

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131125

Docket: A-44-13

Citation: 2013 FCA 273

**CORAM: PELLETIER J.A.
STRATAS J.A.
NEAR J.A.**

BETWEEN:

RAYMOND ALLAN MENARD

Applicant

and

ROYAL BANK OF CANADA

Respondent

Heard at Edmonton, Alberta, on November 25, 2013.

Judgment delivered from the Bench at Edmonton, Alberta, on November 25, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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**CORAM: PELLETIER J.A.
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BETWEEN:

RAYMOND ALLAN MENARD

Appellant

And

ROYAL BANK OF CANADA

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Edmonton, Alberta, on November 25, 2013).

STRATAS J.A.

[1] Mr. Menard appeals from the judgment dated January 4, 2013 of the Federal Court (*per* Justice O'Reilly): 2013 FC 2.

[2] In the Federal Court, Mr. Menard sought to quash the Canadian Human Rights Commission's decision to dismiss his complaint against the respondent Bank. Mr. Menard complained that the Bank had discriminated against him because of his disability.

[3] Before the Federal Court, Mr. Menard submitted that the Commission acted unfairly by failing to conduct a proper and thorough investigation and by failing to consider his response to the investigator's report. He also submitted that the Commission's decision was unreasonable. The Federal Court rejected these submissions.

[4] On his appeal to this Court, Mr. Menard advances similar submissions.

[5] We agree substantially with the reasons of the Federal Court and shall dismiss the appeal.

[6] We are not persuaded that, in the circumstances of this case, the Commission's failure to refer to Mr. Menard's submissions concerning the investigator's report showed that it did not consider those submissions. Further, a review of the investigator's report in the context of this record, including Mr. Menard's submissions, persuades us that the investigation was thorough enough, examining the material issues surrounding the complaint.

[7] Before us, Mr. Menard stressed the Commission's failure in its decision to take into account the credibility issues and contradictions in the Bank's evidence. But also before the Commission were certain frailties in Mr. Menard's evidence such as the inconsistency between his version of events and those related to the Bank's investigator.

[8] On the issue of the reasonableness of the Commission's decision, we also substantially agree with the Federal Court's reasons. It was open to the Commission on this record to find that the complaint of discrimination could not be sustained. The Commission found no basis to the complaint that the Bank acted in a discriminatory manner in terminating Mr. Menard's employment or in handling his questions concerning disability benefits. For example, the investigator rejected Mr. Menard's claim that he was discriminated against because of his disability. These are factual findings supported by the record before the Commission.

[9] Contrary to Mr. Menard's submissions, the Commission did not exceed its mandate. In our view, the Commission kept within its task of assessing whether an inquiry is warranted having regard to all the facts, rather than determining whether the complaint has merit: *Dupuis v. Canada*, 2010 FC 511. In particular, the Commission's function in these circumstances is that of a screening body. In order to discharge that function, it must make certain factual and credibility assessments. Were it otherwise, every case involving a factual or credibility issue would have to be referred to a tribunal. In our view, the Commission's determination that Mr. Menard's claim did not warrant further investigation was within its proper mandate and was reasonable on the record before it.

[10] Finally, we note that the decisions of the Federal Court and the Commission – to the effect that employer actions motivated by an employee's wrongful conduct alone cannot constitute discrimination – are consistent with other leading appellate authorities such as *British Columbia (Public Service Agency) v. B.C.G.E.U.*, 2008 BCCA 357 and *Wright v. College and Association of Registered Nurses of Alberta*, 2012 ABCA 267.

[11] For the foregoing reasons, we shall dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-44-13

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE O'REILLY
DATED JANUARY 4, 2013, NO. T-556-12**

STYLE OF CAUSE: RAYMOND ALLAN MENARD v.
ROYAL BANK OF CANADA

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: NOVEMBER 25, 2013

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

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Andrew R. Fraser FOR THE APPELLANT

Lorene Novakowski FOR THE RESPONDENT

SOLICITORS OF RECORD:

Snyder & Associates LLP FOR THE APPELLANT
Edmonton, Alberta

Fasken Martineau DuMoulin LLP FOR THE RESPONDENT
Vancouver, British Columbia