

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140911**

**Docket: A-200-13**

**Citation: 2014 FCA 199**

**CORAM: NADON J.A.  
TRUDEL J.A.  
BOIVIN J.A.**

**BETWEEN:**

**WANDA MACFARLANE**

**Appellant**

**and**

**DAY & ROSS INC.**

**Respondent**

Heard at Fredericton, on September 11, 2014.

Judgment delivered from the Bench at Fredericton, New-Brunswick, on September 11, 2014.

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

**TRUDEL J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Fredericton, New-Brunswick, on September 11, 2014).**

**TRUDEL J.A.**

[1] This is an appeal by Wanda MacFarlane (the appellant) of a decision of Roy J. of the Federal Court dismissing without costs her application for judicial review (2013 FC 464). The appellant had challenged the decision of an adjudicator appointed under subsection 241(3) of the *Canada Labour Code*, R.S.C., 1985, c. L-2 (the Code) who had dismissed her complaint of

unjust dismissal. The respondent, Day & Ross Inc., has cross-appealed from the Judge's order on the issue of costs alone.

[2] The appellant argues before this Court that the Judge erred in assessing the adjudicator's decision on a reasonableness standard and further submits that the adjudicator's conclusions were not rationally supported by the evidence placed before him.

[3] First, it is well-established that an appellate court, when considering an appeal from a judgment on an application for judicial review, must determine whether the court below selected the proper standard of review and whether it applied it correctly: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paragraph 45, [2013] 2 S.C.R. 559. The Judge was right to review the adjudicator's decision on a standard of reasonableness: a labour arbitrator's decision on a complaint of unjust dismissal involves questions of mixed fact and law and is owed deference (*Payne v. Bank of Montreal*, 2013 FCA 33 at paragraphs 32-33, [2013] F.C.J. No. 123 ). It therefore attracts a standard of reasonableness.

[4] The Judge conducted a thorough review of the circumstances surrounding the appellant's dismissal and of the adjudicator's reasons for dismissing her complaints. We see no error in his conclusion that the adjudicator's decision was reasonable. The adjudicator's reasons are detailed and fall well within the range of acceptable outcomes under a reasonableness review. Moreover, it is not for a reviewing court to reweigh the evidence that was placed before the decision-maker. The appellant cannot relitigate the matter on appeal hoping for a different outcome. We therefore see no basis for overturning the Judge's decision.

[5] On the issue of costs, the respondent submits that it was entitled to costs on the application for judicial review and that the Judge's lack of reasons supporting his order entitles this Court to consider the question *de novo*. Once again, it is settled law that a trial judge is entitled to considerable discretion in setting costs and that a costs award will not easily be set aside on appeal: *Bell Helicopter Textron Canada Limitée v. Eurocopter société par actions simplifiée*, 2013 FCA 220 at paragraphs 7-8, [2013] F.C.J. No. 1044 .

[6] Here the Judge chose not to follow the ordinary rule that costs follow the event without giving reasons. It is therefore difficult for our Court to assess the basis on which the judge exercised his discretion and, as a result, whether or not our Court's intervention is warranted.

[7] Accordingly, the appeal will be dismissed with costs, the cross-appeal will be allowed with costs, the order of the Federal Court on costs will be set aside and the matter of costs will be returned to Roy, J. for re-determination in accordance with these reasons.

“Johanne Trudel”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-200-13  
**STYLE OF CAUSE:** WANDA MACFARLANE v. DAY  
& ROSS INC.  
**PLACE OF HEARING:** Fredericton, New-Brunswick  
**DATE OF HEARING:** SEPTEMBER 11, 2014  
**REASONS FOR JUDGMENT OF THE COURT BY:** NADON J.A.  
TRUDEL J.A.  
BOIVIN J.A.  
**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

**APPEARANCES:**

Wanda MacFarlane SELF-LITIGANT  
Jordan D. Winch FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Norton Rose Fulbright Canada LLP FOR THE RESPONDENT  
Toronto, Ontario