

Federal Court



Cour fédérale

**Date: 20211104**

**Docket: T-801-21**

**Citation: 2021 FC 1175**

**Ottawa, Ontario, November 4, 2021**

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

**BETWEEN:**

**ADRIEN POIRON**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of the final level decision of the Royal Canadian Mounted Police [RCMP] Adjudicator [the “Final Level Adjudicator”], dated April 20, 2021 [the “Final Decision”]. The Final Decision upheld the initial level decision of RCMP Adjudicator [the “Initial Level Adjudicator”], dated October 23, 2020 [the “Initial Decision”], which dismissed

the Applicant's grievance in which he contested the determination of his rate of pay [the "Grievance"].

## II. Background

[2] The Applicant, Adrien Poiron, is an employee of the RCMP as a Sworn Civilian Member. The Applicant has worked as an Electronics/Computer and Radio Technician for the RCMP since March 4, 1991.

### A. *The Applicant's Grievance*

[3] On May 23, 2019, the Applicant presented the Grievance pursuant to section 31 of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [the "*RCMP Act*"]. The Grievance alleges that the RCMP is not following the Treasury Board Directive to the RCMP dated August 24, 1972 [the "Directive"], resulting in unfair compensation for the Applicant.

[4] More specifically, the Applicant alleges that – contrary to the Directive – his hourly rate is not the same as his Public Service counterpart. He attributes the discrepancy to a misinterpretation and misapplication of the Directive by the RCMP.

[5] As part of his Grievance, the Applicant sought the following redress:

- That the RCMP follow the Directive and apply the Annual Rate of Pay Formula set out in the Directive to calculate the Applicant's remuneration, including overtime; and

- That the adjustment in remuneration be retroactively applied to the entirety of the Applicant's employment with the RCMP.

B. *The Initial Decision*

[6] On May 28, 2019, the Office of the Coordination of Grievances and Appeals [the "OCGA"] raised the preliminary issue of standing in regards to the Grievance with the Applicant. Specifically, the OCGA noted that the Applicant was grieving an issue that appeared to be the same as a previous grievance presented by the Applicant, and which had already been adjudicated and dismissed in a final level decision.

[7] On May 29, 2019, the Applicant responded that he wished to proceed with the Grievance because he felt that it was different from the previous grievance and that the facts in his previous grievance were ignored.

[8] On May 11, 2020, the Respondent also raised the preliminary issue of standing on the basis that the Applicant had a similar grievance that had been previously adjudicated upon at a final level. On May 19, 2020, the Applicant provided submissions on the issue of standing at the request of the OCGA.

[9] Pursuant to paragraph 36(a) of the *RCMP Act* and subsection 3(1) of the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 [the "CSO"], an Initial Level Adjudicator was appointed for a decision on the preliminary issue of standing in regards to the Grievance.

[10] Following an examination of the information and documents found in the adjudicator's package provided by the OCGA, the Initial Level Adjudicator dismissed the Grievance for lack of standing, finding that the Applicant had not established that the impugned decision, act, or omission met the requirements of subsection 31(1) of the *RCMP Act* for two reasons.

[11] First, the Initial Level Adjudicator found that there was no distinction between the subjects of the present Grievance and the previously adjudicated grievance. Given that final level decisions are final and binding [*RCMP Act*, subsection 32(1)], the Applicant should have sought a judicial review under the *Federal Courts Act*, RSC, 1985, c F-7 [the "*Federal Courts Act*"] of the previous final decision rather than commence a new grievance. For this reason, the Grievance was dismissed according to subsection 31(1.1) of the *RCMP Act* and paragraph 10(a) of the *CSO*.

[12] As well, the Initial Level Adjudicator found that the impugned decision, act, or omission – in this case, the RCMP's alleged misinterpretation and misapplication of the Treasury Board Directive – was not made in the administration of the affairs of the Force. Upon examination of the record before him, the Initial Level Adjudicator found that it was a decision of the Treasury Board, not the RCMP, that the Applicant was attacking in his Grievance.

### C. *The Final Decision*

[13] In accordance with paragraph 31(2)(b) of the *RCMP Act* and pursuant to subsection 7(2) of the *CSO*, the Applicant requested a referral of the Grievance to the final level on the basis that the Initial Decision was reached in a manner that contravened the applicable principles of procedural fairness and was clearly unreasonable.

[14] In his submissions at the final level, the Applicant argued that the Initial Level Adjudicator was incorrect in his finding that the Applicant was attacking a Treasury Board decision. The Applicant submitted that, though the Treasury Board determines the annual rate of pay for Civilian Members and Public Service employees, the RCMP is misapplying these rates resulting in incorrect compensation to the Applicant as a Civilian Member.

[15] The Applicant also filed a rebuttal response further reiterating his position.

[16] On April 20, 2020, the Final Level Adjudicator rendered the Final Decision regarding the preliminary issue of standing in regards to the Grievance. He upheld the Initial Decision and dismissed the Grievance, finding that the Applicant did not establish that the Initial Decision contravened the Applicant's rights to procedural fairness, was based on an error of law, or was clearly unreasonable.

(1) Procedural Fairness

[17] The Final Level Adjudicator canvassed the relevant case law as well as the applicable legislation and policies (i.e. section 13 of the *CSO* and section 1.4 of the *National Guidebook – Grievance Procedure*). He found that the Initial Decision did not contravene the Applicant's right to be heard, right to a decision from the person who hears the grievance, or the right to reasons for the decision.

[18] Though the Applicant alleged that the Initial Level Adjudicator "ha[d] clearly made a biased and unreasonable decision in favor of RCMP management without examining the details

of [his] grievance properly”, the Final Level Adjudicator found that the Applicant was not actually alleging bias but was disagreeing with the findings of the Initial Decision. As a result, the Initial Decision did not contravene the Applicant’s rights to procedural fairness.

(2) Error of Law

[19] While the Applicant did not argue this point, the Final Level Adjudicator found that the law regarding the Initial Level Adjudicator’s finding of his jurisdiction to adjudicate the matter was correct, as well as his application of subsection 31(1) of the *RCMP Act* in regards to the preliminary issue of standing in the Grievance. Therefore, the Initial Decision was not based on an error of law.

(3) Reasonableness

[20] The Final Level Adjudicator found that the Initial Decision thoroughly examined the question of whether the Grievance had been previously adjudicated and correctly dismissed on this basis.

[21] Moreover, while the Initial Decision could have stopped once it found that the Grievance had been previously adjudicated, it went on to examine the question of whether the impugned decision was made in the administration of the Force: “In determination of standing, the crux of a grievance must be examined. The question at this juncture is: who is responsible for establishing a member’s rate of pay, both annually and hourly?”

[22] The Final Level Adjudicator agreed with the Initial Decision that the Treasury Board, not the Force, is responsible for the determination of pay rates for Civilian Members.

[23] The Final Decision held that the Applicant did not establish that the Initial Decision contravened the Applicant's rights to procedural fairness, was based on an error of law, or was clearly unreasonable.

### III. Decision Under Review

[24] The Final Decision confirmed that, on the preliminary issue of standing, the Applicant's Grievance did not meet the requirements of section 31(1) of the *RCMP Act* because the same issue had been adjudicated previously and the impugned decision was not made in the administration of the Force.

[25] The Final Decision also found that the Initial Decision did not contravene the Applicant's right to procedural fairness, was not based in error of law, and was not clearly unreasonable.

### IV. Issues

[26] The issues are:

- 1) Was the Final Decision reasonable?
- 2) Was the Final Decision procedurally fair?

V. Standard of Review

[27] Where a Court reviews the merits of an administrative decision, such as the Final Decision, the standard of review is reasonableness [*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]].

[28] Issues that relate to a breach of procedural fairness are reviewed on the standard of correctness or a standard with the same import [*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35, 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79].

VI. Analysis

[29] The Applicant submits that the Final Decision is unreasonable because it employed circular reasoning. The Applicant also asserts that the Final Decision refers to and acknowledges a number of documents (i.e. several Treasury Board documents and an article by Lisa Thiele) but did not apply them correctly or ignored them.

[30] In regards to the issue of procedural fairness, the Applicant submits that the adjudicators were influenced by the previous grievance and undertook their analysis with preconceived bias. The Applicant also argues that the grievance process itself is inherently biased because it is not run by an independent group or agency. He also states that by ignoring the aforementioned documents, that the Final Decision was biased and procedurally unfair.



A. *Was the Final Decision Reasonable?*

[31] A reasonableness review should focus on the decision-maker's process and the outcome. It is not the role of the Court to decide the issue themselves, determine the decision it would have made in place of that of the administrative decision-maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision-maker, conduct a *de novo* analysis, or seek to determine the "correct" solution to the problem. The reviewing Court must only consider whether the decision – including the reasons and the outcome – was unreasonable.

[32] I find that the Final Decision is clear, intelligible, and justifiable. The Final Decision thoroughly outlines the procedural history, the positions of the parties, and the applicable legislation and policies, and is reasonable to uphold the Initial Decision that the subject of the Grievance had been adjudicated previously. Indeed, at paragraph 4 of the Applicant's affidavit filed in support of this application, the Applicant states, "...My first grievance was dismissed on standing and therefore a second grievance was filed approaching the subject from a different angle." The Final Decision (and the Initial Decision) were reasonable in dismissing the Grievance on the basis that the subject had been adjudicated previously. While one of the documents (a table of pay rates) was not put before the adjudicators, it would not have affected the outcome.

[33] The Final Decision was also reasonable in upholding the Initial Decision's finding that the impugned decision was not made in the administration of the Force. The Final Decision aptly lays out both parties' positions and the applicable legislation and policies.

[34] There is no circular reasoning in the Final Decision as alleged by the Applicant. In addition, the Final Decision was made upon review of the entire adjudicator's package provided by the OCGA. There is no evidence provided by the Applicant that the Final Decision did not take into account all of the materials provided.

B. *Was the Final Decision Procedurally Fair?*

[35] The Final Decision itself contains a thorough analysis of procedural fairness according to the five non-exhaustive factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*]. Not only does the Final Decision correctly assess and find that the Applicant was afforded procedural fairness regarding the Initial Decision, the Final Decision also follows the same procedurally fair process.

[36] The grievance process provides the parties the right to be heard, the right to a decision from an unbiased adjudicator, the right to a decision from the person who hears the grievance, and the right to reasons for the decision. The Applicant was able to make written and rebuttal submissions throughout the two level process. The Applicant was provided justifiable, intelligible, and transparent reasons by the adjudicators at both levels.

[37] While the Applicant submits that both adjudicators were biased, he has provided no evidence to support this assertion. The adjudicators' reference to the previous grievance was correct and necessary to assess whether the subject of the Grievance had been adjudicated previously in light of the preliminary issue of standing. There is also no evidence that materials were ignored.

[38] I find that the Applicant was afforded procedural fairness. The Applicant has been allowed to fully adjudicate the issue of standing on this subject twice, before four different adjudicators, two different respondents, and over the course of three years.

[39] The Respondent seeks costs in the amount of \$1,500.00. The Applicant responds that it would be unfair to assess costs against him for seeking judicial review of what he has challenged as a procedurally unfair grievance process. Given the facts here, I find that minimal costs in the amount of \$500.00 should be awarded to the Respondent.

**JUDGMENT in T-801-21**

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

1. The application is dismissed.
2. Costs to the Respondent in the amount of \$500.00.

"Michael D. Manson"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-801-21

**STYLE OF CAUSE:** ADRIEN POIRON v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 28, 2021

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** NOVEMBER 4, 2021

**APPEARANCES:**

Adrien Poiron

FOR THE APPLICANT

Joel Stelpstra  
Marylise Soporan

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Adrien Poiron  
Nanaimo, British Columbia

FOR THE APPLICANT

Attorney General of Canada  
Ottawa, Ontario

FOR THE RESPONDENT