Federal Court  Cour fédérale

Date: 20131015

Dockets: T-445-11
T-446-11
T-447-11
T-448-11

Citation: 2013 FC 1040

Ottawa, Ontario, October 15, 2013

PRESENT: The Honourable Madam Justice Strickland

Dockets: T-445-11
T-446-11

BETWEEN:

DENISE ANDERSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Dockets: T-447-11
T-448-11

AND BETWEEN:

KATHLEEN BETTS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is the judicial review of four decisions made by Diane Lorenzato, Assistant Deputy Minister, Public Works and Government Services Canada, Human Resources Branch, dated February 7, 2011, dismissing the complaints of harassment and abuse of authority by Denise Anderson and Kathleen Betts against Dean Miller, Regional Director General (RDG), Public Works and Government Services Canada (PWGSC), Ontario Region (T-446-11 and T-448-11) and against Catherine Vick, Regional Director of Human Resources, PWGSC, Ontario Region (T-445-11 and T-447-11). The four applications were consolidated as a specially managed proceeding on December 6, 2011. This judicial review is brought pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

Background

[2] The Applicants, Denise Anderson and Kathleen Betts, were both employed in the office of the Regional Director General ("RDGO") of PWGSC in Toronto occupying positions as executive administrative assistants, at the AS-01 group and level.

[3] Mr. Miller was appointed as the Regional Director General (RDG), PWGCS, of the Ontario region in September 2007. Mr. Miller's account of his mandate was to rebuild and overhaul a region

which had a history of failing to meet its operational requirements. This involved a restructuring of the RDGO and a reorganization of work in the office.

[4] Mr. Miller met with the Applicants and explained that he was initiating a new structure in which there would be no employees at the AS-01 group and level. There would be one AS-05, one AS-02 and one CR-4. Mr. Miller intended to bring his former assistant with him to work in the RDGO and to fill the new AS-02 position.

[5] Subsequently, Mr. Miller met with the Applicants on a number of occasions and offered to assist them with training and in finding suitable alternate positions within the federal government at the same group and level. The Applicants were unwilling to consider moving into alternate positions, even in one instance which would have meant a promotion to AS-02 level, and refused temporary work assignments to other AS-01 positions.

[6] The Applicants also met with Ms. Catherine Vick, Regional Director of Human Resources, PWGSC, of the Ontario Region, to discuss their situation. They asked that Ms. Vick provide them with information to support Mr. Miller's actions. She directed them to some websites which, according to the Applicants, Ms. Vick stated explained what a manager needs to consider when developing a new organizational structure. Ms. Vick also informed the Applicants that management had a right to reorganize the office.

[7] On October 15, 2008, the Applicants filed complaints of harassment, including abuse of authority, against Mr. Miller, Ms. Vick and others pursuant to the Treasury Board Policy on

Prevention and Resolution of Harassment in the Workplace (Harassment Policy). The Harassment Policy governs the complaint process for harassment in federal departments and organizations.

[8] The Applicants alleged that Mr. Miller harassed them and abused his authority by pressuring them to accept positions outside of the RDGO and by acting contrary to the rules and procedures governing employment in the public service in order to facilitate his former administrative assistant joining that office and his restructuring of the RDGO. The Applicants alleged that Ms. Vick facilitated Mr. Miller's efforts to remove them from their positions knowing that his actions constituted harassment.

[9] Pursuant to the Harassment Policy, if a complaint is not resolved through mediation, the delegated manager may launch an investigation by retaining an independent investigator. The investigator must provide the delegated manager with a written report. Ms. Lorenzato was the delegated manager and Ms. Audrey Devlin, of Devlin and Associates, was appointed to investigate the Applicants' complaints (the investigator). The Applicants' complaints were essentially the same and were investigated concurrently.

[10] On July 2010, PWGSC provided the parties with the investigator's preliminary reports. On November 22, 2010, the Applicants' union representative, Craig Spencer, submitted lengthy responses to the preliminary reports on the Applicants' behalf. These asserted that the complaint against Mr. Miller was that he abused his authority by foregoing the formalities of public service staffing law and removing the Applicants from their indeterminate positions. Further, that the investigator had failed to determine if Mr. Miller held such authority and asserted that, if he did not,

then his actions constituted an abuse and a violation of the Harassment Policy. And, that Ms. Vick had failed in her duty owed to the Applicants when she supported Mr. Miller's decision.

[11] The final reports of the investigator were provided to the Applicants in December 2010 and found that their complaints of harassment and abuse of authority were not substantiated. Mr. Miller had acted within his authority as RDG and his actions did not constitute harassment. The investigator found that some of the Applicants allegations were scurrilous, defamatory and malicious. As to the complaint against Ms. Vick, the investigator found that none of the allegations had been substantiated.

[12] On February 7, 2011, Ms. Lorenzato adopted the findings of the final investigation reports which found that the Applicants' complaints were unsubstantiated. This is the judicial review of Ms. Lorenzato's decisions (collectively, the Decision).

Legislative and Policy Background

[13] The Applicants filed their complaints pursuant to the Harassment Policy. The record does not contain any guidelines or other documents which might flesh out the Harassment Policy's procedural content.

[14] The *Public Service Employment Act*, SC 2003, c 22, ss 12, 13 (PSEA) gives the Public Service Commission (the Commission) the responsibility for appointment of employees in the federal public service. The Commission can delegate this authority to deputy heads that, in turn, can authorize others, such as departmental managers, to exercise those powers. The *Financial*

Administration Act, RSC 1985, c F-11 (FAA) confers authority on the Treasury Board in all matters relating to human resources management in the federal public administration. The Treasury Board may determine the human resources requirements of the public service and provide for the allocation of effective utilization of human resources in the public sector. The Preamble and subsections 2(1), 11, 15(1), 16, 24, 29, 30(1), and 51 of the PSEA and subsections 7 (1)(b), 7(1)(e), 11.1(1), and 12(1) of the FAA are relevant to this proceeding.

Issues

[15] The Applicants submit that this judicial review raises the issue of the appropriate standard of review and of whether PWGSC failed to observe the principles of procedural fairness in rendering its decision to dismiss the Applicants' complaints of abuse of process and harassment. The Respondent submits that the issue is whether the investigator breached the rules of procedural fairness and natural justice.

[16] The core of the matter giving rise to this judicial review is the question of whether the PWGSC properly investigated the Applicants' complaints of harassment and abuse of authority. Therefore, I agree with the parties that the issue before this Court is whether the Decision, which adopted and was based on that investigation, was procedurally fair.

Positions of the Parties

The Applicants

[17] The Applicants' principal allegation is that PWGSC did not conduct a thorough investigation before rendering its Decision to dismiss their harassment complaints.

[18] The Applicants submit that the content of the duty of procedural fairness owed by administrative decision makers depends on the circumstances of each case (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*]) and that the analysis and standard of fairness applied in *Potvin v Canada (Attorney General)*, [2005] FCJ No 547 (QL) (TD) [*Potvin*] is also applicable to this case (*Potvin*, above, at paras 25, 28; *Bell Canada v Communications, Energy and Paperworkers Union of Canada*, [1999] 1 FC 113 at para 43).

[19] Further, that procedural fairness requires that a neutral and thorough investigation be conducted. A thorough investigation requires that the investigator:

- investigate all major allegations in the complaints;
- investigate all obviously crucial evidence;
- confront the respondent with submissions from the complainants that call into question the respondents' position; and
- provide the parties with the opportunity to make all relevant representations in response to the preliminary investigation report and to have all these representations considered.

(*Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 120-123; *Public Service Alliance of Canada v Canada (Treasury Board)*, 2005 FC 1297 at paras 42-50 [*PSAC*])

[20] The Applicants also submit that the investigator's report contains three significant errors which breach these procedural fairness obligations. The investigator failed to (a) investigate the Applicants' core allegation; (b) investigate crucial evidence; and (c) address the substance of their complaint.

[21] As to the failure to investigate the core allegation, the Applicants' submit that their principal allegation against Mr. Miller and Ms. Vick concerned the manner in which the Applicants were removed from their positions. Specifically, that Mr. Miller's actions were inconsistent with the obligations that arise from a federal public service workplace reorganization and the provisions of the PSEA and FAA. Although the Applicants made submissions on the law of staffing in the federal public service, the investigator failed to consider or assess them. The Applicants submit that the investigator did not refer to any documents which indicate the source of Mr. Miller's authority and that the final reports did not consider the statutory limits on Mr. Miller's authority to reorganize the workplace in the manner in that he did, which was primarily motivated by his wish to bring his former assistant with him to his new role. Further, the investigation did not address Mr. Miller's decision to use an informal staffing process rather than a workforce adjustment (WFA).

[22] The Applicants submit that without such inquiries, the investigator could not possibly have undertaken a thorough investigation.

[23] As to the failure to investigate crucial evidence, the Applicants submit that they questioned the lack of documentation supporting Mr. Miller's staffing decisions and requested the investigator to seek the disclosure of these documents. This evidence was crucial as it would have either confirmed or defended their allegations against Mr. Miller and Ms. Vick. The investigator did not request that Mr. Miller produce the "paper record", if any, leading to his decision to remove them from their positions, yet found that Mr. Miller acted within his authority without providing any reasons or addressing the source of this authority.

[24] The Applicants submit that among the links Ms. Vick emailed to them was a departmental policy on organizational change. The investigator found that Mr. Miller had acted within the policy without providing any reasons why this was so or whether the policy addressed the statutory limits on Mr. Miller's authority generally, or, in the context of the Applicants' particular circumstances. The Applicants also submit that the report suggests that the investigator did not review any of the other information that Ms. Vick provided to the Applicants.

[25] Finally, the Applicants submit that the investigator improperly focussed on concerns with the Applicants' performance. However, Mr. Miller's actions would necessarily be "viewed through a different lens" if it had first been determined whether or not he had complied with his obligations under the law governing public service employment. It was impossible for the investigator to properly appreciate the impact of Mr. Miller's behaviour towards the Applicants without first making that determination.

Respondent's Submissions

[26] The Respondent makes two principal submissions being that: (i) Mr. Miller's exercise of authority did not constitute harassment; and (ii) the PWGSC complied with its procedural fairness obligations.

[27] The Respondent submits that the procedural fairness issues must be considered in light of the Policy's definition of harassment and abuse of authority. Harassment and abuse of authority require intentionally harming an employee and must be more than just a flawed administrative

decision (*McElera* v *Canada (Industry)*, [2003] FCJ No 1001 (QL) (TD) at para 11). The Policy defines harassment as follows:

> Harassment…is any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionably act, comment or display that demeans, belittles, or causes personal humiliation or harassment, and any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act*.

[28] In the reports, the investigator refers to the Department of Justice's definition of abuse of authority: "Taking undue advantage of a position of authority to endanger an employee's job, undermine an employee's job performance, threaten an employee livelihood or interfere with his career."

[29] The Respondent submits that the evidence as set out in the investigation reports confirms that there was a reasonable basis in fact supporting Mr. Miller's actions. Therefore, those actions did not constitute an abuse of authority (*Bartrud v Office of the Superintendent of Financial Institutions*, [2006] CPSSLRB No 65 at paras 75 and 84).

[30] The Respondent submits that, at their core, the Applicants' complaints concern alleged breaches of staffing rules. There are other avenues of redress for perceived breaches of public service staffing requirements including a complaint to the Commission or a grievance. However, even if there was a breach of staffing rules, this does not amount to harassment or abuse of authority as they require an intention to harm and the investigation found as a fact, that there was no evidence to support such a finding.

[31] The Respondent submits that the content of procedural fairness depends on context. The circumstances of each case dictate the degree of thoroughness required (*Slattery v Canada (Human Rights Commission*), [1994] FCJ No 181 (QL) (TD) at paras 55, 56 and 69, aff'd [1996] FCJ No 385 (QL) (CA) [*Slattery*]). Here the investigation process was procedurally fair as PWGSC conducted a thorough and neutral investigation (*Slattery*, above; *Miller v Canada (Attorney General)*, [1998] FCJ No 1564 (QL) (TD)). The investigator inquired into the Applicants' core allegation, that by removing them from their position, Mr. Miller acted contrary to public staffing rules. The investigator had sufficient evidence to determine that Mr. Miller had bona fide plans to restructure the organization and appropriately concluded that there was no evidence that he violated any rules governing public service employment. Even if Mr. Miller was mistaken about his right to restructure his organization, this error does not amount to harassment.

[32] The Respondent submits that case law establishes that the courts will only intervene where there is an "unreasonable omission" in the investigation or where the investigation is "clearly deficient." There is an unreasonable omission or a clear deficiency in an investigation where the investigator fails to investigate "obviously crucial evidence," which omission or deficiency cannot be rectified by bringing it to the investigator's attention in the parties' submissions made in response to the preliminary investigation reports. Minor omissions or deficiencies which can and ought to be corrected by the parties in their submissions do not justify judicial review (*Slattery*, above, at paras 56, 69). An investigation does not lack thoroughness merely because the investigator does not analyze each and every allegation raised by the complainant (*Slattery*, above, at paras 56 and 67-69).

[33] As to the Applicants' assertion that the investigation failed to investigate crucial evidence, the Respondent submits that the Applicants do not have any evidence that paper documentation supporting Mr. Miller's staffing decisions even exists. The investigator was provided with sufficient evidence to determine that Mr. Miller had bona fide plans to restructure; accordingly, his actions did not constitute harassment. Given this, a failure to request additional written documents detailing restructuring plans does not constitute a failure to investigate "obviously crucial evidence."

[34] Finally, the Respondent submits that the Applicants' performance was relevant to the investigation as it corroborated that the RDGO was in need of restructuring. The investigator did not breach procedural fairness in analyzing the Applicant's performance.

Standard of Review

[35] Where previous jurisprudence has satisfactorily determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 50 and 57 [*Dunsmuir*]). I agree with the parties that the standard of review for a question of whether an investigation report is thorough is as in this case an issue of procedural fairness to be reviewed on a correctness standard (*Busch v Canada (Attorney General)*, 2008 FC 1211 at para 12 [*Busch*]; *Shaw v Canada (Royal Canadian Mounted Police)*, 2013 FC 711 at para 28; *PSAC*, above at para 24; *Thomas v Canada (Attorney General)*, 2013 FC 292 at para 38 [*Thomas*]; *Sketchley*, above, at paras 46, 52, 55).

[36] It is also well-established that no deference is owed to a tribunal decision maker on an issue of procedural fairness (*Dunsmuir*, above, at para 50; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43 [*Khosa*]; *Sketchley*, above, at para 53; *Gravelle v Canada (Attorney General)*, 2006 FC 251 at para 24 [*Gravelle*]).

Analysis

Was the investigation and decision-making process procedurally fair?

[37] The starting point of this analysis is to determine what was required of PWGSC in order to fulfill the duty of procedural fairness it owed the Applicants. Put otherwise, what was the content of the duty of fairness in the present case?

[38] In *Potvin*, above, the Court held that the policy at issue in that case (the Policy on Prevention and Resolution of Harassment in the Workplace for the Tax Court of Canada) codified the extent of the requirements of the procedural fairness owed in the circumstances. Similarly in *Thomas*, above, Justice Kane found that the same Harassment Policy as is applicable in this case, and related PWGSC Guidelines, served to codify the investigator's procedural fairness obligations.

[39] Here, the Harassment Policy sets out the steps to be followed in the complaint process. This includes the use of investigators who will provide the delegated manager with a written report of his or her findings and conclusions which the delegated manager may rely upon in deciding if harassment has occurred. However, in this case, and unlike *Thomas*, above, no reference is made in the submissions by the parties or in the investigation reports to any guidelines supporting the Harassment Policy which could further flesh out the required investigative process. The

Harassment Policy merely states that investigators are expected to meet the requirements as outlined in the Competency Profile for Internal and External Harassment Investigators and to apply the principles of procedural fairness.

[40] In the absence of a guideline regarding specific procedural fairness guarantees, PWGSC is required to adhere to the principles previously described in *Sketchley* and *Baker*, above. Here, however, the only aspect of procedural fairness at issue is the thoroughness of the investigator's reports.

[41] In *Slattery*, above, Justice Nadon, then of this Court, considered the content of the duty of fairness in the context of an investigation of complaints of discrimination and the decision of the Canadian Human Rights Commissioner's (CHRC) to dismiss the complaints. That decision was based on an investigator's report which found that the allegations of discrimination were not founded on the evidence.

[42] Justice Nadon addressed the degree of thoroughness required by an investigation as follows:

> [55] In determining the degree of thoroughness of investigation required to be in accordance with the rules of procedural fairness, one must be mindful of the interests that are being balanced: the complainant's and respondent's interests in procedural fairness and the CHRC's interests in maintaining a workable and administratively effective system. […]
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> […]
>
> [56] Deference must be given to administrative decision-makers to assess the probative value of evidence and to decide to further investigate or not to further investigate accordingly. It should only be where unreasonable omissions are made, for example where an

> investigator failed to investigate obviously crucial evidence, that judicial review is warranted. Such an approach is consistent with the deference allotted to fact-finding activities of the Canadian Human Rights Tribunal by the Supreme Court in the case of Canada (Attorney General) v. Mossop, [1993] 1 S.C.R. 554.
>
> [57] In contexts where parties have the legal right to make submissions in response to an investigator's report, such as in the case at bar, parties may be able to compensate for more minor omissions by bringing such omissions to the attention of the decision-maker. Therefore, it should be only where complainants are unable to rectify such omissions that judicial review would be warranted. Although this is by no means an exhaustive list, it would seem to me that circumstances where further submissions cannot compensate for an investigator's omissions would include: (1) where the omission is of such a fundamental nature that merely drawing the decision-maker's attention to the omission cannot compensate for it; or (2) where fundamental evidence is inaccessible to the decision-maker by virtue of the protected nature of the information or where the decision-maker explicitly disregards it.

[43] Justice Nadon considered whether the investigation then before the Court was thorough and, if not, whether the omissions in the report could be corrected by the applicant's responding submission. He considered the applicant's submission that the investigation was not thorough because some of the witnesses that she had identified had not been interviewed and because the report contained no analysis regarding the role played by the section head in harassing the applicant.

[44] Justice Nadon found that the investigator considered all of the fundamental issues contained in the applicant's complaint, including the section head's treatment of the applicant. The fact that there was "no analysis of certain specific allegations in the investigator's written report or in the CHRC's reasons for dismissal did not indicate that the allegations were not considered by the investigator and was not a ground for review." He further stated the following:

> [69] The fact that the Investigator did not interview each and every witness that the applicant would have liked her to and the fact

> that the conclusion reached by the investigator did not address each and every alleged incident of discrimination are not in and of themselves fatal as well. This is particularly the case where the applicant has the opportunity to fill in gaps left by the investigator in subsequent submissions of her own. In the absence of guiding regulations, the investigator, much like the CHRC, must be master of his own procedure, and judicial review of an allegedly deficient investigation should only be warranted where the investigation is clearly deficient. […]

[45] Ultimately, in *Slattery*, Justice Nadon concluded that there were no grounds to review the CHRC's decision based on a lack of thoroughness in the investigation or other violation of a rule of procedural fairness. Also see *Miller v Canada (Canada Human Rights Commission)*, [1996] FCJ No 735 (QL) (TD) at p 201.

[46] In the present case, the content of the duty of fairness required that the investigator conduct a thorough investigation and that the Applicants be given an opportunity to respond to the preliminary reports. This is similar to the procedure for initiating and responding to a complaint in the CHRC's procedure (*Potvin*, above, at para 25; *Moussa v Canada (Public Service Commission)*, 2007 FC 884 at para 38). Although here the parties do not have an opportunity to make further submissions to the delegated manager who makes the ultimate decision on the complaint, they are permitted to, as the Applicants did, make further submissions following their review of the preliminary investigation reports. In my view that aspect of the duty of fairness was met leaving only the degree of thoroughness employed by the investigator in the context of the Applicants' complaints to be considered.

[47] The Applicants assert that the investigation was not thorough because the investigator failed to investigate their core allegation being the manner in which they were removed from their

positions and the source of the authority to permit that action. It should perhaps be noted, for purposes of clarity, that the Applicants' employment with the federal civil service was not terminated. Nor were they involuntarily deployed to other positions.

[48] Upon reviewing the investigation reports and supporting record, I am satisfied that the investigator considered the Applicants' allegation that Mr. Miller's actions were inconsistent with the obligations which arise out of a federal public workplace reorganization. That is, the investigator thoroughly investigated the Applicant's core complaint of abuse of authority.

[49] The Applicants' original complaint included an allegation, amongst many others, that Mr. Miller had a "blatant disregard for the rules and regulations that govern us all with respect to hiring and other HR principles", "unethical" staffing processes and that the harassment stemmed from his efforts to remove them from their AS-01 positions and to restructure the RDGO. The original complaint contained no reference to any specific legislative provisions in relation to that allegation.

[50] The preliminary investigator's reports summarized the Applicants' complaints as being that Mr. Miller had harassed them by his repeated efforts to remove them from their substantive positions and transfer them to other positions in order to facilitate his former assistant joining the RDGO, a patronage appointment. He had thereby abused his authority by contravening the rules and procedures governing employment in the public service.

[51] The Applicants' union representative submitted lengthy replies to the preliminary investigation reports which put forth several submissions. The replies stated that the investigator had an obligation to inform herself of the staffing system of the federal public service and that she had several resources available to her to undertake this task, such as the PWGSC's Human Resource Community and the Public Service Commission.

[52] The replies also noted that at the request of the investigator, the union representative had provided an overview of the options available to a manager who wishes to displace an employee from an indeterminate position (the Memo). However, that there was no evidence that this document was considered by the investigator. The replies also note that the investigator did not consider the source of Mr. Miller's authority to undertake the changes in the office. Further, that it was the presence or absence of a paper trial which could have informed the investigator as to whether Mr. Miller's actions were appropriate.

[53] The Memo, dated March 2, 2010, was attached to the replies. It asserts that while there are various ways an indeterminate employee can leave or be dismissed from his or her position, there must be a "paper trail" to support such actions. If the investigator was not given the documentation to support one of the options then "she knows from the outset that the actions were outside the law". The Memo includes provisions of the PSEA, the FAA and extracts from a document concerning WFAs and the grievance process from same. In the context of WFAs, it asserts that management has the right under the FAA to reorganize the delivery of its services, but that in doing so, new job descriptions must be written, positions must be classified and new job numbers added to the

organizational chart. In order to determine if Mr. Miller's actions were appropriate, the investigator was required to inquire into such documentation.

[54] The Memo does not, however, specify the alleged breaches of the provisions of the PSEA or the FAA by Mr. Miller or Ms. Vick. Nor does it specifically address Mr. Miller's authority, in the context of that legislation, to reorganize the RDGO. It does address the requirements for WFAs. However, the complaints and the investigation reports make it clear that Mr. Miller was attempting to avoid a WFA process as he hoped that alternate arrangements could be agreed upon which would be in the best interest of all concerned, a potential result of a WFA being the loss of the Applicants' employment.

[55] While it is true that the Memo was not referred to in the investigation reports, the investigator, whose decision formed the basis for PWGSC's ultimate decision in this case (*Sketchley*, above at para 37) was not obliged to refer to every piece of evidence and she is presumed to have reviewed all the evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL) (CA); *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) (TD) at para 17). It is also significant that the Memo was provided in response to the investigator's request leading to the inference that the investigator was alert to the Applicant's view that Mr. Miller lacked authority to restructure the RDGO as he did and their submissions on the issue. However, as indicated earlier, the Memo does not specify any breaches of the public service statutory requirements, policy or rules, and suggests only that a paper trail should have been generated to substantiate the changes made to the office.

[56] Further, the final investigation reports acknowledged that the preliminary reports had been provided to the parties and that the Applicants, through their union representative, had provided lengthy responses (which attached copies of the Memo), but concluded that, as no new evidence was contained in the responses, no changes were required to the preliminary reports.

[57] The investigation reports concerning the complaints against Mr. Miller describe the evidence considered by the investigation and sufficiently contemplate Mr. Miller's authority. A summary description of the pertinent evidence and the investigators findings follows:

- One witness, a senior staff member at NHQ, confirmed that he had ongoing discussions with Mr. Miller over many months concerning his plans to restructure the office and region;

- Another witness, a former senior staff at NHQ, stated that there was an inherent and explicit expectation that Mr. Miller would improve the performance of the Ontario region and that the office structure would be brought into alignment with the other regional offices both by re-assigning and realigning work in order to do so;

- The investigator refers to an email exchange between two witness dated June 25-July 4, 2007 which predates Mr. Miller's arrival in the RDGO, and in which one witness confirms problems with the efficiency and operation of the RDGO;

- Throughout the reports, the investigator cites the evidence of several witnesses and concludes that the Applicants provided no evidence that Mr. Miller had violated any rules governing public service employment; there was no defamation, and, that Mr. Miller had the authority to organize the office in the manner he felt best served the region;

- One witness reported that he advised Mr. Miller to be transparent and to keep the staff informed of his plans as they evolved. He states the goal was to implement a sensible and effective structure. The witness states that Mr. Miller had expressed concerns that the RDGO was not working well as a team;

- The investigator found that Mr. Miller made numerous ongoing efforts to assist the Applicants in coming to terms with the changes and to locate comparable positions for them which they declined. The investigator found that these efforts were neither bullying nor attempts to threaten them;

- Mr. Miller indicated that his mandate was to rebuild and overhaul a region which had an unfortunate history as he noted that there were serious issues in some of the regions and that

Ontario had the most significant challenges. Considerable latitude was given by the Deputy and the Associate Deputy to the RDGs to carry out their tasks;

- Mr. Miller's evidence was that he had continuing discussions with the Regional Executive Committee, the RDG's NHQ HR Staff including the ADM, and the Associate Deputy Minister concerning the plans for rebuilding and improving the Region and the RDGO in particular. Feedback and suggestions that he received were incorporated into subsequent iterations of the plan. A mandate to implement his proposal was implicit in those discussions, and through an email to him from the NHQ Director General, Human Resources Policies and Programs in June of 2008.

[58] The investigation reports concerning the complaints against Ms. Vick also described the evidence considered by the investigator which included Ms. Vick's evidence that Mr. Miller was entitled to re-structure and re-assign staff and that his actions were not in contravention of any policy or rules governing the public service.

[59] The investigation report concerning Ms. Betts' complaint against Ms. Vick addressed the allegation that Ms. Vick had effectively harassed her by failing to provide copies of policies and regulations governing public service employment and re-assignment. Ms. Vick had directed Ms. Betts to the Treasury Board and department websites as well as a PWGSC "Policy 005" which detailed the process to be followed for organizational change. The investigation report lists Policy 005 and the email from Ms. Vick providing some of the requested information and referring Ms. Betts to websites where more information concerning her inquiry could be obtained. The fact that the investigator referred to this documentation confirms that she was aware of and considered it.

[60] The investigator concluded that all of the policies and procedures regarding assignments and organizational changes were available to all employees on the departmental intranet or Treasury Board websites to which Ms. Betts had been directed. Therefore, it was not reasonable to suggest

that Ms. Vick had withheld information. The investigator also found that Mr. Miller acted within the departmental Policy 005, regarding organizational change.

[61] The investigator also considered the complaint against Ms. Vick which concerned her responsibilities in connection with Mr. Miller's arranging of work assignments for Ms. Betts in other units. The summary of Ms. Vick's evidence indicated that she advised the Applicants that management had a right to re-organize how work is done and she explained that it was "Classification at headquarters" which would make decisions about new jobs.

[62] In all of the reports, the investigator considered and concluded that Mr. Miller had acted within his authority and noted that there was no evidence that his actions contravened the policy regarding public service employment. The investigator found that Mr. Miller had the authority to assign work particularly where there were changes in the organizational structure and that it was not uncommon for senior level managers to transfer in a trusted administrative professional to a vacant position which was what occurred in this case. Mr. Miller had a different expectation of the work to be performed than had his predecessor. Further, RDGs across the country were engaged in discussions about the level of support needed and the structure of the RDGOs.

[63] Based on this and as stated above, I am satisfied that the investigator considered the Applicants' allegation that Mr. Miller's actions were inconsistent with the obligations which arise out of a federal public workplace reorganization. That is, that she did investigate the Applicant's core complaint of abuse of authority and concluded that it was unfounded.

[64] The Applicants also submit that the investigation was not thorough because the investigator failed to address their submission that a paper trail supporting the restructuring should have been generated and investigated (*Busch*, above). According to the Applicants, the investigation seems to simply have accepted at face value Mr. Miller's explanation of his authority rather than investigating this issue further (*Gravelle*, above).

[65] The investigator's duty of thoroughness does not require it to interview every person proposed by a complainant (*Miller*, above, at para 10; *Slattery*, above at para 69). The investigator must simply ensure that all fundamental issues raised in the complaint have been dealt with in the report (*Batemen v Canada (Attorney General)*, 2008 FC 393 at para 29). The investigator also has a duty to consider crucial evidence (*Slattery*, above).

[66] Given that the investigator concluded, based on the evidence, that Mr. Miller's interactions with the Applicants for the purpose of assisting them in alternate placements did not constitute harassment, the existence of a "paper trail" to demonstrate Mr. Miller plans to reorganize the RDGO is, in my view, not crucial evidence in these circumstances. The investigator found that there was evidence to indicate that there were plans to reorganize the office.

[67] The investigator undertook a thorough analysis of all the evidence submitted by the Applicants, Mr. Miller and numerous witnesses. The evidence was that operational problems at the RDGO pre-existed Mr. Miller's appointment. Further, that the reassignment of some work tasks which Mr. Miller implemented, such as ATIP work, had been under discussion for a considerable period of time before Mr. Miller assumed the RDG position. Similarly, that the restructuring of the

RDGOs to improve their effectiveness had also been discussed before Mr. Miller assumed the RDG position. And, that there was an expectation that when he assumed that position that Mr. Miller would take steps to improve the efficiency of the office. This supported the investigator's finding that his actions taken to affect the restructuring were validly founded and did not constitute harassment. Put otherwise, that they were done in good faith.

[68] Therefore, as there was evidence of an intent to restructure the office pre-dating Mr. Miller's arrival, even if the investigator had made the further inquiries that the Applicants' wish and even if a breach of any statutory or policy requirement was discovered as a result, this would not have changed the outcome. As Mr. Miller's actions were not motivated by bad faith and did not constitute harassment, a "paper trail" of the restructuring plan was not, therefore, obviously crucial evidence that the investigator was under an obligation to undertake, but failed to pursue.

[69] In my view, there was therefore no breach of procedural fairness as the investigator did investigate the issue that the Applicants identified as its core allegation and addressed the substance of their complaint, the essence of which was that Mr. Miller had harassed them and abused his authority in removing them from their positions. There was no omission in the investigation nor was it clearly deficient. In my view, the investigator did not fail to consider obviously crucial evidence.

[70] As to the investigations against Ms. Vick, the Applicants' claims are primarily centred on the allegation of abuse of authority by Mr. Miller and Ms. Vick's alleged enabling of that abuse.

Therefore, and for the reasons set out above, the investigations of Ms. Vick's actions also met the content of procedural fairness.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-445-11 & T-446-11
STYLE OF CAUSE:	DENISE ANDERSON v AGC
DOCKET:	T-447-11 & T-448-11
STYLE OF CAUSE:	KATHLEEN BETTS v AGC
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	APRIL 17, 2013
REASONS FOR JUDGMENT AND JUDGMENT BY:	STRICKLAND J.
DATED:	OCTOBER 15, 2013

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