Federal Court of Appeal | Cour d'appel fédérale

Date: 20221027

Docket: A-56-22

Citation: 2022 FCA 182

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

BETWEEN:

MICHAEL CHRISTOFOROU

Appellant

and

JOHN GRANT HAULAGE LTD.

Respondent

Heard at Toronto, Ontario, on October 27, 2022.
Judgment delivered from the Bench at Toronto, Ontario, on October 27, 2022.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 27, 2022).

GLEASON J.A.

[1] The appellant appeals from the judgment of the Federal Court in *Christoforou v. John Grant Haulage Ltd.*, 2022 FC 162, 343 A.C.W.S. (3d) 234 (*per* Phelan, J.), dismissing the appellant's application for judicial review of the remedial decision of the Canadian Human Rights Tribunal (the CHRT) in *Christoforou v. John Grant Haulage Ltd.*, 2021 CHRT 15. In that decision, the CHRT awarded the appellant damages for lost income and certain lost benefits over

the period from May 10, 2010 to March 31, 2011, finding that compensatory damages were not payable after that date because the appellant had failed to mitigate his damages.

[2] In the judgment under appeal, the Federal Court held that the reasonableness standard of review applied to the CHRT's remedial decision. The Federal Court declined to interfere with the CHRT's remedial decision, holding, among other things, that the CHRT's determination regarding the appellant's failure to mitigate was reasonable. The Federal Court also noted that, had appellate standards of review applied, it would have reached the same determination as the CHRT did not err in law and made no palpable and overriding error of fact or of mixed fact and law in reaching its conclusion on mitigation.

[3] In this appeal, we are in effect required to step into the shoes of the Federal Court, determine if it selected the appropriate standard of review and, if so, determine whether it applied that standard correctly: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10, 462 D.L.R. (4th) 585; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45–47, 360 D.L.R. (4th) 411.

[4] Contrary to what the appellant submitted in his memorandum of fact and law, the applicable standard of review is reasonableness. The decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 establishes that reasonableness is the presumptive standard of review, and none of the exceptions to the presumptive application of that standard applies in the present case. Indeed, the case law recognizes both that the reasonableness standard applies to a decision of the CHRT, generally,

and that determinations as to mitigation made by specialized decision-makers in the labour and employment area are reviewable for reasonableness: *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31 at paras. 27–30, [2018] 2 S.C.R. 230; *Bangloy v. Canada (Attorney General)*, 2021 FCA 245 at paras. 33–35, 342 A.C.W.S. (3d) 367; and *Bahniuk v. Canada (Attorney General)*, 2016 FCA 127 at para. 14, 265 A.C.W.S. (3d) 933).

[5] Before us, the appellant submits that the Federal Court's judgment should be set aside because the CHRT failed to follow the law applicable to mitigation and failed to consider certain testimony that the appellant alleges contradicts the CHRT's conclusion in respect of mitigation.

[6] With respect, we disagree. Contrary to what the appellant asserts, the CHRT did not cast the burden on him or fail to reasonably apply the law regarding mitigation as set out in *Red Deer College v. Michaels* (1975), [1976] 2 S.C.R. 324, 57 D.L.R. (3d) 386 (S.C.C.) and the other authorities the appellant relies on.

[7] There was more than ample evidence before the CHRT from which it could reasonably conclude that the respondent had discharged its burden of establishing that the appellant had failed to mitigate the damages he suffered by reason of the respondent's breach of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6. This included the evidence from Mr. Shepley, the exhibits filed by the respondent regarding job postings, and the fact that the appellant was shown to have made very few attempts to find alternate work. In our view, it was not necessary for the CHRT to have commented on the evidence given by Mr. Gibson, upon which the appellant relies. Contrary to what the appellant asserts, it does not appear that Mr. Gibson's view was that

the appellant was unhireable for any trucking job. Indeed, the fact that the appellant eventually did succeed in finding alternate work as a driver demonstrates precisely the opposite.

[8] We therefore conclude that the CHRT's remedial decision is reasonable. Accordingly, this appeal will be dismissed with costs, fixed in the all-inclusive amount of $2000.00.

"Mary J.L. Gleason"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-56-22
APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE MICHAEL L. PHELAN OF THE FEDERAL COURT DATED FEBRUARY 9, 2022 IN FILE NO. T-752-21.	
STYLE OF CAUSE:	MICHAEL CHRISTOFOROU v. JOHN GRANT HAULAGE LTD.
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	OCTOBER 27, 2022
REASONS FOR JUDGMENT OF THE COURT BY:	WEBB J.A. GLEASON J.A. LASKIN J.A.
DELIVERED FROM THE BENCH BY:	GLEASON J.A.

APPEARANCES:

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