Federal Court of Appeal  Cour d'appel fédérale

**Date: 20160406**

**Docket: A-416-15**

**Citation: 2016 FCA 107**

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

**BETWEEN:**

**JOSEPH YUE**

**Appellant**

**and**

**BANK OF MONTREAL**

**Respondent**

Heard at Toronto, Ontario, on April 6, 2016.
Judgment delivered from the Bench at Toronto, Ontario, on April 6, 2016.

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

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**REASONS FOR JUDGMENT OF THE COURT**
**(Delivered from the Bench at Toronto, Ontario, on April 6, 2016).**

**GLEASON J.A.**

[1] This is an appeal from the judgment of the Federal Court, rendered by Justice Camp on August 26, 2015, dismissing the appellant's application for judicial review of a decision of an adjudicator made under Division XIV of Part III of the *Canada Labour Code*, R.S.C. 1985, c. L-2 [the *Code*]. The adjudicator was charged with determining whether the appellant had been unjustly dismissed from his employment with the Bank of Montreal. The appellant argued before

the adjudicator that he had been constructively dismissed by the Bank because it refused to accommodate his medical need to work closer to his home in Barrie, Ontario.

[2] The adjudicator dismissed the complaint, holding that the Bank had not constructively dismissed the appellant and that the medical evidence tendered did not support the need for the appellant to cease commuting to and from his workplace in downtown Toronto.

[3] In this appeal, as the Supreme Court of Canada held in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paragraphs 45-47, this Court is required to step into the shoes of the Federal Court and determine whether it selected the appropriate standard of review and whether it applied that standard correctly.

[4] The appellant argues that the correctness standard should be applied to the portions of the adjudicator's decision setting out the test for constructive dismissal as this is a common law doctrine that the adjudicator was bound to correctly delineate.

[5] We disagree. It is well-settled that the reasonableness standard applies to review of adjudicators' decisions under Division XIV of Part III of the *Code*, generally, and to their interpretations of what sorts of employer conduct constitute an unjust dismissal: *Payne v. Bank of Montreal*, 2013 FCA 33 at paragraphs 32-33, 443 N.R. 253; *MacFarlane v. Day & Ross*, 2014 FCA 199 at paragraph 3, 466 N.R. 53; *Donaldson v. Western Grain By-Products Storage Ltd.*, 2015 FCA 62 at paragraph 33, 469 N.R. 189.

[6] This holds true even if, in deciding what constitutes a dismissal, the adjudicator is required to apply an employment law doctrine from the common or civil law, like the doctrine of constructive dismissal. As was held in *Attorney General of Canada v. Gatien*, 2016 FCA 3, 479 N.R. 382, labour adjudicators are "owed deference in respect of their application of common or civil law rules in the labour relations context" (at paragraph 33). Thus, the reasonableness standard of review applies to the entirety of the adjudicator's decision.

[7] We do not see anything unreasonable in the adjudicator's decision in the present case. Based on the nature of the medical evidence tendered, it was open to the adjudicator to find that the evidence did not support the need for the appellant to work from Barrie. Likewise, it was reasonable to find that the Bank did not fail in its duty to accommodate the appellant in light of the lack of substantiation for the appellant's medical claims and his precipitous filing of the unjust dismissal complaint immediately following the denial of his application for disability benefits.

[8] Further, we disagree that the adjudicator failed to consider the impact of the potential alteration of the appellant's temporary schedule that allowed him to work two or three days a week from Barrie on a temporary basis. That issue was canvassed by the adjudicator at paragraphs 52-53 of the award, and there is nothing unreasonable in his treatment of the issue. Even if the Bank ended the arrangement for working out of Barrie prematurely, there is nothing unreasonable in holding that there was no constructive dismissal, which requires a substantial unilateral change to a fundamental term of the employment contract by the employer, as the Supreme Court of Canada held in *Farber v. Royal Trust*, [1997] 1 S.C.R. 846 at paragraph 24,

210 N.R. 161. There is nothing unreasonable in declining to find a few weeks' change to a temporary work location a constructive dismissal, especially in light of the appellant's insistence that he needed to work from Barrie five days per week.

[9] This appeal will therefore be dismissed with costs fixed in the all-inclusive amount of $2,000.00 as the adjudicator's decision is reasonable.

"Mary J.L. Gleason"
J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

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| **DOCKET:** | A-416-15 |
| **STYLE OF CAUSE:** | JOSEPH YUE v. BANK OF MONTREAL |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | APRIL 6, 2016 |
| **REASONS FOR JUDGMENT OF THE COURT BY:** | STRATAS J.A.<br>WEBB J.A.<br>GLEASON J.A. |
| **DELIVERED FROM THE BENCH BY:** | GLEASON J.A. |

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