Federal Court of Appeal Cour d'appel fédérale

Date: 20150415

Docket: A-246-14

Citation: 2015 FCA 98

CORAM: **RYER J.A.**
NEAR J.A.
RENNIE J.A.

BETWEEN:

MARK HALFACREE

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, on April 15, 2015.

Judgment delivered from the Bench at Toronto, on April 15, 2015.

REASONS FOR JUDGMENT OF THE COURT BY: RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on April 15, 2015)

RYER J.A.

[1] This is an appeal from a decision of Annis J. of the Federal Court (2014 FC 360) dismissing an application for judicial review of the decision of an adjudicator of the Public Service Labour Relations Board (the "Board") dated December 14, 2012 and cited as 2012 PSLRB 130.

[2] The Board dismissed three grievances that were filed by Mr. Halfacree.

[3] The first grievance (PSLRB File No. 566-02-577) related to a one-day suspension imposed upon Mr. Halfacree, in March of 2006, as discipline for failing to report for work as instructed, hanging up on his supervisor in a related telephone conversation and expressly refusing to meet with his manager. The Board determined that these matters warranted discipline and upheld the one-day suspension.

[4] The second grievance (PSLRB File No. 566-02-3081) related to a five-day suspension imposed upon Mr. Halfacree, in March of 2007, as discipline for two matters. First, for refusing to provide a medical report supporting his absence from the workplace, that was requested by his employer. Secondly, for reporting for duty at the wrong workplace and then refusing to go to the correct workplace. The Board determined that discipline was warranted for the incorrect workplace matters, but that a three-day suspension, rather than a five-day suspension, was warranted.

[5] The third grievance (PSLRB File No. 566-02-3439) related to the termination of Mr. Halfacree's employment, in April of 2009, for insubordination resulting from nine refusals to provide information related to his absence from the workplace, which had persisted for more than two years prior to the termination. The Board upheld the termination. It found that Mr. Halfacree's repeated failures to provide such information or to meet with management to discuss his employment constituted insubordinate, if not contemptuous, conduct on his part.

[6] Unsatisfied with the Board's decision, Mr. Halfacree applied to the Federal Court for judicial review of that decision on several grounds:

(a) the Board erred in concluding that Mr. Halfacree did not establish a *prima facie* case of discrimination based on family status or disability;

(b) the Board erred in finding that Mr. Halfacree was insubordinate; and

(c) the Board committed a breach of procedural fairness by prohibiting Mr. Halfacree's counsel from cross-examining one of the employer's managers as to the source of an allegation that Mr. Halfacree had been working at a second job since 2003.

[7] The Federal Court Judge dismissed the application for judicial review.

[8] With respect to the family status discrimination issue, the Federal Court Judge agreed that the Board cited an incorrect legal test. However, he found that, assuming that the employer had a duty to accommodate, Mr. Halfacree nonetheless failed to establish that the employer had breached that duty. In particular, the Federal Court Judge was satisfied that Mr. Halfacree failed to explain the nature of the family status problem or co-operate with his employer in attempting to solve that problem. Accordingly, the Federal Court Judge found that the Board's conclusion that there had been no discrimination based upon family status was a reasonable outcome.

[9] With respect to the disability discrimination issue, the Federal Court Judge stated that decisions of labour arbitrators and human rights tribunals have consistently determined that stress, in and of itself, is not a disability. In addition, he upheld as reasonable the Board's

finding that there was no evidence before it of any illness or disease that created a limitation upon Mr. Halfacree that required accommodation. In so doing, the Federal Court Judge found that the medical evidence before the Board was uninformative, said little about Mr. Halfacree's condition and did not support a conclusion that he was disabled.

[10] With respect to the insubordination issue, the Federal Court Judge determined that the employer was entitled to request and receive medical evidence that explained Mr. Halfacree's many absences from work. The Federal Court Judge also found that the employer was entitled to request meetings with Mr. Halfacree to explain his absences. Accordingly, the Federal Court Judge upheld as reasonable the Board's conclusion that Mr. Halfcree was insubordinate when he refused to provide the requested medical evidence and to attend meetings to explain his absences from work.

[11] With respect to the procedural fairness issue, the Federal Court Judge concluded that because the employer's decision to terminate Mr. Halfacree's employment was based on insubordination, and not on an allegation that he was working a second job while on sick leave, the unanswered question as to the identity of the source of that allegation was irrelevant. Accordingly, he concluded that the Board had not committed a breach of procedural fairness.

[12] In this appeal, we must determine whether the Federal Court Judge correctly determined and applied the standards of review with respect to the issues that were before him (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, at para 47, [2013] 2 S.C.R. 559).

[13] In his memorandum of fact and law, Mr. Halfacree raises twelve issues but presents no arguments with respect to them, other than an argument with respect to the issue of whether the Board adopted an incorrect test with respect to the establishment of a *prima facie* case of discrimination on the basis of family status. This was not in issue before the Federal Court, as the Crown had conceded that the Board applied an incorrect legal test.

[14] The Federal Court Judge determined that the standard of review for issues of procedural fairness was correctness and for the balance of the issues before him was reasonableness. In our view, these determinations were correct.

[15] Moreover, we are not persuaded that the Federal Court Judge made any reviewable error in the application of those standards of review to the issues that were before him when he upheld the Board's decision to dismiss the grievances in PSLRB File Nos. 566-02-577 and 566-02-3439 and to substitute a three-day suspension for a five-day suspension, but otherwise dismiss the grievance in PSLRB File No. 566-02-3081.

[16] Accordingly, for the foregoing reasons, the appeal will be dismissed with costs.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-246-14

(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE ANNIS OF THE FEDERAL COURT OF CANADA DATED APRIL 14, 2014, DOCKET NO. T-124-13)

STYLE OF CAUSE:	MARK HALFACREE v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	APRIL 15, 2015
REASONS FOR JUDGMENT OF THE COURT BY:	RYER J.A. NEAR J.A. RENNIE J.A.
DELIVERED FROM THE BENCH BY:	RYER J.A.

APPEARANCES:

Mark Halfacree	FOR THE APPELLANT (SELF-REPRESENTED)
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SOLICITORS OF RECORD:

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