Federal Court of Appeal | Cour d'appel fédérale

Date: 20111114

Docket: A-4-11

Citation: 2011 FCA 309

CORAM: **NOËL J.A.**
NADON J.A.
SHARLOW J.A.

BETWEEN:

AHMED MAQSOOD

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on November 09, 2011.

Judgment delivered at Ottawa, Ontario, on November 14, 2011.

REASONS FOR JUDGMENT BY: NADON J.A.

CONCURRED IN BY: NOËL, J.A.
SHARLOW, J.A.

Federal Court of Appeal | Cour d'appel fédérale

Date: 20111114

Docket: A-4-11

Citation: 2011 FCA 309

CORAM: **NOËL J.A.**
NADON J.A.
SHARLOW J.A.

BETWEEN:

AHMED MAQSOOD

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

NADON J.A.

[1] This is an appeal from a decision rendered by Mr. Justice Pinard of the Federal Court (the "judge") on December 8, 2010, dismissing the appellant's motion for an extension of time to serve and file an application for judicial review of the decision of an adjudicator appointed by the Public Service Labour Relations Board (the "Board").

[2] The only issue before us is whether the judge erred in the exercise of his discretion. For the reasons that follow, I conclude that he did not.

The Facts:

[3] On April 11, 2007, the appellant was dismissed, while on probation, from his position as a senior trademarks examiner within the Trade-marks Branch of the Canadian Intellectual Property Office of Industry Canada (the "employer").

[4] His grievance of the dismissal was referred to an adjudicator and was heard in Ottawa from September 16 to 19, 2009.

[5] On December 14, 2009, the adjudicator dismissed the grievance. More particularly, she concluded that the appellant had been dismissed for an employment-related reason, i.e. his failure to meet the expected performance standards. In so concluding, the adjudicator was of the view that the appellant had not met his burden of showing that the employer had acted in bad faith in rejecting him while on probation.

[6] Consequently, by reason of section 211 of the *Public Service Labour Relations Act*, S.C., 2003, c. 22, s. 2 (the "Act"), which excludes the right provided by section 209 of the Act to refer a grievance to adjudication whenever a termination of employment occurs during a period of probation, other than as a result of bad faith on the part the employer, the adjudicator held that she was without jurisdiction to hear the grievance and so dismissed it.

[7] On January 26, 2010, the appellant commenced before this Court a judicial review application of the adjudicator's decision and on April 21, 2010, Pelletier J.A. quashed the appellant's application on the grounds that this Court had no jurisdiction to hear it.

[8] On October 21, 2010, leave to appeal Pelletier J.A.'s decision to the Supreme Court of Canada was refused.

[9] On November 9, 2010, the appellant applied to the Federal Court for an order extending the time for him to serve and file an application for judicial review of the adjudicator's decision.

[10] On December 8, 2010, his application was dismissed by the judge. In his view, the appellant's request for an extension of time was without merit because of its failure to address the test applicable for the granting of an extension of time enunciated by this Court in *Stanfield v. Her Majesty the Queen*, 2005 FCA 107, where we held at paragraph 3 of our Reasons:

> [3] Generally, in determining whether to grant an extension of time, the four factors listed in *Grewal v. Canada (Minister of Employment & Immigration)*, [1985] 2 F.C. 263 (F.C.A.) should be considered. The factors are (1) whether the party seeking the extension has a continuing intention to pursue the matter, (2) whether the position taken by the party seeking the extension of time has some merit, (3) whether the other party is prejudiced by the delay, and (4) whether there is a reasonable explanation for the delay. The weight to be given to each of these factors will vary with the circumstances of each case.

[11] On January 7, 2011, the applicant filed the appeal which is now before us. In my view, the appeal cannot succeed.

Analysis:

[12] Although I am prepared to accept that the appellant had a continuous intention to pursue his judicial review application, that there is a reasonable explanation for the delay other than for a few days between December 14, 2009 and January 28, 2010, and that no prejudice would result to the respondent if the extension of time were granted, I have not been persuaded that the judge erred in refusing to allow the extension of time sought by the appellant.

[13] The adjudicator heard the appellant's grievance over a period of three days. Her Reasons demonstrate that she carefully reviewed the evidence before her and then proceeded to consider the arguments submitted by the parties. After a careful analysis of both the facts and the law, the adjudicator held that there was no basis whatsoever to conclude that the employer was acting in bad faith in dismissing the appellant. She was satisfied that the grounds for dismissal were clearly employment related.

[14] After carefully reviewing the record before us and considering the appellant's arguments on this appeal, I see no basis upon which his judicial review application might succeed. Although the appellant asserts in his Memorandum of Fact and Law that he has "solid evidence to prove his case", he did not present this evidence to the judge or to us. There is, in effect, no evidence before us, since the appellant has neither filed an affidavit in support of his motion nor has he provided us with the transcript of the evidence adduced before the adjudicator. All we have are the appellant's unsupported allegations and statements as to what he believes to be the evidence before the adjudicator which, he says, the adjudicator failed to consider.

[15] The appellant takes the position, as he did before both the adjudicator and the judge, that the employer's decision to terminate him was arbitrary, made in a discriminatory fashion and in bad faith. In support of his assertions, he refers to evidence which the adjudicator carefully reviewed and dealt with in the course of her Reasons. Although the appellant strongly disagrees with the conclusions reached by the adjudicator, he cannot point to any possible error on her part. Even assuming that the standard of review applicable to the adjudicator's decision is correctness, I cannot detect any error on her part which might lead a court to find in the appellant's favour.

[16] Consequently, in the light of the relevant test, I have not been persuaded that the judge made any error which would allow us to intervene. More particularly, I am of the opinion that the judge's exercise of discretion, in the circumstances of this case, does not result from an error of principle or from a misapprehension of the facts.

Disposition:

[17] For these reasons, I would dismiss the appeal with costs.

"M. Nadon"

J.A.

"I agree.
Marc Noël J.A."

"I agree.
K. Sharlow J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-4-11
STYLE OF CAUSE:	AHMED MAQSOOD v. A.G.C.
PLACE OF HEARING:	Ottawa, ON
DATE OF HEARING:	November 9, 2011
REASONS FOR JUDGMENT BY:	NADON J.A.
CONCURRED IN BY:	NOËL, SHARLOW JJ.A.
DATED:	November 14, 2011

APPEARANCES:

Ahmed Maqsood	APPELLANT ON HIS OWN BEHALF
Adrian Bieniasiewicz	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT