

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140120

Docket: A-195-13

Citation: 2014 FCA 9

**CORAM: SHARLOW J.A.
WEBB J.A.
NEAR J.A.**

BETWEEN:

DEBORAH GUYDOS

Appellant

And

CANADA POST CORPORATION

Respondent

Heard at Toronto, Ontario, on January 20, 2014.

Judgment delivered from the Bench at Toronto, Ontario, on January 20, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

WEBB J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on January 20, 2014).

WEBB J.A.

[1] This is an appeal from the decision of Justice Campbell (2013 FC 410) who dismissed the Appellant's application for judicial review of the decision of an adjudicator rendered on June 4, 2012.

[2] The Appellant had been employed by the Canada Post Corporation (CPC). She stopped working in September 2006 as a result of her disability. On February 25, 2010 the Appellant received a letter from CPC in which CPC indicated that the Appellant had failed to provide necessary medical information in relation to her disability. CPC was also seeking to determine when she would be returning to work. CPC took the position that this letter was a “Notice of Release for Incapacity” to become effective April 2, 2010.

[3] The Appellant’s union (Canadian Union of Postal Workers (CUPW)) filed a grievance on her behalf on February 26, 2010. Under the collective agreement, the employment of a person cannot be terminated while a grievance is outstanding. On June 22, 2011, the Appellant received notification from CPC that she was approaching the end of the maximum sick leave period allowed under the collective agreement. The letter also indicated that her employment would be terminated on September 27, 2011 if she was not able to return to work by then. On July 11, 2011 CPC wrote to the Appellant to advise her that she was to report for work on July 18, 2011 unless she submitted sufficient medical documentation to justify her absence. On March 28, 2012 counsel for CUPW stated that the union was withdrawing the grievance that had been filed on February 26, 2010.

[4] The Appellant filed a complaint of unjust dismissal under the *Canada Labour Code*, RSC 1985, c. L-2 (Code). The adjudicator determined that as a result of CUPW withdrawing the grievance that it had filed on February 26, 2010, the operative date of her dismissal was April 2, 2010. Since, at that time, she was a member of a group of employees subject to a collective agreement, the adjudicator determined that he did not have jurisdiction to hear the Appellant’s complaint of unjust dismissal as a result of the provisions of section 240 of the Code.

[5] The federal court Judge found that the adjudicator's determination that the operative date of her dismissal was April 2, 2010 was reasonable and that he was correct in finding that he did not have jurisdiction to hear her complaint.

[6] On an appeal to this Court, the role of this Court is to determine whether the federal court Judge "had chosen and applied the correct standard of review" (*Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] SCC 19, at paragraph 43).

[7] We have not been persuaded that the federal court Judge committed any error in choosing or applying the correct standard of review.

[8] As a result the appeal will be dismissed with costs to be fixed in the amount of \$1,200 inclusive of all disbursements and taxes.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-195-13

**(APPEAL FROM A DECISION OF THE HONOURABLE JUSTICE CAMPBELL OF
THE FEDERAL COURT, DATED APRIL 24, 2013, DOCKET NO. T-1309-12)**

STYLE OF CAUSE:

DEBORAH GUYDOS v. CANADA POST
CORPORATION

PLACE OF HEARING:

TORONTO, ONTARIO

DATE OF HEARING:

January 20, 2014

**REASONS FOR JUDGMENT OF
THE COURT BY:**

SHARLOW J.A.
WEBB J.A.
NEAR J.A.

**DELIVERED FROM THE
BENCH BY:**

WEBB J.A.

APPEARANCES:

Deborah Guydos

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FOR THE RESPONDENT

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