Federal Court of Appeal | Cour d'appel fédérale

Date: 20160211

Docket: A-252-15

Citation: 2016 FCA 50

CORAM: **STRATAS J.A.**
NEAR J.A.
GLEASON J.A.

BETWEEN:

MURLIDHAR GUPTA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on February 10, 2016.

Judgment delivered at Ottawa, Ontario, on February 11, 2016.

REASONS FOR JUDGMENT BY: STRATAS J.A.
GLEASON J.A.

CONCURRED IN BY: NEAR J.A.

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REASONS FOR JUDGMENT

STRATAS AND GLEASON JJ.A.

[1] Dr. Gupta appeals from the judgment dated April 24, 2015 of the Federal Court (*per* Justice Brown) that dismissed his application for judicial review: 2015 FC 535. The Federal Court refused to set aside a decision of the Public Sector Integrity Commissioner dated March 13, 2014.

[2] Acting under the *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46 [the Act], the Commissioner decided not to investigate certain of Dr. Gupta's allegations that he suffered reprisals and threats of reprisals after he made a disclosure of wrongdoing. The Commissioner decided that some of Dr. Gupta's allegations were out of time and exercised his discretion on the facts before him against granting an extension of time. The Commissioner also decided that some of the allegations did not fall into the definition of a reprisal based on the information placed before him.

[3] On judicial review, the Federal Court found, among other things, that the Commissioner's decision on these matters was acceptable and defensible on the facts and the law and, thus, was reasonable. Dr. Gupta appeals this finding to this Court.

[4] The parties agree that the standard of review is reasonableness. We agree with the parties. Thus, our task in this case is to determine whether we agree with the Federal Court's finding that the Commissioner's decision on these matters was reasonable: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paragraph 47.

[5] Subsection 19.1(2) of the Act provides that a complaint "must be filed not later than 60 days after the day on which the complainant knew, or in the Commission's opinion ought to have known, that the reprisal was taken." Dr. Gupta submits that while the reprisals in question began before this period, they were ongoing and thus a complaint about them was timely. Reading the reasons of the Commissioner in a holistic manner in light of the record before him, as we must do (see *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury*

Board) , 2011 SCC 62, [2011] 3 S.C.R. 708), we agree with the Federal Court that the Commissioner implicitly dealt with this submission and did so reasonably. The language of this subsection is clear—the sole criterion to determine whether a complaint is filed on time is one of knowledge or imputed knowledge of specific incidents of reprisal. The allegation that the most recent act of reprisal is part of an ongoing chain of reprisals does not bring the earlier events into the 60-day time limit.

[6] Dr. Gupta submits that this interpretation would give no recourse to public servants who are victims of reprisals which are less obvious. For example, he submits such a victim might not act because she or he might be uncertain as to whether a reprisal had taken place. Or there might be "systemic" reprisal—a situation where there are a series of seemingly benign acts and only later does it become evident that reprisals are taking place.

[7] We do not agree that in such a situation a victim is left without recourse. Subsection 19.1(2) of the Act provides that the 60-day period can run from the time a victim "ought to have known" that she or he had suffered a reprisal. A victim who was reasonably confused or unaware of the nature of the conduct against her or him or who did not appreciate what was happening at the time would not reasonably have known that there had been a reprisal. For such a person, the 60-day time period set out in subsection 19.1(2) of the Act would not yet have started to run and would not commence until it is reasonable to conclude that the person ought to have appreciated that he or she had been the victim of a series of reprisals.

[8] In addition, even when an individual appreciates that he or she has been the victim of a series of reprisals, if the reprisals consisted of a series of connected events committed by the same individuals, with relatively little time between each event, a victim may be able to make a compelling case for an extension of time in respect of the acts of reprisal that occurred more than 60-days before the complaint was filed: see subsection 19.1(3) of the Act. That, however, is not Dr. Gupta's situation. The acts he complains of occurred years before the last event and he appreciated at the time the events occurred that they might constitute reprisals.

[9] We would add (and the respondent agrees) that provided a complainant makes a complaint within the 60-day period provided for under subsection 19.1(2) of the Act or during an extended period permitted by the Commissioner, the complainant may rely on relevant facts taking place outside of that period in order to support the complaint. In appropriate circumstances these facts may demonstrate the presence of an illicit desire to punish the employee for making a disclosure of wrongdoing under the Act and thus be relevant to determine the motive behind impugned actions taken with the 60-day time period. What is not permitted, though, is a complaint based on a reprisal taken outside of that period.

[10] This interpretation of the subsection is dictated by its precise wording which can predominate in the interpretive process: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601. But it is also consistent with its context within the scheme of the Act and the Act's overall purpose, two other matters relevant to the interpretative process: *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 154 D.L.R. (4th) 193. The Act promotes expeditiousness in the

complaints and resolution process in furtherance of a general purpose to denounce and punish wrongdoing quickly in order to maintain public confidence in the integrity of the public service: see *Agnaou v. Canada (Attorney General)*, 2015 FCA 29 at paragraph 60 and, *e.g.*, subsection 19.4(1), section 20.3, and subsections 21(1) and 21.5(3) in the Act. This benefits the public, victims of reprisal and their managers, who all are served by a timely and effective process to redress complaints of reprisal. The Act is not meant to promote investigations delving back into historic allegations, in this case allegations of reprisals that occurred years before that Dr. Gupta appreciated at the time might constitute acts of reprisal. Rather, complaints are to be reported and addressed within a short timeframe.

[11] We agree with the Federal Court that the analogies Dr. Gupta makes to the limitation provisions in the *Canada Labour Code*, R.S.C. 1985, c. L-2 and the *Canadian Human Rights Act*, R.S.C. 1985, c H-6 are unpersuasive. These Acts have differently worded provisions within different legislative regimes that serve different purposes.

[12] The *Canada Labour Code* is designed to maintain a balance between competing labour relations considerations and facilitate constructive settlement of disputes (*Telus Communications Inc. v. Telecommunications Workers Union*, 2005 FCA 262, 257 D.L.R. (4th) 19 at paragraph 58). This purpose may well militate in favour of an extension of time to file a complaint. In addition, prior to the Canada Industrial Relations Board possessing authority to extend the time limits for making a complaint (which it currently possesses under paragraph 16(*m.1*) of the *Code*), the Board (or its predecessor, the Canada Labour Relations Board) typically allowed complaints to proceed about actions that occurred outside the relevant time limits in cases where

the statutory duty sought to be enforced in the complaint was an ongoing one, as it was in the bad faith bargaining and duty of fair representation cases relied upon by Dr. Gupta.

[13] In the case of the *Canadian Human Rights Act*, the words of paragraph 41.1(*e*) expressly allow a complaint which includes a pattern of discrimination extending back many years to be filed as long as the last act of discrimination has occurred no more than one year before filing. The relevant provision here—subsection 19.1(2) of the Act, set out above—is worded quite differently.

[14] On the issue of the extension of time, the Commissioner relied primarily on the very lengthy period of delay in the particular circumstances of this case to deny the extension. This is reasonable, given the purpose of the Act that reprisals are to be reported and dealt with quickly. Over time, under this relatively recent statute, the Commissioner will no doubt develop full criteria for the granting of an extension of time consistent with the purposes of the Act. In this case, given the very lengthy period of delay and the purposes of the Act, that was not called for.

[15] Dr. Gupta also submits that he should have been afforded an opportunity to address the issue of delay before the Commissioner made his decision on whether an extension of time should have been given. In our view, given the effluxion of time in this case, further submissions would not have assisted the Commissioner: *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202. In any event, on the facts of this case, the complaint form that Dr. Gupta filled out notified him about the limitation period and the

possibility of an extension of time and invited him to supply information on these issues. Therefore, the Commissioner fulfilled his duty of procedural fairness.

[16] We also see no grounds for interfering with the Federal Court's conclusion that the Commissioner reasonably ruled that certain of the allegations did not meet the statutory definition of reprisal and agree substantially with the Federal Court's reasons on this point. We note that the Commissioner reasonably determined that the initial information submitted by Dr. Gupta was insufficient, Dr. Gupta was given two opportunities to supply more information, and Dr. Gupta did not supply it.

[17] For the foregoing reasons, we would dismiss the appeal. The parties have agreed that costs should follow the event and should be fixed in the amount of $2,500, all inclusive. Therefore, we would grant costs to the respondent in that amount.

"David Stratas"

J.A.

"Mary J.L. Gleason"

J.A.

"I agree
D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-252-15
APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE BROWN DATED APRIL 24, 2015, DOCKET NO. T-1023-14	
STYLE OF CAUSE:	MURLIDHAR GUPTA v. ATTORNEY GENERAL OF CANADA
DATE OF HEARING:	FEBRUARY 10, 2016
REASONS FOR JUDGMENT BY:	STRATAS J.A. GLEASON J.A.
CONCURRED IN BY:	NEAR J.A.
DATED:	FEBRUARY 11, 2016

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