

Federal Court



Cour fédérale

**Date: 20180424**

**Docket: T-1640-17**

**Citation: 2018 FC 442**

**Ottawa, Ontario, April 24, 2018**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**JULIA ANN MCCREA**

**Applicant**

**and**

**THE MINISTER OF EMPLOYMENT,  
WORKFORCE DEVELOPMENT AND  
LABOUR CANADA, AND MISSISSAUGAS OF  
THE NEW CREDIT FIRST NATION**

**Respondents**

**JUDGMENT AND REASONS**

I. Facts

[1] Julia Ann McCrea (the “Applicant”) is an occasional teacher. She taught at Lloyd S. King Elementary School from November 13, 2015 to February 3, 2016. Her employer at the time was the Mississaugas of the New Credit First Nation (the “Employer”) and she believes that she did not receive the appropriate compensation for her work. Accordingly, she filed a complaint

against the Employer. In response, she received a Notice of Unfounded Complaint from an Inspector working with Employment and Social Development Canada's (ESDC) Labour Program.

[2] Unsatisfied with the Notice of Unfounded Complaint, the Applicant sought to challenge it. An official of the ESDC Labour Program determined that the Applicant's complaint would be treated as an appeal, and appointed Professor Joseph B. Rose (the "Referee") to hear the matter.

[3] By way of a letter dated March 24, 2017, the Referee contacted the parties, proposing two dates for a hearing. The Applicant subsequently received a letter dated April 24, 2017, indicating that the hearing would take place on May 30, 2017. The Applicant's affidavit states that on May 16, 2017, she had a telephone call with the Referee to advise him of a conflict with the date, and that in response, he agreed to adjourn the matter. The affidavit further states that no firm date was set at that time.

[4] Nevertheless, a hearing on the appeal of the Notice of Unfounded Complaint was held on September 20, 2017, in which the Applicant failed to appear. Accordingly, the appeal was dismissed by way of a decision dated September 26, 2017. The Applicant's sworn affidavit indicates that she received no notice to advise her that the date of the hearing had been set and, pursuant to further inquiries with the Referee, no such documentation advising her of the hearing was produced.

[5] The Applicant now seeks to appeal the Referee's decision before the Federal Court. She filed a Notice of Application on October 30, 2017 which names the Minister of Employment, Workforce Development and Labour (the "Minister") as the sole respondent. The Employer was not named as a party.

[6] Counsel for the Minister sought to remedy the above irregularity by way of a motion dated April 10, 2018, which sought to add the Employer as a party to these proceedings, and to allow the Applicant to serve the Applicant's Record and Notice of Hearing on the Employer. The Applicant indicated her consent to the motion by way of a letter dated April 11, 2018. By way of an order dated April 17, 2018, this Court granted the Minister's motion.

## II. Issues and Analysis

[7] The parties do not dispute that the Referee's decision must be sent for redetermination by a different officer. I agree. It is plain and obvious that the Applicant was not afforded procedural fairness, because the Referee does not appear to have given her notice of the hearing.

[8] Accordingly, the only issue that remains is whether the Applicant is entitled to costs. The Applicant asks for this Court to award her costs, while the Minister and the Employer are of the position that costs ought to be borne by each party.

[9] It is trite law that, per Rule 400(1) of the *Federal Courts Rules*, SOR/2004-238, this Court retains full discretion over the issue of costs. In the case at bar, the Applicant incorrectly named the Minister, rather than the Employer, in her Notice of Application. Had the proper party

been named, it is entirely possible that this matter could have been resolved without resorting to a hearing because the Employer does not appear to contest that the matter must be sent for redetermination.

[10] Nevertheless, with a view to facilitating a just outcome in the matter, the Minister's counsel sought to correct the Applicant's error by bringing a motion to add the Employer to these proceedings, and to allow the Applicant to serve the Employer accordingly. It would be highly improper for this Court to award costs against a party that, absent a duty to do so, has attempted to resolve the matter between the two proper parties to this case.

[11] I am sympathetic to the Applicant, who has undoubtedly been inconvenienced by the Referee's conduct; that, however, cannot be held against the Employer and the Minister, who are not the cause of the Applicant's cost and inconvenience in coming to this Court for relief. The appropriate recourse for the breach of procedural fairness is to have the matter sent back for redetermination by a different referee, and I shall indeed order accordingly.

**JUDGMENT in T-1640-17**

**THIS COURT'S JUDGMENT is that:**

1. The Referee's decision is set aside and the matter returned back for redetermination by a different referee.
2. Each of the parties shall bear their own costs / there shall be no order as to costs.

"Shirzad A."

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1640-17

**STYLE OF CAUSE:** JULIA ANN MCCREA v THE MINISTER OF  
EMPLOYMENT, WORKFORCE DEVELOPMENT AND  
LABOUR CANADA, AND MISSISSAUGAS OF THE  
NEW CREDIT FIRST NATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 23, 2018

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** APRIL 24, 2018

**APPEARANCES:**

Ms. Julia Ann McCrea FOR THE APPLICANT  
(ON HER OWN BEHALF)

Mr. Derek Edwards FOR THE RESPONDENT  
(ATTORNEY GENERAL OF CANADA)

Mr. Todd Weisberg FOR THE RESPONDENT  
(MISSISSAUGAS OF THE NEW CREDIT FIRST  
NATION)

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