Federal Court  Cour fédérale

Date: 20140127

Docket: T-429-13

Citation: 2014 FC 87

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 27, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

AGNAOU, Yacine

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Court has before it an application under section 51.2 of the *Public Servants Disclosure Protection Act*, SC 2005, c 46 [Act], for judicial review of a decision dated February 12. 2013, [decision] in which the Office of the Public Sector Integrity Commissioner [OPSIC] refused to deal with a reprisal complaint because it was of the opinion that the complaint was beyond its jurisdiction pursuant to paragraph 19.3(1)(c) of the Act. The applicant is asking that the decision be

set aside and remitted to the OPSIC for redetermination by an independent decision-maker who is proficient in French, with the directive to commence an investigation into the reprisal allegations.

[2] The issue raised in this case is directly linked to the issue in another docket, *Agnaou v Attorney General*, 2014 FC 86 [*Agnaou No. 1*], which was heard by this Court a few weeks before this case and which was therefore released at the same time as this decision.

[3] In *Agnaou No. 1*, above, the alleged fault was connected to a difference of opinion between work colleagues concerning the decision by the Attorney General, the Public Prosecution Service of Canada [PPSC] and the Quebec Regional Office [QRO] to not prosecute in a certain file "A", which had been assigned to the applicant, who was a federal Crown prosecutor at the QRO of the PPSC at that time.

[4] The circumstances that gave rise to *Agnaou No. 1*, above, ended on March 24, 2009, when the applicant was informed by his superiors that the decision to not prosecute was final. Subsequently, the applicant filed a disclosure with the OPSIC in which he claimed that his superiors and their subordinates had taken reprisals. The OPSIC concluded that there had been no reprisal, a decision that was upheld by this court in *Agnaou No. 1*, above.

[5] The facts of this case took place immediately after those in *Agnaou No. 1*, above. On April 1, 2009, less than two weeks after the applicant's superiors informed him of their decision to not prosecute in file A, the applicant asked one of his superiors, Mr. Morin, to reconsider that decision. Mr. Morin gave him an answer the same day, saying that the decision was final. The

applicant therefore told another manager who had been involved in the discussion that he intended to submit the issue to the Director of Public Prosecutions for review. The same day, that manager replied that the decision to not prosecute was final and that the client agency had already been informed.

[6] The applicant replied, in turn, that given that the decision had been communicated to the client, he would reconsider his intention to submit the issue to the Director of Public Prosecutions. He also indicated that he would focus on his work in the upcoming weeks and that, depending on the circumstances, [TRANSLATION] "if necessary", he would decide what to do. He did not pursue this matter with the Director of Public Prosecutions.

[7] However, in January 2013, about three and a half years later, he filed a complaint regarding these incidents, alleging that Mr. Morin and numerous other senior managers had taken reprisals against him by reclassifying a position for which he claimed priority. The Commissioner rejected the complaint at the preliminary stage on the basis that there had been no disclosure.

[8] It is clear that if there was no wrongdoing committed around these incidents that ended on March 24, 2009, there could also not be a wrongdoing committed two weeks later when the applicant asked the same managers to reconsider their decision. At the hearing, which focused on the issue of whether or not there had been a disclosure, counsel for the Attorney General was questioned about whether there had been a reprisal, and he answered that the issue would be determined in *Agnaou No. 1*, above.

[9] I agree that the issue of whether reprisals were taken was determined in *Agnaou No. 1*, above. Accordingly, this Court has already determined in *Agnaou No. 1*, above, that there was no evidence of reprisals in the circumstances that preceded the circumstances in this case.

[10] I also agree with the respondent that the applicant's statement that he would reconsider his intention to submit the issue to the Director of Public Prosecutions and that, if necessary, he would decide what to do, is not a disclosure of wrongdoing.

[11] OPSIC never told the PPSC that this disclosure had been filed, and the applicant was unable to show that the PPSC was aware of the alleged disclosure. A body that is unaware of the existence of a disclosure cannot take a reprisal within the meaning of the Act.

[12] I also reject the applicant's argument that the Commissioner erred by focusing on the exchange of emails between April 1 and 2, 2009, for the purpose of determining the nature of the disclosure. The analyst in charge of the file wrote to the applicant asking him to indicate where the evidence of the disclosure could be found in his materials. The applicant had submitted 650 pages of documentation at first instance, *Agnaou No. 1*, above, which were also included in the documentation filed with the OPSIC in the context of the second complaint, with 300 pages of additional documentation. In his response, the applicant referred the OPSIC to the exchange of emails dated April 1 and 2, indicating in his letter that the OPSIC should take into consideration all the documents filed.

[13] In an attempt to show that there was additional evidence of the disclosure in the materials, the applicant referred the Court to the emails he exchanged with Mr. Morin between April 3 and 7, 2009. They relate to a discussion that occurred between him and his managers, which began on March 31, 2009, during which his managers expressed their concern about the applicant's health and the stress he was under. The managers suggested that he should take some time off and consult a physician. Mr. Morin stated that these discussions occurred because of employees' complaints about their safety. The managers acted upon these concerns, and on April 7 the applicant was ordered to stay away until he could provide a letter from his physician confirming that he was able to continue his duties.

[14] The applicant complained in his exchanges with his superiors that forcing him to stay away from the office was a form of reprisal because of his opposition to the decision to not prosecute in file A. However, these discussions were begun prior to the incidents that constitute the alleged disclosure, and therefore it cannot be argued that they happened because of the alleged disclosure. In addition, the applicant filed a grievance about his managers' actions, which was ultimately abandoned.

[15] I find nothing in these circumstances that strengthens the applicant's argument that the alleged disclosure was made on April 1 and 2, 2009, or shortly thereafter.

[16] I also reject the applicant's argument that his right to procedural fairness was breached. His argument was of the same nature as the one he made in *Agnaou No. 1*, above, where I found that it was without merit.

[17] Given that there was no wrongdoing or disclosure, I find that the OPSIC's decision to refuse to deal with the applicant's complaint was completely reasonable.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Peter Annis"

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-429-13
STYLE OF CAUSE:	AGNAOU, YACINE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	January 8, 2014
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APPEARANCES:

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