

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240624

**Dockets: A-163-23
A-146-23**

Citation: 2024 FCA 116

**CORAM: DE MONTIGNY C.J.
LEBLANC J.A.
WALKER J.A.**

Docket: A-163-23

BETWEEN:

**CANADIAN HUMAN RIGHTS
COMMISSION**

Appellant

and

**6589856 CANADA INC. (COB LOOMIS
EXPRESS) and WARREN FICK**

Respondents

Docket: A-146-23

AND BETWEEN:

WARREN FICK

Appellant

and

**CANADIAN HUMAN RIGHTS COMMISSION and 6589856 CANADA INC.
COB TFI TRANSPORT 22LP (Operating as Looming Express)**

Respondents

Heard at Ottawa, Ontario, on June 20, 2024.

Judgment delivered at Ottawa, Ontario, on June 24, 2024.

REASONS FOR JUDGMENT BY:

WALKER J.A.

CONCURRED IN BY:

DE MONTIGNY C.J.
LEBLANC J.A.

Federal Court of Appeal



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INC. COB TFI TRANSPORT 22LP (Operating as Looming Express)**

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REASONS FOR JUDGMENT

WALKER J.A.

[1] The appellant in the first appeal (Court file A-146-23), Mr. Fick, appeals a judgment of the Federal Court (*Fick v. Canada (Human Rights Commission)*, 2023 FC 718) dismissing his application for judicial review of a January 2022 decision of the Canadian Human Rights Tribunal (the Tribunal). In the second appeal (Court file A-163-23), the Canadian Human Rights Commission (the Commission) appeals the same Federal Court judgment, focussing its appeal on the Tribunal's assessment and conclusions regarding the application to Mr. Fick's case of section 25 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act). These appeals were consolidated by Order of this Court dated July 10, 2023, with the appeal in Court File A-163-23 being designated as the lead appeal.

[2] In its decision, the Tribunal dismissed Mr. Fick's 2016 complaint to the Commission in which Mr. Fick alleged that the respondent, 6589856 Canada Inc. (Loomis), discriminated against him on the basis of age and, primarily, disability contrary to section 7 of the Act when it terminated their working relationship in 2016. The Tribunal concluded (1) that age and disability were not factors in Loomis' termination of Mr. Fick's transportation services, and (2) that Mr. Fick's relationship with Loomis did not fall within the definition of "employment" in section 25 of the Act.

[3] The Federal Court in turn concluded that the Tribunal's assessment of the two central issues before it was justified and intelligible and that the Tribunal's decision was reasonable.

[4] In an appeal to this Court of a Federal Court decision on judicial review, we are required to determine whether the Federal Court: (i) selected the appropriate standard of review; and (ii) if so, correctly applied that standard: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47. In this second regard, we step into the shoes of the Federal Court and consider the administrative decision at issue, here the Tribunal decision.

[5] I have very carefully considered the decisions of the Tribunal and of the Federal Court, the record and the parties' written and oral arguments in arriving at the following conclusions. On behalf of the Court, I recognize that for Mr. Fick and his spouse, Ms. Kruger, this has been an immensely difficult process during a period of prolonged personal upheaval.

[6] First, I find that the Federal Court correctly identified reasonableness as the standard to be applied to its review of the Tribunal's decision.

[7] Second, the Tribunal correctly set out the three-part test Mr. Fick was required to meet to establish his allegation of discrimination: *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360 at para. 33. Applying the test, the Tribunal determined that Mr. Fick suffered from a disability due to a serious heart attack in January 2016 and that he endured an adverse impact due to the termination of his work with Loomis. However, the Tribunal found that there was insufficient evidence that Mr. Fick's heart attack and resulting disability were factors in Loomis' termination decision. In other words, Mr. Fick had not established a prima facie case of discrimination.

[8] I find no reviewable error in the Tribunal’s review of the evidence or in its conclusion that it could not draw from the evidence the suggestion or “scent” of discrimination. I agree with the Federal Court that the Tribunal methodically assessed the evidence before it and that its findings were clear, justified and, ultimately, reasonable.

[9] This finding is sufficient to dispose of the appeal. Our jurisdiction, and that of the Tribunal and Federal Court, extends only to Mr. Fick’s complaint to the Commission and his allegation of discrimination as a factor in the termination decision. It does not extend to the question of whether Loomis’ business practices or termination decision was made in accordance with relevant employment and labour (union) laws. The January 19, 2018 decision of the adjudicator appointed under the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the Code) determining that she did not have authority to decide Mr. Fick’s unjust dismissal claim made under the Code is not before the Court. The adjudicator’s decision was previously found reasonable by this Court (*6586856 Canada Inc. (Loomis Express) v. Fick*, 2021 FCA 2) on appeal from a decision of the Federal Court (*Fick v. 6586856 Canada Inc.*, 2019 FC 759).

[10] In the absence of a finding of discrimination, the complaint and this appeal must fail.

[11] The parties nevertheless focussed their arguments on the findings of the Tribunal regarding the definition of “employment” in section 25 of the Act and its application to Mr. Fick’s relationship with Loomis. Briefly, I do not agree that the Tribunal failed to take a broad and purposive approach to its interpretation of section 25 or that the Tribunal restricted the protections afforded by the Act to skilled workers.

[12] The Tribunal highlighted the necessity of a broad interpretation of the meaning of employment in human rights legislation and the fact that the interpretation differed from that developed under other legal frameworks. The Tribunal was alive to the fact that a contract for services may fall within the definition of employment for purposes of the Act. It found that Mr. Fick's arrangement with Loomis did not require that he personally provide the contracted services, as referenced in section 25 of the Act, and turned to the common law and the question of control by the employer: *McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39, [2014] 2 S.C.R. 108 at para. 23. In this latter regard, the Tribunal reviewed the evidence at length and set out its conclusions intelligibly and logically.

[13] The Commission centres its arguments in part on the Tribunal's language distinguishing the facts of a particular case, *Canada (Attorney General) v. Lapierre*, 2004 FC 612, from the facts in this case (Tribunal decision at para. 108). In contrasting the requirement for the scientist in that case to perform the contracted services personally, the Tribunal referred to the fact that Mr. Fick was permitted to hire other drivers. Although I do not agree with its simplistic and harsh description of Mr. Fick's role, the Tribunal's language does not limit the application of section 25 of the Act to skilled workers. Rather, the Tribunal's conclusion is based squarely on the facts of Mr. Fick's case.

[14] I find no reviewable error in the Tribunal's analysis of the evidence and section 25 of the Act that warrants this Court's intervention. Mr. Fick views the evidence very differently and asks this Court to come to a different conclusion from that of the Tribunal and the Federal Court.

However, our role is not to re-weigh the evidence but to assess whether the Tribunal's analysis and conclusions regarding the evidence were reasonably open to it.

[15] I note Mr. Fick's allegations of a lack of judicial impartiality, and of fraud and criminal activity on the part of many of those involved in this and the arbitration litigation, including the Tribunal, the Federal Court, the arbitrator in 2018 and the respondent Loomis' original counsel. Certain of the allegations and statements made in this regard are not relevant to these proceedings as the current appeals address only Mr. Fick's discrimination complaint under the Act. The remaining allegations are not supported by the evidence.

[16] Accordingly, I would dismiss both appeals without costs. A copy of these reasons for judgment will be filed in File A-146-23 as the reasons in that appeal.

"Elizabeth Walker"

J.A.

"I agree."

Yves de Montigny C.J.

"I agree."

René LeBlanc J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-163-23
A-146-23

DOCKET: A-163-23

STYLE OF CAUSE: CANADIAN HUMAN RIGHTS
COMMISSION v. 6589856
CANADA INC. (COB LOOMIS
EXPRESS) and WARREN FICK

AND DOCKET: A-146-23

STYLE OF CAUSE: WARREN FICK v. CANADIAN
HUMAN RIGHTS COMMISSION
and 6589856 CANADA INC. COB
TFI TRANSPORT 22LP
(Operating as Looming Express)

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 20, 2024

REASONS FOR JUDGMENT BY: WALKER J.A.

CONCURRED IN BY: DE MONTIGNY C.J.
LEBLANC J.A.

DATED: JUNE 24, 2024

APPEARANCES:

Caroline Carrasco Sameha Omer	FOR THE CANADIAN HUMAN RIGHTS COMMISSION
Patrick-James Blaine	FOR 6589856 CANADA INC. (COB LOOMIS EXPRESS)
Warren Fick	SELF REPRESENTED

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FOR 6589856 CANADA INC.
(COB LOOMIS EXPRESS)