

Cour fédérale



Federal Court

Date: 20050630

Docket: T-1956-04

Citation: 2005 FC 926

Montréal, Quebec, the 30th day of June 2005

**PRESENT: THE HONOURABLE MADAM JUSTICE JOHANNE GAUTHIER**

**BETWEEN:**

**MICHEL BENOIT**

**and**

**Applicant**

**BELL CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Mr. Benoit is asking the Court to set aside the decision of the Canadian Human Rights Tribunal (the Tribunal) dismissing his complaint against his former employer, Bell Canada, of discrimination on the grounds of disability (his alcoholism), in violation of section 7 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act).

[2] In that decision, the Tribunal concluded that the applicant had adduced *prima facie* evidence of discrimination. However, it declared itself to be satisfied that the explanation furnished by the respondent, to the effect that Mr. Benoit had been targeted for layoff during a staff reduction in his division because of his performance, was reasonable and did not constitute a pretext. It

also concluded that it was convinced that Mr. Benoit's alcohol problem did not play any role in the decision to terminate his employment, since, at the time this decision was taken (July 2000), those responsible (Mr. Boucher and Mr. Moody) had no knowledge of his disability.

[3] Mr. Benoit, who represented himself, submitted that the Tribunal had made the following errors:

- i) It had not properly assessed the probative value of Exhibit P-12 (the log sheet).
- ii) It had failed to consider certain elements of the evidence that may have led it to assign less credibility to Mr. Boucher's testimony to the effect that he did not know about Mr. Benoit's disability in July of 2000, and had targeted him for layoff on the basis of his performance relative to that of the other managers in his division, as well as to Bell Canada's other explanations in general. These elements were as follows:
  1. A decision taken in five minutes, during a telephone call between Mr. Boucher and Mr. Moody;
  2. Contradictions between the testimonies of Mr. Bouchard and Mr. Moody as to whether or not a voluntary departure package had been offered to the managers in his division;
  3. Contradictions in the testimonies of Mr. Boucher and Mr. Lecompte as to Mr. Benoit's ability to replace Mr. Lecompte when, several months after the decision of July 2002, Mr. Lecompte was transferred;
  4. A breach of Bell Canada's Code of Ethics by Mr. Boucher, in the context of a conversation with Mr. Benoit's former spouse;
  5. Contradictions between the testimony of Mr. Boucher and the

investigator's report, including certain notes made by the investigator;

6. An unwarranted effort by Bell Canada to undermine Mr. Benoit's credibility by referring to an expense account problem without having informed the applicant beforehand (disclosure of evidence).

[4] The parties agree that all of these arguments raise questions regarding the assessment of the facts and of the evidence.

[5] The applicable standard of review is therefore patent unreasonableness (see the functional and pragmatic analysis made by Mr. Justice Gibson in *Quigley v. Ocean Construction Supplies Ltd., Marine Division*, [2004] F.C.J. No. 786 (T.D.) (QL), at paragraphs 34 to 46; *International Longshore & Warehouse Union (Marine Section), Local 400 v. Oster*, [2002] 2 FC 430, at paragraph 22; *Lincoln v. Bay Ferries Ltd.*, [2004] F.C.J. No. 941, at paragraph 16 (FCA) (QL).

[6] As indicated at the hearing, this signifies that the Court cannot simply substitute its own assessment of the evidence for that of the Tribunal. As shown by the Supreme Court of Canada in *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, at paragraph 52, a patently unreasonable decision has been described as clearly irrational or evidently not in accordance with reason. It also includes that which is not supported by any evidence in the record (*Canadian Union of Public Employees v. Ontario Minister of Labour*, [2003] F.C.J. No. 28, at paragraph 162).

[7] At paragraph 39 of the decision, the Tribunal indicated that Exhibit P-12 is a document that seems to have come from Bell Canada, but whose origins could not be explained by anyone at the hearing. From all of the evidence, it was persuaded that Mr. Boucher was not the author of the document and that, in all likelihood, it was written by a third party who compiled the information from a number of log sheets, and that this document could not be relied upon to advance the notion that Mr. Boucher was aware of the complainant's alcoholism before the decision to dismiss him in the month of July 2000.

[8] The Court has closely examined the transcript of the four-day hearing before the Tribunal. Exhibit P-12 was used by Mr. Benoit during his cross-examination of Mr. Boucher. Mr. Boucher explicitly denied having written the comments that appeared next to the dates "April '99" and "August '00", even though he acknowledged that certain other passages in the document, such as the "October '99" entry, originated, in all likelihood, from a memo that he had written.

[9] The Court, after having examined both sides of Exhibit P-12, and all of Mr. Boucher's testimony, is satisfied that the Tribunal's findings with regard to this document are not unreasonable, and that they are certainly not patently unreasonable.

[10] Regarding the second and third elements, the Court notes that the circumstances under which the decision was taken, namely, during a five-minute conversation, were correctly recorded by the Tribunal at paragraph 19 of the decision, which clearly took them into account. The Tribunal also specifically addressed the possibility of offering Mr. Lecompte's job to the applicant,

and the contradiction in the testimonies of Mr. Boucher and Mr. Lecompte, at paragraphs 25, 26 and 45 of the decision. Its analysis of the evidence in this regard and its comments are supported by the evidence. Taking the applicable standard of review into account, the Court cannot intervene in the matter of these findings.

[11] As for the three final points made by Mr. Benoit, the Court notes, in the first place, that Bell Canada's efforts to undermine his credibility did not influence the Tribunal, which, after having noted the allegation regarding certain financial difficulties, referred specifically to the fact that the applicant had categorically denied this allegation during his own testimony. At paragraph 34 of the decision, the Tribunal indicates that, even though it concluded that Mr. Boucher and Mr. Moody were credible witnesses,

[t]hat is not to say that the Complainant's evidence was false or misleading. To the contrary, I found him sincere and refreshingly candid.

[12] In the circumstances, this question of non-disclosure of evidence cannot constitute a reviewable error that would warrant setting the decision aside.

[13] Secondly, as was explained at the hearing, the investigation report and the notes attached to Mr. Benoit's affidavit were not in evidence before the Tribunal, and the Court cannot take them into account. It is obvious that the Court cannot blame the Tribunal for not having taken into account evidence that was not before it.

[14] As regards the alleged breach of the Code of Ethics, the Tribunal does not make mention of this question, raised during Mr. Benoit's cross-examination of Mr. Boucher. This breach, if there

was one, was not among the issues that were raised in Mr. Benoit's complaint and that had to be decided by the Tribunal. This too was only a collateral element, raised to attack Mr. Boucher's credibility. It was up to the Tribunal to decide whether to give any weight to it. Under the circumstances, I am satisfied that it did not have to specifically make reference to it in its decision.

[15] Taking the foregoing into account, and having closely examined all of the evidence in the file, the Court cannot find that the Tribunal committed a reviewable error in its weighing of the evidence, and that its finding that Mr. Boucher and Mr. Moody, when they took the decision to lay the applicant off in July of 2000, were unaware of his disability, which he kept hidden until August 9, 2000, on which date he asked for Bell Canada's help in seeking alcohol dependency treatment, is patently unreasonable.

[16] The Tribunal's decision to dismiss the complaint because it was convinced that the disability did not play a role in the decision to terminate his employment is also reasonable.

[17] The respondent did not ask the Court to award it costs.

**ORDER**

**THE COURT ORDERS THAT:**

The application is dismissed.

"Johanne Gauthier"

Judge

Certified true translation  
Susan Deichert, Reviser

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1956-04

**STYLE OF CAUSE:** MICHEL BENOIT  
v. BELL CANADA

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** June 28, 2005

**REASONS FOR ORDER  
AND ORDER BY:** The Honourable Madam Justice  
Johanne Gauthier

**DATED:** June 30, 2005

**APPEARANCES:**

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