

Federal Court of Appeal



Cour d'appel fédérale

Date: 20211101

Docket: A-147-19

Citation: 2021 FCA 212

**CORAM: STRATAS J.A.
WEBB J.A.
GLEASON J.A.**

BETWEEN:

BLANDIE SAMSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the registry on October 27, 2021.

Judgment delivered at Ottawa, Ontario, on November 1, 2021.

REASONS FOR JUDGMENT BY:

GLEASON J.A.

CONCURRED IN BY:

**STRATAS J.A.
WEBB J.A.**

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REASONS FOR JUDGMENT

GLEASON J.A.

[1] In this application, the applicant seeks to set aside the decision of an adjudicator of the Federal Public Sector Labour Relations and Employment Board in *Samson v. Deputy Head (Department of Justice)*, 2019 FPSLREB 40. In that decision, the adjudicator dismissed the applicant's termination grievance, finding that the employer had cause to terminate her employment and to have imposed several lesser disciplinary sanctions prior to termination.

[2] The applicant submits that she was denied procedural fairness and that the adjudicator was biased against her. She also submits that the decision was unreasonable.

[3] I disagree.

[4] Several of the applicant's alleged violations of procedural fairness or examples of alleged bias are merely disagreements with the factual determinations the adjudicator made or with the conclusions she reached. Such disagreements do not give rise to a valid claim for bias, which necessitates cogent evidence of a closed mind or of a predisposition against a party such that a reasonable person would conclude that the decision-maker would likely not decide fairly: *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369, 68 D.L.R. (3d) 716 at 394; *Hennessey v. Canada*, 2016 FCA 180, 484 N.R. 77 at paras.15-18; *Bergey v. Canada (Attorney General)*, 2017 FCA 30, 2017 CarswellNat 276 at para. 65.

[5] The remaining procedural fairness/bias arguments raised by the applicant challenge three matters: first, the adjudicator's failure to characterize the applicant's harassment complaint as involving sexual harassment; second, the fact that she was prevented from entering into arguments over legal issues when cross-examining witnesses; and third, the fact that she was prevented from filing an affidavit.

[6] None of the foregoing amounts to a violation of procedural fairness or to a demonstration of bias. It was well within the authority of the adjudicator, in her management of the hearing, to have ruled the affidavit inadmissible and to have directed the applicant to cease argumentative

cross-examination. Similarly, it was open to the adjudicator to have referred to the harassment complaint as being just that in light of the evidence showing that such was the way the applicant had characterized it at the relevant time and the fact that the complaint was determined to have been unfounded.

[7] Insofar as concerns the applicant's contestation of the reasonableness of the decision, in both her written materials and oral submissions before this Court, the applicant sought to re-argue her case and have this Court re-weigh the evidence. However, that is not our role in an application for judicial review. Rather, we may only intervene if the adjudicator's decision is unreasonable in that it is based on an inadequate, incoherent or irrational chain of reasoning or is unjustified in light of the relevant factual and legal constraints that bear upon it: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 at paras. 99-101.

[8] The adjudicator's decision is not unreasonable. Her reasons were thorough, careful, and fully responsive to the arguments raised. Given the evidence before her and the case law applicable to terminations for cause and progressive discipline, it was entirely reasonable for the adjudicator to have concluded that the ongoing misconduct of the applicant and her failure to follow the directions given to her, despite progressive sanctions, provided the employer cause to terminate the applicant's employment.

[9] Therefore, I would dismiss this application, with costs, which I would fix in the all-inclusive amount of \$1,500.00.

"Mary J.L. Gleason"

J.A.

"I agree.
David Stratas J.A."

"I agree.
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-147-19

STYLE OF CAUSE: BLANDIE SAMSON v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: BY ONLINE VIDEO
CONFERENCE

DATE OF HEARING: OCTOBER 27, 2021

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: STRATAS J.A.
WEBB J.A.

DATED: NOVEMBER 1, 2021

APPEARANCES:

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