

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160428**

**Docket: A-463-15**

**Citation: 2016 FCA 132**

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

**BETWEEN:**

**PAUL ALEXANDER**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA  
(DEPUTY HEAD, PUBLIC HEALTH AGENCY  
OF CANADA)**

**Respondent**

Heard at Toronto, Ontario, on April 28, 2016.  
Judgment delivered from the Bench at Toronto, Ontario, on April 28, 2016.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**DAWSON J.A.**

Federal Court of Appeal



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Respondent

**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Toronto, Ontario, on April 28, 2016).

**DAWSON J.A.**

[1] For reasons cited as 2015 PSLREB 64, an adjudicator dismissed the applicant's grievance made under the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (Act).

[2] The adjudicator found that:

1. Her jurisdiction was limited to a grievance properly referred to adjudication under subsection 209(1) of the Act. This restricts grievors from raising at adjudication substantive issues that were not raised, explicitly or implicitly, in the grievance.
2. To the extent the concept of constructive dismissal is relevant within the federal public service, this issue was raised for the first time in the reference to adjudication. It followed that the adjudicator did not have jurisdiction to consider this issue.
3. The grievance did assert disguised discipline in the form of a requirement that the grievor submit to a fitness-to-work assessment upon return from a leave without pay. However, the grievor did not present any evidence or argument when invited to provide particulars and submissions. Instead, the grievor simply asserted that the matter required an oral hearing. Because the grievor failed to meet his evidentiary onus, there was an insufficient basis on which to conclude that the grievor was subject to disciplinary action. Thus, the adjudicator lacked jurisdiction to hear the grievance.

[3] On this application for judicial review of the decision of the adjudicator the applicant has failed to demonstrate these findings were in any way unreasonable.

[4] Nor has the applicant demonstrated any breach of procedural fairness.

[5] Section 41 of the Act and subsequently section 22 of the *Public Service Labour Relations and Employment Board Act*, S.C. 2013, c. 40, s. 365, specify that adjudicators may decide

matters referred to adjudication without holding an oral hearing. The applicant has not shown any unfairness flowing from the decision of the adjudicator not to hold an oral hearing.

[6] Finally, we reject the notion that the adjudicator's reasons were inadequate. The reasons are cogent and adequate and fully allow the Court to understand why the grievance was dismissed and to determine whether the conclusion is in within the range of permissible outcomes.

[7] Therefore, the application for judicial review will be dismissed with costs.

"Eleanor R. Dawson"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-463-15

**(APPEAL FROM A GRIEVANCE MADE UNDER THE PUBLIC SERVICE LABOUR RELATIONS ACT)**

**STYLE OF CAUSE:** PAUL ALEXANDER v.  
ATTORNEY GENERAL OF  
CANADA (DEPUTY HEAD,  
PUBLIC HEALTH AGENCY OF  
CANADA)

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** APRIL 28, 2016

**REASONS FOR JUDGMENT OF THE COURT BY:** DAWSON J.A.  
STRATAS J.A.  
NEAR J.A.

**DELIVERED FROM THE BENCH BY:** DAWSON J.A.

**APPEARANCES:**

Ernest J. Guiste FOR THE APPLICANT

Karen Clifford FOR THE RESPONDENT

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