

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20130430**

**Docket: A-472-11**

**Citation: 2013 FCA 118**

**CORAM: NOËL J.A.  
MAINVILLE J.A.  
NEAR J.A.**

**BETWEEN:**

**VIVIAN BOUTZIOUVIS**

**Appellant**

**and**

**FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS  
CENTRE OF CANADA (FINTRAC)**

**Respondent**

Heard at Ottawa, Ontario, on April 30, 2013.

Judgment delivered from the Bench at Ottawa, Ontario, on April 30, 2013.

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

**NOËL J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Ottawa, Ontario, on April 30, 2013)

**NOËL J.A.**

[1] This is an appeal by Vivian Boutziouvis (the appellant) from a decision of the Federal Court wherein Mosley J. (the Federal Court judge) quashed a decision of an adjudicator appointed by the Public Service Labour Relations Board (the adjudicator) allowing her grievance.

[2] The appellant was dismissed from her management position with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). She grieved that decision before the adjudicator and was reinstated. The Federal Court judge allowed FINTRAC's application for judicial review and set aside the adjudicator's decision. He found that the matter before the adjudicator gave rise to a true question of jurisdiction or *vires* (reasons, para. 36) and, applying a standard of correctness, he held that the adjudicator erred when he assumed jurisdiction over the matter (reasons, para. 54). He went on to find that if, contrary to what he held, the adjudicator had jurisdiction, the decision to allow the appellant's grievance and order her reinstatement was reasonable and therefore should stand (reasons, para. 60).

[3] The appellant grieved her dismissal on the basis that it was "a disciplinary measure taken purportedly for cause" (reasons, para. 7). Her grievance was initially rejected and an adjudicator was subsequently appointed to look into the matter. FINTRAC took the position before the adjudicator that he did not have jurisdiction over the grievance because contrary to what the appellant believed, the dismissal had taken place on an "otherwise than for cause" basis as contemplated by section 49 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (PCTFA). FINTRAC rested its case entirely on this argument and offered no evidence.

[4] The adjudicator in the course of his reasons did express the view that he had jurisdiction whether the dismissal took place on a with or without cause basis (adjudicator's reasons, para. 96). However he found, based on an extensive review of the evidence, that FINTRAC did not proceed to dismiss the appellant "otherwise than for cause" (adjudicator's reasons, paras. 116 to 121). In

coming to this conclusion, he noted that FINTRAC's position that the termination took place on an "otherwise than for cause basis" was only advanced by its general counsel after the grievance had been filed. The adjudicator did not give credence to this statement noting in particular the fact that there had been no opportunity to question the author or any other FINTRAC representative as to the exact basis for the dismissal (adjudicator's reasons, para. 118). He went on to hold that the dismissal was disciplinary in nature and that although the alleged misconduct was serious, the dismissal was not shown to be justified as FINTRAC elected not to bring any evidence in support of it (adjudicator's reasons, paras. 127 to 129).

[5] The Federal Court judge conducted his analysis on the basis that FINTRAC "elected to terminate the appellant otherwise than for cause" as authorized by section 49 of the PCTFA (reasons, para. 51; the analysis begins at para. 29). According to the Federal Court judge, this had the effect of taking the matter outside the jurisdiction of the adjudicator (reasons, para. 51).

[6] The finding by the Federal Court judge that the appellant was dismissed without cause runs directly counter to the finding made by the adjudicator on this point. The Federal Court judge offers no reason in support of his rejection of the adjudicator's finding.

[7] The determination of the basis upon which the appellant was terminated is one of fact, which calls for deference. The extensive reasons given by the adjudicator in this respect meet the hallmarks of justification and intelligibility, and show that this finding was reasonably open to him (adjudicator's reasons, paras. 116 to 121).

[8] Absent a demonstration to the contrary, the Federal Court judge was bound to conduct his analysis on the basis that FINTRAC proceeded to dismiss the appellant for cause. Had he done so, he would have had no alternative but to dismiss the judicial review application given FINTRAC's decision not to advance any evidence in support of the alleged misconduct. We refer in this respect to the reasons of the adjudicator at paragraphs 127 to 129.

[9] It follows that the question whether an adjudicator has the jurisdiction to look into the matter when a dismissal takes place "otherwise than for cause" does not arise on the facts of this case, and there is no need to express any opinion on this question.

[10] For these reasons, the appeal will be allowed with costs, the judgment of the Federal Court judge will be set aside, and giving the judgment which he ought to have given, the application for judicial review will be dismissed with costs.

"Marc Noël"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-472-11

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE MOSLEY DATED NOVEMBER 10, 2011, DOCKET NO. T-81-11.**

**STYLE OF CAUSE:** VIVIAN BOUTZIOUVIS and  
FINANCIAL TRANSACTIONS  
AND REPORTS ANALYSIS  
CENTRE OF CANADA  
(FINTRAC).

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** April 30, 2013

**REASONS FOR JUDGMENT OF THE COURT BY:** Noël, Mainville, Near JJ.A.

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

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