

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190205

Docket: A-151-18

Citation: 2019 FCA 26

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.
GLEASON J.A.
RIVOALEN J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

ÉRIC BERNARD FRÉMY

Respondent

Heard at Ottawa, Ontario, on February 5, 2019.

Judgment delivered from the bench at Ottawa, Ontario, on February 5, 2019.

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 February 5, 2019.)

GLEASON J.A.

[1] The appellant appeals from the judgment of the Federal Court in *Frémy v. Attorney General of Canada*, 2018 FC 434 (*per* Grammond J.) in which the Federal Court allowed the respondent's application for judicial review from the decision of a level II adjudicator.

Adjudicating on behalf of the Commissioner of the Royal Canadian Mounted Police (RCMP), the adjudicator upheld the decision rendered at the first level of the grievance process. The

level I adjudicator had dismissed the grievance filed by the respondent further to the refusal of the Commanding Officer, E Division, of the RCMP (the Commanding Officer) to authorize the respondent to withdraw his resignation.

[2] On appeal from a decision of the Federal Court in an application for judicial review, this Court must put itself in the place of the Federal Court and decide whether it chose the appropriate standard of review and applied it correctly: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-46.

[3] In our view, the Federal Court correctly found that the appropriate standard of review in this case was reasonableness. While we do not endorse the Federal Court's reasons in their entirety, we are of the opinion that the level II adjudicator's decision was unreasonable, essentially for the reasons set out by the Federal Court at paragraphs 35 to 41 of its Reasons.

[4] In short, the Commanding Officer had to be satisfied that the respondent's resignation was voluntary; therefore, the voluntary nature of the respondent's resignation was a central issue for the adjudicators reviewing his grievance. The level II adjudicator's analysis regarding the voluntary nature of the resignation was unreasonable because the adjudicator did not factor in a number of relevant factors, such as the background to the respondent's resignation, including the reasons why the RCMP intended to dismiss him; the violation of the respondent's rights under the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.); and the respondent's withdrawal of his resignation (even though it had not been directed to the right person) before it was accepted by the Commanding Officer. These factors, both individually and collectively, could lead to the

conclusion that the respondent's resignation was not truly voluntary or that there were "limited and exceptional circumstances" that could justify the withdrawal of his resignation. Since the adjudicator did not consider these factors, the adjudicator's decision is unreasonable.

[5] The appeal will therefore be dismissed, with costs.

"Mary J.L. Gleason"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-151-18

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. ÉRIC BERNARD
FRÉMY

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 5, 2019

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

DELIVERED FROM THE BENCH BY: GLEASON J.A.

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Éric Bernard Frémy SELF-REPRESENTED

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