Federal Court  Cour fédérale

Date: 20090616

Docket: T-2168-07

Citation: 2009 FC 634

Montréal, Quebec, June 16, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

DIANE BEGIN, LUCIE BERGERON, SERGE BERNIER, JOANNE BILODEAU, FRANCE BONNEVILLE-HEBERT, GINETTE BRASSEUR, CARMELO FORTUNATO, PIERRE HURTUBISE, DIANE OGLEMAN, FRANCE RIENDEAU, CHRISTIANE SAULNIER, FRANCINE SAUMURE, FRANÇOIS SAUVAGEAU

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicants are seeking judicial review of the decision by the Deputy Head's Nominee for Classification Grievances (DHNCG), accepting the recommendation of a Classification Grievance Committee (Committee) to deny the applicants' grievances and maintain the classification of their positions at the PM-04 group and level.

II. Facts

[2] In February and March 2004, the applicants grieved the classification of their position at the PM-04 level.

[3] A Committee heard their arguments on September 10, 2007, and on November 8, 2007, recommended the maintenance of the classification of their positions at the PM-04 group and level. The applicants are contesting the DHNCG's decision accepting the Committee's recommendation.

[4] During the hearing of the grievances, the Chair of the Committee informed the applicants [TRANSLATION] "that following their presentation, the Committee may consider it appropriate to consult with management in order to clarify certain points and, in the event that it provides information that contradicts the facts put in evidence, the information will be forwarded to them for reply".

[5] All of the documents produced by the applicants before the Committee were examined by it; it even accepted that the applicants produced, after the hearing, five additional job descriptions, which were also taken into account in its recommendation.

[6] The Committee subsequently saw fit to verify with management the effective date of the job descriptions and certain information that was already part of the applicants' job descriptions; however, the information obtained from management did not contradict that of the applicants; that is why the Committee did not think it was advisable to forward it to them.

[7] The applicants maintain that the Committee should have forwarded them the information obtained from management and that in not doing so, despite its undertaking, the Committee thus breached the principle of procedural fairness because they were not able to make their arguments with respect to elements that, according to them, are a bar to their claims. Moreover, they maintain that they did not have the opportunity to fully present their case, given the refusal of the Committee to receive all documentary evidence and to hear their arguments as a result of time constraints and the conduct of the Chair of the Committee.

III. Issues

a. Was the DHNCG's decision made in breach of the principles of procedural fairness and natural justice?

b. Was it reasonable to maintain the applicants' positions at the PM-04 level?

IV. Analysis

Standard of review

[8] The Classification Grievance Committee assumes highly specialized roles and has expertise in matters of classification that the Court has recognized in several decisions. Given the nature of the issues, the Court must show the Committee's decision a high degree of deference (*Trépanier v. Canada (Attorney General),* [2004] F.C.J. No. 1601, paragraph 22; *Beauchemin v. Canada (Agence canadienne d'inspection des aliments*), [2008] A.C.F. No. 238, paragraph 20; *Adamidis v. Canada (Treasury Board),* [2006] F.C.J. No. 305, paragraph 24) and apply the standard of review of

reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9). Of course, this is on condition that there was no breach of procedural fairness as the applicants claim.

Procedural fairness

[9] The case law recognizes the administrative nature of the process followed before a Classification Grievance Committee; this process does not necessarily involve an adversarial context. ". . . [T]he case before me involves an administrative decision as opposed to a judicial or quasi-judicial decision and, therefore, the applicants are only entitled to a minimum level of fairness" (*Chong v. Canada (Attorney General)*, [1995] F.C.J. No. 1600, paragraph 40). The process was in accordance with procedural fairness if the complainants had the opportunity to make their arguments relating to the classification of their positions and to be heard, and if there was no restriction on their participation.

[10] While they had the opportunity to appear before the Committee, the applicants maintain that they were not given full and ample opportunity to make all of their arguments on the classification of their position because of the manner in which the hearing was conducted.

[11] In fact, the applicants maintain that the Committee refused to receive documents during their presentation, and used the pretext of time constraints; in addition, the Chair of the Committee had a hostile attitude towards them.

[12] Committee members were entitled to inquire about the time required by the applicants to complete their presentation without fearing being reproached today for having inappropriately restricted the time allocated to them to complete their presentation. Committee members have the right to manage the hearing process, including inquiring about the time required for presentations and deciding when to suspend, adjourn or proceed with the hearing.

[13] If it is true in this case that a Committee member indicated that it was impossible to extend the morning hearing past a certain hour, the applicants were nevertheless informed at the same time that, if necessary, their presentation could continue that same afternoon. If the applicants did not accept the proposal made to them by the Committee, they have only themselves to blame.

[14] As the hearing before the Committee was not recorded and no transcript is available, the Court must rely on the contradictory affidavits of the parties with respect to their submissions on the conduct of the hearing, the process that was followed, and the remarks by Committee members. The Court cannot, on the basis of only the affidavits produced by the parties, agree with the applicants or find that they were inappropriately interrupted or hurried during their presentation. The Committee's version is just as valid as that of the applicants on this point. The applicants had the burden of persuading the Court as to their submissions but it cannot accept their claims.

[15] Certainly, the applicants were able to make all of their arguments in support of their submissions. They even sent extra information to the Committee, after the hearing, which received and examined it.

[16] In short, the applicants were unable to demonstrate to the Court how the Committee could have breached procedural fairness or any other rule of procedure that it was legally required to comply with.

Right of reply

[17] The applicants maintain that, contrary to what is stated in the report, the information provided by management to the Committee, after the hearing, contradicts their arguments, and thus the Committee should have granted them a right of reply.

[18] The applicants had every opportunity to make their arguments. The Committee heard them and took note of them. Consequently, we may wonder: what would have been the use of a reply? They would have merely been able to reiterate before the Committee the arguments already made. The Court does not see how the refusal of the Committee to grant a right of reply to the applicants can constitute in this case a breach of the principle of procedural fairness. Not accepting the applicants' arguments or not allowing them to reiterate the same arguments does not constitute a breach of the principle of natural justice and even less so a breach of the principle of procedural fairness.

[19] This finding is all the more relevant because the subsequent information provided by management was not new and the applicants had every opportunity to make their submissions on this during their presentation. In fact, the management representative merely confirmed after the

hearing certain information already produced by the applicants and appearing in their job descriptions; it consisted of the following elements: confirmation of the effective date of their job description; their obligation to stay in contact with various stakeholders, such as the media, which was already part of their job description; the fact that the applicants were always responsible for the proper progression of their files from start to finish; the fact that the nature of the decisions made by the applicants was consistent with their presentation before the Committee.

[20] In short, management did not provide any information to the Committee that the applicants did not know about or could not anticipate. Furthermore, for analysis purposes, the Committee had to rely on the content of the job description and could not take into account contradictory or divergent external elements.

[21] The grievance process relating to the classification of positions does not necessarily involve an adversarial context (*Utovac v. Canada (Treasury Board)*, 2006 FC 643, paragraph 16), even if the Committee is required to act with fairness and give the grievor full opportunity to express himself or herself on central issues. However, even supposing that the applicants had the right to an adversarial context, their right of reply would be limited to new facts raised by the opposing party. In this case, there was no information that the applicants did not know about or could not have anticipated and that could warrant a right of reply.

[22] The applicants did not establish to the satisfaction of the Court that the procedure followed by the Committee constituted a breach of the principle of procedural fairness. The Committee, consequently, exercised its discretionary authority correctly.

Reasonableness of the decision

[23] The applicants did not make any submission that could potentially persuade the Court that the decision to maintain their positions at the PM-04 level was unreasonable; they opted to contest the procedure that was followed rather than the substance of the decision. There is therefore no cause for intervention.

V. Conclusion

[24] For all of these reasons, the Court finds that the applicants did not demonstrate that the decision being contested was unreasonable. Their application for judicial review will therefore be dismissed with costs.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISSES the application for judicial review, with costs.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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