] For these reasons, the appeal should be dismissed

"M Nadon"

J.A.

"I agree.

Gilles Létourneau J.A."

"I agree.

J.D. Denis Pelletier J.A."

Certified true translation
François Brunet, Réviseur

FEDERAL COURT OF CANADA
APPEAL DIVISION

SOLICITORS OF RECORD

DOCKET: A-111-02

STYLE OF CAUSE: Charlotte Rhéaume v. A.G.C.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 2, 2003

REASONS FOR JUDGMENT: Nadon J.A.

CONCURRED IN BY: Létourneau J.A.
Pelletier J.A.

DATED: April 14, 2003

APPEARANCES:

Charlotte Rhéaume THE APPLICANT, SELF-REPRESENTED

Carole Bidal FOR THE RESPONDENT

SOLICITORS OF RECORD:

Charlotte Rhéaume THE APPLICANT, SELF-REPRESENTED

Morris Rosenberg FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario

