Federal Court

Cour fédérale

Date: 20151110

Docket: T-416-15

Citation: 2015 FC 1262

Ottawa, Ontario, November 10, 2015

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MANFRED SCHAMBORZKI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of a Level II Adjudicator [the Adjudicator] rendered January 20, 2015, wherein a grievance presented by the Applicant pursuant to section 31 of the *Royal Canadian Mounted Police Act* RSC 1985 cR-10 [the Act] was dismissed.

[2] For the reasons that follow, this application is allowed.

I. **Background**

[3] In 2003, the Applicant made a Request for Intervention [RFI] related to a non-selection decision in a corporal promotional process. That RFI was successful and the process was restarted, but the same final decision was reached. The Applicant made another RFI, which was dismissed for lack of jurisdiction and timeliness and was subsequently the subject of a judicial review by the Federal Court (*Schamborzki v Canada (AGC),* 2010 FC 586 [*Schamborzki*]).

[4] The Applicant retired on May 5, 2010. Shortly thereafter, on May 28, 2010, Justice O'Keefe issued a Judgment in *Schamborzki* in favour of the Applicant, returning his RFI to a third adjudicator to be addressed on the merits. The Applicant and the RCMP then reached a settlement, promoting him retroactively to corporal in 2003 with back pay [the Settlement].

[5] After the Settlement, the Applicant requested to participate retroactively in promotional processes which were held at the time of his retroactive promotion. The Respondent refused, and the Applicant grieved this refusal. The dismissal of this grievance is the subject of this judicial review.

II. **Impugned Decision**

[6] The Adjudicator considering the Level II grievance explained that the main issue to be addressed was whether the Applicant had standing to present his grievance. This turned on whether the Applicant was a "member" for purposes of section 31 of the Act, which created the right to present a grievance.

[7] The Adjudicator noted that the Applicant had retired from the RCMP in May 2010. At the time of his retirement, he had an outstanding matter – his non-selection for promotion to corporal in 2003. The Settlement included a retroactive promotion to corporal with related back pay and adjustments to the Applicant's pension. The Applicant argued that nothing in the Settlement prevented him from applying for promotional opportunities as of the date of his backdated promotion. The Respondent argued that nothing in the Settlement implied recognition that the Applicant had a right to be promoted nor gave him a right to apply for promotions.

[8] The Adjudicator found that the External Review Committee [ERC] and the Commissioner of the RCMP [Commissioner], both of which have a role in the grievance process under the Act, have stated in other decisions that the meaning of "member" can be extended in the grievance process to include retired members when there is sufficient linkage with employment-related issues that arose before the member retired. However, the Adjudicator concluded that this principle did not apply to this case.

[9] The Applicant retired on May 5, 2010, and at that time his one unresolved issue was before the Federal Court. The parties agreed, and the Adjudicator concurred, that such issue was concluded with the signing of the Settlement and was not part of the current grievance. The Adjudicator reasoned that, if competing for promotions retroactively is considered to be a new issue, it would not fall within the ambit of the Settlement and could therefore still be pursued by the Applicant. However, at the same time, the Applicant wishes to characterize the competition for promotions as a continuation of the old issue so that it could be considered an employment

matter that was left unresolved upon retirement, thus extending the concept of "member" to include him.

[10] The Adjudicator was not swayed by the Applicant's arguments and found that the issue cannot be both new and old. The Settlement provided that the RCMP did not recognize the validity of the Applicant's initial claim that he was entitled to a promotion. It was a promotion of convenience to achieve resolution, not of merit. Moreover, the Adjudicator did not see the purpose of a settlement that would leave issues hanging and therefore found that the Settlement did conclude all the issues that arose from the initial decision not to promote, including competition for further promotional opportunities.

[11] The Adjudicator held that, being a retired member, who was now raising an issue that was resolved by the Settlement, the Applicant did not fit within the concept of a member grieving an outstanding issue that had arisen in the employer-employee context. He had not established on a balance of probabilities that he was a "member" for purposes of the relevant Career Management Bulletins governing the promotion process. Consequently he could not be aggrieved by the decision denying him the opportunity to compete for promotional opportunities. He therefore failed to establish standing both as a "member" and as a member who was "aggrieved".

III. **Issues**

[12] The issues raised by the parties in this application are as follows:

A. Should portions of the Affidavit of Amy Appleby, filed by the Respondent, be struck out?

B. What is the applicable standard of review?

C. Did the Adjudicator err in determining that the Applicant did not have standing?

IV. **Positions of the Parties**

A. *Applicant's Submissions*

[13] The Applicant argues that certain paragraphs of the Respondent's Affidavit, the Affidavit of Amy Appleby, should be struck pursuant to Federal Court Rule 81 because they contain opinion, argument and legal conclusions. The Applicant cites *Canadian Tire Corporation v Canadian Bicycle Manufacturers Association*, 2006 FCA 56 in support of his position.

[14] On the standard of review, the Applicant argues that the appropriate standard with respect to a Level II Adjudicator's decision on standing is correctness. The Applicant relies on *Flood v Attorney General of Canada*, 2001 FCT 878 [*Flood*] and *Derakhshan v Canada (Commissioner of the Royal Canadian Mounted Police)*, 2004 FC 106 [*Derakhshan*], in which the issue before the Court was whether an adjudicator had committed a reviewable error in determining that an applicant did not have standing to bring a grievance under the Act, and the Court held that correctness was the appropriate standard.

[15] On the merits of the Adjudicator's decision on standing, the Applicant submits that the test to be applied when determining whether a retired member of the RCMP has standing to bring a grievance is whether the subject-matter of the grievance is an employment issue. He argues that the Adjudicator did not correctly articulate and apply this test.

[16] The Applicant references ERC decision G-324 where it was concluded that section 31(1) of the Act was intended to limit the grievance process to issues pertaining to the employee-employer relationship as opposed to challenge by the general public of RCMP decisions. The ERC noted that the Act does not impose timelines for decision-making within the grievance process and expressed the concern that there could be a lack of accountability for decisions respecting the rights of members if a member's retirement determined whether the decision would be subject to scrutiny within the grievance process.

[17] The Applicant also refers to the Commissioner of the RCMP having noted in decision G-332 that whether a retired member has standing to bring a grievance must be decided on a case-by-case basis and depends on the requirement that the retired member's grievance pertain to the employment relationship.

[18] Specifically, the Applicant submits that the Adjudicator made the following errors:

A. he did not apply the proper legal test on standing. The test is not one of continuation from an issue that existed prior to retirement but whether the issue relates to the employment relationship that existed before retirement;

B. he conflated the issue in the non-selection grievance with the issue at stake in the present grievance. The fact that this second issue crystalized after his retirement does not negate the conclusion that the issue pertains to the employment relationship that existed prior to the Applicant's retirement; and

C. he misconstrued the effect of the Settlement. The Settlement expressly stated that it did not relate to any other entitlement or proceeding that the parties might have or undertake.

[19] Overall, the Applicant argues that the subject-matter of the grievance pertains to the employment relationship that existed between the Applicant and the RCMP before the Applicant's retirement. Therefore, he falls within the extended meaning of "member" for the purposes of determining standing to present a grievance.

B. *Respondent's Submissions*

[20] The Respondent submits that the impugned paragraphs of the Affidavit of Amy Appleby are not argumentative in nature and are not in violation of Rule 81. The Affidavits filed for both parties not only present evidence in support of opposing positions but also provide the Court with a narrative, which includes background information that provides assistance to the Court. Material introduced as general background information may be accepted by the Court on judicial review for the purposes of assistance (*Chopra v Canada (Treasury Bd)* [1999] 168 FTR 273 (TD)).

[21] The Respondent's position on standard of review is that this Court has ruled that the appropriate standard for a judicial review of a decision of an RCMP adjudicator, given the adjudicator's specialized expertise and broad powers before him or her, is one of reasonableness. The Respondent refers to a number of Federal Court decisions including that of Justice O'Keefe in *Schamborzki*.

[22] On the decision on standing, the Respondent submits that the Adjudicator was reasonable in finding that the Applicant was not a member as defined under the Act. The Respondent argues that the Act sets out two preliminary requirements in order for an individual to have standing to submit a grievance: he or she must be a "member" and must be aggrieved.

[23] The Respondent then argues that the Applicant did not provide sufficient linkage, with employment-related issues that arose before the Applicant retired, to extend the meaning of "member". The issue has to have arisen before the Applicant retired or, alternatively, be an issue that was a continuation of a grievance that remained unresolved upon the Applicant's retirement.

[24] The Respondent submits that the Applicant over-simplifies the applicable test. Notwithstanding that ERC decisions are not precedential or binding, but merely recommendations, an examination of the decisions supports the Adjudicator's interpretation. The grievors in the cases cited by the Applicant either were members of the RCMP at the time the complaint was initiated, had retired after the time that a decision was sought and before it was issued, or had received a commitment from the RCMP for a retirement benefit. The Respondent distinguishes those cases from that of the Applicant and argues that the Adjudicator correctly

found that the Applicant was notionally promoted from Constable to Corporal pursuant to the Settlement, which does not provide the Applicant with the linkage to his employment necessary for him to be considered a member.

V. **Analysis**

A. *Should portions of the Affidavit of Amy Appleby, filed by the Respondent, be struck out?*

[25] I agree with the Applicant that paragraphs 4 and 39 of the Affidavit of Amy Appleby [the Appleby Affidavit] should be struck out as argumentative. These paragraphs express a legal conclusion that the Applicant no longer met the definition of "member" under the Act, which is precisely the issue that the Court must decide in this application. The other impugned paragraphs of the Appleby Affidavit (paragraphs 6 and 32 to 38) contain references to provisions of the Act and relevant Career Management Bulletins and Standing Orders and, on my reading of their context, represent an effort to provide the Court with a narrative, grounded in the legislative and procedural backdrop, of the history of the matter that gives rise to this application. They are not argumentative and fit within the parameters recognized as acceptable in *Delios v Canada (Attorney General),* 2015 FCA 117:

> [42] Accordingly, as a general rule, the evidentiary record before the Federal Court on judicial review is restricted to the evidentiary record that was before the administrative decision-maker. In other words, as a general rule, evidence that was not before the administrative decision-maker and that goes to the merits of the matter before the Board is not admissible on judicial review. As a result, most affidavits filed on judicial review only attach the record that was before the administrative decision-maker, without commentary. This is proper. See generally *Connolly v. Canada*

> *(Attorney General)*, 2014 FCA 294, 466 N.R. 44 (F.C.A.) at paragraph 7, citing *Access Copyright*, above at paragraphs 19-20.
>
> [43] There are narrow, principled exceptions to the general rule against filing evidence on judicial review that was not before the administrative decision-maker: *Access Copyright*, above at paragraph 20. In the case before us, the Federal Court invoked one of the exceptions, the "general background" exception. The discussion that follows is limited to this exception.
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> [44] Under this exception, a party can file an affidavit providing "general background in circumstances where that information might assist [the review court to understand] the issues relevant to the judicial review": *Access Copyright*, above at paragraph 20(a).
>
> [45] The "general background" exception applies to non-argumentative orienting statements that assist the reviewing court in understanding the history and nature of the case that was before the administrative decision-maker. In judicial reviews of complex administrative decisions where there is procedural and factual complexity and a record comprised of hundreds or thousands of documents, reviewing courts find it useful to receive an affidavit that briefly reviews in a neutral and uncontroversial way the procedures that took place below and the categories of evidence that the parties placed before the administrator. As long as the affidavit does not engage in spin or advocacy - that is the role of the memorandum of fact and law - it is admissible as an exception to the general rule.
>
> [46] But "[c]are must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider": *Access Copyright*, above at paragraph 20(a).

[26] I also note that paragraphs 32 to 38 of the Appleby Affidavit reference exhibits, but the Applicant has confirmed that no issue is taken with those documents forming part of the record before the Court.

[27] My decision on this preliminary issue is that paragraphs 4 and 39 of the Appleby Affidavit are struck out, but the other impugned paragraphs and exhibits referenced therein will remain.

B. *What is the applicable standard of review?*

[28] The Respondent disagrees with the Applicant's reliance on *Flood* and *Derakhshan*, as authority for adoption of a correctness standard, on the basis that those cases predate *Dunsmuir v New Brunswick,* 2008 SCC 9 [*Dunsmuir*]. Although the Supreme Court in *Dunsmuir* states at paragraph 57 that existing jurisprudence may be helpful in identifying questions that generally fall to be determined under the correctness standard, the Respondent argues that the several post-*Dunsmuir* cases [*Schamborski* at para 50; *Smith v Canada (AGC)*, 2009 FC 162 at paras 13-14, *Sansfaçon v Canada (AGC),* 2008 FC 110 at paras 14-15; *Canada (AGC) v Boogaard*, 2015 FCA 150 at para 33; *Rehill v Canada (AGC)*, 2011 FC 1348 at para 16; and, *Mousseau v Canada (AGC)*, 2012 FC 1285 at para 15] that have held the appropriate standard of review for decisions of RCMP adjudicators to be reasonableness, currently represent better authority.

[29] The Applicant argues that *Flood* employs consideration of the factors subsequently approved in *Dunsmuir,* in identifying the applicable standard of review, and therefore remains good authority.

[30] I agree with the Respondent that the evolution of the jurisprudence favours adoption of the standard of reasonableness in the case at hand. I consider the analysis in paragraph 15 of

Mousseau v Canada (Attorney General), 2012 FC 1285 to apply to the decision to be reviewed in this application:

> [15] In the case of a judicial review of a decision of an RCMP adjudicator, given the adjudicator's specialized expertise and broad powers with regard to the questions before him or her, "great deference should be given to the Adjudicator in this matter" (*Sansfaçon v Canada (Attorney General)*, 2008 FC 110 citing *Shephard v Canada (Royal Canadian Mounted Police)*, 2003 FC 1296 at paras 35-36; *Smith v Canada (Attorney General)*, 2005 FC 868 at para 13; *Gillis v Canada (Attorney General)*, 2006 FC 568 at para 27), especially when it involves an internal grievance process and internal policies at the RCMP. Therefore, the applicable standard of review is reasonableness. Consequently, this Court must determine whether the findings are justified, transparent and intelligible, and fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[31] In so concluding, I note that *Flood* and *Derakhshan* do not address precisely the same issue that is before the Court in the case at hand. While those decisions dealt with issues of standing, they arose in the context of adjudicators' decisions whether a member had shown the negative personal impact or prejudice necessary to create standing. They did not involve decisions on whether a grievor could be considered a "member" for purposes of the Act. I therefore find more influential the decisions cited by the Respondent which include the recent decision of the Federal Court of Appeal in *Canada (AGC) v Boogaard*, 2015 FCA 150, holding that the Commissioner's decisions should be reviewed on a standard of reasonableness, and the following analysis in *Schamborzki*:

> [54] The mere fact that jurisdiction is declined does not render the question a true question of jurisdiction or *vires*. Though it is true that Adjudicator Guertin declined to hear the matter citing section 25 which limited his jurisdiction, I cannot agree that the question for judicial review was the question of his jurisdiction. In my opinion, the true question before Adjudicator Guertin was not the outer limits of his jurisdiction under section 25, but whether that

> section had been triggered at all. This was a determination by Adjudicator Guertin that, "The original RFI presented to Supt. McCloskey dealt with the same promotion . . .". Yet, the proper interpretation of section 25 does not appear to be at issue. That leaves me to surmise that it is only his determination of mixed fact and law that lies in dispute and not a jurisdictional matter at all.
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> [55] Since I have determined that it is not a question of pure jurisdiction, the reasonableness standard shall apply.

[32] This analysis has relevance to the present case. While the Adjudicator declined to consider the Applicant's grievance on the merits, on the basis of his conclusion that the Applicant had no standing, this does not involve a true question of jurisdiction such as would militate in favour of the correctness standard. The Adjudicator was tasked with determining whether the Applicant met the requirements of the Act necessary to be entitled to present his grievance. This was a determination of mixed fact and law which attracts a reasonableness standard.

C. *Did the Adjudicator err in determining that the Applicant did not have standing?*

[33] Notwithstanding my conclusion that the Adjudicator's decision attracts a reasonableness standard, and that he is accordingly entitled to deference, I find that his decision not to grant standing to the Applicant to pursue his grievance was unreasonable.

[34] The starting point for consideration of the issue of standing is section 31(1) of the Act:

31. (1) Subject to subsections (1.1) to (3), if a member is aggrieved by a decision, act or omission in the administration of the affairs of the Force in	**31.** (1) Sous réserve des paragraphes (1.1) à (3), le membre à qui une décision, un acte ou une omission liés à la gestion des affaires de la

respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.	Gendarmerie causent un préjudice peut présenter son grief par écrit à chacun des niveaux que prévoit la procédure applicable aux griefs prévue à la présente partie dans le cas où la présente loi, ses règlements ou les consignes du commissaire ne prévoient aucune autre procédure pour réparer ce préjudice.

[35] To present a grievance, the grievor must be a "member", the definition of which in the Act does not expressly contemplate a retired member of the RCMP. However, it is common ground between the parties that the term "member" is to be given a more expansive definition so as to include, in some circumstances, former members who have retired. The Adjudicator so noted in paragraph 36 of his decision, observing that both the ERC and the Commissioner have agreed that the meaning of "member" can be extended in the grievance process to include retired members when there is sufficient linkage with employment-related issues that arose before the member retired. However, the Adjudicator held that such linkage did not exist in the case at hand.

[36] The parties have not referred to any jurisprudence of this Court that prescribes the circumstances in which the meaning of "member" can be extended in the grievance process to include retired members. They refer to recommendations of the ERC and decisions of the Commissioner but correctly acknowledge that, while these "decisions" may inform the Court's analysis, they are of course not binding. The Applicant argues that the language in some of these decisions refers to the requirement for a connection between the grievance and the employment relationship, which the Applicant says exists in the case at hand. The Respondent argues that

these decisions all involve some form of more direct connection between the grievance and the previous employment than applies to the Applicant's grievance.

[37] I agree with the Applicant's position, that the rationale underlying the ERC and Commissioner decisions referenced by the parties is the existence of a connection between the grievance and the employment relationship. In the Recommendation made by the ERC in G-324, the ERC stated as follows at paragraphs 17 to 18:

> [17] I disagree with the Level 1 adjudicator's conclusion regarding the Grievor's standing because I consider that he misinterpreted the reason why s.31(1) of the *Act* refers to "*any member...aggrieved by any decision*" in describing the scope and purpose of the grievance right. I would characterize the adjudicator's interpretation as having been a literal interpretation which did not give any consideration to the purpose for which Parliament saw fit to provide within the RCMP a similar recourse to challenge management decisions as that which exists in other labour relations contexts. In my opinion, the adjudicator's interpretation of the *Act* was not consistent with the rule of statutory interpretation established by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-23 which states that "[*e*]*very enactment is deemed remedial, and shall be given fair, large and liberal construction and interpretation as best ensures the attachment of its objects"*.
>
> [18] The indication in the *Act* that the right of grievance is one that can be exercised by RCMP members only obviously was intended to refer to the fact that this recourse was not intended as a means for the general public to challenge RCMP decisions. For that purpose, there exists a different recourse provided for by the *Act*, which consists in the filing of a public complaint. I do not disagree with the Level 1 adjudicator's assertion that retired members are no longer considered to be members for the purposes of the *Act* but that fact was not relevant for the purpose of deciding whether the Grievor had standing. A far more relevant consideration was the fact that the decision which was being grieved is one that pertained to a harassment complaint that the Grievor had presented as a member of the Force and which addressed events that affected him personally in his capacity as a member. The wording "*any member... aggrieved by any decision*" in s. 31(1) merely imposes as a requirement that the decision in question be one that pertains

> to the employer-employee relationship. That wording is therefore sufficiently broad to capture instances where a member has retired between the time that a decision was sought and the time that the decision was finally issued.

[38] In his subsequent Decision in G-324, the Commissioner ruled that the grievor did have standing, noting that the grievance in that case was a continuation of a harassment complaint that the grievor had filed while still an active member of the RCMP. The Respondent would distinguish this decision on the basis of the connection between the grievance and the previous harassment complaint. However, while that particular connection did exist in that case, I find the rationale for both the Recommendation and the Decision was the existence of a connection with the employment relationship and that it need not be that particular connection (the grievance being a continuation of a previous complaint) for the rationale to apply. I consider the reasoning in the ERC's Recommendation, that the *Interpretation Act*, R.S.C. 1985, c.I-23 requires the Act to be afforded a large and liberal interpretation, to be compelling and supportive of this rationale.

[39] The Commissioner's Decision in G-332, as summarized by his office, stated as follows:

> On the issue of standing, the Commissioner ruled that it was essential to examine whether the subject-matter of the grievance concerned an employment issue. In the present case, where the grievance related to a benefit that accrued to the member as a result of his service with the RCMP, access to the grievance process was reasonable given that the grievance process was designed to resolve disputes arising from the employer-employee relationship between the Force and its members. This grievance concerned a change to a retirement benefit that was available to the Grievor for up to two years after retirement. Therefore, the Commissioner ruled that although the Grievor was retired, he had standing to present his grievance. The Commissioner further commented that the standing of retired members to grieve must be determined on a case-by-case basis.

[40] Again, while there was a particular connection in the G-332 case, the rationale underlying the decision to grant standing was the fact that the grievance concerned a dispute arising from the employment relationship.

[41] Against this backdrop, being conscious of the deference to be afforded to the Adjudicator, I must consider the reasonableness of the Adjudicator's decision that there is not sufficient linkage between the Applicant's grievance and employment-related issues that arose before the Applicant retired. There is certainly some degree of linkage between the Applicant's request to participate retroactively in promotional processes and his employment relationship with the RCMP. This is not an example of a member of the public challenging an RCMP decision. It is a challenge brought by a former employee, which has been brought following his retirement because the challenge flows from a judicial decision and resulting settlement related to his employment that did not occur until after his retirement.

[42] This brings us to the significance of the Settlement. It is apparent from the Adjudicator's reasons that his conclusion, that there is insufficient linkage between the Applicant's grievance and employment-related issues that arose before the Applicant retired, stems from his analysis of the impact of the Settlement. In paragraphs 41 to 43 of his decision, the Adjudicator reaches a conclusion that the Settlement concluded all issues arising from the initial non-promotion decision, that the nature of the Settlement demonstrates an intention to "wipe the slate clean for all purposes", and that notwithstanding the Applicant's assertion that he always intended to compete for promotions, the Settlement "closed that door".

[43] In effect, the Adjudicator has interpreted the Settlement Agreement to represent a release of the grievance that the Applicant now wishes to present. I note that the Adjudicator's reasons do not include a consideration of the meaning of section 5 of the Settlement Agreement, which speaks to what the Settlement applies to and what it does not. However, the concern I have with the Adjudicator's treatment of the Settlement is not a function of whether he has interpreted it correctly but rather the fact that he interprets it in considering whether the Applicant qualifies as a "member" for purposes of the Act so as to have standing to present his grievance.

[44] It may or may not be that the effect of the Settlement is to preclude the Applicant pursuing whatever entitlements he says would result from an opportunity to participate retroactively in promotional processes. But this is an issue to be raised by the Respondent, if this were to be the Respondent's position, when the merits of the Applicant's grievance are being considered. The Respondent argues that the Adjudicator cannot be faulted for analyzing the Settlement, because the Applicant placed it in issue. However, it does not appear that either party was arguing that rights to pursue the new grievance were either created or foreclosed by the Settlement. The Adjudicator's reasons refer to the Applicant's position being that nothing in the Settlement prevents him from applying for promotional opportunities and the Respondent's position as being that nothing in the Settlement implies recognition that the Applicant had a right to be promoted or gives him a right to apply for promotion. The reasons then refer to "common links" as including that the Settlement does not specifically allow or preclude the Applicant from applying for further promotional opportunities.

[45] The Adjudicator's subsequent conclusion that the Settlement did preclude the Applicant from competing for promotions therefore represents a premature foray into the merits of the grievance, which should not have formed part of the Adjudicator's consideration of the Applicant's standing. Whether or not he qualified for the extended definition of "member" should not depend on whether his grievance will ultimately succeed on its merits or be foreclosed by the Settlement or any other issue.

[46] Absent the analysis of the effect of the Settlement, there could well be a linkage between the Applicant's grievance and his employment relationship which is sufficient to support standing. I therefore find that the Adjudicator's decision is outside the range of acceptable outcomes and that this matter should be referred to another adjudicator for determination.

VI. **Costs**

[47] Counsel for both parties agreed at the hearing of this application that costs should be in the cause and calculated in accordance with the lower to middle range of units under Column IV of the Tariff B Table. The Applicant having succeeded in this application, costs shall be payable by the Respondent in an amount to be agreed by the parties or, failing agreement, to be assessed in accordance with the lower to middle range of units under Column IV.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, with costs to be assessed in accordance with the lower to middle range of units under Column IV of the Tariff B Table, and the matter of the Applicant's grievance is referred to another adjudicator.

"Richard F. Southcott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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