

Federal Court



Cour fédérale

Date: 20181221

Docket: T-690-18

Citation: 2018 FC 1296

Ottawa, Ontario, December 21, 2018

PRESENT: Mr. Justice Grammond

BETWEEN:

NATHALIE BOUSQUET-GAGNON

Applicant

and

**NATIONAL RESEARCH COUNCIL OF
CANADA**

Respondent

JUDGMENT AND REASONS

[1] Ms. Bousquet-Gagnon was employed by the National Research Council of Canada [the Council] as a technical officer. During the course of fiscal year 2016-17, her supervisor changed. In July 2017, her new supervisor, Ms. Vercauteren, assessed her performance for 2016-17 as “meeting some expectations.” That was below Ms. Bousquet-Gagnon’s self-assessment and below the evaluation given by her former supervisor, Dr. Loisel, in previous years. She grieved her performance evaluation, but the Council’s Vice-President dismissed her grievance. She now

seeks judicial review of that decision. I am allowing her application, because in deciding the grievance, the Vice-President entirely failed to acknowledge the fact that the former supervisor provided information that contradicted the evaluation and to explain why that information was ignored.

[2] Dr. Loisel left the Council in November 2016. In the course of preparing the grievance, Ms. Bousquet-Gagnon's union communicated with Dr. Loisel to obtain his comments on Ms. Bousquet-Gagnon's evaluation. I set out, in the left-hand column of the table below, the four main points that Ms. Vercauteren relied upon to justify her evaluation and, in the right-hand column, Dr. Loisel's comments, provided in an e-mail to the union dated November 6, 2017.

<p>[TRANSLATION]</p> <p>As observed by her supervisors, Nathalie</p> <ul style="list-style-type: none"> - Did not follow the DOPs/SOPs for client experiences, despite many reminders about the importance of following the DOPs/SOPs. At our sustainable gradual return-to-work meeting of May 24, Nathalie said that she "had not automatically applied the DOPs/SOPs in the past." 	<p>During the time I was in charge of leading the purification section, I recall that Nathalie usually followed DOPs or SOPs. Nathalie had sometimes to deviate from the procedure, relative to the innovative work she was carrying out. Changes made to the protocol were recorded.</p>
<ul style="list-style-type: none"> - Carried out purifications that did not meet the quality standards required by Client C45. For this reason, Thomas Loisel had decided not to allow Nathalie to carry out purifications for C45, which he also recommended to the current supervisor. 	<p>My decision to move Nathalie out of Client 45 project is because Nathalie was very efficient in challenging projects where purification was difficult and required working outside of procédurales [sic] such as those used in C45 projects. It wasn't due to a lack of capacity to follow DOPs. The documentation for projects Nathalie performed was adequate. One can assume that due to that Nathalie has a preference for challenging purification over routine purification.</p>
<ul style="list-style-type: none"> - On many occasions, did not carry out specific duties as per the order of priority, 	

<p>despite explicit requests from her supervisor and the urgent need to prioritize the work for external clients, in accordance with HHT objectives.</p>	
<p>- Did not communicate with her co-workers in a constructive manner and showed a lack of team spirit on many occasions, which led to tensions within the team and with other HHT teams. Thomas Loisel told the current supervisor that it was important and urgent to help Nathalie improve her interpersonal interactions.</p>	<p>It holds true that Nathalie sometimes performed some duties without taking enough time at informing colleagues. This was always done in the spirit of helping and being efficient at resolving technical situations. I had to ask Nathalie to take more time communicating at the expense of work execution timeline, for the good of the organization. Nathalie made significant efforts. At all time [<i>sic</i>] Nathalie had positive and team oriented spirit. The perception of her actions were sometime viewed different [<i>sic</i>]. This had caused some tensions, that I thought were resolved. [...]</p>

[3] In addition, Ms. Bousquet-Gagnon submitted letters of reference that she had obtained earlier from Dr. Loisel and Ms. Parat, a research officer with whom she worked closely, but who then was on maternity leave. Both letters speak highly of her. The file also contains an e-mail from Ms. Parat that confirms a number of points made by Dr. Loisel in his e-mail.

[4] The final level decision regarding Ms. Bousquet-Gagnon's grievance was rendered on March 19, 2018 by Dr. Szumski, the Council's Vice-President, Life Sciences. It is now the subject of this application for judicial review. The substance of Dr. Szumski's decision is expressed in the following paragraph:

[TRANSLATION]

After a full review of the facts, I have concluded that the rating assigned during your 2016–2017 CTE assessment accurately reflects your performance during the period in question. Moreover, the facts gathered during my review indicate that your supervisor had ample time and information, including feedback from your former supervisor, to assess your performance.

[5] To understand the basis of Dr. Szumski's decision, it is useful to refer to a "final level grievance report" prepared for him by the Council's labour relations staff. The report describes the grounds for the grievance, including the fact that "comments from Dr. Loisel and Mary Parat (RO on maternity leave) obtained by RCEA [the union] contradict CTE as well as their letters of recommendation for the grievor." The report goes on to describe "key findings." These findings, however, are merely a restatement of Ms. Vercauteren's opinion, as summarized in the table above. The report also includes an assertion that Dr. Loisel had communicated Ms. Bousquet-Gagnon's alleged deficiencies to Ms. Vercauteren.

[6] In the course of the preparation of that report, Dr. Szumski, together with a labour relations officer, communicated with Ms. Vercauteren to obtain a confirmation of her views. In contrast, Council staff did not communicate with Dr. Loisel. There is conflicting evidence as to an attempt to have such a communication in November 2017, when Ms. Bousquet-Gagnon was preparing her grievance. What is clear is that at the final level grievance, in February 2018, Dr. Szumski did not seek Dr. Loisel's input.

[7] I agree with Ms. Bousquet-Gagnon that it was unreasonable for Dr. Szumski to ignore Dr. Loisel's e-mail. Of course, it is open to a decision-maker to weigh the evidence and to resolve conflicts. In doing so, a decision-maker is not required, in his or her reasons, to refer to each piece of evidence. In this case, however, Dr. Loisel's e-mail constituted a significant piece of evidence that is contrary to Dr. Szumski's conclusion. It does not merely express a disagreement with Ms. Vercauteren's opinion or evaluation. It says that what Ms. Vercauteren attributes to Dr. Loisel is false. While Dr. Szumski's decision indicates that Ms. Vercauteren's

evaluation was based on Dr. Loisel's comments, it does not grapple with Ms. Bousquet-Gagnon's argument that Ms. Vercauteren misrepresented Dr. Loisel's comments, an argument buttressed by Dr. Loisel's e-mail. On the evidence before him, Dr. Szumski could not reasonably reach the conclusion that Ms. Bousquet-Gagnon's evaluation was based on [TRANSLATION] "feedback from your former supervisor," without explaining why that supervisor's e-mail rebutting the evaluation was ignored.

[8] The Council argues that all of this is irrelevant, because Ms. Vercauteren based her evaluation on her own observation of Ms. Bousquet-Gagnon's performance. This, however, is belied by the evaluation report itself. To a large degree, the crucial passages that I quoted above refer to Dr. Loisel's opinions or observations. The views attributed to Dr. Loisel appear to have played a major role in the evaluation and in the grievance decision.

[9] The Council also argues that the contradiction between Dr. Loisel's and Ms. Vercauteren's views pertained to a single issue, Ms. Bousquet-Gagnon's failure to comply with procedures and her removal from a specific client's file. There would be enough other information in the record to justify Ms. Vercauteren's evaluation of Ms. Bousquet-Gagnon as "meeting some expectations." As shown by the table above, however, the disagreement appears to be broader in scope. It is difficult for me to find that the result of the evaluation would have been the same. It is not always easy to relate Ms. Vercauteren's concerns to the specific objectives for which Ms. Bousquet-Gagnon was said to "meet some expectations." In those circumstances, and in light of the brevity of Dr. Szumski's reasons, I cannot reconstruct an alternative reasonable path that would lead to the same result.

[10] Lastly, the Council contends that it had no duty to reach out to a former supervisor, who was no longer employed by it, to obtain his views regarding the grievance. I make no pronouncement as to whether the Council had such a duty. Once Ms. Bousquet-Gagnon had put Dr. Loisel's views in the record, however, Dr. Szumski could not simply ignore it without further inquiry and without giving reasons.

[11] The parties have raised a number of other issues, but I find that it is not necessary to address them. The application for judicial review will be allowed and the matter will be sent back for reconsideration. The parties have agreed that the losing party would bear the costs of this application in the amount of \$3000, which I find to be reasonable in the circumstances.

JUDGMENT in T-690-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The matter is sent back for reconsideration;
3. The respondent is condemned to pay the costs of this application in the amount of \$3000, inclusive of taxes and disbursements.

“Sébastien Grammond”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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