

Federal Court



Cour fédérale

Date: 20180824

Docket: T-182-17

Citation: 2018 FC 856

Ottawa, Ontario, August 24, 2018

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

DENEACE GREEN

Applicant

and

**CANADIAN AIR TRANSPORT SECURITY
AUTHORITY (CATSA)**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns an allegation of racial discrimination taking place at the Calgary International Airport on December 21, 2014. Deneace Green (the “Applicant”) is a black woman and she is a Canadian Border Services Agency (“CBSA”) Officer. She is self-represented in these proceedings. While travelling on official business with her work equipment (including an extendible baton, handcuffs and bulletproof vest), the Applicant presented herself at an airport

screening checkpoint. Upon noticing her baton in the scanner, a Canadian Air Transport Security Authority (“CATSA”) screening officer sought the advice of his superiors and activated a silent alarm to notify the police. The Applicant’s bag was searched and the police arrived to intervene. When it was determined that the Applicant is a CBSA Officer, she was allowed to proceed. The Applicant asserts that she was detained and questioned because she is black.

[2] The Applicant filed a complaint with CATSA, which was dismissed. CATSA determined that the correct security protocol was followed by the screening officer, and that the Applicant’s allegation of racial discrimination was unfounded. The Applicant then launched a complaint with the Canadian Human Rights Commission (“CHRC” or the “Commission”), which investigated the facts surrounding the incident. The CHRC Investigator (the “Investigator”) found that the alleged differential treatment asserted by the Applicant was not directly or indirectly related to her race, colour or national or ethnic origin, but rather because she did not identify herself to be a CBSA Officer carrying work tools. The CHRC investigation report (the “Report”) therefore recommends that the complaint be dismissed, and that further inquiry is not warranted. By way of a letter dated January 5, 2017, the parties were informed of the Commission’s decision to close the matter.

II. Facts

[3] On December 21, 2014, the Applicant travelled through Calgary International Airport to Fort McMurray. She is a CBSA Officer and, at the time of the incident, she was travelling for work and was carrying her work tools (protective vest, handcuffs, uniform, tool belt and an extendible baton). At the Air Canada check-in counter, the Applicant advised the airline staff that

she was travelling with her work tools, and was told to proceed to the oversized screening area to have them checked in.

[4] The Applicant proceeded to the screening area, where she was initially processed by a screening officer (the “Screening Officer”). She did not identify herself as a CBSA Officer because she did not want to receive preferential treatment. The Screening Officer asked the Applicant whether she had any dangerous goods to declare, to which the Applicant responded in the negative. The Applicant’s bag was placed on the conveyor and, upon viewing an x-ray of the Applicant’s bag, the Screening Officer detected a baton. The Applicant told the Screening Officer, “it is what you think it is but I’m allowed to have them” (Report, para. 23). He then informed the Applicant that he needed to check whether the baton was permitted (because he is relatively inexperienced), and contacted the Acting Checkpoint Manager. The pair was unable to determine whether the baton contained a spring (which would make it a prohibited item); therefore, the Screening Officer activated a silent alarm to notify the police while the Acting Checkpoint Manager contacted the Checkpoint Manager. The police and the Checkpoint Manager arrived on the scene (although there is some dispute with respect to the timing and sequence) and, eventually, the Applicant was cleared to proceed after producing her identification.

[5] On December 27, 2014, the Applicant filed a complaint with CATSA. An investigation was carried out and the Director of Client Satisfaction, who subsequently wrote to the Applicant to inform her of the outcome. It was found that the CATSA representatives followed the applicable procedure. The Director of Client Satisfaction further noted that screening officers do

not have discretion in applying the procedure (notifying the police) once they discover an item that appears to be prohibited, and denied that the actions of the CATSA employees were racially motivated.

[6] The Applicant subsequently addressed the matter to the Vice President of Human Resources and Corporate Affairs at CATSA. The Vice President equally maintained that the appropriate procedures were followed in calling the police.

[7] On June 5, 2015, the Applicant made a complaint to the CHRC. The complaint was accepted on July 13, 2015 and was referred for an investigation on February 10, 2016. Aside from the Applicant's account of the incident, she further provided an informal survey documenting the experiences of her CBSA colleagues when travelling under the same circumstances. The Investigator concluded his investigation on October 3, 2016. During the investigation, he interviewed five individuals: the Applicant, the Checkpoint Manager, the Acting Checkpoint Manager, the Screening Officer, and a CBSA Superintendent. He also reviewed the security footage of the incident. The Investigator did not interview the other people mentioned in the Applicant's survey, explaining that "none of them were present during the alleged incident; therefore they cannot attest to what transpired that day" (Report, para. 5). Although the parties participated in mediation, it did not lead to a resolution.

[8] The Report concludes that, "[o]n the evidence, it appears that the alleged differential treatment was not linked directly or indirectly to the complainant's race, colour or national or ethnic origin but rather because she did not identify herself as a CBSA Officer who was carrying

her work tools” (Report, para. 35). The decision-maker further found that the Applicant did not declare her baton prior to the security screening, and only identified herself as a CBSA Officer after the police arrived on the scene. The Investigator found that the police were only called once the CATSA employees noticed the baton, in accordance with their standard operating procedures, and that therefore the Applicant had not received differential treatment because of her race, colour, or national or ethnic origin. Accordingly, the Investigator recommended that no further inquiry was necessary in this case, and by way of a letter dated January 5, 2017, the matter was closed.

III. Issues

[9] In my view, this case raises three issues:

1. Is the decision under review reasonable?
2. What relief, if any, is appropriate in the circumstances?
3. Are costs warranted?

IV. Standard of Review

[10] Where the appropriate standard of review is established in jurisprudence, a full analysis of the standard is unnecessary: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 62. The presumptive standard of review applicable to the Commission’s decisions – when it is interpreting its home statute (the *Canadian Human Rights Act*, RSC 1985 c H-6 (“the Act”)), is reasonableness: *Public Service Alliance of Canada v Canada (Attorney General)*, 2015 FCA 174

at para. 28. The case before me involves the Commission's application of s. 44(3)(b)(i) of the *Act* to a set of facts, and thus I shall adopt the standard of reasonableness in reviewing that decision.

V. Analysis

A. *Reasonableness of the Decision*

[11] The Applicant takes issue with a number of elements in the Report. She says that the Report erroneously states that she initiated her complaint to CATSA in January 2015, when she had actually done so in December 2014. She says that the Report is "seethed with lies," such as the timing of the Checkpoint Manager's arrival on the scene; while the Applicant asserts that the Checkpoint Manager arrived approximately two minutes before the police arrived, CATSA alleges that she arrived two minutes before the police. The Applicant also takes issue with the fact that the Screening Officer said that her bag remained in the x-ray machine until the police arrived; she says that it is plain to see in the video surveillance that all of her belongings had been spread out on an examination table.

[12] The Applicant further accuses the Investigator of withholding the statistics that she had collected with respect to her colleagues' experience at the airport, and asserts that he "did his job from a very biased perspective, while unsubtly including his personal racial prejudicial spin on the statements he passed off as those of witnesses and parties whom he interviewed" (Applicant's Memorandum, para. 17 (a)).

[13] The Respondent submits that the decision was reasonable. It relies upon Federal Court jurisprudence for the proposition that when the CHRC does not provide reasons, the Report is deemed to constitute the reasons for the decision: *Wong v Canada (Public Works and Government Services)*, 2017 FC 633 at para. 27. It further submits that the CHRC is owed deference in deciding whether further inquiry into a human rights complaint is warranted. The Respondent canvasses several of the Report's findings (the Applicant did not inform the Screening Officer that she was travelling with work tools, did not identify herself as a CBSA Officer, her bags did not have CBSA insignias, she was wearing civilian clothing, the call to the police was made to confirm the baton is not prohibited, and that the normal procedure for law enforcement officers is to declare and present credentials) and repeats the Report's conclusion that the Applicant's failure to self-identify as a CBSA Officer is the reason why the Applicant was processed through security.

[14] In my view, the decision before me is reasonable. The Report provides clear and logical reasons for arriving at the conclusion that the complaint does not require further investigation: on the evidence, CATSA does not appear to have treated the Applicant differently because of her race, but rather because she did not identify herself as a CBSA Officer in possession of work tools, and because she did not declare those tools when asked. To determine whether the Applicant faced discriminatory treatment, an investigator would require some evidence to suggest that she was treated differently to similarly-situated individuals. The Investigator examined that possibility by obtaining the standard operating procedure that is to be followed when it appears that a prohibited weapon is identified in the course of the screening process:

6.7) Non Permitted Items – Police Response required; when a screening officer discovers what appears to be a prohibited weapon

in the course of the screening process, he is required to contact law enforcement. The luggage remains in the X-Ray machine until the police arrive on the scene after which the screening officer will open and search the luggage. The item is then cleared by the police officer on the scene.

[Emphasis Added]

(Report, para. 10).

On the face of this policy, the Report concludes that the Applicant was not treated differently.

Her processing was consistent with the policy's requirements (especially considering that, in the mind of the screening officers at that point, the Applicant was a regular passenger carrying an undisclosed baton). There is no evidence to suggest that his actions were influenced by the Applicant's race.

B. *Relief*

[15] Having found that the decision is reasonable, I need not consider the issue of relief.

C. *Costs*

[16] The Applicant sought costs for the application for judicial review, and the Respondent CATSA requested an award of costs in an unspecified fixed amount. Neither the Applicant nor the Respondent offers any argument on this issue. In the circumstances, I find it appropriate that each party should bear their own costs.

VI. Conclusion

[17] In closing, I wish to note that allegations of racial discrimination ought not to be taken lightly, both in the interest of the person who has asserted that they have been subject to discriminatory treatment, as well as that of the alleged perpetrator. In the case at bar, the Applicant alleged that the CHRC Investigator is not only racially prejudiced (Applicant's Memorandum, para. 17(a)), but also dishonest (Applicant's Memorandum, para. 8), biased (Certified Record, p. 14) but incompetent as well (Certified Record, p. 14). Those are very serious accusations and deserve this Court's attention.

[18] The only basis for the allegation of racial discrimination identifiable on the record is the fact that the Investigator identified the Applicant as Jamaican. The others are bald, unfounded accusations. In any event, the Applicant takes issue with being referred to as a Jamaican because she only lived the first eight years of her life in Jamaica (Certified Record, p. 16). I appreciate the Applicant's position that she would be more accurately referred to as a Jamaican-born Canadian. The Report, however, indicates that the Applicant self-identified as black Jamaican (Report, para. 8). As such, I see no impropriety about the manner in which the Investigator identified the Applicant.

[19] In reviewing the Applicant's materials and listening to her oral arguments, I am convinced that she feels that she has been subject to discriminatory treatment on the basis of her race. That is, without a doubt, a hurtful thing to experience. However, on the legal question before the Court – that is, whether the decision under review was reasonable – I find that the

Report provides a clear and coherent explanation that justifies the Commission's decision not to proceed with the complaint. As such, this application for judicial review is dismissed.

JUDGMENT in T-182-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There shall be no order as to costs.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-182-17

STYLE OF CAUSE: DENEACE GREEN v CANADIAN AIR TRANSPORT
SECURITY AUTHORITY (CATSA)

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 11, 2018

JUDGMENT AND REASONS: AHMED J.

DATED: AUGUST 24, 2018

APPEARANCES:

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FOR THE APPLICANT
(ON HER OWN BEHALF)

Mr. Barry Benkendorf

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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