Federal Court Cour fédérale

Date: 20180420

Docket: T-1319-17

Citation: 2018 FC 430

Ottawa, Ontario, April 20, 2018

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

EDWARD JOEL KAMPS

Applicant

and

THE MINISTER OF NATIONAL DEFENCE

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to s. 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7. The Applicant, a CF member, seeks review of a final grievance decision denying his request for reimbursement for travel costs for relocation. The decision under review was rendered on July 10, 2017. The Chief of the Defence Staff (CDS) delegated his Final Authority ("FA") in the grievance process to the Director General of the Canadian Forces

Grievance Authority, per section 29.14 of the *National Defence Act*, RSC 1985, c N-5 (the "Act").

[2] For the reasons that follow this application for judicial review is dismissed.

II. Background

[3] Edward Kamps (the "Applicant") was employed as a member of the Canadian Forces before his retirement in August 2013. In 2010, the Applicant was posted from Edmonton, Alberta to Gagetown, New Brunswick. He received approval to go on a house hunting trip ("HHT") from June 7-11, 2010.

[4] The Applicant drove to Gagetown in his girlfriend's car and returned by plane. He was required to contact Brookfield Global Relocation Services ("BGRS") so they could book his return flight to Edmonton. He made several attempts to contact BGRS to book his return flight. By June 2, 2010 he had not heard back and booked the flight personally. On June 3, 2010, BGRS contacted the Applicant and advised him that they had booked his return flight. From the record, there does not appear to be any further interactions between the Applicant and BGRS that week. The Applicant returned to Edmonton on the ticket he had personally purchased and seeks reimbursement of the cost of that ticket, for $417.11.

[5] In 2013, the Applicant was posted back to Edmonton, Alberta. In facilitating his move from Fredericton, NB to Edmonton, AB, he rented a car in Fredericton. He is seeking reimbursement for the cost of the rental, $262.79 and gas, $24.56.

III. Issues

[6] The issues are:

A. *What is the Standard of Review?*

B. *Was the Decision on the Return Airfare Reasonable?*

C. *Was the Decision to Refer the Vehicle Rental to Further Review Reasonable?*

D. *Was the Decision Procedurally Unfair?*

E. *Cross-Examination Issues*

IV. Standard of Review

A. *The Applicant's Submissions*

[7] The Applicant did not make direct submissions on the standard of review but does indicate that the decision of the FA "…was not within a reasonable range of outcomes".

B. *The Respondent's Submissions*

[8] The Respondent submits that decisions of the FA involve questions of mixed fact and law and are therefore reviewable on standard of reasonableness. The Respondent further submits that questions dealing with procedural fairness are reviewable on a standard of correctness; citing *McBride v Canada (National Defence)*, 2012 FCA 181 [*McBride*].

[9] I agree with the Respondent that the standard of review for matters of procedural fairness is correctness and for matters involving questions of mixed fact and law, the standard is reasonableness.

V. Was the decision on the return airfare reasonable?

A. *The Applicant's Submissions*

[10] The Applicant cites the Canadian Forces Integrated Relocation Policy 2009 ("CFIRP") Article 4.2.03:

> Travel by commercial carrier shall be arranged by the service provider except when it was impossible to do so and was supported by BComd/BAdminO (i.e. for operational reasons)

[11] The Applicant argues that it was impossible for him to get service from his BGRS because he called and sent several emails and waited in the office of BGRS for the entire day before he was to depart. The Applicant further argues that he required contact with his BGRS before he sought approval from his BComd.

[12] The Applicant argues that the policy does not include a remedy for someone in his situation (when the BGRS does not make contact) and therefore a discretionary provision from the CFIRP should be applied. Article 2.1.01, reads:

> Director of Compensation and Benefits Administration (DCBA), has authority to:
>
> Approve reimbursement of all or part of the expenses reasonably incurred that are directly related to the CF member's relocation but are not specifically provided for in the policy

[13] This is a different argument than the one made at the Final Grievance Level. At the FA the Applicant relied on the Military Grievances External Review Committee's (the "Committee") recommendation that the Applicant's airfare be reimbursed pursuant to the amended policy that was not in effect when he made his initial request for reimbursement, Canadian Forces Integrated Relocation Policy 2014, Article 2.1.01:

> Grievance Authorities and Director of Compensation and Benefits and Benefits Administration (DCBA):
>
> If a CF member has not received a benefit because the relevant circumstances, although not dissimilar to, were different from the circumstances established, then the appropriate grievance authority for relocation benefits or DCBA may, if he or she considers it would be equitable and consistent with the purpose of the [Directive], approve the payment of all or part of that benefit.

[14] The Applicant further argues the decision of the FA was unreasonable because the FA relied on an erroneous belief that the BGRS booked the Applicant's ticket three days before his departure, while the Applicant states he was approved to spend two of those days in transit and therefore could not be in contact with BGRS.

B. *The Respondent's Submissions*

[15] The Respondent submits the applicable policy, which was noted by the FA, is the CFIRP Article 4.2.03, quoted above.

[16] The Respondent submits that to have a commercial flight reimbursed, two criteria have to be met: 1) it must be impossible for the service provider to arrange the travel and 2) the Applicant must receive support of the BComd/BAdminO. In this case, the service provider,

being the BGRS, did arrange the travel and the Applicant did not use the ticket provided and further made no attempt to receive support from the chain of command for the new ticket, per the policy requirements.

[17] The decision of the FA acknowledges that the Committee recommended the Applicant's airfare be reimbursed under the discretionary and equitable authority granted to the FA under the new policy from 2014. However, the FA declined to do so because this directive was not in effect when the Applicant originally booked his ticket or made his grievance. This policy was not retroactive. The Respondent submits this outcome is reasonable and should not be set aside.

[18] This decision comes down to the interpretation of the applicable policy. I agree with the Respondent's position that the applicable policy for reimbursement of airfare is Article 4.2.03. I further agree that the two criteria for reimbursement in exceptional circumstances were not met in this case. The FA received the applicable policy and the material before him and provided reasons for his findings. The Court acknowledges the frustration of the Applicant however this aspect of the decision is a reasonable conclusion. The Court also notes the Applicant's argument that his leave actually began on June 3rd and that he was in transit to the HHT that was to begin on June 7th. However this detail does not play a major factor in the outcome.

VI. Was the decision to refer the vehicle rental to further review reasonable?

A. *The Applicant's Submissions*

[19] The Applicant submits that the FA made an error by applying CFIRP Article 9.3.03 to his vehicle rental in 2012. He submits that CFIRP 9.3.03 applies to "a non-Imposed Restriction situation in which the member, their family travel to the new location at approximately the same time." The Applicant argues that his situation was actually an "Unaccompanied Move" and should therefore be governed by Section 11.2.13 of the Brookfield Policy, which reads as follows:

> CF members are entitled to five days special (relocation) leave to facilitate returning to the former residence/place of duty to assist with the move and return to a new location. They will be reimbursed: …Transportation, traveling, and ILM&M expenses for up to five days.

B. *The Respondent's Submissions*

[20] The Respondent submits that reimbursement of rental vehicles is governed by CFIRP Article 9.3.03, which allows a vehicle "where CF members are necessarily separated from their primary vehicle due to shipping and the primary mode of travel to the new location is by commercial carrier". The Applicant's request for reimbursement was denied because he did not meet the two criteria: 1) he had not been separated from his vehicle due to shipping and 2) his mode of travel to the new location had been by vehicle, not commercial carrier.

[21] The Applicant relies on a vehicle rental approval letter from March 28, 2016 at Exhibit "I". The Respondent submits that this evidence was not before the original decision maker and

the Applicant cannot rely on it. The Respondent further argues that the letter was written after the Committee had already dealt with the grievance issue on the vehicle rental and that it appears that someone approved the rental not realizing it had already been denied.

[22] Given the circumstances of the vehicle rental complaint, the Respondent argues that it was reasonable to refer the matter back and allow a final determination to be made.

[23] Once again the decision comes down to the interpretation of the applicable policy. I find that the FA relied on the appropriate governing policy for both decisions. The policy, on its face, is clear on the criteria that need to be met in order for reimbursement. The FA determined that the criteria were not met in this case. The decision of the FA to also review this reimbursement was reasonable.

VII. Was the Decision Procedurally Fair?

A. *The Applicant's Submissions*

[24] The Applicant submits that the process was procedurally unfair due to delay, although he acknowledges he consented to several time extensions as a courtesy. The Applicant submits that the Respondent benefited from the time extensions.

[25] The Applicant argues that he was unable to produce evidence of his attempts to communicate with BGRS because of these delays and that his ability to make representations was impacted.

[26] The Applicant also argues that it was a breach of procedural fairness to not be provided with the Order for Op Order for Op RESOLUTION (the "Order") by the CF.

B. *The Respondent's Submissions*

[27] The Respondent acknowledges that this grievance process took from March 14, 2013 until July 20, 2017, but argues long grievance processes are not unusual. The Respondent cites *Walsh v Canada (Attorney General)*, 2015 FC 775 at paragraphs 53-54 [*Walsh*], where the Court dealt with a similar 4-year delay that lead to a complaint that the process was procedurally unfair. In *Walsh* the evidence had to establish that the delay was "so oppressive as to taint the proceedings" such that an Applicant suffered prejudice.

[28] The Respondent submits that the Applicant has not indicated what evidence he believes to be lost as a result of the delay, and how this delay has prejudiced him. The Respondent further submits that additional evidence is not allowed on judicial review in any event.

[29] The Respondent argues this is an issue of reimbursement of a few hundred dollars that is not likely to cause "stress and stigma" which can be a factor when looking at the impact of a delay. The Respondent also argues that the Applicant consented to two extensions of time, one of 1 year and one of 180 days, prior to the FA's decision.

[30] The Respondent argues it is not open to the Applicant to raise new issues on review. Unless the Applicant is making an argument of procedural unfairness due to delay in respect of

the FA's decision, it is not open to him to now make arguments about the entire grievance process.

[31] It has been held that not supplying publicly available documents is not a breach of procedural fairness. *McBride* is the authoritative case that applies to this situation. The fact that the Order was not provided immediately is not determinative of the matter. The applicant has not demonstrated why his situation is different than the situation in *McBride*:

> [38] … I am of the view that the failure to disclose CFP 154 did not amount to a breach of procedural fairness.
>
> [39] This is all the more so when one considers that CFP 154 appears to have been available on-line to members of the public at all material times. Counsel for Mr. McBride admitted that he downloaded from the internet the copy of CFP 154 which appears as an exhibit to Mr. McBride's affidavit.

[32] There is also no evidence on the record that the delay was so oppressive so as to taint the proceedings (*Walsh*, above at para 54).

VIII. Cross-Examination Concerns

A. *The Applicant's Submissions*

[33] The Applicant submits that counsel for the Respondent violated procedural fairness by not responding to his questions for cross-examination. The Applicant alleges that he did not understand the process and that he did not submit the questions in the proper format.

B. *The Respondent's Submissions*

[34] The Respondent submits that the Applicant's allegations of impropriety against the Respondent's counsel are not properly before this Court. The Respondent argues that if the Applicant had concerns about his ability to cross-examine he should have brought this as an interlocutory motion.

[35] I agree that the Applicant's concerns about his inability to cross examine some CFC personnel should have been properly brought to the Court by interlocutory proceedings. They were not and cannot be addressed by me at this point. Legal processes can be very technical and there are numerous rules to be followed by litigants and the Court.

[36] For the above reasons the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no Order as to costs.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1319-17
STYLE OF CAUSE:	EDWARD JOEL KAMPS v MINISTER OF NATIONAL DEFENCE
PLACE OF HEARING:	CALGARY, ALBERTA
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APPEARANCES:

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