Federal Court  Cour fédérale

Date: 20131218

Docket: T-2215-12

Citation: 2013 FC 1258

Toronto, Ontario, December 18, 2013

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

TIPPET-RICHARDSON LIMITED

Applicant

and

GERARD LOBBE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On December 2, 2010, Gerard Lobbe got into a heated telephone conversation with his supervisor, Jeff Brennan. By the end of the conversation, Mr. Lobbe no longer worked for Tippett-Richardson Ltd. (TRL). TRL says that Mr. Lobbe quit. Mr. Lobbe says that he was fired. An adjudicator appointed under the *Canada Labour Code*, R.S., 1985 c. L-2 sided with Mr. Lobbe, finding that he had been unjustly dismissed by his employer.

[2] TRL seeks judicial review of the adjudicator's decision, asserting that it was denied procedural fairness in this case as it is evident from the adjudicator's reasons that she was biased against the company. TRL further submits that the adjudicator erred by failing to draw an adverse inference from the failure of Mr. Lobbe's wife to testify at the hearing, and by failing to consider relevant evidence that would have assisted Tippett-Richardson in its case. Finally, TRL argues that the adjudicator's decision was unreasonable.

[3] For the reasons that follow, I have not been persuaded that the adjudicator was actually biased against the company or that a reasonable apprehension of bias exists on her part. I am moreover satisfied that the adjudicator's decision was reasonable. Consequently, the application for judicial review will be dismissed.

Background

[4] TRL is a moving and storage company. Mr. Lobbe worked for TRL from 1997 until December 2, 2010, with a three month break in service in 2003. For the last four years of his employment, Mr. Lobbe worked as a long distance truck driver.

[5] The events giving rise to the December 2, 2010 telephone call related to a cross-border trip assigned to Mr. Lobbe in late November, 2010. Mr. Lobbe was to leave Toronto and end up in Texas, with various pick-ups and deliveries along the way. In Texas, he was to pick up a further shipment which was to be brought back to Toronto.

[6] TRL drivers are required to have an "Automated Commercial Environment" (ACE) manifest for shipments crossing the Canada/United States border. ACE manifests are prepared by TRL Operations and are provided to drivers once they have completed their last pick-up before reaching the border crossing. There was a disagreement between the parties as to whether the manifest is ordinarily sent to the location of the last pick-up or to a secure location near to the border crossing.

[7] The parties do agree that Mr. Lobbe completed his last pick-up in London, Ontario on December 1, 2010 and that he sent the details of his shipment to be included in the ACE manifest to Jeff Brennan (who was TRL's Operations Manager) at 5:00 p.m. that afternoon. Both parties anticipated that Mr. Lobbe would receive the completed ACE manifest early the following morning and that this did not happen

[8] It is not necessary to review the parties' competing versions of events at length as both versions were set out in detail in the adjudicator's decision. Suffice it to say, the parties disagree as to whether Mr. Lobbe was supposed to pick up his manifest in London or in Windsor. Jeff Brennan assumed that Mr. Lobbe would be making his way to Windsor the next morning, whereas Mr. Lobbe understood that he was to remain at a London truck stop awaiting the ACE manifest that was to be sent there.

[9] On the morning of December 2, 2010, Mr. Lobbe provided a TRL dispatcher in Ottawa with a fax number at a truck stop where the manifest was to be sent. The area code for London is the same as for Windsor, so the fax number did not identify where Mr. Lobbe was located.

[10] When Mr. Lobbe had not received the manifest by mid-day on December 2, he contacted Mr. Brennan. It appears that TRL was having issues with the software used to generate the manifest, and that it had not yet been sent to Mr. Lobbe.

[11] The document was finally sent to Mr. Lobbe at 1:04 pm on December 2, 2010. Mr. Lobbe testified that the normal practice was for the driver to be contacted when the manifest was sent so that they could go and pick it up. However, he says that he did not receive a call on December 2, 2010, and was thus unaware that the document had been faxed to him.

[12] In the meantime, Mr. Lobbe became concerned about the impact that the delay in receiving the manifest would have on his ability to meet his schedule. Consequently, he contacted a TRL agent in Madison, Wisconsin, the first destination on his shipment route, and re-scheduled the labour to assist in the unloading of the truck from December 4 to December 6, 2010. TRL contends that this was done unilaterally by Mr. Lobbe, without company knowledge or authorization.

[13] When Mr. Lobbe still had not received the manifest by 2:30 p.m. on the afternoon of December 2, he contacted Mike Donnachie, the Central Operations Manager of TRL to advise him of the situation. Mr. Donnachie then went to see Mr. Brennan to find out what was going on, at which time he informed Mr. Brennan that Mr. Lobbe was still in London. Mr. Brennan was surprised and upset by this as he assumed that Mr. Lobbe was already in Windsor.

[14] Mr. Brennan was concerned that Mr. Lobbe's delay in getting to the border could jeopardize his schedule, specifically, his ability to make the pick-up in Texas on time for the return trip. This was a particular concern as much of the profit on such shipments is made on the return trip.

[15] Mr. Lobbe had no recollection of being asked to drive to Windsor or to pick up the manifest there. He explained that he chose to not move the truck from London to Windsor on the morning of December 2 because he wanted to delay "opening his log" until he actually received the manifest. Mr. Lobbe explained that Ministry of Transportation rules limited him to a maximum of 14 hours of driving in one day, and that he did not want to start the clock until he had the manifest in hand so that he would have enough driving hours left to get the deliveries done on time.

[16] Upon learning that Mr. Lobbe was still in London, Mr. Brennan contacted him by phone, and what followed is the discussion that forms the basis of this claim.

[17] TRL maintains that during this exchange Mr. Lobbe called Mr. Brennan a "fucking moron", amongst other things, and that Mr. Lobbe resigned by saying: "Look you fucking moron, I'm parking this fucking truck right here and you can come and get the fucking thing". According to Terry Cochrane, one of TRL's witnesses, it was well known within TRL that if a driver were to "put down his keys", it amounted to a resignation.

[18] In contrast, Mr. Lobbe testified that Mr. Brennan started the call by saying "what the fuck are you still doing in London?", and that in the course of the ensuing discussion, Mr. Lobbe was told that he was fired. TRL's Operations Manager in London subsequently came to pick up the truck from Mr. Lobbe and arrangements were made to get Mr. Lobbe back to Ottawa. Another driver then completed the trip to Texas.

[19] In support of his claim that his employment had been terminated by TRL, Mr. Lobbe pointed to an internal TRL document entitled "Employment Termination Notice". This document, which was prepared by TRL's Human Resources Department, cites the reason for the termination of Mr. Lobbe's employment as being "'M' Dismissal".

[20] On March 4, 2011, Mr. Lobbe filed a complaint under section 240 of the *Canada Labour Code* alleging that he had been unjustly dismissed by TRL. The adjudicator was subsequently appointed to hear his complaint.

The Adjudicator's Decision

[21] The hearing before the adjudicator took five days. Eleven witnesses testified, nine on behalf of TRL and two on Mr. Lobbe's behalf, and a substantial volume of documentary evidence was filed with the adjudicator.

[22] Early in her decision, the adjudicator noted that John Novak, TRL's President, was the first witness for the company and that he had stayed in the hearing room for the remainder of the hearing. According to the adjudicator, this "seemed to send a strong message to all giving

testimony as to its importance, and to his interest and commitment". The adjudicator further noted that sentiments of loyalty to TRL "came through strongly" in the evidence given by TRL employees: at para. 4 of the adjudicator's decision.

[23] It was also apparent to the adjudicator that long distance moving is a tough industry, and that driving trucks over long distances is a challenging way of life. The adjudicator noted that drivers are often a bit "rough around the edges", and that the frequent use of the "F-bomb" in the discussion at issue had to be considered in this context: at para. 5.

[24] The adjudicator identified the question of whether Mr. Lobbe resigned as the central issue for determination, acknowledging that if he resigned, she would have no further jurisdiction to deal with the matter: at para. 44.

[25] The adjudicator found that there was a "misunderstanding" between Mr. Brennan and Mr. Lobbe as to where he should pick up the manifest, and that they "got their wires crossed": at paras. 8 and 47. She further noted that there was no evidence that Mr. Lobbe had any interest in deliberately delaying the trip, or that there was any advantage to him in waiting for the manifest in London rather than in Windsor. The adjudicator also found it "significant" that Mr. Lobbe did not open his log book in order to save his full 14 hours of driving time, to start the clock running only once he had his manifest: at para. 28.

[26] The adjudicator also found that Mr. Brennan was having a bad day: in addition to the difficulties with the server that was supposed to be generating the manifests, "it was a

particularly hectic morning generally at TRL-Ottawa": at para. 12. Mr. Brennan was, moreover, feeling under tremendous pressure, believing as he did that the return load was now lost: at para. 25.

[27] The adjudicator further found that Mr. Brennan was clearly angry to discover that Mr. Lobbe was still in London at 2:30 on December 2, especially given his mistaken belief that the manifest had been faxed to him hours before.

[28] With respect to the critical phone call, the adjudicator considered the evidence of the three parties to the communication: Mr. Brennan, who initiated the call, Ottawa Branch Dispatcher Trevor Butler (one of TRL's witnesses) who was present at the time of the call, and Mr. Lobbe.

[29] Based upon this evidence, the adjudicator found that a "frustrated and flustered" Mr. Brennan "went on the attack" with Mr. Lobbe: at para. 23. From Mr. Lobbe's standpoint, he had done nothing wrong, and he "got his back up and immediately shot back": at para. 23. The adjudicator commented that Mr. Lobbe's statements during the call were "in all likelihood … much more colourful" than he cared to admit: at para. 49. The adjudicator did not, however, accept that Mr. Lobbe resigned during the call, or that the words he used suggested his intention to resign.

[30] The adjudicator specifically referred to the evidence of Terry Cochrane suggesting that it was well known within TRL that if a driver were to "put down his keys", it amounted to a

resignation. However, she found that Mr. Lobbe did not "put down his keys"; rather, they were taken from him: at para. 50. On a balance of probabilities, the adjudicator found that Mr. Lobbe did not resign, but was in fact terminated.

[31] Having found that Mr. Lobbe had been dismissed by TRL, the adjudicator noted that the onus shifted to the company to adduce evidence to demonstrate that, on a balance of probabilities, the dismissal was just.

[32] Insofar as Mr. Lobbe's past disciplinary record was concerned, the adjudicator held that a minor incident from 2001 was "too far gone to be fairly considered in this assessment": at para. 53. A second incident allegedly occurring a week before Mr. Lobbe's last trip was only raised after December 2, 2010, and had never been brought to Mr. Lobbe's attention. As a consequence, the adjudicator did not give this incident much weight. While there were general complaints about Mr. Lobbe, none of these complaints had been documented and the adjudicator found that "they were in no way disciplinary": at para. 55. There was, moreover, positive evidence regarding Mr. Lobbe's skills and integrity as an employee.

[33] Accordingly, the adjudicator assessed the justness of Mr. Lobbe's termination based solely on the events of December 2, 2010, asking whether the telephone exchange on that date gave TRL the right to terminate Mr. Lobbe for cause.

[34] After reviewing the legal principles relating to just cause for dismissal, the adjudicator concluded that Mr. Lobbe should not have reacted as he did during the December 2 call, but that

Mr. Brennan's attack on Mr. Lobbe was inappropriate: at para. 64. Although the adjudicator accepted that Mr. Lobbe's behaviour could have warranted some discipline, she was not persuaded that there was insubordination on the part of Mr. Lobbe that could be characterized as misconduct warranting dismissal.

[35] In coming to this conclusion, the adjudicator noted that serious misconduct is required for an employer to terminate an employee without notice, and that the context must be considered. In this case, there was a single incident with a host of mitigating circumstances. The decision to terminate was rational, and was inspired by the employer's desire to salvage the return shipment, but it was not proportionate to Mr. Lobbe's misconduct.

[36] The adjudicator declined to reinstate Mr. Lobbe on the basis that the relationship between Mr. Lobbe and his employer was not salvageable on a going-forward basis. However, she awarded Mr. Lobbe the equivalent of seven months salary as compensation in lieu of notice, for a total of $37,975. This was reduced by one month, in part to take into account the potential disciplinary measures that could have been imposed against Mr. Lobbe, for a total award of $32,550.

[37] In a subsequent costs order, the adjudicator did not find that there were 'exceptional circumstances' justifying an award of solicitor-client costs, but that some costs were in order, fixing Mr. Lobbe's costs at $10,000: *Lobbe v. Tippet Richardson Ltd.*, [2013] C.L.A.D. No. 12.

Analysis

[38] Before turning to address TRL's arguments with respect to the merits of its application, it is first necessary to address Mr. Lobbe's objections to the affidavit of John Novak which was filed in support of TRL's application for judicial review.

The Admissibility of Mr. Novak's Affidavit

[39] Mr. Lobbe argues that Mr. Novak's affidavit contains evidence that was not before the adjudicator and is thus inadmissible. Moreover, Mr. Lobbe says that much of the affidavit should be disregarded as it contains argument and opinion.

[40] I agree that portions of Mr. Novak's affidavit constitute argument and opinion: see, for example, paras. 13, 14, 20, 21, 25, 29, 49, 50, 53, 54, 55, 58, 61, 62, 67, and 80-82. However, given that these arguments were repeated by TRL's counsel in his submissions, they will be considered in that context.

[41] While Mr. Lobbe submits that the affidavit contains evidence that was not before the adjudicator, there is no evidence before me to support that assertion. The only affidavit filed by Mr. Lobbe in support of his response to the application was from a legal assistant in the office of his counsel. This affidavit appends copies of documents that were before the adjudicator, but does not address the question of whether or not the evidence referred to in Mr. Novak's affidavit was before the adjudicator.

[42] There is no transcript of the proceedings before the adjudicator. However, as was noted previously, Mr. Novak was present throughout the hearing, and is thus in a position to attest to what went on at the hearing.

[43] More fundamentally, the modern approach to standard of review analysis requires the Court to determine the reasonableness of a decision having regard to the reasons offered by the decision-maker *and* to the reasons "which could be offered in support of a decision": *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 48.

[44] The Court is, moreover, required to determine whether the decision falls within a range of possible acceptable outcomes which are defensible in respect of the facts and the law: see *Dunsmuir*, at para. 47, and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 59. In order to do this the Court must have an appreciation of the record that was before the first instance decision-maker.

[45] As a consequence, I am prepared to consider the information contained in Mr. Novak's affidavit to the extent that it addresses the contents of the evidentiary record that was before the adjudicator.

[46] The portions of Mr. Novak's affidavit that address the allegation of bias on the part of the adjudicator are also admissible, given that they go to an issue of procedural fairness: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency*, 2012 FCA 22, 428 N.R. 297, at para. 20. This issue will be addressed next.

The Procedural Fairness Arguments

[47] TRL advances three arguments that it says relate to the fairness of the proceedings before the adjudicator.

[48] Where an issue of procedural fairness arises, the task for the Court is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Khosa*, above, at para. 43.

Is there a Reasonable Apprehension that the Adjudicator was Biased?

[49] TRL's first argument is that the adjudicator's disproportionate criticism of the TRL management personnel and her comments regarding Mr. Novak's continued presence in the hearing room demonstrated actual bias on her behalf or, at a minimum, gave rise to a reasonable apprehension that she was biased against TRL.

[50] As I understand TRL's argument, it is that the testimony of TRL's witnesses was either not believed, or was given less weight by the adjudicator because Mr. Novak was in the room when they gave their evidence and she believed that his presence influenced the witnesses' testimony.

[51] TRL states that it was not aware of the adjudicator's concerns in this regard until it received the adjudicator's decision. Consequently it had no opportunity to address those concerns in the course of the hearing.

[52] TRL also points out that Mr. Novak gave his evidence before any of TRL's other witnesses, and that he had every right to be present during the hearing. Not only was he the instructing client, the exclusion order issued by the adjudicator at the commencement of the hearing expressly exempted Mr. Novak from its purview.

[53] The test for determining whether actual bias or a reasonable apprehension of bias exists in relation to a particular decision-maker is what an informed person, viewing the matter realistically and practically and having thought the matter through would conclude. That is, would he or she think it more likely than not that the decision-maker, either consciously or unconsciously, would not decide fairly: see *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, 68 D.L.R. (3d) 716, at p. 394.

[54] An allegation of bias, especially an allegation of actual, as opposed to apprehended, bias, is a serious allegation. Indeed, it challenges the integrity of the administration of justice as well as the very integrity of the adjudicator whose decision is in issue. As a consequence, the threshold for establishing bias is high: *R. v. R.D.S.*, [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193, at para. 113.

[55] It is not entirely clear why the adjudicator commented on Mr. Novak's continued presence in the hearing room, other than to note his interest in the case and its importance to the company. That said, I am not persuaded that bias (either actual or apprehended) has been established in this case.

[56] I will deal with the alleged failure of the adjudicator to make reference to certain evidence when I address the reasonableness of the decision. Suffice it to say that the fact that this evidence may not have been specifically referred to in the adjudicator's reasons does not, in my view, suggest that the adjudicator was biased.

[57] Moreover, the fact that the adjudicator preferred one version of events over another does not give rise to an inference of bias – it is the very essence of the adjudicator's task to weigh conflicting evidence in order to come to a decision. In particular, there is no suggestion in the adjudicator's reasons that any of the witnesses' testimony was negatively affected by Mr. Novak's continued presence in the hearing room or was accorded any less probative value as a result.

[58] In considering this matter "realistically and practically", an informed person would be hard-pressed to find bias. Indeed, on several occasions the adjudicator chides Mr. Lobbe for his "colourful language" and his response to Mr. Brennan's call on the afternoon of December 2, 2010. In fact, she goes so far as to reduce Mr. Lobbe's unjust dismissal award by one month's pay, in part in recognition of the fact that his conduct was not entirely blameless.

[59] TRL raises two additional arguments which it characterizes as issues of procedural fairness. These relate to failure of the adjudicator to draw an adverse inference from the fact that Mr. Lobbe's wife did not testify at the hearing, and her alleged failure to properly address the issue of mitigation.

[60] In my view, these are not issues of procedural fairness at all, and go instead to the reasonableness of the adjudicator's decision. As such, these issues will be addressed in the next section of these reasons.

Was the Adjudicator's Decision Reasonable?

[61] The adjudicator was faced with a threshold question of whether Mr. Lobbe was "dismissed" within the meaning of section 240 of the *Canada Labour Code* or whether he resigned. Also at issue was whether TRL had just cause to dismiss Mr. Lobbe and if not, the determination of the appropriate measure of damages.

[62] Each of these issues involves questions of mixed fact and law, and each is heavily fact-dependent. As such, the adjudicator's decision is reviewable against the standard of reasonableness.

[63] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in respect of the facts and the law: see *Dunsmuir*, above at para. 47, and *Khosa*, above at para. 59.

[64] Dealing first with Mr. Lobbe's failure to call his wife as a witness, TRL points out that in her opening statement before the adjudicator, Mr. Lobbe's counsel indicated that the wife would be called. I have not, however, been provided with any information as to what it was that she was expected to say.

[65] No explanation was provided to the adjudicator for Mr. Lobbe's wife's ultimate failure to testify. According to TRL, in these circumstances the adjudicator should have inferred that her testimony would not have assisted Mr. Lobbe.

[66] I do not agree.

[67] First of all, Mr. Lobbe's wife was not an "arm's length" witness, and one can only assume that Mr. Lobbe and his counsel would both have been well aware of what it was that she would have said long before the commencement of the case. There could be, moreover, any number of reasons why they may have decided not to call her as a witness.

[68] Furthermore, Mr. Lobbe's wife was not a party to the telephone call that forms the heart of this case, nor was she a first-hand witness to any of the other relevant events. As such, it is not clear what evidence she could have provided, other than to confirm whatever it was that Mr. Lobbe may have told her, after the fact. Indeed, one could reasonably anticipate that counsel for TRL may well have objected to her testifying on the basis that her testimony would be entirely hearsay.

[69] As a consequence, it was not unreasonable for the adjudicator not to draw an adverse inference from the failure of Mr. Lobbe's wife to testify.

[70] TRL also takes exception to the fact that the adjudicator did not address portions of the evidence in her analysis. In particular, TRL refers to Mr. Lobbe's conduct in unilaterally

changing the arrangements for the unloading of the truck in Madison, Wisconsin from December 4, 2010 to December 6, 2010, thereby allegedly jeopardizing the scheduling of the remainder of the trip.

[71] I would note that although Mr. Lobbe had mentioned the *possibility* of changing the arrangements relating to the December 4, 2010 labour earlier in the day, no one at TRL was aware that the change had already been made at the time of the telephone call at the heart of this case. As a result, it played no role in the discussions between Mr. Lobbe and Mr. Brennan, and was thus largely irrelevant to the question of whether Mr. Lobbe quit or was fired in the course of that call.

[72] I accept that "after-acquired cause" could potentially be relevant in a case of unjust dismissal. That is, there are cases where it may be appropriate for an employer to rely on circumstances of which it was not aware at the time of a dismissal in order to support a claim that there was just cause for the dismissal.

[73] That said, while it is not for me to decide the issue, one would have to question whether Mr. Lobbe's actions in unilaterally changing the delivery arrangements in Wisconsin could possibly justify the summary dismissal of an employee with 23 years of service and a good disciplinary record.

[74] More fundamentally, however, an adjudicator is presumed to have weighed and considered all of the evidence before her: see *Florea v. Canada (Minister of Citizenship and Immigration)* [1993] F.C.J. No. 598, (F.C.A.) at para. 1.

[75] Furthermore, "perfection is not the standard". An adjudicator's reasons do not need to address all of the evidence and arguments, and she is not required to make explicit findings on each constituent element leading to her final conclusion: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at paras. 14-18.

[76] As a consequence, I have not been persuaded that the failure of the adjudicator to make express reference to this evidence renders her findings that Mr. Lobbe was dismissed and that TRL did not have just cause to dismiss Mr. Lobbe unreasonable.

[77] TRL also submits that the adjudicator considered irrelevant matters, specifically events occurring after the December 2, 2010 telephone call. I am not satisfied that these events were completely irrelevant to the task that the adjudicator had to undertake, as the totality of the relationship between Mr. Lobbe and TRL was relevant to the question of whether reinstatement was an appropriate remedy in this case.

[78] I am also not persuaded that the adjudicator erred in her treatment of other decisions under the *Canada Labour Code* dealing with the dismissal of truck drivers, which were relied upon by TRL in support of its case. Each of these cases clearly turned on their own facts and the

adjudicator had to evaluate the evidence of each of the witnesses to the events in issue in this case and to draw her own conclusions from that evidence. This she did.

[79] Finally, TRL submits that the adjudicator erred in failing to properly address the issue of mitigation.

[80] Mr. Lobbe remained unemployed from December of 2010 to July of 2011. The adjudicator found that Mr. Lobbe "did make some efforts to mitigate his losses … but that he could have pushed harder": at para. 71 of the adjudicator's decision. It is apparent from the adjudicator's reasons that her decision to reduce Mr. Lobbe's award by one month's pay was, at least in part, to take into account his failure to pursue his quest for alternate employment with sufficient vigour.

[81] In a case such as this, the onus is on the employee to prove his damages. However, if it is the employer's position that the former employee has failed to sufficiently mitigate his losses and that other employment was reasonably available to him, then the onus is on the employer to demonstrate that this was in fact the case: *Michaels v. Red Deer College*, [1976] 2 S.C.R. 324, 57 D.L.R. (3d) 386. I have not been directed to any evidence in the record that would support such a finding. As a consequence, I have not been persuaded that the adjudicator erred as alleged.

Conclusion

[82] For these reasons, TRL's application for judicial review is dismissed, with costs to Mr. Lobbe fixed in the amount of $4,250.00.

Mr. Lobbe's Request for Interest

[83] In her oral submissions, counsel for Mr. Lobbe requested that I order that TRL pay interest on the award made by the adjudicator from the date of her decision to the date of this Court's order. Not only has Mr. Lobbe failed to provide any authority for the Court's ability to make such an order, this relief was not identified in his memorandum of fact and law. Consequently I decline to make any such order.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and

2. Mr. Lobbe shall have his costs of this application fixed in the amount of $4,250.00.

"Anne L. Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Bruce R. Jaeger Lillian Ferreira	FOR THE APPLICANT
Terri H. Semanyk	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Fluxgold Izsak Jaeger LLP Barristers and Solicitors Richmond Hill, Ontario	FOR THE APPLICANT
Shanbaum Semanyk Professional Corporation Barristers and Solicitors Ottawa, Ontario	FOR THE RESPONDENT