

Date: 20081222

Docket: A-152-08

Citation: 2008 FCA 417

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

BETWEEN:

MOHAMMAD ASLAM CHAUDHRY

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on December 1, 2008.

Judgment delivered at Ottawa, Ontario, on December 22, 2008.

REASONS FOR JUDGMENT BY:

DESJARDINS J.A.

CONCURRED IN BY:

**NADON J.A.
BLAIS J.A.**

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REASONS FOR JUDGMENT

DESJARDINS J.A.

[1] This is an appeal of a decision of the Federal Court (Heneghan J.) 2008 FC 356, dismissing an appeal of an Order of Prothonotary Aalto, dated July 11, 2007.

[2] The appellant was a probationary employee with Correctional Service Canada (CSC) working at the Millhaven Institution in 2004. His supervisor found the appellant's performance to be deficient and recommended that he be rejected on probation for cause. The warden at Millhaven accepted the recommendation with the result that the appellant's employment with CSC was terminated effective March 7, 2004.

[3] The appellant filed a grievance in connection with his termination pursuant to section 91 of the *Public Service Staff Relations Act*, R.S., 1985, c. P-35 (the PSSRA) The appellant also filed a complaint under section 23 of the PSSRA alleging that, prior to receiving notice of his termination, his supervisor had threatened termination if he filed a grievance regarding workplace concerns.

[4] The appellant's complaints were dismissed by the adjudicator and vice-chairperson of the Public Service Labour Relations Board on the ground that the appellant had not met his burden of proof. The adjudicator held that the evidence had not demonstrated that the rejection on probation was a sham, a camouflage or that it was done "in bad faith" (A.B., p, 60). The grievance against the rejection on probation was dismissed for lack of jurisdiction under section 92 of the PSSRA.

[5] The Federal Court of Canada rejected his application for judicial review. His appeal to the Federal Court of Appeal was also dismissed.

[6] On or around April 26, 2007, the appellant commenced an action in damages against three public servants who allegedly fabricated deceptive justifications for terminating his employment.

[7] The appellant was then advised by the respondent that the Federal Court did not have or would refuse jurisdiction to deal with his action based on the principles enumerated by the Supreme Court of Canada in *Vaughan v. Canada*, [2005] 1 S.C.R. 146. The respondent indicated that if the

appellant were to discontinue his action, the respondent would seek no costs. Otherwise, costs would be sought against him.

[8] The appellant did not withdraw his action. Instead, he brought a motion for default judgment.

[9] The Prothonotary dismissed the appellant's motion for default judgment. As well, he dismissed the appellant's action in its entirety under the authority of rule 210(4)(b) of the *Federal Court Rules* (S.O.R./98-106).

[10] The Prothonotary was of the view that the motion and the action arose from the same material facts as those dealt with in the grievance proceeding under the PSSRA and that pursuant to the decision of the Supreme Court of Canada in *Vaughan*, the courts should not entertain jurisdiction.

[11] The Federal Court judge dismissed the appeal from the Prothonotary's decision on the basis that it was clear and obvious that the appellant's proceedings disclosed no reasonable cause of action (*Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959).

[12] For the same reasons given by the Federal Court judge, this Court cannot grant the appellant's request for damages based on alleged suffering nor does this Court have jurisdiction to

order a judicial inquiry into the matter. As a whole, we see no grounds for overturning the decision of the Federal Court Judge.

[13] Constitutional questions were raised by the appellant following notice given under section 57 of the *Federal Court Act* (R.S.C. 1985, c. F-7). The appellant's submission, however, cannot be entertained given that neither the Federal Court nor this Court has jurisdiction to hear the action.

[14] I would dismiss this appeal and would award costs to the respondent.

"Alice Desjardins"

J.A.

"I agree.
M. Nadon J.A."

"I agree.
Pierre Blais J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-152-08

STYLE OF CAUSE: MOHAMMAD ASLAM
CHAUDHRY v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 1, 2008

REASONS FOR JUDGMENT BY: DESJARDINS J.A.

CONCURRED IN BY: NADON J.A.
BLAIS J.A.

DATED: DECEMBER 22, 2008

APPEARANCES:

MOHAMMAD ASLAM CHAUDRY
(on his own behalf)

FOR THE APPELLANT

LIZ TINKER

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE APPELLANT

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