Federal Court of Appeal | Cour d'appel fédérale

Date: 20221012

Docket: A-171-21

Citation: 2022 FCA 170

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

BETWEEN:

GRIGORIOS TRIGONAKIS

Appellant

and

SKY REGIONAL AIRLINES INC.

Respondent

Heard by online video conference hosted by the Registry on October 12, 2022.
Judgment delivered from the Bench at Ottawa, Ontario, on October 12, 2022.

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on October 12, 2022).

STRATAS J.A.

[1] An airline decided to remove the appellant, a pilot, from active duty. Several co-pilots had reported aggressive and volatile behaviour by the appellant while flying passenger aircraft. The airline wanted to conduct tests into the appellant's fitness for duty. But after several

exchanges over four months, the appellant refused to cooperate. The airline terminated the pilot's employment.

[2] The appellant claimed his dismissal was unjust. An adjudicator appointed under the *Canada Labour Code*, R.S.C. 1985, c. L-2, agreed and ordered damages in lieu of reinstatement. The airline applied for judicial review from that decision.

[3] The Federal Court (*per* Annis J.) (2021 FC 513) granted the judicial review and quashed the adjudicator's decision, holding that the adjudicator had "failed to grasp the essential issues and standards that should have governed the hearing" (at para. 238). The Federal Court remitted the matter to a new adjudicator for re-decision.

[4] The appellant now appeals, seeking to overturn the Federal Court's judgment and reinstating the adjudicator's decision.

[5] We agree in result with the Federal Court and so we will dismiss the appeal. Like the Federal Court, we find that the adjudicator unreasonably interpreted and unreasonably applied the legislative standard governing this situation, section 602.02 of the *Canadian Aviation Regulations*, S.O.R. 96-433 as it then read: airlines must prevent pilots from flying aircraft if they have "any reason to believe…the person…is unfit to perform properly the person's duties…".

[6] We agree with the Federal Court that the adjudicator unreasonably applied a much higher standard—in the adjudicator's words, "a serious cause and an imminent danger that necessitates an immediate corrective action"—a standard that would imperil passenger safety and undermine the purpose behind section 602.02. The adjudicator also unreasonably failed to give effect to the airline's clear contractual right in these circumstances, upon giving an explanation, to require that the appellant undergo a medical assessment by a Certified Aviation Medical Examiner. The adjudicator also unreasonably considered the assessment to be a "drastic measure" that could be taken only in "exceptional and clear circumstances", rather than one that could be taken to ensure there is no safety concern. These aspects of the adjudicator's ruling cannot be sustained on any reasonable interpretation of the legislative standard or the contractual documents.

[7] In the course of its reasons, the Federal Court, purportedly conducting reasonableness review, adopted its own interpretation of "any reason to believe" based on an incomplete and arguably faulty review of case law and applied that interpretation to the adjudicator's decision. This was improper correctness review. It is for a new adjudicator to interpret "any reason to believe" with particular regard to case law considering that phrase and with due consideration of the context of that phrase in the legislation and in light of its legislative purpose.

[8] As well, the Federal Court unnecessarily considered many other issues, offering many observations on them that are open to question. We should not be taken to agree with the Federal Court's observations on these other issues.

[9] In oral argument, the appellant emphasized, with passion and eloquence, what he personally viewed as the general injustice of this situation, especially in light of his background and motives and his employer's conduct and motives. However, when conducting reasonableness review, the task of the Federal Court and this Court is limited: in cases like this, we can only vet the acceptability and defensibility of an administrative decision, such as the decision of the adjudicator here, based on the legal standards set in the legislation, any other legal documents such as contracts, and the facts found in the evidentiary record. We cannot operate outside of these constraints. We cannot do whatever might strike someone—or us—as right or just in a general sense.

[10] Also in oral argument, the appellant invited us to revisit the factual record and make factual findings in his favour. It is for an administrative decision-maker, here the adjudicator, not us, to find facts, nor can we interfere with the fact-finding absent some fundamental error that vitiates it and renders it unreasonable. We see no such unreasonableness here.

[11] Just before our hearing, the respondent filed amended reasons for judgment of the Federal Court. Apparently, after the Federal Court had rendered judgment in this matter and became *functus*, it amended its reasons. In these circumstances, this was wrong. After becoming *functus*, a court may correct typographical and grammatical errors and other non-substantive errors in its reasons for judgment but it cannot make substantive changes. This is the natural operation of the doctrine of finality and Rules 397-399 discussed by this Court in *Canada v. MacDonald*, 2021 FCA 6. In this case, some of the amendments the Federal Court made to its reasons went beyond these limits. They should not have been made. Accordingly, in considering this appeal, we did

not consider the Federal Court's amended reasons. In any event, the amended reasons do not affect our reasoning or observations above or the disposition of this appeal.

[12] In the end, as mentioned above, in its judgment the Federal Court remitted the matter to a new adjudicator for re-decision.

[13] The respondent has not cross-appealed against that disposition. In particular, it has not sought *mandamus* requiring the new adjudicator to dismiss the appellant's complaint on the ground that dismissal was the only reasonable result on this factual record, the legislative standard, and the contractual documents: see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 142, citing *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, at pp. 228-30, *Sharif v. Canada (Attorney General)*, 2018 FCA 205, 50 C.R. (7th) 1 at paras. 53-54 and *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175 at paras. 51-56 and 84. Thus, we have to leave in place the Federal Court's disposition.

[14] Therefore, we will dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-171-21

APPEAL FROM THE JUDGMENT OF THE HONOURABLE JUSTICE ANNIS DATED FEBRUARY 2, 2022, DOCKET NO. T-616-20

STYLE OF CAUSE:	GRIGORIOS TRIGONAKIS v. SKY REGIONAL AIRLINES INC.
PLACE OF HEARING:	HEARD BY ONLINE VIDEO CONFERENCE HOSTED BY THE REGISTRY
DATE OF HEARING:	OCTOBER 12, 2022
REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. WEBB J.A. RENNIE J.A.
DELIVERED FROM THE BENCH BY:	STRATAS J.A.

APPEARANCES:

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