

Federal Court



Cour fédérale

Date: 20201215

Docket: T-1678-19

Citation: 2020 FC 1155

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 15, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

GABRIEL BOND-CASTELLI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Captain Gabriel Bond-Castelli, seeks judicial review of a decision of the Final Authority [FA] dated September 26, 2019, by which Lieutenant General W.D. Eyre, intervening as final authority in the grievance process in accordance with the powers delegated by the Chief of the Defence Staff, rejected Captain Gabriel Bond-Castelli's grievance against the Canadian Armed Forces [CAF].

[2] Captain Bond-Castelli's grievance is based on the theory that he should have been promoted to the rank of lieutenant in 2014 and that he should have obtained a higher rank, that of lieutenant, when he rejoined the CAF in 2016.

[3] For reasons that follow, I dismiss this application for judicial review. In short, Captain Bond-Castelli maintains that a qualification entitles one to a promotion and that, given his training, he had all the qualifications for the rank of lieutenant; he was therefore entitled to expect a promotion to that rank. I was not persuaded by this argument.

II. Facts

[4] On January 19, 2013, Captain Bond-Castelli was enrolled in the CAF Primary Reserve as an artillery officer in the Reserve Entry Scheme for Officers. He was promoted to the rank of second lieutenant on December 8, 2013, after completing the Basic Military Officer Qualification.

[5] On August 8, 2014, Captain Bond-Castelli completed the Artillery Troop Commander course at the Combat Training Centre in Gagetown, New Brunswick, and was posted as troop commander until the end of November 2014. The fact that he had completed his troop commander course allowed Captain Bond-Castelli to enter the promotion zone for the rank of lieutenant.

[6] Captain Bond-Castelli received a positive performance report; in particular, during the evaluation period, which was between September 1, 2013, and May 13, 2014, Captain Bond-

Castelli [TRANSLATION] “demonstrated leadership in the performance of his duties” and “turned out to be a reliable officer. He showed up every Tuesday evening as well as at regimental training” and “proved to be an agent of change”.

[7] Up to this point, there was no indication that Captain Bond-Castelli was not considered a leader on his way to being promoted to lieutenant in the military.

[8] It would appear that, in the spring of 2014, the CAF was downsizing with respect to Captain Bond-Castelli’s unit and that such a reduction would continue until at least May 2015. Captain Bond-Castelli was less present in his unit from the fall of 2014 but attributes his lack of availability to the fact that the CAF had reduced the personnel required for training; as a result, his hours were drastically reduced.

[9] Feeling less useful because of the reduction in his working hours, and needing to better ensure his income, Captain Bond-Castelli therefore found a new job. This may explain a possible lack of motivation on his part during this period. In any event, owing to the drop in working hours he could expect from his unit, Captain Bond-Castelli requested his release from the CAF in November 2014, and in June 2015 he was officially released.

[10] Captain Bond-Castelli believes he was eligible for promotion to the rank of lieutenant prior to his release since he had completed the required training, and the officers who completed the necessary training at the same time as him were all promoted between December 2014 and August 2015. However, he did not file a grievance at the time regarding his non-promotion.

Captain Bond-Castelli may have been determined to leave the CAF and not return, and therefore did not find it necessary to do so.

[11] About a year later, on July 26, 2016, having made his re-enrolment request, Captain Bond-Castelli was reinstated to the CAF Primary Reserve with the rank of second lieutenant, but assigned to another military occupation classification [MOC], as a logistics officer. He was granted certain equivalencies upon re-enrolment on the basis of his previous service.

[12] On October 18, 2016, he filed the grievance giving rise to these proceedings with the Initial Authority [IA]; Captain Bond-Castelli argued (1) that he should have been promoted to the rank of lieutenant before leaving the CAF in 2015 with an income adjustment retroactive to August 8, 2014, when he had completed his Artillery Troop Commander course [the 2014 situation], and (2) that he should also have been admitted at the same rank, that of lieutenant, upon his re-enrolment in July 2016 [2016 situation].

[13] On April 3, 2017, the IA partially granted Captain Bond-Castelli's grievance. Regarding the 2014 situation, the IA granted him a promotion to the rank of lieutenant as of August 8, 2014, thus giving Captain Bond-Castelli the benefit of the doubt as to his situation in 2014. According to Captain Bond-Castelli, he deserved the promotion because there was nothing in his service record in 2014 stating [TRANSLATION] "not recommended" for promotion, nor were there any poor performance reports; therefore, his promotion should have been automatic.

[14] However, the IA did not agree with Captain Bond-Castelli in his grievance regarding the 2016 situation and maintained his rank of second lieutenant upon his re-enrolment in 2016.

[15] Dissatisfied with the outcome of his grievance, on April 6, 2017, Captain Bond-Castelli challenged this decision before the FA. In accordance with the applicable regulations, Captain Bond-Castelli's grievance was the subject of a discretionary referral to the Military Grievances External Review Committee [Committee] so that an independent analysis could be carried out with the findings and recommendations being presented for consideration by the FA. These were communicated to Captain Bond-Castelli on October 13, 2017, who provided written submissions in relation to those findings and recommendations three days later.

[16] On February 14, 2018, the FA (Lieutenant General P.F. Wynnyk) overturned the IA's decision and rejected his grievance in its entirety.

[17] On March 29, 2018, Captain Bond-Castelli filed an application for judicial review in this Court against the FA's decision. On motion by the respondent, the Department of National Defence [Minister], this Court quashed the impugned decision and referred Captain Bond-Castelli's grievance back to the FA, apparently on the grounds that the decision maker had erroneously relied on a policy that was not in effect on August 8, 2014.

[18] The FA had to re-examine on the merits whether Captain Bond-Castelli was eligible for the rank of lieutenant in August 2014 and following his re-enrolment in July 2016.

[19] On September 26, 2019, the FA (Lieutenant General W.D. Eyre) again rejected Captain Bond-Castelli's grievance. Regarding the 2014 situation, the FA concluded that Captain Bond-Castelli did not meet two criteria necessary for a promotion at the time, namely the recommendation of his commanding officer and the lack of availability until his release from the CAF in 2015. The FA noted that the commanding officer to whom Captain Bond-Castelli reported at the time did not recommend his promotion to the rank of lieutenant because his motivation and commitment to his unit [TRANSLATION] "had changed drastically at this time" and because Captain Bond-Castelli "was less available than before" and "harder to reach".

[20] Regarding the 2016 situation, the FA noted that Captain Bond-Castelli did not have the necessary qualifications as part of his new MOC to obtain the rank of lieutenant upon his re-enrolment in the CAF in 2016, and that there was no evidence in his file that justified his being treated as a special case.

[21] On October 15, 2019, Captain Bond-Castelli filed an application for judicial review in this Court against that decision. It is this application that is before me today.

[22] Before me, Captain Bond-Castelli argues that the FA's decision was based entirely on the testimony of his former commanding officer stating that he [TRANSLATION] "changed over time", and therefore that this decision was unreasonable. He views this as an attack on him and wants to restore his integrity as a worker.

[23] Captain Bond-Castelli says that, since 2016, he has lost employment and training opportunities which are invaluable to a career military member — he was unable to take some of the courses he was not eligible for as he had not received the promotion that should normally have been offered to him.

[24] Captain Bond-Castelli further contends that the decision was not impartial because it was based on flawed, biased and illogical reasoning in the application of CAF policies.

[25] In short, Captain Bond-Castelli maintains that, through his decision, the FA directly attacked his integrity and reliability, in particular since he relied on the emails from his former commanding officer, emails which did not take taking into account the concrete facts, which gave rise to a delay, since the circumstances in 2014 never changed thereafter.

III. Issue

[26] Was the FA's rejection of the applicant's grievance reasonable?

IV. Law

[27] The conditions to be fulfilled for a promotion under paragraph 8 of Canadian Forces Administrative Order [CFAO] 49-12 - *Promotion Policy - Officers - Primary Reserve*, as amended by CANFORGEN 087/06 paragraph 5, are as follows:

- i. meet the minimum operational standards related to universality of service as set out in DAOD 5023-1, which includes successful completion of the applicable fitness standard;
- ii. be in the promotion zone (see paras 9, 11);

- iii. have qualified, and demonstrated that they possess the skills and knowledge required, to perform the duties and tasks of their officer classification;
- iv. be judged to possess the necessary experience and ability for the next higher rank;
- v. be recommended by their commanding officer;
- vi. be available for the duties to be performed by an officer of the next higher rank in the vacancy being considered; and
- vii. meet the minimum medical standards required for their officer classification in accordance A-MD-154-000/FP-000 Medical Standards for the Canadian Forces or be recommended by the administrative review (medical employment limitations) as being retained without restrictions.

[Emphasis added.]

[28] With regard to re-enrolment, the relevant provision is this one: CFAO 49-10, Appendix 4, Annex A (Enrolment of Applicants with Former Commissioned Service), paragraph 9 (b):

9(b) an area commander, if authorized by the commander of the command, may authorize re-enrolment with immediate promotion to the rank of major or below, as follows:

(1) normally, to the applicant's former substantive rank or below, or

(2) in special cases, to a rank higher than the applicant's former substantive rank

[Emphasis added.]

V. Discussion

A. *Standard of review*

[29] The standard is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]).

[30] As Justice Roussel observed in *Joseph v Canada (Citizenship and Immigration)*, 2020 FC 735 (CanLII) at paragraph 7:

When the reasonableness standard applies, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov* at para 100). The Court must “focus . . . on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83) to determine whether the 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” (*Vavilov* at para 85). Close attention must be paid to a decision maker’s written reasons, and they must be interpreted holistically and contextually (*Vavilov* at para 97). It is not a “line-by-line treasure hunt for error” (*Vavilov* at para 102). If “the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and . . . it is justified in relation to the relevant factual and legal constraints that bear on the decision”, it is not open to this Court to substitute the outcome it would have preferred (*Vavilov* at para 99).

[31] In addition, a wide margin of appreciation must be accorded to the FA in exercising its grievance jurisdiction (*Higgins v Canada (Attorney General)*, 2016 FC 32 at para 77; *Bossé v Canada (Attorney General)*, 2015 FC 1143 at para 28).

B. *Preliminary issue*

[32] The Minister asked the Court to change the style of cause so that the respondent is the “Attorney General of Canada” within the meaning of subsection 303(2) of *Federal Courts Rules*, SOR/98-106 [Rules]. I agree.

C. *2014 situation*

[33] As reported, with regard to the 2014 situation, the FA justified his decision that Captain Bond-Castelli did not meet two criteria necessary for a promotion at the time, namely, the commanding officer's recommendation and Captain Bond-Castelli's availability in the fall of 2014.

[34] Captain Bond-Castelli submits that this decision was unreasonable because the FA failed to consider the relevant facts and the reasons for the decision are inconsistent. In addition, and more generally, Captain Bond-Castelli contends that the FA relies on non-contemporaneous and unreliable emails, and that the emails from his commanding officer at the time changed over time.

[35] I will discuss the three issues.

(1) *Failure to consider relevant facts*

[36] Captain Bond-Castelli is of the opinion that several relevant facts were not considered by the FA, such that he could not make a reasonable decision, namely:

- i. the previous judicial review proceedings;
- ii. his performance reports;
- iii. emails from his supervisor and his colleague and the training schedules;
- iv. the absence of a non-recommendation; and
- v. the absence of a warning as to the consequences of the request for release.

[37] More generally, Captain Bond-Castelli criticizes the FA for relying more on emails from his commanding officer at the time that are supposedly not very credible and not contemporaneous in assessing his motivation and his availability for work in 2014. These emails were exchanged internally as part of the analysis of Captain Bond-Castelli's grievance [the 2017 emails].

[38] The Minister merely states that the FA reasonably concluded that Captain Bond-Castelli did not meet both of the essential criteria for a promotion and that, therefore, the FA's decision was reasonable.

First judicial review proceeding

[39] Captain Bond-Castelli submits that the decision in question is unreasonable because the FA did not take the first judicial review proceeding into account in his analysis. With respect, the FA did in fact specifically mention that proceeding. Therefore, this element was indeed considered by the decision maker.

Performance reports

[40] Captain Bond-Castelli contends that the FA gave too much weight to the 2017 emails whereas the 2014 performance reports would have been favourable to his promotion.

[41] The only exhibit to which Captain Bond-Castelli refers that assesses his performance in 2014 is the report for the period ending May 13, 2014. This document does not contradict the 2017 emails stating that from September 2014 on, Captain Bond-Castelli seemed demotivated.

Emails from supervisor and colleague, and training schedules

[42] As I mentioned, Captain Bond-Castelli attributes his lack of motivation and availability between the fall of 2014 and his release from the CAF in 2015 to the CAF's downsizing. He asserts that his working hours were reduced during this period due to the reduced workload and draws the attention of this Court to the training plan for the 2nd Field Regiment where he was employed, which shows a reduction in the time slots required.

[43] Captain Bond-Castelli says that the CAF cut his available attendance time, which wrongly resulted, three years later during the analysis of his grievance by the FA, in the FA's misperception that he was just not as available as before, compared with his colleagues.

[44] Captain Bond-Castelli relies on an email from his supervisor dated September 16, 2014, which stated, [TRANSLATION] "I'll let you say who should come in next Tuesday evening, but it's always the minimum as possible!" He also quotes an email from his colleague who maintained, [TRANSLATION] "We couldn't go to work at all towards the end of [2014]".

[45] Captain Bond-Castelli states the following in his affidavit filed in support of his application for judicial review:

[TRANSLATION]

I received the direct order from my supervisor [name of supervisor] to decrease my attendance on September 16, 2014, orally and in writing. She told the troop manager, the [battery sergeant-major [BSM]]” to “decide who should come next Tuesday evening, but it is still the minimum possible”.

[Emphasis added.]

[46] Looking at the way Captain Bond-Castelli presented it, one would think that the message from his supervisor was addressed to him. However, before me, he was forced to admit that this part of the email from his supervisor was addressed rather to the BSMs, that is to say the non-commissioned officer who was the troop manager of the battery to which Captain Bond-Castelli belonged, and not to Captain Bond-Castelli himself.

[47] However, Captain Bond-Castelli maintains that this message was clear, and that it was up to the BSM to decide who should be called to work, without exception. However, it appears from the evidence that Captain Bond-Castelli was indeed an officer at the time, and therefore was not under the BSM’s command. This means that, contrary to what Captain Bond-Castelli maintains, it was not up to the BSM to prevent him from going to work on the days he was required to be present.

[48] There is no doubt that Captain Bond-Castelli’s unit saw a decrease in the staffing requirements for local training during the fall of 2014 and winter of 2015 and that the hours of service of several officers, including the Captain Bond-Castelli, were reduced during this time

due to a reduced workload. In fact, it appears from the evidence that several of Captain Bond-Castelli's fellow officers saw their days of service reduced to about 60 days on average throughout this period. However, Captain Bond-Castelli appears to have only been available for duty for 25 days during that same period. The minimum expected threshold was set at 40 days of service.

[49] In his email of August 22, 2017 — apparently following Captain Bond-Castelli's appeal of the IA's decision to the FA and while the case was before the Committee so that it could complete an independent analysis of it — his commanding officer at the time explained more precisely Captain Bond-Castelli's attendance at the battery: [TRANSLATION] "Diligent officers . . . worked an average of 60 days between August 2014 and June 2015, while Captain Bond-Castelli, much less present, did 25 days of work, which is not much and shows that he was more often absent than present".

[50] Captain Bond-Castelli maintains that it was impossible to meet the expectations of his then commanding officer with respect to work attendance (40 days), as set out in his email of August 22, 2017. He relies on the training schedule to argue that there were only 25 days he could be on duty for the period between April 1, 2014, and March 31, 2015, fewer than the number of days for which his commanding officer at the time would have liked him to be at work.

[51] The FA recognized the reality of reduced hours of service. He observed in his decision:

[TRANSLATION]

Your record shows a decrease in commitment to the CAF, a fact that you yourself admit to explain your decreased motivation, and I cannot reward this approach with a promotion to the rank of lieutenant. In your comments, you attribute your decrease in attendance to the fact that you were told to minimize your attendance at training. These reductions in training attendance linked to budget restrictions are unfortunately a reality for reservists. The consequences of these restrictions are different for each reservist. In your case, you have found it necessary to obtain a new civilian job to support yourself, resulting in reduced availability for the CAF and ineligibility for promotion.

[Emphasis added.]

[52] Captain Bond-Castelli confirms that he did not have any adverse performance reports indicating that he was absent from duty when he should have been present as one might expect if, in fact, his dedication and his attendance had not lived up to expectations, and that, in any case, there is no proof that his colleagues were on average present for 60 days during the period in question, which was mentioned by the commanding officer at the time as erroneous.

[53] However, there is also no evidence to the contrary. The training schedule to which Captain Bond-Castelli refers is not clear on the issue of how many days each person had been on duty, and I find Captain Bond-Castelli's explanation somewhat confusing.

[54] The only evidence that I have, and probably that the FA had, are emails from the commanding officer at the time, according to which Captain Bond-Castelli had only been on duty 25 days while his colleagues had been for 60 days on average. In fact, I find the commanding officer's account of the facts at the time more consistent with the overall picture of

what was happening on the ground in 2014 and therefore more persuasive than the allegations of Captain Bond-Castelli.

[55] Even if the Captain Bond-Castelli's commanding officer at the time had been wrong about the details of his expectations in 2014 (which was not established), Captain Bond-Castelli did not produce any evidence contradicting his lower availability of service to that of his colleagues, who were, moreover, promoted during this same period.

[56] Consequently, I do not see how the training calendars and the September 16, 2014, email from Captain Bond-Castelli's supervisor confirm his thesis that the FA erroneously concluded in his decision that he was not as motivated and available during the period leading up to his departure from the CAF.

Absence of non-recommendation

[57] One of Captain Bond-Castelli's recurring arguments is that there was no non-recommendation for promotion at the time of the events.

[58] However, according to CFAO 49-12, to be promoted, you must be recommended. This criterion is logical. The fact that Captain Bond-Castelli was not "not recommended" is therefore irrelevant; he has not produced any evidence that his supervisor actually recommended him.

No warning

[59] Captain Bond-Castelli argues that he should have been given a warning that his request for release could have an effect on his supervisor's willingness to recommend his promotion.

[60] I cannot say what the source of this obligation is. I am of the opinion that Captain Bond-Castelli should have expected that his willingness to be released could have an adverse effect on his future prospects in the CAF. It was reasonable for the FA to draw the same conclusion.

(2) *Inconsistent grounds*

[61] Captain Bond-Castelli argues that FA's reasoning as to his inability to take on new responsibilities and his declining motivation and commitment are inconsistent. Further, he contends that the FA drew conflicting conclusions.

New responsibilities

[62] The FA noted that a new promotion comes with new responsibilities, responsibilities which Captain Bond-Castelli was allegedly not willing to take on. However, Captain Bond-Castelli maintains that he was already assuming responsibilities; it would therefore follow that the FA's decision was inconsistent.

[63] The FA, at this point, only explained the opinion of Captain Bond-Castelli's supervisors regarding his lack of motivation in September 2014. We can reasonably conclude that they thought Captain Bond-Castelli was not ready to take on new responsibilities if he was less motivated to work. I do not think this conclusion is inconsistent.

Motivation and commitment of Captain Bond-Castelli

[64] Furthermore, Captain Bond-Castelli maintains that the FA relied on his lack of motivation and commitment to reject his grievance, when those are not criteria required for promotion.

[65] It is true that these are not criteria, but the recommendation is. Captain Bond-Castelli does not deny that his motivation and his commitment to his unit may constitute criteria for a recommendation. The FA merely explains why the commanding officer at the time did not recommend him.

[66] Captain Bond-Castelli says there is no evidence he was not recommended for a promotion in 2014. However, there is no evidence that he was specifically recommended for a promotion, and when asked the question in 2017 (when this question became relevant) his commanding officer at the time stated that Captain Bond-Castelli had not been promoted due to his lack of motivation and, ultimately, his decision to leave the CAF. Among the conditions for a promotion, there is that of being recommended, for the person concerned. The timely silence in this case is more akin to a “non-recommendation” than a “recommendation”.

Conflicting conclusions

[67] Captain Bond-Castelli contends that the FA drew conflicting conclusions. On the one hand, he concluded that [TRANSLATION] “there is nothing in your file to indicate that your experience or skills have been called into question”. On the other hand, he concluded that Captain Bond-Castelli had not been recommended for a promotion.

[68] With respect, FA assessed two different criteria here for awarding a promotion. A person can be formally recommended by a person at the same time as their experience and skills are questioned by someone else. In the present case, the FA concluded that there was no evidence to suggest that his skills and abilities were called into question. However, he concluded that Captain Bond-Castelli had not been recommended by his commanding officer. In my opinion, these two conclusions are reasonable and consistent.

(3) *Emails on which FA relied and supposed evolution of reports*

[69] Captain Bond-Castelli criticizes the FA for having only taken into account the 2017 emails, without having considered the facts in 2014. He maintains that the 2017 emails come too late in relation to the facts and do not reflect reality.

[70] In one of these emails dated January 31, 2017, — that is, before the IA's decision of April 3, 2017, partially granting Captain Bond-Castelli's grievance — his commanding officer at the time stated:

[TRANSLATION]

Indeed, if 2Lt Bond-Castelli had not been released from 2 Fd Regt, I would have supported his promotion to Lt. However, he requested his release before a promotion had been initiated. So, as a manager, I wonder whether he really is a victim of a grievance, or if his own actions have created that situation.

[71] Captain Bond-Castelli argues that the promotion process should have started on August 8, 2014, i.e., as soon as he entered the promotion zone. This appears to be confirmed to

some extent by an email to his commanding officer at the time, dated February 16, 2017, as part of the Committee's consideration of the matter prior to the IA decision:

[TRANSLATION]

The purpose of this email is therefore to ask you if, in this context, support his [Captain Bond-Castelli] promotion on the precise date of August 8, 2014, the date on which he completed the DP1 Artillery, which made him eligible for the rank of Lt.

[72] On March 2, 2017, Captain Bond-Castelli's commanding officer at the time replied:

[TRANSLATION]

I looked at my notes to make sure I had the facts fresh in mind and to determine why 2Lt Bond-Castelli had not been promoted after completing his basic training in the summer of 2014.

So, it is true that 2Lt Bond-Castelli would have been eligible for his promotion to Lt under normal circumstances. But, as in all other cases, a qualification does not necessarily imply a promotion. So, I would have been ready to promote 2Lt Bond-Castelli in September 2014, but his motivation and commitment to the unit changed drastically during that time. He became less available and difficult to reach and subsequently expressed his desire to be released from the CAF. I met with him personally to discuss options with him, to see if it was simply a personality conflict in duties and responsibilities; I was ready to grant him his promotion.

After several months of reflection, he decided to seek release from the CAF.

So, since promotions serve to reward good work, attendance and commitment to the CAF, unit morale would have suffered if I had given a promotion to someone who is not present and whose colleagues have to assume the duties and responsibilities. In this context and in relation to the commitment of 2Lt Bond-Castelli to the CAF, I could not grant the promotion in September 2014.

[Emphasis added.]

[73] Captain Bond-Castelli insists that promotions are automatic and that when his commanding officer at the time argued that there is a subjective element in the awarding of the promotion, this goes contrary to normal practice. This statement by Captain Bond-Castelli is difficult to accept.

[74] He also claims that his commanding officer at the time gave his opinion on what appears to be a lack of motivation on his part without knowing that his supervisor had already ordered him to reduce his presence in the unit. In my opinion, this argument strikes me as somewhat fallacious. It may well be that his unit was ordered to reduce their working hours in general, but it is clear that Captain Bond-Castelli went even further and simply chose not to show up as often as he could have, even in view of these reduced hourly obligations.

[75] As I have already noted, on April 3, 2017, the IA partially granted Captain Bond-Castelli's grievance and awarded him a promotion to lieutenant on August 8, 2014, thereby giving him the benefit of a doubt about his situation in 2014: he asserted that, if not for the budget cuts in the CAF, encouraging him to look for a new student job to maintain adequate finances, he would have kept his motivation to train.

[76] The FA decided to reverse this decision for the reasons already touched on.

[77] I note that the signs of an imminent reduction in workload were evident from the spring of 2014, taking effect at the end of the summer and the beginning of the fall. Captain Bond-Castelli completed the Artillery Troop Commander course on August 8, 2014, but promotions

were somewhat delayed due to reduced training opportunities. Although Captain Bond-Castelli says his promotion should have been automatic as of August 8, 2014, and that the reduction in local training sessions due to budget cuts relating to his unit should not have been the cause of a delayed promotion, the fact remains that this is exactly what happened. Many of his colleagues decided to hang on to their positions and wait, and they were ultimately rewarded with promotions, from December 2014 to August 2015.

[78] For his own reasons, Captain Bond-Castelli chose not to wait and made known his intention to leave the CAF in November 2014. Having made his own decision, one can understand why he was not as committed to his work as his colleagues. Certainly, seeing his colleagues promoted in late 2014 and early 2015 may have been frustrating for him, but he chose to stick to his decision to leave the CAF, which he ultimately did later in 2015, even after meeting with his then commanding officer in March 2015 to discuss his options and reconsider his desire to be released — his commanding officer at the time encouraged him to remain in the unit. According to Captain Bond-Castelli, he was completely frustrated with the CAF, and in his own mind he was ready to go anyway, so he did not want to talk about promotions during the discussion with his commanding officer.

[79] In my opinion, it is clear that with regard to Captain Bond-Castelli's record, there was no evidence of poor performance on his part between the time he completed his qualification in August 2014 and his release in June 2015. However, there is no doubt that he was frustrated by the reduction in work hours and therefore became less motivated and less available in the fall of 2014, which resulted in him being sidelined for a promotion — which must have resulted in his

increased frustration when he met his commanding officer in March 2015. The fact remains that he reduced his presence and sought to be released from the CAF, all of which weighed heavily in the decision not to promote him to the rank of lieutenant. The IA was prepared to give him the benefit of the doubt, but the FA was not.

[80] A court hearing an application for judicial review cannot, except in exceptional circumstances, interfere with the findings of fact of an administrative decision maker. As the Supreme Court clearly stated in *Vavilov* at paragraph 25:

It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”.

[81] Even if we were to consider the weight given to the different pieces of evidence, I could not accept Captain Bond-Castelli’s view on the probative value of the 2017 emails. The FA used them to establish two facts: the absence of a recommendation from the supervisor and the applicant’s lack of availability. These two facts are clearly and unambiguously set out in the 2017 emails.

[82] On the contrary, Captain Bond-Castelli’s release request in November 2014 aligns with his commanding officer’s observation that [TRANSLATION] “when he returned from his summer course in September 2014, [Captain Bond-Castelli] was found to be less motivated, less engaged, more difficult to contact and less present. Faced with this situation . . . his supervisor did not recommend his promotion”.

[83] Finally, Captain Bond-Castelli maintains that there has been an evolution in the way his commanding officer at the time reported his impressions of the 2014 situation between his emails of January 31, 2017, and March 2, 2017, on the one hand — before the IA issued his decision — and his email of August 22, 2017 — while the Committee was carrying out an independent analysis of the issues — on the other hand.

[84] Captain Bond-Castelli pointed out what he believed to be inconsistencies between what his commanding officer at the time indicated in his email of August 22, 2017, and his emails of January and March 2014. However, I do not see any inconsistency. In fact, I read the August 22, 2014, email as supporting, albeit in a somewhat different tone, the facts presented by the commanding officer at the time, in his previous messages.

[85] As I noted earlier, in his message of August 22, 2014, the commanding officer at the time observed that Captain Bond-Castelli's colleagues had served an average of 60 days during the period concerned, but that he had served only 25 days. Captain Bond-Castelli says he was actually on duty for well over 25 days if you include his training in Gagetown during the summer of 2014. However, when asked to be more specific, he admitted that the 60 days on average mentioned by the commanding officer at the time excluded the periods of field training. Therefore, from what I understand, Captain Bond-Castelli is comparing apples with oranges if he wants me to believe that I should include his training period in Gagetown in the summer of 2014 in the comparison of days of work done by his commanding officer at the time.

[86] Captain Bond-Castelli quotes an email from one of his colleagues dated March 29, 2018, reporting what he remembered at the time, stating that their supervisor [TRANSLATION] “asked us not to come in unless there was a specific task to be completed, and any entry had to be approved in advance by the BC”. I have no doubt that Captain Bond-Castelli was asked to reduce his working hours, but that does not establish that he nevertheless worked the same number of hours as the rest of his colleagues, nor that the FA’s conclusions regarding his motivation and dedication were unreasonable.

(4) *Conclusion on 2014 situation*

[87] In summary, I believe it was reasonable to conclude that Captain Bond-Castelli did not meet, at the relevant time, two of the criteria necessary for a promotion in 2014, namely the commanding officer’s recommendation and availability to perform the duties of an officer in the rank of lieutenant, as provided by CFAO 49-12 - *Promotion Policy - Officers - Primary Reserve*, as amended by CANFORGEN 087/06, paragraph 5.

[88] The fact remains that the he did not fulfill the prerequisites for the promotion he wanted to obtain in 2014 when he left the CAF. Consequently, I see no reason to set aside the contested decision with regard to the 2014 situation.

D. *2016 situation*

[89] When he re-enrolled in the CAF in 2016, Captain Bond-Castelli did not have the necessary qualifications under his new MOC to obtain the rank of lieutenant, and, furthermore,

there was nothing in his file to justify that he be treated as a special case within the meaning of the regulations.

[90] In support of his arguments challenging the 2016 situation decision, Captain Bond-Castelli relies primarily on the fact that the qualifying course he should have completed was not provided upon his return to the CAF; therefore, even if he wanted to, he could not have obtained the rank of lieutenant.

[91] The Minister simply referred back to the criteria related to obtaining a higher rank upon reinstatement. He contends that the FA reasonably concluded that Captain Bond-Castelli was not a special case covered by CFAO 49-10 and should therefore be re-enrolled to the same rank he held on his release, that of second lieutenant.

[92] It is unfortunate that Captain Bond-Castelli returned to the CAF when the qualification course for the rank of lieutenant in his new MOC was not being offered. However, that was the situation at the time. Captain Bond-Castelli decided to leave the CAF when he did, return to it when he did, and re-enroll in a new MOC. It is simply impossible to argue that Captain Bond-Castelli would have been reinstated at the lieutenant level because the qualification course was not being offered at the time.

[93] In any case, as the FA found, even if Captain Bond-Castelli had been a lieutenant at the time of his release in 2015, his re-enrolment as a lieutenant would, however, not have been authorized since he re-enrolled in a new MOC.

[94] Accordingly, I find that the FA's decision regarding the 2016 situation was reasonable.

VI. Conclusion

[95] I see nothing in the emails from Captain Bond-Castelli's commanding officer at the time that would suggest that there was a misrepresentation of the facts concerning his situation or that the way he was viewed by his superiors at the end of summer and fall 2014 has somehow evolved over time to his detriment, so as to correspond to the final decision taken regarding his promotion.

[96] Here is my view of the facts, in particular following the hearing which took place before me. In 2014, Captain Bond-Castelli felt frustrated by what he perceived, rightly or wrongly, to be shortcomings in the CAF in terms of his development and training. He decided to leave the CAF to take on a new job in the private sector, and this resulted in a reduction in effort and commitment; therefore, he did not get his promotion, a promotion he likely would have had if not for his declining attitude, motivation and commitment until his release from the CAF.

[97] He attempted, after his return to the CAF a year later, to obtain redress for the wrong he felt he had suffered by dispersing the motives and intentions of his superiors and claiming that they were repeating history; this did not persuade me of the justice of his cause. Captain Bond-Castelli made the decision in 2014 to leave the CAF and must now face the consequences of that decision.

[98] The reasoning behind the nine-page FA decision is coherent, intelligible and clear, and I cannot conclude that Captain Bond-Castelli has established that there is an exceptional circumstance which calls for the intervention of this Court with regard to the FA's findings of fact. As a result, I would dismiss the application for judicial review, with costs.

A. *Costs*

[99] Captain Bond-Castelli asks to be exempted from paying the respondent's costs, in accordance with section 400 of the Rules.

[100] I do not see why this request should be granted. Captain Bond-Castelli does not raise any of the relevant factors under section 400, subsection 3, of the Rules. Rather, the facts of the case show that the Minister acted in accordance with the interests of justice, for example, when he brought a motion to quash the decision rendered in the previous judicial review proceeding.

JUDGMENT in T-1678-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed with costs payable by Captain Bond-Castelli established at \$1,500.
2. The style of cause must be amended so that the Attorney General of Canada is the respondent.

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1678-19

STYLE OF CAUSE: GABRIEL BOND-CASTELLI v DEPARTMENT OF NATIONAL DEFENCE

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE IN MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 8, 2020

JUDGMENT AND REASONS: PAMEL J.

DATED: DECEMBER 15, 2020

APPEARANCES:

Gabriel Bond-Castelli

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Benoit De Champlain

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT