

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20180111**

**Docket: A-140-16**

**Citation: 2018 FCA 8**

[ENGLISH TRANSLATION]

**CORAM: PELLETIER J.A.  
GAUTHIER J.A.  
GLEASON J.A.**

**BETWEEN:**

**PLACIDE KALONJI**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on January 11, 2018.

Judgment delivered from the Bench at Ottawa, Ontario, on January 11, 2018.

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

**GLEASON J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Ottawa, Ontario, on January 11, 2018.)

**GLEASON J.A.**

[1] This is an application for judicial review that seeks to set aside the decision by the Public Service Labour Relations and Employment Board (the Board) dated April 6, 2016, in *Kalonji v. Deputy Head (Immigration and Refugee Board of Canada)*, 2016 PSLREB 31, in which the Board dismissed the applicant's grievance. That grievance challenged the applicant's termination for unsatisfactory performance.

[2] Under section 230 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (the Act), the Board had to determine whether it was reasonable that the employer deemed the applicant's performance unsatisfactory. The Board answered that question in the affirmative and thereby dismissed the grievance. In its decision, the Board undertook a detailed review of the evidence and applied its earlier case law from similar cases.

[3] The standard of review that applies to the Board's decision (including its interpretation of section 230 of the Act) is reasonableness: see *Forner v. Canada (Attorney General)*, 2016 FCA 136 at paragraph 11, [2016] F.C.J. No. 450, and *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42, [2003] 2 S.C.R. 157 at paragraph 16.

[4] As indicated by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47, "[r]easonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[5] We are of the view that the Board's interpretation of section 230 of the Act, as well as the rest of the decision, possesses all the above-mentioned characteristics of a reasonable decision. The Board provided a long and detailed explanation to support its conclusions, followed the applicable case law, and had before it sufficient evidence to justify its conclusion. Furthermore, given that evidence, it was open to the Board to conclude that the employer and the applicant's

supervisors acted in good faith, and that the standards applied by the employer were appropriate and had been clearly communicated to the applicant. Since these three points were the only ones being disputed, the Board's decision is therefore reasonable.

[6] The applicant invites us to substitute our assessment of the evidence for that of the Board. More specifically, he insists that we must reassess the evidence and conclude that his supervisors were acting in bad faith because, according to him, the Board ignored evidence that was favourable to him. We do not agree. The Board considered all the evidence that was submitted to it. In his memorandum, the applicant goes so far as to say that there was fraud in this case, even though he did not raise that allegation before the Board.

[7] It is not the role of this Court to reassess the evidence in this way or to substitute its assessment of the evidence for that of the Board. In addition, an applicant cannot submit new arguments on judicial review that he or she did not raise before the tribunal. Likewise, aside from specific exceptions that do not apply in this case, administrative decisions are reviewed based on the evidence that was before the decision-maker.

[8] This application for judicial review will therefore be dismissed, with costs set at \$1,000, including disbursements.

“Mary J.L. Gleason”

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J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-140-16

**STYLE OF CAUSE:** PLACIDE KALONJI v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JANUARY 11, 2018

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

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

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