

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20100601**

**Docket: A-437-09**

**Citation: 2010 FCA 144**

**CORAM: LÉTOURNEAU J.A.  
PELLETIER J.A.  
STRATAS J.A.**

**BETWEEN:**

**THE ROYAL BANK OF CANADA**

**Appellant**

**and**

**LI MIN (“AMANDA”) WU**

**Respondent**

Heard at Vancouver, British Columbia, on June 1, 2010.

Judgment delivered from the Bench at Vancouver, British Columbia, on June 1, 2010.

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

**LÉTOURNEAU J.A.**



**Date: 20100601**

**Docket: A-437-09**

**Citation: 2010 FCA 144**

**CORAM: LÉTOURNEAU J.A.  
PELLETIER J.A.  
STRATAS J.A.**

**BETWEEN:**

**THE ROYAL BANK OF CANADA**

**Appellant**

**and**

**LI MIN (“AMANDA”) WU**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on June 1, 2010)**

**LÉTOURNEAU J.A.**

**I. The Issue on Appeal:**

[1] This is an appeal against a judgment of Justice O’Keefe of the Federal Court (the judge) allowing an application for judicial review of the decision of an adjudicator appointed under the *Canada Labour Code*, R.S.C. 1985, c. L-2.

[2] The adjudicator upheld the appellant’s decision to terminate the employment of the respondent. On judicial review, the judge, without explicitly saying so, set aside the adjudicator’s decision and referred the matter to a different adjudicator for re-determination.

[3] The issue before us is whether the judge erred in setting aside the decision of the adjudicator.

## II. Analysis of the Decision

[4] The appellant has raised numerous grounds of complaints against the judge's decision. It is not necessary to review them in detail. We are of the view that the judge did not accord sufficient deference to the adjudicator's conclusion. In fact, he clearly substituted his own assessment of the evidence while the evidence on the record reasonably supported the adjudicator's conclusion that termination of the respondent's employment on account of misappropriation was not excessive in all of the circumstances. It was not open to the judge, as he did in paragraph 131 of his reasons for judgment, to reweigh factors which had been assessed by the adjudicator in order to come to a different conclusion.

[5] The adjudicator's decision was well documented and reasonable. It should not have been interfered with. The adjudicator applied a contextual approach to decide whether the employment relationship could continue to exist in view of the respondent's misconduct. He took into account the seriousness of the offence consisting in misappropriation of money, the premeditated and repetitive nature of the misconduct, the respondent's length of service, her discipline record, any instances of earlier discipline and the consistency of the discipline with the employer's discharge policy. He also took into consideration the authorities submitted to him by the parties.

[6] His analysis and assessment of the evidence led him to make the following findings of fact accepted by the judge. The respondent's misconduct was serious, premeditated, deliberate and occurred over a long period of time. As he said, it was not a "momentary and emotional aberration". He noted that the respondent had a discipline free record and was a "good and dedicated employee", but a short-term employee. He added that the respondent was not singled out for any special or harsh treatment. He also found that the respondent refused to take responsibility for her actions, instead blaming the appellant for allowing her to commit the violations of the Bank Code of Conduct. Accordingly, he ruled that the penalty imposed by the employer was not excessive.

[7] In our view the adjudicator took into account the factors relevant to the application of the principle of proportionality. On the basis of the evidence before him, it was open to him to conclude that termination of the respondent's employment in the circumstances struck "an effective balance between the severity of an employee's misconduct and the sanction imposed": see *McKinley v. BCTel*, [2001] 2 S.C.R. 161.

### III. Conclusion

[8] For these reasons, the appeal will be allowed with costs, the decision of the judge will be set aside and, rendering the judgment that should have been rendered, the respondent's application for judicial review in the Federal Court will be dismissed with costs.

"Gilles Létourneau"

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-437-09

**STYLE OF CAUSE:** THE ROYAL BANK OF CANADA v.  
LI MIN (“AMANDA”) WU

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** June 1, 2010

**REASONS FOR JUDGMENT  
OF THE COURT BY:** LÉTOURNEAU J.A.  
PELLETIER J.A.  
STRATAS J.A.

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

**APPEARANCES:**

Lorene Novakowski / Mark Colavecchia FOR THE APPELLANT

Thomas F. Beasley FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Fasken Martineau DuMoulin LLP FOR THE APPELLANT  
Vancouver, British Columbia

Coutts Pulver LLP FOR THE RESPONDENT  
Vancouver, British Columbia