

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241003

Docket: A-131-23

Citation: 2024 FCA 159

**CORAM: STRATAS J.A.
LASKIN J.A.
BIRINGER J.A.**

BETWEEN:

TERRY CASPER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online videoconference hosted by the Registry on October 1, 2024.

Judgment delivered at Ottawa, Ontario, on October 3, 2024.

REASONS FOR JUDGMENT BY:

BIRINGER J.A.

CONCURRED IN BY:

**STRATAS J.A.
LASKIN J.A.**

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REASONS FOR JUDGMENT

BIRINGER J.A.

[1] The applicant seeks judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board: 2023 FPSSLREB 36. The Board dismissed two grievances alleging discrimination by the applicant's employer for failing to accommodate his return to work after a leave of absence.

[2] The applicant had been a service delivery specialist at the Citizenship and Immigration Canada case processing centre in Vegreville, Alberta. After a medical diagnosis, and several incidents of conflict in the workplace, the applicant took a leave of absence. The next year, the applicant told his employer that he wanted to return to work, subject to his doctor's advice that he work at a different location. Despite the employer's efforts, the applicant did not return to work.

[3] In dismissing the grievances, the Board found that a *prima facie* case of discrimination had been established, but the employer had satisfied its duty to accommodate.

[4] The standard of review for the Board's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 23; *Walcott v. Public Service Alliance of Canada*, 2024 FCA 68 at para. 5. The reviewing Court must consider "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision": *Vavilov* at para. 99. Absent exceptional circumstances, this Court is not to interfere with the Board's factual findings: *Vavilov* at para. 125.

[5] In the first grievance, filed six months after expressing his wish to return to work, the applicant claimed that the process used to return him to work, known as "priority status referral", was ineffective and unreasonably delayed. The Board concluded that an employer is not required to follow any particular procedure in order to satisfy its duty to accommodate; the priority status

referral process was a reasonable approach. The Board also decided that the delay in getting the referral process up and running was not unacceptable.

[6] In the second grievance, the applicant claimed that the employer had failed in its duty to accommodate, in the processes it employed and in not pursuing others. On this, the Board considered the employer's efforts—the number of job referrals, exempting the applicant from certain job requirements and modifying the interview process. The Board found that when the employer offered the applicant a service delivery specialist position at a case processing centre in Ottawa, it engaged in a “reasonable accommodation” that met the applicant's sole accommodation request.

[7] The Board then considered the conduct of the applicant, relying on the Supreme Court's decision in *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970 and the Board's decisions in *Ahmad v. Canada Revenue Agency*, 2013 PSLRB 60 and *Leclair v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 97. *Central Okanagan* provides that the search for accommodation is a “multi-party inquiry”; a complainant has a duty to facilitate the implementation of an employer's reasonable proposal and a duty to accept a reasonable accommodation: *Central Okanagan* at p. 994.

[8] The Board recognized that the move to Ottawa would be a challenge in many respects. Nonetheless, it found that the applicant in declining the position had rejected a reasonable accommodation, and was not entitled to insist on a perfect or preferred accommodation. It is not for this Court to reweigh the evidence that underpinned this conclusion.

[9] The Board went on to consider the parties' efforts after the Ottawa deployment offer. The Board characterized the applicant's efforts as "half-hearted and sporadic", noting that his unavailability for extended periods precluded him from participating in interviews for available positions in Edmonton, Saskatoon and Calgary. The Board concluded that the applicant "effectively made it impossible for the employer to accommodate him". These are factually suffused findings to which deference is owed.

[10] Under reasonableness review, there is no basis to intervene in the Board's decision. I do not accept the applicant's submission that the Board's decision was unreasonable by failing to consider whether the employer had demonstrated "undue hardship" under subsection 15(2) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6. It was reasonable for the Board to conclude, based on the law and its factual findings, that the employer offered a reasonable accommodation and that the process ended due to the applicant's lack of cooperation. In these circumstances, as the applicant's counsel acknowledged at the hearing, the Board was not required to conduct an "undue hardship" analysis.

[11] I also reject the applicant's submission that the Board found the nature of the applicant's leave of absence—as personal-needs-based and not medical—to lower the employer's accommodation obligations. The Board made its determination about the employer's obligations having found "clear" evidence that the employer accepted the applicant's disability, honoured his doctor's recommendations, and was prepared to return him to work on that basis.

[12] For the foregoing reasons I would dismiss the application, with costs in the agreed-upon, all-inclusive amount of \$3,500.

“Monica Biringer”

J.A.

“I agree.

David Stratas J.A.”

“I agree.

J.B. Laskin J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-131-23

STYLE OF CAUSE: TERRY CASPER v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: BY ONLINE
VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 1, 2024

REASONS FOR JUDGMENT BY: BIRINGER J.A.

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

DATED: OCTOBER 3, 2024

APPEARANCES:

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