Federal Court of Appeal | Cour d'appel fédérale

Date: 20220509

Docket: A-61-21

Citation: 2022 FCA 77

[ENGLISH TRANSLATION]

CORAM: **PELLETIER J.A.**
DE MONTIGNY J.A.
LEBLANC J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

JEAN-CLAUDE POUPART

Respondent

Heard by online videoconference hosted by the registry on April 5, 2022.

Judgment delivered at Ottawa, Ontario, on May 9, 2022.

REASONS FOR JUDGMENT BY: LEBLANC J.A.

CONCURRED IN BY: PELLETIER J.A.
DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

LEBLANC J.A.

[1] The Attorney General of Canada (the Attorney General) is seeking judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board (the Board) dated February 5, 2021 (2021 FPSLREB 13). In its decision, the Board allowed a grievance filed by the respondent that contested the decision of his employer, the Correctional Service of Canada (the Employer), to recover the sums that he had been paid pursuant to the collective agreement

between the parties (the Collective Agreement) for injury-on-duty leave, after the relevant provincial authorities ultimately ruled that the incident that had given rise to those payments did not qualify as an industrial accident or an occupational disease within the meaning of the applicable provincial legislation, namely, the *Act respecting industrial accidents and occupational diseases*, C.Q.L.R. c. A-3.001 (the AIAOD).

[2] The Board found that section 363 of the AIAOD, which in such circumstances, save for two exceptions that do not apply in this case, prohibits the recovery of "sums" already paid to an employee who has wrongfully claimed to have suffered an industrial accident or to have contracted an occupational disease, was enforceable against the Employer and was thus a bar to the contested recovery. The Board consequently ordered that the sums recovered from the respondent be reimbursed.

[3] The Attorney General argues that the Board's decision is unreasonable because it runs counter to the well-settled case law to the effect that section 363 of the AIAOD does not apply to federal employers and because it fails to take into account the fact that the initial decision recognizing that the respondent was entitled to an income replacement indemnity on account of an industrial accident had been reversed by the relevant authorities.

[4] For the following reasons, I find that there are serious shortcomings in the Board's decision that affect its reasonableness and that consequently call for the Court's intervention.

I. Background

[5] The facts that underlie this matter are not in dispute. They can be summarized as follows.

[6] On January 31, 2015, the respondent was involved in an incident with an inmate. He ceased working that same day. In the weeks that followed, his treating physician made a diagnosis of an adjustment disorder with anxious mood and extended his leave from work.

[7] On March 5, 2015, the respondent, as required by the *Government Employees Compensation Act*, R.S.C. 1985, c. G-5 (the GECA), which applies to federal government employees who have suffered a work-related accident or contracted an industrial disease, filed a claim for an income replacement indemnity to the Quebec body with appropriate jurisdiction, which at the time was Quebec's Commission de la santé et de la sécurité du travail (the CSST), given that the respondent worked in Quebec. That same day, the Employer, as stipulated in the Collective Agreement, issued a notice of compensation for injury-on-duty leave with pay.

[8] However, this notice of compensation, which was retroactive to February 1, 2015, was subject to the respondent's CSST claim being approved, which the Employer disputed as it did not consider the January 31 incident to be a work-related accident.

[9] On June 18, 2015, the CSST accepted the respondent's claim, but the Employer challenged the merits of that decision through the CSST's reviewing division. The Employer's challenge was successful on November 2, 2015. In the meantime, on August 10, 2015, the

Employer, pursuant to its internal policies, ended the paid leave of the respondent, who then went on unpaid leave. The CSST took over by paying the respondent, as of that date, income replacement compensation for a work accident, although those payments stopped following the reviewing division's decision.

[10] The respondent challenged the reviewing division's decision through the Tribunal administratif du travail, but that challenge was dismissed on February 3, 2017. In this respect, the matter did not go further.

[11] In April 2016, the respondent was informed of the Employer's intention to recover the sums paid to him as injury-on-duty leave with pay between February 1 and August 10, 2015. Those sums totalled, in gross, $33,422.00. The recovery process began when the respondent returned to work in June 2017. The grievance that gave rise to this proceeding was then filed; that grievance was dismissed at each level of the internal grievance process before being referred to adjudication before the Board, as provided for in subsection 209(1) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2.

[12] It is important to specify at this stage that the recovery carried out by the Employer did not apply to the sums paid to the respondent by the CSST beginning on August 10, 2015 as income replacement compensation for a work accident. The recovery concerned only the sums paid by the Employer itself to the respondent pursuant to the Collective Agreement, more specifically clause 30.16, which reads as follows:

Injury-on-duty Leave	**Pour accident de travail**
30.16 An employee shall be granted injury-on-duty leave with pay for such reasonable period as may be determined by the Employer when a claim has been made pursuant to the *Government Employees' Compensation Act*, and a Workers' Compensation authority has notified the Employer that it has certified that the employee is unable to work because of:	**30.16** L'employé-e bénéficie d'un congé payé pour accident de travail d'une durée fixée raisonnablement par l'Employeur lorsqu'une réclamation a été déposée en vertu de la *Loi sur l'indemnisation des agents de l'État* et qu'une commission des accidents du travail a informé l'Employeur qu'elle a certifié que l'employé-e était incapable d'exercer ses fonctions en raison :
(a) personal injury accidentally received in the performance of his or her duties and not caused by the employee's willful misconduct, or	**a)** d'une blessure corporelle subie accidentellement dans l'exercice de ses fonctions et ne résultant pas d'un acte délibéré d'inconduite de la part de l'employé-e, ou
(b) an industrial illness or a disease arising out of and in the course of the employee's employment, if the employee agrees to remit to the Receiver General for Canada any amount received by him or her in compensation for loss of pay resulting from or in respect of such injury, illness or disease providing, however, that such amount does not stem from a personal disability policy for which the employee or the employee's agent has paid the premium.	**b)** d'une maladie ou d'une affection professionnelle résultant de la nature de son emploi et intervenant en cours d'emploi, si l'employé-e convient de verser au receveur général du Canada tout montant d'argent qu'il reçoit en règlement de toute perte de rémunération résultant d'une telle blessure, maladie ou affection, à condition toutefois qu'un tel montant ne provienne pas d'une police personnelle d'assurance-invalidité pour laquelle l'employé-e ou son agent a versé la prime.

II. The Board's decision

[13] After disposing of a preliminary objection by the Employer, which was not raised again as part of this judicial review, and after providing a lengthy summary of the parties' claims as to the very merit of the respondent's grievance, the Board began by underscoring the absence of

bad faith on the part of the respondent throughout the process, which began with the claim to the CSST in March 2015 and culminated in the filing of the grievance.

[14] Noting that clause 30.16 of the Collective Agreement does not explicitly provide that the Employer may retroactively recover sums that have already been paid, the Board emphasized that this did not mean that the Employer could not recover such sums pursuant to subsection 155(3) of the *Financial Administration Act*, R.S.C. 1985, c. F-11 (the FAA), which gives the Receiver General for Canada the power to "recover any over-payment made out of the Consolidated Revenue Fund on account of salary, wages, pay or pay and allowances out of any sum of money that may be due or payable by Her Majesty in right of Canada to the person to whom the over-payment was made."

[15] Even so, the Board was of the view that an over-payment must have been made for this provision of the FAA to apply. However, since clause 30.16 makes explicit reference to the GECA and applies within the limitations of the framework established by that Act, there can only, in the Board's opinion, be an over-payment within the meaning of the FAA if section 363 of the AIAOD—an Act that is part of the framework put in place by the GECA—does not apply. Indeed, the Board reiterated that it is this Act—the AIAOD—that sets outs, by reason of the definitions provided in the GECA for the terms "compensation" and "industrial disease" and by reason of section 4 of the GECA, the compensation to be received by federal employees who have suffered a work-related accident and the eligibility requirements for that compensation.

[16] According to the Board, section 363 of the AIAOD applied to the Employer because the judgments rendered by the Court of Appeal of Quebec in *Société canadienne des postes v. Québec (Commission de la santé et de la sécurité du travail)*, (1996) R.J.Q. 873 (CA), 136 D.L.R. (4th) 187 (*SCP No. 1*) and *Syndicat des postiers du Canada c. Société canadienne des postes*, [1997] R.J.Q. 1182 (CA), 1997 CanLII 10828 (*SCP No. 2*), which rejected its application in a federal context, were rendered obsolete by the Supreme Court of Canada's ruling in *Martin v. Alberta (Workers' Compensation Board)*, 2014 SCC 25, [2014] 1 S.C.R. 546 (*Martin*).

[17] The Board concluded that in summary, these judgments "no longer hold" and that it was now clear, in light of *Martin*, that the Collective Agreement, and more specifically clause 30.16, should be interpreted by taking into account section 363 of the AIAOD, which provides employees covered by the Collective Agreement with protection that the parties thereto cannot derogate from.

[18] Accordingly, when interpreted by taking into account section 363 of the AIAOD, which prohibits the recovery of sums already paid to an employee even though the employee's entitlement to said sums may have been reduced or denied by the relevant provincial authorities, the Collective Agreement did not authorize the Employer to recover the sums paid to the respondent for injury-on-duty leave with pay.

[19] The Board added that it found it difficult to conceive that the parties to the Collective Agreement could have intended to allow a recovery that would have retroactively deprived

affected employees of their only source of income because the Board considered that that seemed inconsistent with the legal system in place with respect to an injury on duty.

III. Issue and applicable standard of review

[20] The only issue in this case is whether, in ruling the way that it did, the Board made an error that justifies the Court's intervention.

[21] There is no dispute that the applicable standard of review in this case is reasonableness (*Babb v. Canada (Attorney General)*, 2022 FCA 55, [2022] F.C.J. No. 397 (QL/Lexis) at para. 31, citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] S.C.J. No. 65 (QL/Lexis) (*Vavilov*)). Indeed, it is common ground that this case does not raise any issues that justify derogating from the presumption that "reasonableness is the applicable standard in all cases" (*Vavilov* at para. 10).

[22] It is trite law that reasonableness is a deferential standard. This means that the Court must "avoid 'undue interference' with the administrative decision maker's discharge of its functions" (*Vavilov* at para. 30, citing *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (*Dunsmuir*) at para. 27). In this regard, the Court must be very careful not to conduct a *de novo* analysis of the issues that were before the administrative decision maker, to decide on these issues in the administrative decision maker's place or even to determine the correct solution to these issues (*Vavilov* at para. 83).

[23] The role of the Court is instead to ensure that the impugned decision and its underlying justification have the "qualities that make a decision reasonable" (*Vavilov* at para. 86, citing *Dunsmuir* at para. 47). The Court must therefore focus not only on the outcome, but also on the reasoning that led to that outcome. As the Supreme Court reiterated in *Vavilov*, a reasonable decision is one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker", which are used to "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov* at para. 85–90).

[24] Therefore, a decision that, in this respect, has "serious shortcomings" that tend to strip it of the qualities of justification, intelligibility and transparency will require the Court's intervention (*Vavilov* at para. 100).

IV. Analysis

[25] In my opinion, there are shortcomings in three key aspects of the Board's decision: (a) how *Martin* is treated; (b) how section 363 of the AIAOD is treated; and (c) how the relationship between the Collective Agreement and subsection 155(3) of the FAA is treated. In my view, these shortcomings, both individually and collectively, irremediably affect the reasonableness of the decision.

A. *The Martin decision*

[26] The *Martin* decision is central to the Board's decision. Indeed, it is safe to say that the Board's decision substantially stems from the Board's finding that *Martin* rendered the case law that is relied on by the Employer obsolete, with the result that, contrary to that case law, the Collective Agreement had to be interpreted by taking into account section 363 of the AIAOD, which, in the Board's opinion, is one of the industrial accident protections that parties to any collective agreement cannot derogate from.

[27] Said case law cited by the Employer includes two decisions rendered by the Court of Appeal of Quebec concerning employees governed by the GECA (*Société canadienne des postes v. Québec (Commission de la santé et de la sécurité du travail)*, (1996) R.J.Q. 873 (CA), 136 D.L.R. (4th) 187 (*SCP No. 1*) and *Syndicat des postiers du Canada c. Société canadienne des postes*, [1997] R.J.Q. 1182 (CA), 1997 CanLII 10828 (*SCP No. 2*)).

[28] In both of those cases, the Court of Appeal of Quebec, after reiterating that compensating federal employees for work-related accidents or occupational diseases falls under the exclusive jurisdiction of Parliament, found that, if the GECA incorporates by reference the provincial laws on industrial accidents for the purposes of determining eligibility for compensation for such accidents (or occupational diseases) and the rate of compensation, if any, that incorporation by reference does not include all aspects of that legislation. In doing so, the Court ruled that section 363 of the AIAOD (*SCP No. 2*), which is the section at issue in this appeal, as well as section 32 of the same Act—which provides recourse through the CSST to employees who

believe that they have been the subject of reprisals by their employer for having exercised their rights under the AIAOD (*SCP No. 1*)—did not benefit the employees involved because those provisions concerned neither their eligibility for compensation nor the applicable compensation rate, if any.

[29] Other than citing excerpts from three paragraphs of *Martin*, which has 63 paragraphs, the Board did not clarify how these two Court of Appeal of Quebec decisions no longer hold following *Martin* or even how *Martin* now supported the argument that the GECA incorporates by reference section 363 of the AIAOD.

[30] However, the scope of *Martin* seems narrower than the scope that the Board gave it in the present matter. Indeed, it seems that the Supreme Court focused only on the role of provincial policies and legislation with respect to work-related accidents for the purposes of determining entitlement to the compensation established by the GECA. Furthermore, as noted by the Supreme Court, this issue was the subject of conflicting case law in the provincial courts of appeal at the time, some considering "that the GECA provides a complete code of eligibility for federal workers' compensation", others concluding "that eligibility for compensation under the GECA is determined in accordance with provincial rules" (*Martin* at para. 2). It was therefore important that this issue be settled.

[31] It must be recalled that the GECA recognizes that federal government employees who suffer a work-related accident or contract an industrial disease are entitled to receive compensation. Both eligibility for compensation and the rate and amount of that compensation

are determined, on the basis of what is set out in the GECA, by the legislation—and the appropriate authorities—respecting compensation for workers in the province where the federal employee concerned is usually employed.

[32] It is important to note that the appellant in *Martin* was challenging the refusal of the Albertan board responsible for applying the legislation in Alberta as regards work-related accidents to recognize that he was entitled to compensation for chronic stress on the grounds that the appellant's condition did not meet all the eligibility criteria set out in a policy adopted by that board (*Martin* at para. 1). Thus, the issue in *Martin* was essentially eligibility to receive compensation for a work-related accident pursuant to the GECA and the corollary issue of the applicable boundaries and structures for such a determination.

[33] By confirming that provincial legislation and policies had a role to play in these two respects, so long as they do not conflict with the provisions of the GECA, the Supreme Court rejected the appellant's argument that Parliament, by adopting that section, "intended to subject all federal employees to the same eligibility standard, but to have the amount of compensation be determined by each province" (*Martin* at para. 15).

[34] It would make "little sense" to the Supreme Court to defer to a provincial regime of compensation for rates without also deferring on the question of eligibility conditions or criteria for compensation (*Martin* at para. 24). According to the Supreme Court, Parliament's intention, as demonstrated by both the text of the GECA and its legislative history, was for "both eligibility for and the rate of compensation . . . to be determined according to provincial law" (*Martin* at

para. 35), subject to any conflict, in that regard, with the provisions of the GECA (*Martin* at para. 40).

[35] The Court concluded as follows:

> [63] In enacting the *GECA*, Parliament intended that provincial boards and authorities would adjudicate the workers' compensation claims of federal government employees — including both entitlement to and rates of compensation — according to provincial law, except where a conflict arises between the provincial law and the *GECA*. The Alberta Policy's interpretation of "accident" in the context of psychological stress claims does not conflict with the *GECA* and was applicable to the appellant's claim. . . .

[36] It is interesting to note that the Court of Appeal of Quebec resolutely took the side of provincial courts of appeal that were of the opinion, as the Supreme Court would rule in *Martin*, "that eligibility for compensation under the *GECA* is determined in accordance with provincial rules" (*Martin* at para. 2; see *SCP No. 1* at 3–4, 12; *SCP No. 2* at 13) (emphasis added). In such a context, it therefore appears risky to say the least to conclude, without further elaboration, as the Board did, that *Martin* somehow spelled the end of *SCP No. 1* or *SCP No. 2*, which, moreover, were not explicitly rejected or even mentioned in that case.

[37] As for the issue of the applicability of section 363 of the AIAOD to federal government employees more specifically, in *SCP No. 2*, a majority of the Court of Appeal of Quebec rejected the idea that the incorporation by reference established by Parliament under the GECA integrally included all applicable provincial legislation. It had previously substantiated its understanding that this incorporation by reference was really directed more towards provincial provisions governing the determination of federal employees' right to compensation in the event of a

work-related accident and, where appropriate, the applicable compensation rate. It stated the following at page 15 of its decision:

> [TRANSLATION]
>
> The GECA states that to be entitled to the compensation provided for by the AIAOD, the federal employee must have suffered a workplace injury. Of course, whether a workplace injury occurred is at the discretion of the appropriate provincial authority. But when the provincial authority determines that no workplace injury occurred, in my opinion the federal employee is not entitled, under the GECA, to the compensation provided for by the provincial legislation because he or she did not suffer a work-related accident or contract an industrial disease (subsection 4(1) of the GECA).
>
> Should the provincial authority determine that the compensation should be reduced, meaning the federal employee was not entitled to it for the entire period in which it was received, the same reasoning applies. As soon as the federal employee stops being entitled to compensation, the AIAOD stops applying to that person.
>
> I do not think that the GECA implicitly entrusts provincial legislation with determining what must happen to sums already paid to a federal employee when compensation is cancelled or reduced retroactively. In my opinion, this is an employer-employee labour relations issue, and employer-employee labour relations is an area that is exclusively within federal jurisdiction when the employee concerned is a federal employee.

[38] In response to the argument that compensation entitlement includes the consequences of withdrawing compensation, and that this must consequently be governed by provincial legislation to ensure that all workers in the province are treated consistently, the Court of Appeal of Quebec ruled that if consistency is required in that regard, it should be at the federal level. Justice Louise Mailhot, speaking for the majority, had the following to say on this point:

> [TRANSLATION]
>
> I do not think that the principle applies here. The employees in question in this case are federal government employees. That puts them in a pan-Canadian category. They are first and foremost governed by federal legislation, but certain conditions of application vary by province.
>
> The evidence shows, however, that all unionized employees of the [Canada Post] Corporation across Canada are subject to the same policy. (The Union, however, underscored that unlike the AIAOD, the legislation of some provinces—Alberta, Saskatchewan and Manitoba—expressly provides for the recovery of over-payments to a worker). It also seems that the other bodies subject to the GECA recover over-payments. I am therefore of the view that if consistency is required in this regard, it must be found at the federal level, which appears to be the current situation.
>
> (*SCP No. 2* at 16)

[39] Some may reasonably argue that *SCP No. 1* and *SCP No. 2* fell within an area that the Supreme Court did not have to explore—and, in fact, did not explore—in *Martin*. The question arises and merited an analysis by the Board, without which the reasonableness of the conclusion that the Board arrived at appears difficult to defend.

[40] In his written and oral submissions, the respondent placed a great deal of emphasis on the following passage from *Martin*, which was reiterated by the Board in its decision:

> Where a direct conflict between the provincial law and the *GECA* exists, the *GECA* will prevail, rendering that aspect of the provincial law or policy inapplicable to federal workers. Otherwise, the provincial workers' compensation scheme prevails.
>
> (*Martin* at para. 39, cited by the Decision of the Board at para. 85)

[41] The respondent views this as a strong indicator of a substantially broader and more liberal interpretation of the GECA than that found in *SCP No. 1* and *SCP No. 2* regarding the applicability of the AIAOD—including section 363 of the AIAOD—to federal employees employed in Quebec.

[42] Yet, again, this claim seems to me to disregard the context in which the *Martin* decision was rendered as well as the immediate context in which that excerpt appears in the decision. Indeed, it is difficult to see something other than a discussion on the consequences of the existence of possible conflicts between the GECA and the applicable provincial legislation in determining a federal employee's eligibility for compensation for a work-related accident, or the compensation rate and amount.

[43] This excerpt immediately follows a passage wherein the Supreme Court states that it agrees with the description provided by the Nova Scotia Court of Appeal in *Cape Breton Development Corp. v. Morrison Estate*, 2003 NSCA 103, 218 N.S.R. (2d) 53, of the "legislative landscape" governing the granting of compensation under the GECA (*Martin* at para. 39). The description is as follows:

> The provincial workers' compensation scheme governs claims submitted under *GECA* provided that:
>
> a) the provision in issue is reasonably incidental to a "rate" or "condition" governing compensation under the law of the province, and

b) the provision is not otherwise in conflict with *GECA*. [para. 68]

(*Martin* at para. 39).

[44] Immediately following the excerpt cited by the respondent, the Supreme Court made its final comments under the heading "*Conflicts Between the GECA and Provincial Legislation*" as follows:

> [40] Given the broad delegation of the determination of eligibility to the provincial level, conflicts between provincial law and the *GECA* with respect to eligibility will generally only arise in situations where the *GECA* regime has specifically included or excluded matters from compensation in a way that is in conflict with the relevant provincial law, as for example occurred in the case of pulmonary tuberculosis.

[45] According to paragraph 37 of *Martin*, this example of conflict over "pulmonary tuberculosis" arises from the fact that at one time there was explicit eligibility, following amendments to the GECA, for compensation for this condition even if it was not covered by provincial legislation. Once again, one may reasonably argue that this example illustrates the type of (rare) conflicts of law that the GECA might lead to, namely those related to questions of compensation eligibility.

[46] Accordingly, even if this excerpt was central to the Board's decision, the Board was still required to explain how it made it possible to depart from the case law of the Court of Appeal of Quebec, given that on the face of things, it seems resolutely limited to issues of compensation eligibility and is consequently of little assistance when, as in this case, the time comes to

determine what is to happen to sums already paid to a federal employee when that person's entitlement to those sums was revoked retroactively by the appropriate provincial authority.

[47] The respondent also tried to establish that a certain number of provincial courts of appeal had distanced themselves from the Court of Appeal of Quebec by interpreting the GECA more broadly and more liberally. At the hearing, however, the respondent conceded that all the decisions of these courts of appeal that were brought to the Court's attention dealt with issues of compensation eligibility, not with issues similar to those on which the Court of Appeal of Quebec had to rule in *SCP No. 1* and *SCP No. 2*. As discussed, for issues pertaining strictly to eligibility, the Court of Appeal of Quebec was already on the side of the provincial courts of appeal that considered that those issues were governed by provincial rules.

[48] I would like to reiterate that a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the factual and legal constraints that "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov* at para. 90).

[49] Were it not for the scope given by the Board to *Martin*, the decisions of the Court of Appeal of Quebec—the highest court of the province where the respondent is usually employed—in *SCP No. 1* and *SCP No. 2* would unquestionably establish a precedent in terms of legal constraints dictating the contours of the space in which the Board may act. As the Supreme Court stated in *Vavilov*, a decision, to be reasonable, must be justified notably in relation to the constellation of law (*Vavilov* at para. 105). This includes "[a]ny precedents on the issue before

the administrative decision maker", which includes "a relevant case in which a court considered a statutory provision" (*Vavilov* at para. 112). An administrative tribunal cannot depart from such a precedent without indicating why it is preferable to do so (*Vavilov* at para. 112).

[50] This explanation based on *Martin* is irreparably lacking in this case because it has all the hallmarks of a "peremptory conclusion", which, as the Supreme Court reiterated, "will rarely assist a reviewing court in understanding the rationale underlying a decision" and consequently in measuring the quality of that decision, which is one of the essential qualities of a reasonable decision (*Vavilov* at para. 102). Upon reviewing the Board's decision and *Martin*, I cannot understand how the Board could have arrived at the conclusion that the decisions of the Court of Appeal of Quebec in *SCP No. 1* and *SCP No. 2* "no longer hold" since the ruling in *Martin* and that the pronouncements in that case clearly favour the application of section 363 of the AIAOD to federal employees.

[51] In the absence of real justification, the Board's decision on this crucial point cannot stand because at first blush, nothing in *Martin* appears to support the scope that was attributed to it by the Board. In this regard, there are serious shortcomings in the decision as regards justification, transparency and intelligibility that, on their own, justify the Court's intervention.

B. *The scope of section 363 of the AIAOD*

[52] But even assuming that section 363 of the AIAOD applies in this case, a concern, which was not addressed by the Board, remains: does the prohibition set out in this provision include the sums recovered by the Employer?

[53] I would like to reiterate that these are the sums that were paid by the Employer itself under clause 30.16 of the Collective Agreement as "injury-on-duty leave with pay" for "such reasonable period as may be determined by the Employer", which, in this case, according to the Employer's policy, was for 130 working days following the day on which the respondent stopped working. These sums equal 100% of the employee's salary. At the end of this period of 130 working days, that is, on August 10, 2015, the respondent, I reiterate, was placed on leave without pay by the Employer.

[54] At that point in time, the respondent began receiving income replacement benefits for a work accident from the CSST equal to 90% of his salary. As also previously noted, the payment of these benefits stopped when the CSST's reviewing division overturned the initial decision that allowed the respondent's compensation claim to the CSST for a work accident.

[55] In such circumstances, section 363 of the AIAOD prohibits the recovery of "sums" already paid to an employee who wrongfully claimed to have suffered an industrial accident or to have contracted an occupational disease. This provision reads as follows:

363. Where the Commission, following a decision under section 358.3, or the Administrative Labour Tribunal cancels or reduces the amount of an income replacement indemnity or of a death benefit contemplated in section 101 or in the first paragraph of section 102 or a benefit provided for in the personal rehabilitation program of a worker, the sums already paid to a beneficiary are not recoverable unless they were obtained through bad faith or unless they were wages paid as an indemnity pursuant to section 60.	**363.** Lorsque la Commission, à la suite d'une décision rendue en vertu de l'article 358.3, ou le Tribunal administratif du travail annule ou réduit le montant d'une indemnité de remplacement du revenu ou d'une indemnité de décès visée dans l'article 101 ou dans le premier alinéa de l'article 102 ou une prestation prévue dans le plan individualisé de réadaptation d'un travailleur, les prestations déjà fournies à un bénéficiaire ne peuvent être recouvrées, sauf si elles ont été obtenues par mauvaise foi ou s'il s'agit du salaire versé à titre d'indemnité en vertu de l'article 60.

[56] What is prohibited is therefore the recovery of "sums already paid to a beneficiary" whose entitlement to those benefits was revoked or reduced. However, according to the definition in the AIAOD, "benefit" means "compensation or an indemnity paid in money, financial assistance or services furnished under this Act" (emphasis added).

[57] By revoking the recovery of the sums that were paid to the respondent by the Employer as injury-on-duty leave with pay under clause 30.16 of the Collective Agreement, and by ordering that they be reimbursed to the respondent, the Board necessarily equated those sums, paid out of the Consolidated Revenue Fund within the meaning of the GECA, to "sums already paid to a beneficiary", and therefore to "compensation or an indemnity paid . . . under [the AIAOD]", pursuant to the AIAOD. However, was the Board authorized to equate these sums given that payments from separate legal sources seem to have been involved, namely payments from the Government of Canada's Consolidated Revenue Fund, through the GECA and the Collective Agreement, in one case, and the CSST, through the AIAOD, in the other?

[58] In my opinion, this question is all the more relevant in this case seeing as the respondent successively received two types of payments: sums paid as injury-on-duty leave with pay under clause 30.16 of the Collective Agreement, equal to 100% of his salary, and the "benefit" paid by the CSST, representing 90% of his salary. It is known that the sums paid by the CSST are not included in the recovery being challenged and are not at issue in this case; in fact they appear to be clearly covered by section 363 of the AIAOD.

[59] Once again, therefore, there are serious shortcomings in the Board's decision as regards justification because the crucial issue, assuming that section 363 of the AIAOD is enforceable against the Employer, of whether the sums paid by the Employer under the Collective Agreement qualify as "sums" within the meaning of section 363, was not at all discussed by the Board. As the Supreme Court stated in *Vavilov*, "a failure to justify the decision against any one relevant constraint may be sufficient to cause the reviewing court to lose confidence in the reasonableness of the decision" (*Vavilov* at para. 194). That is the case here.

[60] The issue of the scope of the prohibition set out in section 363 of the AIAOD, assuming that it applies here, is clearly relevant in order to "dictate the limits and contours of the space in which the [Board] [could] act and the types of solutions it [could] adopt". I am of the opinion that the Board's failure to address the essential aspects of this issue also justifies the Court's intervention.

C. *Relationship between the Collective Agreement and subsection 155(3) of the FAA*

[61] Lastly, the Board's decision more generally raises concerns about the role of subsection 155(3) of the FAA in the federal legislative landscape on compensation for a work-related accident or an occupational disease. At the beginning of its analysis, the Board seemed to recognize that this legislative provision could allow the federal government to retroactively recover sums paid to its employees as injury-on-duty leave with pay, as long as these sums could be characterized as "over-payments" (Decision of the Board at paras. 77–78). This is where the Board made reference to, departing from *SCP No. 1* and *SCP No. 2* on the basis of *Martin*, section 363 of the AIAOD to conclude that these sums could not constitute an over-payment, because they were paid to the respondent under said section.

[62] Subsection 155(3) of the FAA confers on the Receiver General for Canada the power to "recover any over-payment made out of the Consolidated Revenue Fund on account of salary, wages, pay or pay and allowances out of any sum of money that may be due or payable by Her Majesty in right of Canada to the person to whom the over-payment was made."

[63] In conclusion, the Board found it useful to add that it found it unlikely that the intention of the parties to the Collective Agreement was to allow employees who, at some point, were considered by a workers' compensation board to have suffered a work-related accident, to be "retroactively den[ied] . . . of their only source of income". In the Board's view, that result would be "at odds with the legal system in place with respect to injury on duty" (Decision of the Board at para. 96).

[64] This comment, which appears to be separate from the issue of the applicability of section 363 of the AIAOD, calls for another. To the extent that its purpose is to remove any uncertainty about the non-recoverability of the sums at issue in this case, this comment is problematic because in doing so, the Board does not seem to have given consideration to clause 5.01 of the Collective Agreement, which gives precedence to federal laws, and therefore the FAA, over the Collective Agreement.

[65] I find this nuance important because it highlights the necessary and essential relationship between the GECA, the Collective Agreement and the FAA when it comes to determining the "legal system in place with respect to an injury on duty"—in this case, the federal system—and consequently when it comes to properly measuring the impact of subsection 155(3) of the FAA on the authority of an employer subject to the GECA to recover sums paid to an employee after it has been determined by the appropriate authorities that this employee was never entitled to such compensation. Furthermore, although the Board was satisfied that the wording of the collective agreement in *SCP No. 2* authorized the recovery in dispute in that case, the Court of Appeal of Quebec took care to add that if the collective agreement in question had not addressed this issue, the recovery would have been allowed under the FAA (*SCP No. 2* at 26).

[66] I see this as another demonstration of the insufficient nature of the justification put forward by the Board to deny the Employer, this time without regard to section 363 of the AIAOD, any right to recover the sums that it paid to the respondent in this case as injury-on-duty leave.

[67] For all of these reasons, I would set aside the Board's decision because it is fatally flawed as regards justification, transparency and intelligibility, and I would refer the matter back to another member of the Board for reconsideration in light of these reasons.

[68] Since the Attorney General is the successful party, I would award costs to the Attorney General.

"René LeBlanc"
J.A.

"I agree.
J.D. Denis Pelletier J.A."

"I agree.
Yves de Montigny, J.A."

Certified true translation
Janine Anderson, Jurilinguist

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

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