

*Federal Court of Appeal*



*Cour d'appel fédérale*

<sup>110</sup>  
**Date: 20121030**

**Docket: A-453-11**

**Citation: 2012 FCA 270**

**CORAM: NADON J.A.  
GAUTHIER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Appellant**

**and**

**RAYMOND ROBITAILLE**

**Respondent**

Heard at Ottawa, Ontario, on October 30, 2012.

Judgment delivered from the bench at Ottawa, Ontario, on October 30, 2012.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NADON J.A.**

Federal Court of Appeal



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**BETWEEN:**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Ottawa, Ontario, on October 30, 2012)**

**NADON J.A.**

[1] In a decision dated May 27, 2010, citation 2010 PSLRB 70, adjudicator Michele Pineau of the Public Service Labour Relations Board of Canada (the adjudicator) allowed four grievances filed by the respondent against his employer, the Department of Transport (the employer).

[2] Paragraphs 349–55 of the adjudicator’s decision list the remedies that she deemed necessary to compensate the respondent for the unjustified disciplinary action taken against him by his employer. Among other remedies, the adjudicator ordered the following at paragraph 352:

With respect to the grievor’s career, I order the deputy head, at its expense, to have a human resources expert conduct a financial assessment of the grievor’s loss of career advancement opportunities since September 6, 2005, and to reimburse the grievor for any loss of pay and benefits, including pension benefits, which resulted from that loss of advancement.

[3] The appellant filed an application for judicial review with the Federal Court raising several issues, including the remedy described at paragraph 352 of the adjudicator’s decision. According to the appellant, the adjudicator erred in ordering the employer to calculate, at its expense, the financial losses incurred by the respondent as a result of his loss of career advancement opportunities.

[4] Justice Pinard of the Federal Court, in a decision dated October 27, 2011, citation 2011 FC 1218, allowed in part the application for judicial review, but rejected the appellant’s argument relating to the remedy ordered by the adjudicator at paragraph 352 of her decision.

[5] Before this Court, the appellant is challenging Pinard J.’s finding that the adjudicator had the authority to order the deputy head (Department of Transport) to conduct, at the department’s expense, a financial assessment of the respondent’s loss of career advancement opportunities. According to the appellant, because the onus was on the respondent to demonstrate the loss he had incurred, it was not open to the adjudicator to issue the order she did, and the judge thus erred in law in refusing to intervene.

[6] During the appeal hearing, counsel for the appellant, in response to our questions, informed us that the parties had reached a settlement with respect to the respondent's financial compensation for his loss of career advancement opportunities, adding that it would not be paid until the conclusion of this litigation. The appellant has asked that we decide the issue raised by the appeal even though it has become moot.

[7] We do not consider it appropriate in the circumstances of this case to decide the issue raised by the appeal, particularly in light of the fact that the respondent is not before this Court.

[8] For these reasons, the appeal will be dismissed.

“M. Nadon”

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J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-453-11

**STYLE OF CAUSE:** A.G.C. v. RAYMOND  
ROBITAILLE

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** October 30, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON, GAUTHIER, TRUDEL  
J.J.A.

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCES:**

Adrian Bieniasiewicz FOR THE APPELLANT

**SOLICITORS OF RECORD:**

Myles J. Kirvan FOR THE APPELLANT  
Deputy Attorney General of Canada