Federal Court  Cour fédérale

Date: 20150427

Docket: T-1648-13

Citation: 2015 FC 543

Ottawa, Ontario, April 27, 2015

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

GISÈLE GATIEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant's claim for damages for mental distress was denied by the adjudicator at the Public Service Labour Relations Board (the Board). She now applies for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[2] The applicant seeks an order setting aside the decision of the adjudicator with respect to damages, directing the same adjudicator to redetermine the issue and granting costs of this application.

I. Background

[3] The applicant has been employed in the federal public service for over 35 years with a clean record. She has been a manager since 1995, managing the Federal Workers Compensation Program. Her unit is responsible for processing claims made to the Workplace Safety Insurance Board (WSIB).

[4] In Fall 2010, the applicant started experiencing behavioural issues with one of her employees, "AB". She complained to the director general, Ms. Shimbashi, and kept her boss, Ms. Ananiadis, the regional director in Toronto, updated as well.

[5] By March 2011, the applicant was in virtually daily contact with labour relations advisors seeking assistance regarding AB's behavioural issues. In late March 2011, the applicant was about to increase the progressive discipline but was told to stop with no reason given by Ms. Ananiadis.

[6] During this period, the applicant received complaint letters from her employees on April 19, 2011, May 11, 2011 and May 12, 2011, all of which she forwarded to Ms. Ananiadis. She wrote an email request to Ms. Ananiadis that AB be removed from the workplace.

[7] On May 24, 2011, the applicant was getting ready to issue AB a written reprimand. Shortly after, Ms. Ananiadis told the applicant to stop all AB's disciplinary proceedings with no reason given.

[8] On May 26, 2011, at approximately 15:00, AB physically assaulted the applicant by pulling her hair. Police were called. The applicant reported the incident to Ms. Ananiadis, who in turn informed Ms. Shimbashi. AB was later removed from the workplace and transferred to a different department.

[9] Following this incident, the applicant went to see her family physician and was referred for psychological services. She filled out a WSIB claim form which was signed off on June 6, 2011 by her boss and approved by WSIB in September 2011. She attended weekly visits first and later changed to biweekly visits with Dr. Smyth, a psychologist.

[10] On July 8, 2011, the applicant was informed that AB was returning to the workplace to collect her personal belongings. The applicant was told to leave early and to tell her staff to do so as well. The applicant reacted negatively and barricaded the office. This sight greeted AB, the union representative and Ms. Marcoux, the director of Labour Relations. Ms. Marcoux reported this to Ms. Shimbashi on the same day.

[11] On July 12, 2011, Ms. Shimbashi and Ms. Marcoux interviewed the applicant regarding the July 8th incident. The applicant admitted she built the barricade and no one else participated. Ms. Marcoux stated the applicant was evasive in her responses otherwise.

[12] On July 15, 2011, the applicant sent an email detailing her regrets for her actions to both Ms. Marcoux and Ms. Shimbashi. She never received a reply to her email.

[13] In September 2011, the applicant took sick leave and upon returning to the workplace, she provided Ms. Ananiadis with a letter attaching a medical note from her psychologist.

[14] On October 14, 2011, a pre-disciplinary meeting was held with the applicant, her representative, Ms. Shimbashi and Ms. Marcoux. On November 17, 2011, the applicant received a letter imposing a ten day suspension as discipline for the July 8th incident.

[15] After serving the suspension, the applicant went on reduced hours on her doctor's advice and then went on sick leave while continuing to see her psychologist.

[16] On December 9, 2011, the applicant filed a grievance. The psychologist issued a letter on June 4, 2013 stating that "the major source of Ms. Gatien's problems is not the assault itself so much as her employer's refusal to recognize the harm that was done to her and to protect her from further harm in the workplace."

II. Decision Under Review

[17] The Board's decision dated September 5, 2013 reduced the ten day suspension to an oral reprimand, ordered the employer to immediately reimburse the applicant for lost wages and benefits and denied the applicant's request of $100,000 for damages.

[18] The Board first summarized the arguments from the applicant and the employer and then structured its analysis into two parts: 1) disciplinary sanction; and 2) request for damages.

[19] With respect to the disciplinary sanction, the Board found the ten day suspension was excessive and reduced it to an oral reprimand. The applicant does not have issue with this portion of the decision.

[20] With respect to the $100,000 in damages, the Board found the employer's behaviour did not warrant it. It reviewed "*Wallace* damages," noting that at this point, all the case law on the subject of damages submitted by both counsel dealt with terminations of employment. It mentioned that one of the reasons damages have not been awarded in suspensions is that adjudicators have the authority to modify suspensions, hence, there would be no loss of employment and some or all the monies lost could be recovered. The Board stated this is an accurate reflection of the statement found at paragraph 73 of the *Wallace* case (see *Wallace v United Grain Growers Ltd*, [1997] 3 SCR 701, [1997] SCJ No 94 [*Wallace*]). Although the Board agreed with the applicant that the ten day suspension was excessive, it ruled this discipline could not lead to damages because it is not a "separate actionable course of conduct."

[21] Further, the Board disagreed that there is bad faith involved in the employer's conduct as to justify damages. It quoted paragraphs 59 and 60 of *Honda Canada Inc v Keays*, 2008 SCC 39, [2008] 2 SCR 362 [*Honda*] and reasoned examples of conduct that could attract compensable damages are far removed from what exists in this case. It stated that the imposition of excessive discipline was compensated by its modification of the penalty.

[22] Then, the Board reviewed the applicant's argument that the employer ought to have known that imposing discipline would cause her mental suffering and unfair loss of professional

standing. The Board reasoned that the employer did not have any medical information at the time of the disciplinary meeting, so it could not have guessed possible mental anguish. Also, the applicant did not raise this issue at either interview. The only letter in support was after the disciplinary action which dated June 4, 2013. As for professional standing, the applicant did not provide any evidence to support this claim and even if there was a loss of professional standing, the modification of the penalty should serve to restore it.

[23] Therefore, the Board denied the applicant's request for damages.

III. Issues

[24] The applicant raises three issues for my consideration:

1. What is the appropriate standard of review?
2. Did the Board err in law by finding that aggravated and mental suffering damages are not available in circumstances of discipline short of termination?
3. Did the Board render an unreasonable finding of fact without regard to the evidence before it by concluding that HRSDC had no medical information about the applicant and no reason to know the discipline could cause the applicant mental suffering and anguish?

[25] The respondent raises two issues in response:

1. What is the appropriate standard of review of the decision?
2. Did the Board commit a reviewable error warranting the intervention of this Court?

[26] In my view, there are three issues:

A. What is the standard of review?

B. Did the Board misunderstand the test for awarding damages?

C. Was the Board's decision reasonable?

IV. Applicant's Written Submissions

[27] The applicant submits the standard of review for decisions by the Public Service Labour Relations Board adjudicators is reasonableness (see *Tipple v Canada (Attorney General)*, 2012 FCA 158 at paragraph 7, [2012] FCJ No 718 [*Tipple*]; and *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190 [*Dunsmuir*]) and the Board's decision does not fall within the acceptable range of outcomes.

[28] The applicant structures her argument on two grounds: 1) the Board erred in law in finding aggravated and mental suffering damages are not available in disciplinary actions; and 2) the Board made unreasonable findings of fact.

[29] Insofar as the mental suffering damages are concerned, the applicant submits the Board has broad remedial authority under the *Public Service Labour Relations Act*, SC 2003, c 22 [the Act] and this authority remains the same regardless of whether the disciplinary action results in termination, demotion, suspension or financial penalty (see the Act, paragraph 209(1)(b), subsection 228(2); and *Canada (Attorney General) v Robitaille*, 2011 FC 1218 at paragraph 46, [2011] FCJ No 1494 [*Robitaille*]). The applicant argues the Board failed to consider the legal context of the cited cases that dealt with termination.

[30] The applicant submits the compensatory damages for mental distress have been awarded in a wide range of circumstances, such as unreasonably requiring a drug test or mental distress arising from harassment (see *Chenier v Treasury Board (Solicitor General Canada – Correctional Service)*, 2003 PSSRB 27 at paragraph 44, [2003] CPSSRB No 24). In *Robitaille*, the Federal Court upheld an adjudicator's finding awarding damages arising from the stress of an unjustified investigation and other management actions which did not include termination of employment (*Robitaille* at paragraphs 51 to 56). She argues this indicates remedies available to employees under the Act are equally applicable to all disciplinary measures, not just termination.

[31] The applicant then submits it is well-established that harsh treatment of an employee known to be in difficult circumstances may give rise to aggravated damages for mental distress (see *Altman v Steve's Music Store Inc*, 2011 ONSC 1480 at paragraphs 130 to 132, [2011] OJ No 1136; *Vorvis v Insurance Corp of British Columbia*, [1989] 1 SCR 1085 at paragraphs 21 to 22, [1989] SCJ No 46; and *Honda* at paragraphs 50 to 53). The applicant argues an independent actionable wrong is not required.

[32] In support, the applicant cites *Wallace* and in that case, the Supreme Court held even if the act falls short of an independent actionable wrong, any bad faith conduct or unfair dealing causing mental distress could be addressed by extending the reasonable notice period. This is further confirmed in *Fidler v Sun Life Assurance Co of Canada*, 2006 SCC 30 at paragraphs 44, 45 and 49, [2006] 2 SCR 3). In *Honda*, the Supreme Court eliminated the distinction between "true aggravated damages" resulting from a separate cause of action and "moral damages" resulting from conduct in the manner of termination (*Honda* at paragraph 59). Despite the

removal of this distinction, punitive damages remain available only where the employer's conduct gives rise to an independent actionable wrong. However, aggravated damages for mental distress, which is compensatory in nature, now no longer requires a separate actionable wrong. The applicant argues this is further confirmed in the Ontario Court of Appeal's decision in *Piresferreira v Ayotte*, 2010 ONCA 384 at paragraphs 42, 43, 91 and 92, [2010] OJ No 2224. The applicant submits that the Board erred by applying the more onerous test for punitive damages in denying her claim of aggravated damages for mental distress.

[33] The applicant then went on reviewing *Fidler*, *Honda*, *Tipple* and *Mulvihill v Ottawa (City)*, 2008 ONCA 201, 90 OR (3d) 285, arguing that the employer has an obligation of good faith and fair dealing in the manner of termination. She urges this Court to adopt the ruling in *Tipple,* where the Court in that case found an adjudicator erred in both fact and law when he concluded that management's severe disciplinary response did not amount to bad faith giving rise to aggravated damages. She argues Ms. Shimbashi's report clearly reveals the suspension was based on unfounded and fabricated allegations of mismanagement. The applicant submits that her unduly harsh disciplinary suspension was imposed in bad faith and there is no meaningful distinction between conduct resulting in termination and conduct resulting in suspension. She argues that therefore, the Board erred in law.

[34] Insofar as the Board's findings of fact are concerned, the applicant submits it was unreasonable for the Board to conclude that the employer had no medical information and had no way of knowing that imposing discipline could cause the applicant mental suffering. She notes the following evidence and argues the evidence clearly establishes that management was aware

of her mental distress: for the May 26, 2011 incident, Ms. Ananiadis noted that the applicant was in shock and in tears; after this incident, the applicant reported her injury as "assault-traumatic incident"; in the course of the investigative meeting, the applicant told Ms. Shimbashi that she was stressed from the assault; in her July 15, 2011 email, the applicant advised Ms. Shimbashi and Ms. Marcoux that the events involving AB had caused her "stress beyond all thoughts"; and the applicant took sick leave and on October 6, 2011, she provided Ms. Ananiadis with a medical note dated September 22, 2011 from her psychologist citing "recent stressors" which made her unfit for work. This is further confirmed by Dr. Smyth's report dated June 4, 2013. The applicant submits that therefore, the Board ignored or failed to properly consider the above evidence as to make its decision unreasonable.

V. Respondent's Written Submissions

[35] The respondent agrees with the applicant that the appropriate standard of review is reasonableness (*Dunsmuir*). It submits the nature of the question in this case is one of mixed fact and law. The general rule is matters arising out of labour relations are worthy of deference (see *Vaughan v Canada*, 2005 SCC 11 at paragraph 39, [2005] 1 SCR 146 [*Vaughn*]). It cites the following cases for further support: *Hagel v Canada (Attorney General)*, 2009 FC 329, [2009] FCJ No 417, aff'd 2009 FCA 364, [2009] FCJ No 1618; *Peck v Canada (Parks Canada)*, 2009 FC 686 at paragraphs 25 and 26, [2009] FCJ No 1707; *Kanagarajah v Canada (Minister of Citizenship and Immigration)*, 2007 FC 2001 at paragraph 5, [2007] FCJ No 1435; *Gauthier v Canada (Attorney General)*, 2008 FCA 75 at paragraph 48, [2008] FCJ No 326; *Groulx v Canada (Veterans Affairs)*, 2007 FC 293 at paragraph 35, [2007] FCJ No 414; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62,

[2011] 3 SCR 708 [*Newfoundland Nurses*]; *Communications, Energy and Paperworks Union of Canada, Local 30 v Irving Pulp & Paper Ltd*, 2013 SCC 34 at paragraph 54, [2013] 2 SCR 458; *Canada (Attorney General) v Clegg*, 2008 FCA 189 at paragraphs 37, 38 and 40, [2008] FCJ No 853; *Diallo v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1063 at paragraphs 19, 24, 30 and 32, [2007] FCJ No 1385; *Stelco Inc v British Steel Canada Inc*, [2000] 3 FC 282 at paragraphs 21, 22 and 24, [2000] FCJ No 286; and *Entertainment Software Association et al v Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 221 at paragraph 25, [2010] FCJ No 1088.

[36] First, the respondent submits the Board did not err in law by concluding that damages cannot be awarded for bad faith disciplinary action short of termination because it did not reach such a conclusion. It quotes part of the Board's decision as follows:

> […] I note at this point that all the case law on the subject of damages referred to by both counsel dealt with terminations of employment. I am aware of no case law in which damages were awarded in a case involving a suspension.
>
> I suspect <u>at least one of the reasons</u> damages have not been awarded in suspensions is that adjudicators have the authority to modify suspensions if they are deemed too severe, as I have done.
>
> [respondent's emphasis]

[37] The respondent argues that as demonstrated from the decision, the Board did not rule out the possibility of awarding damages. It determined that based on the evidence, such damages were not warranted.

[38] Also, the respondent submits that the Board applied the proper test (*Honda* at paragraphs 59 and 60; and *Tipple* at paragraph 13).

[39] Second, for the medical information, the respondent submits stress may be disabling but it is not, in and of itself, a disability. It cites multiple tribunal decisions for support: *Riche v Treasury Board (Department of National Defense)*, 2013 PSLRB 35 at paragraph 130, [2013] CPSLRB No 29; *Crowley v Liquor Control Board of Ontario*, 2011 HRTO 1429 at paragraphs 57 to 63, [2011] OHRTD No 1439; *Matheson v Okanagan Similkameen School District No 53*, 2009 BCHRT 112 at paragraph 14, [2009] BCHRTD No 112; and *TRW Linkage & Suspension Division v Thompson Products Employees' Assn (Coons Grievance)*, 144 LAC (4th) 215 at paragraph 9, 83 CLAS 271.

[40] The respondent argues that the only evidence before the Board prior to imposing discipline is a note from Dr. Smyth dated September 22, 2011, which referred to "stressors" and did not mention a disability. The other letter from the same doctor was dated June 4, 2013, a month prior to the start of the hearing. It argues that the evidence does not demonstrate that the employer ought to have known that imposing discipline to the applicant would inflict mental anguish. It submits that the Board identified the right test in *Honda* and ruled reasonably that the examples of conduct which could attract compensable damages, are far removed from what exists in this case. Also, the respondent quotes the Board's finding on "loss of professional standing" and argues this analysis is reasonable.

[41] Therefore, the respondent submits the Board's decision falls within the range of possible, acceptable outcomes.

VI. Analysis and Decision

A. *Issue 1 - What is the standard of review?*

[42] Labour Relations Boards have long been recognized as a field of specialized expertise and should be given deference when reviewing its decisions (*Vaughan* at paragraph 13). Generally, where jurisprudence has established a test, the Board must correctly understand the law. Here, although both the applicant and respondent submit the appropriate standard of review in this case is reasonableness, in my view, two standards should be applied to the analysis of the issues. The standard of correctness should be applied to the review of the Board's understanding of the law on the legal test of damages for mental suffering. The Board's application of the law to the facts should be reviewed on the reasonableness standard.

[43] The standard of reasonableness means that I should not intervene if the Board's decision is transparent, justifiable, intelligible and within the range of acceptable outcomes (*Dunsmuir* at paragraph 47). Put another way, I will set aside the Board's decision only if I cannot understand why it reached its conclusions or how the facts and applicable law support the outcome (*Newfoundland Nurses* at paragraph 16). As the Supreme Court held in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59 and 61, [2009] 1 SCR 339, a court reviewing for reasonableness cannot substitute its own view of a preferable outcome, nor can it reweigh the evidence.

B. *Issue 2 - Did the Board misunderstand the test for awarding damages?*

[44] Here, the applicant submits two arguments. I will deal with them separately.

[45] First, pertaining to the aggravated and mental suffering damages not being available in disciplinary actions, I agree with the respondent that the Board did not err in law because it did not make such a finding. The Board's decision needs to be read in context, as opposed to in isolation.

[46] In this case, the Board's decision at paragraphs 114 and 115 demonstrates that it considered the reason why mental suffering damages are not often awarded in disciplinary actions.

[47] In rationalizing so, the Board did not make the broad finding as alleged by the applicant that mental suffering damages are never awarded in disciplinary actions. Instead, it simply reasoned that it is not typically awarded.

[48] Second, pertaining to the test for awarding mental suffering damages, I agree with the applicant that the Board misunderstood the test.

[49] The jurisprudence on the matter of aggravated damages has been in constant flux. The current law stands that aggravated damages for mental distress, also known as moral damages, are based on reasonable foreseeability under the *Hadley* principle (*Honda*) and though actual

physical damages need to be proven, independent actionable wrong is no longer required for a claim of mental suffering damages to succeed (*Honda*). This is clearly illustrated in *Honda* at paragraph 59:

> To be perfectly clear, I will conclude this analysis of our jurisprudence by saying that there is no reason to retain the distinction between "true aggravated damages" resulting from a separate cause of action and moral damages resulting from conduct in the manner of termination. Damages attributable to conduct in the manner of dismissal are always to be awarded under the *Hadley* principle. Moreover, in cases where damages are awarded, no extension of the notice period is to be used to determine the proper amount to be paid. The amount is to be fixed according to the same principles and in the same way as in all other cases dealing with moral damages. Thus, if the employee can prove that the manner of dismissal caused mental distress that was in the contemplation of the parties, those damages will be awarded not through an arbitrary extension of the notice period, but through an award that reflects the actual damages. Examples of conduct in dismissal resulting in compensable damages are attacking the employee's reputation by declarations made at the time of dismissal, misrepresentation regarding the reason for the decision, or dismissal meant to deprive the employee of a pension benefit or other right, permanent status for instance (see also the examples in *Wallace*, at paras. 99-100).

[50] Here, the Board quoted Wallace and reasoned that the discipline, although excessive, cannot lead to damages because it is not a "separate actionable course of conduct". This is not a correct understanding of the law under *Honda*. Therefore, the Board erred in law by misunderstanding the test.

C. *Issue 3 - Was the Board's decision reasonable?*

[51] The Board concluded that the applicant did not provide any medical information relating to stress prior to the imposition of discipline. This finding is not correct as there was some

medical evidence of stress. Ms. Ananiadis, the applicant's immediate supervisor, documented that the applicant was in shock and tears after the May 26, 2011 incident. At paragraph 102 of the Board's decision, the Board accepted that something had taken place in the workplace on May 26, 2011. Ms. Ananiadis in her report of the incident to the Workplace Safety and Insurance Board dated June 6, 2011 described the incident as "assault-traumatic incident." The applicant had told Ms. Shimbashi during the course of the investigative meeting that she was stressed as a result of the assault. In a July 15, 2011 email, the applicant told Ms. Shimbashi and Ms. Marcoux that the incident had caused her "stress beyond all thoughts." There was also a medical note dated September 22, 2011 referring to "recent stressors". It should also be noted that the applicant went on sick leave in September 2011.

[52] The Board, in its decision, under the heading, "Summary of the evidence" stated as follows at paragraphs 57 to 61:

> [57] Ms. Shimbashi was asked if she felt that it was an embarrassment that allegations of workplace violence were made in the very area that regulated workplace violence in the federal service. She denied that it was an embarrassment and stated that she manages issues that are in front of her. It was then put to her that the severity of the discipline was related to the fact that Ms. Shimbashi felt that the grievor had mishandled the managerial situation with AB. Ms. Shimbashi denied that and testified that it was related to the barricading issue.
>
> [58] Ms. Shimbashi was then shown a document that she authored in preparation for the grievance hearing (Exhibit G-22). In it she wrote as follows at page 4, when describing the grievor's work unit:
>
> > … it is above all the immediate supervisor's responsibility to demonstrate good judgement and leadership in seeking the resolution as soon as possible, and to inform the senior management in a timely manner in an effort to obtain the necessary support. Unfortunately, Ms. Gatien has not only

> failed to demonstrate the required judgement and leadership, which were critical in this situation, but has also participated in aggravating the circumstances by ignoring the gravity of the problems which loomed in the team and furthermore by not informing the senior management in a timely manner.

[59] Ms. Shimbashi was asked what the grievor failed to inform senior management about. She replied that the grievor could have notified senior management when the problem in the work unit first arose. She also wrote this in the report at page 3, the column entitled "comments":

> It would appear that during 2010, the actions and behaviours of [AB] were not addressed by Ms. Gatien, nor were they brought to the attention of management to have been addressed sooner.

[60] At page 5 of Ms. Shimbashi's document, she wrote as follows (Exhibit G-22):

> Although the senior management's involvement may appear to have been rather slow at the beginning, in fact, the principal reason for that impression would rather be the fact that the employee withheld the information and did not inform the senior management in a timely manner, which in turn helped in aggravating the situation.

[61] In responding to the question about what information the grievor had withheld, Ms. Shimbashi stated that any information about AB's behaviour would have helped. In her view, the grievor mismanaged the situation; however, the discipline was issued in consideration of all the facts available at the time.

[53] It would appear that Ms. Shimbashi was suggesting that the grievor (the applicant) had mismanaged the situations involving AB. However, the evidence does not show this at all. Instead, the evidence shows that the grievor promptly informed her superiors of the problems with AB and suggested remedial action. This could be a factor to consider when deciding whether or not to award damages.

[54] It must further be noted that it is the task of the Board to consider the evidence and come to a conclusion as to whether the evidence is sufficient to support a claim for damages. The evidence noted above was not considered by the Board. If this evidence had been considered by the Board, I have no way of knowing what the Board's finding would have been. It is not for the Court to do this assessment. As a result of this failure to consider this evidence and the application of the wrong test, I am of the view that the Board's decision was unreasonable.

[55] As a result, the application must be allowed with respect to damages and the matter referred back to the same Board for redetermination.

[56] The applicant shall have her costs of the application.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is referred back to the same board for redetermination.

2. The applicant shall have her costs of the application.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

***Federal Courts Act*, RSC 1985, c F-7**

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction	18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :
(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and	a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;
(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.	b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.
…	…
(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.	(3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d'une demande de contrôle judiciaire.
18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.	18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.
…	…
(3) On an application for	(3) Sur présentation d'une

judicial review, the Federal Court may	demande de contrôle judiciaire, la Cour fédérale peut :
(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

***Public Service Labour Relations Act*, SC 2003, c 22**

209. (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to	209. (1) Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire peut renvoyer à l'arbitrage tout grief individuel portant sur :
…	…
(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;	b) soit une mesure disciplinaire entraînant le licenciement, la rétrogradation, la suspension ou une sanction pécuniaire;
…	…
228. (2) After considering the grievance, the adjudicator or the Board, as the case may be, must render a decision, make the order that the adjudicator or the Board consider	228. (2) Après étude du grief, l'arbitre de grief ou la Commission, selon le cas, tranche celui-ci par l'ordonnance qu'il juge indiquée. Il transmet copie de

appropriate in the circumstances, and then send a copy of the order — and, if there are written reasons for the decision, a copy of the reasons — to each party, to the representative of each party and to the bargaining agent, if any, for the bargaining unit to which the employee whose grievance it is belongs. The adjudicator must also deposit a copy of the order and, if there are written reasons for the decision, a copy of the reasons, with the Chairperson.

l'ordonnance et, le cas échéant, des motifs de la décision à chaque partie et à son représentant ainsi que, s'il y a lieu, à l'agent négociateur de l'unité de négociation à laquelle appartient le fonctionnaire qui a présenté le grief. L'arbitre de grief doit en outre transmettre copie de ces documents au président.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1648-13
STYLE OF CAUSE:	GISELE GATIEN v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	OCTOBER 27, 2014
REASONS FOR JUDGMENT AND JUDGMENT:	O'KEEFE J.
DATED:	APRIL 27, 2015

APPEARANCES:

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