Federal Court Cour fédérale

Date: 20211006

Docket: T-304-20

Citation: 2021 FC 1035

Ottawa, Ontario, October 6, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

GEORGES KOURIDAKIS

Applicant

and

CANADIAN IMPERIAL BANK OF COMMERCE

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Georges Kouridakis, the Applicant, seeks judicial review of the Arbitration decision on the quantum [the Decision on the quantum], rendered by Mr. Mark Abramowitz [the Adjudicator]. The Adjudicator ordered the Respondent, the Canadian Imperial Bank of Commerce [the CIBC] to pay Mr. Kouridakis a severance of $10,250 in full satisfaction of all claims due him, and denied Mr. Kouridakis moral damages and legal fees.

[2] For the reasons that follow, I will grant Mr. Kouridakis' application for judicial review. In brief, I have not found in the Decision on the quantum the hallmark of intelligibility and coherence required under the reasonability standard. On the basis of the Adjudicator's findings, the evidence, the applicable law and the standard of review, Mr. Kouridakis has demonstrated that the Court's intervention is warranted and that the Decision on the quantum must be set aside.

II. Context

[3] In order to understand the parties' submissions, it is necessary to outline briefly the relevant context.

[4] From October 2000 to June 2016, Mr. Kouridakis was employed by the CIBC, where he held various positions and received many certificates of appreciation, pay increases and bonuses. Conversely, during his time at CIBC, Mr. Kouridakis also received several warning letters.

[5] On April 6, 2016, Mr. Kouridakis had an incident with his superior. On April 7, 2016, he consulted a doctor, and he took sick leave. On June 14, 2016, while still on sick leave, Mr. Kouridakis was terminated. The letter he received from the CIBC outlined that he was "terminated for cause and without payment, effective immediately for the reasons discussed with you". Shortly thereafter, Mr. Kouridakis filed a complaint for unjust dismissal pursuant to section 240 of the *Canada Labour Code*, RSC 1985, c L-2 [the Labour Code].

[6] On September 18, 2018, the Adjudicator issued his decision on the merits [the Decision on the merits] and found that the dismissal for just cause, based on the faulty acts of

Mr. Kouridakis, had not been sufficiently made out by the employer. The Adjudicator, raising the particular circumstances of the matter, found that reinstatement was not a viable option and that termination was necessary. He added that *severance compensation* was due to Mr. Kouridakis, citing words of *Brown and Beatty* (Canadian Labour Arbitration, 4th edition) on the payment of compensation in lieu of reinstatement (Decision on the merits at para 49).

[7] Mr. Kouridakis applied for judicial review of the Decision on the merits, whereby challenging the Adjudicator's conclusions that reinstatement was not a viable option and that he was entitled to *severance compensation*, as unreasonable. On this last issue, Mr. Kouridakis stressed that no evidence had yet been submitted to the Adjudicator on quantum, but that the Adjudicator had nonetheless dealt with determining that only *severance compensation*, as opposed to *general compensation*, was necessary.

[8] On September 24, 2019, the Court dismissed Mr. Kouridakis' application for judicial review (*Kouridakis v CIBC*, 2019 FC 1226 [*Kouridakis 2019*]). The Court confirmed the Adjudicator's Decision on the merits and sent the file back to the Adjudicator for a decision on the quantum.

[9] On January 28, 2020, in his Decision on the quantum, the Adjudicator ultimately ordered the CIBC to pay Mr. Kouridakis severance of $10,250 in full satisfaction of all claims due him. This decision is the one under review in these proceedings.

III. The impugned Decision on the quantum

[10] Before the Adjudicator, at the hearing on quantum, Mr. Kouridakis testified for himself and called a CIBC representative to testify. The CIBC did not call any witnesses.

[11] As per Ms. Mona Moussa, testifying for the CIBC, Mr. Kouridakis asked the Adjudicator for the following remedies:

- A compensation for his salary loss (less the $12,000.00 he admits having received);
- An indemnity of 1 month per year of service, for a total of 16 months;
- An amount of $7,500.00 for damages to his health;
- The reimbursement of his legal fees.

[12] In his Decision on the quantum, the Adjudicator addressed (1) the background to the dismissal and quantum of severance; and (2) the discussion of quantum due to complainant.

[13] Under the heading “Background to the dismissal and quantum of severance”, the Adjudicator provided an overview of Mr. Kouridakis’ 16 years of employment with the CIBC, and of his salary and bonuses. The Adjudicator also indicated, having decided on the merits, that although the incident of April 6, 2016 was not deemed as sufficient cause justifying Mr. Kouridakis’ dismissal, the proof was clear that the ongoing conduct and criticism of Mr. Kouridakis directed towards his manager was indicative of insolent and defiant behavior towards authority. The Adjudicator thus outlined that the remedy of removal was required for administrative reasons, given Mr. Kouridakis’ behavior, and that the same reasoning applied to

the refusal to reinstate Mr. Kouridakis. The Adjudicator cited paragraphs of his Decision on the merits to identify that the remaining question at issue was that of the quantum of *severance compensation* due to Mr. Kouridakis.

[14] Under the heading "Discussion of quantum due to complainant", the Adjudicator initially proceeded to define what he, the Adjudicator, meant by his use of the term *severance* in his Decision on the merits. He cited the definition of "severance pay" found in *Black's Law Dictionary*.

[15] The Adjudicator cited paragraph 94 of the Court's decision in *Kouridakis 2019*, citing *Wolf Lake Nation v Young*, 130 FTR 115. He thus outlined that the amount of severance pay is not limited to the amount provided for in section 235 of the Labour Code, and that subsection 242(4) of the Labour Code is designed to fully compensate an employee who is unjustly dismissed. The Adjudicator noted the passage indicating that subsection 242(4) is not limited to the amount of severance pay to which the employee is entitled, and it is not calculated by determining the notice period which should have been given to the employee. The Adjudicator added, as was quoted in *Kouridakis 2019*, that subsection 242(4) is to "empower the adjudicator, as near as may be, to put the wronged employee in the position of not suffering and employment related disadvantage as a result of his unjustified dismissal" (*Davidson v Slaight Communications Inc*, [1985] 1 FC 253 (FCA)).

[16] I understand from this passage that the Adjudicator, although he did not name it specifically, was then referring to the "make whole" approach discussed by the parties in these proceedings, and referred to by the Court at paragraph 93 of *Kouridakis 2019.*

[17] The Adjudicator confirmed that Mr. Kouridakis was effectively dismissed for administrative reasons rather than as a disciplinary measure, and outlined case law related with an administrative dismissal.

[18] The Adjudicator cited paragraph 20.3.1 of the doctrinal book *Le congédiement en droit québécois en matière de contrat individuel de travail,* 3rd edition by the authors Audet, Bonhomme, Gascon and Le François [*Le congédiement en droit québécois*], that refers to a situation where there has been a lack of just and sufficient cause for dismissal, but the contributive fault of the employee was to be considered in the evaluation of the indemnity.

[19] I note that paragraph 20.3.1 of the doctrinal book *Le congédiement en droit québéco*is is situated in the book's chapter "Partie II", itself dedicated to section 124 of the Quebec legislation *Loi sur les normes du travail,* RLRQ c N-1.1. The Adjudicator does not refer to the chapter dedicated to the Labour Code, found at "Partie VI", nor to the remedies related to its subsection 242(4), outlined at paragraph 43 of "Partie VI". The Adjudicator does not explain why he is referring to section 124 of the Quebec legislation or how it compares to section 242 of the Labour Code.

[20] The Adjudicator discussed Mr. Koudirakis' situation and efforts to mitigate his claim for loss of earnings of one year salary, rather than the 16 months he was claiming. In this regard, the Adjudicator (1) opined that it was not unreasonable to suggest that it should not have been difficult for Mr. Kouridakis to find a new job in a city as large as Montreal where the economy is generally booming; (2) noted that Mr. Kouridakis applied without success for work at two banks and for a post office position; (3) noted as well that Mr. Kouridakis undertook tutoring students; and (4) noted that no documentary evidence of job applications or responses were produced by Mr. Kouridakis. The Adjudicator mentioned that one was left with the impression that Mr. Kouridakis' efforts at finding alternate employment were minimal and that he was apparently content to rely on employment insurance he received in the aftermath of his dismissal.

[21] The Adjudicator noted Mr. Kouridakis' arguments that (1) it is up to the employer to establish that other employment opportunities were available of which complainant ought to have taken advantages (*Red Deer College v Michaels*, [1976] 2 SCR 124, [*Red Deer College*]), as well as the fact that the CIBC representative could not testify as to the employment opportunities, and (2) the employer had failed to satisfy its burden so that it could not be said that complainant's efforts at mitigation of damages were deficient.

[22] The Adjudicator did not agree with Mr. Kouridakis' proposition, founded on *Red Deer College*, as (1) it could reasonably be assumed that in a city the size of Montreal, with its vibrant economy, mundane clerical jobs were most likely readily available; and (2) the *Red Deer College* matter could be distinguished from the situation prevailing in Montreal. The Adjudicator

ultimately found that Mr. Kouridakis had not satisfied the legal obligation of mitigating his damages.

[23] The Adjudicator referred again to Mr. Kouridakis' claim of *one-year* salary, rather than 16 months, and found that it could not be accepted. He cited examples of indemnities as reported in Annex IX of *Le congédiement en droit québécois* to fix the indemnity at 6 months. He then proceeded to reduce it by 50% based on Mr. Kouridakis' contributory misconduct and his minimal efforts at mitigating his damages. The Adjudicator thus ultimately granted Mr. Kouridakis 3 months salary, or $10,250, as severance indemnity.

[24] The Adjudicator granted no indemnity for mental distress and moral damages, since it flowed from the dismissal and since there was absence of malice, bad faith or vexatious conduct on the part of the CIBC (*Wallace c United Grain Growers* [1997] 3 RCS 701 [*Wallace*]; *Taxis Coop Québec c Proulx,* [1994] RJQ 603; *Banque nationale du Canada c Gignac*, [1995] JQ no 1134).

[25] Finally, the Adjudicator did not grant Mr. Kouridakis his legal fees. The Adjudicator cited *Bianca Nazionale del lavoro of Canada Ltd v Lee-Shanok* (FCA), [1988] FCJ No 594 and other decisions, as well as a passage found at the pages 20 to 39 of *Le congédiement en droit québécois.* Again, this passage is situated in the section of the book pertaining to section 128 of the *Loi sur les normes du travail* rather than the one on section 240 of the Labour Code. The Adjudicator concluded that, since there has been no evidence of abuse, malice, bad faith,

recklessness whim or tactics or undue delay attached to its decision to dismiss Mr. Kouridakis, the claim for reimbursement of legal expenses would not be allowed.

[26] In summary, as mentioned earlier, the Adjudicator ordered the CIBC to pay Mr. Kouridakis severance of $10,250.00 in full satisfaction of all claims due to him.

IV. Issues raised before the Court and parties' positions

[27] Before the Court, Mr. Kouridakis raises four arguments. He contends that the Adjudicator (1) failed to exercise his jurisdiction; (2) reached unreasonable conclusions regarding entitlement to severance given the circumstances; (3) neglected to apply the principles established by the Supreme Court in *Red Deer College* relating to mitigating of damages and the burden of proof; and (4) reached conclusions regarding damages for mental distress and legal fees that are not reasonable, sound and logical.

[28] First, Mr. Kouridakis submits that the Adjudicator failed to exercise his jurisdiction (1) by misstating and ignoring his demands, clearly presented; (2) by ignoring his claim for loss of salary and benefits under paragraph 242(4)(a) of the Labour Code; (3) by ignoring his claim for loss of his job-one month of pay for every year of service (in lieu of re-instatement) under paragraph 242 (4)(c) of the Labour Code; and (4) generally by omitting to apply the "make whole" approach, treating his demands for compensation in the context of a wrongful dismissal action rather than as a complaint for unjust dismissal under the Labour Code (*Wilson v Atomic Energy of Canada Ltd* [2016] 1 SCR 770). Mr. Kouridakis submits that there is no reasoning, no justification and no rationale whatsoever in the Adjudicator's decision.

[29] Second, Mr. Kouridakis argues that reference to entitlement to severance is unreasonable as (1) even in the Decision on the merits, the Adjudicator indicated that the Applicant was only entitled to severance; (2) the chapter from *Brown and Beatty*, on which the Adjudicator appear to base his Decision on the quantum on, only deals with re instatement, i.e. paragraph 242(4)(b) of the Labour Code, not with the quantum as a whole, and reference to *Black's Law Dictionary* rather than to section 242 of the Labour Code is misplaced: (3) the Adjudicator still refers to the severance due; and (4) the table the Adjudicator refers to does not refer to an employee fired after 16 years of service and most of its cases reveal that the Arbitrators were not urged to apply the "make-whole" approach.

[30] Third, Mr. Kouridakis adds that mitigation of damages has no place when dealing with the indemnity for the loss of a job under paragraph 242(4)(c) of the Labour Code, but should be considered under loss of salary and benefits under paragraph 242(4)(a) of the Labour Code.

[31] Mr. Kouridakis submits that the law on mitigation of damages in employment law was laid down in *Red Deer College* and that the Adjudicator reversed the burden of proof by putting the entire weight on the employee's shoulders while the bank had submitted no proof at all. Mr. Kouridakis adds that the Adjudicator also failed to consider that he had focused his efforts on reinstatement and finally, that it was not open to the Adjudicator to find that the economy was booming and that the jobs were easy to find in absence of proof from the bank.

[32] In addition, Mr. Kouridakis submits that the Adjudicator improperly introduced evidence in favor of the bank concerning the job market on Montreal, absent any evidence from the parties on the subject.

[33] Lastly, Mr. Kouridakis submits that the analysis of the evidence, the reasoning and the outcome reached by the Adjudicator are not sound and are flawed and unreasonable since the Applicant did prove bad faith conduct, unfair dealing, damages to his self-worth and abusive behaviour on the part of the bank (*Wallace*). Mr. Kouridakis lists 11 elements of evidence that, he submits, are justifying an award of damages for mental distress.

[34] In regards to legal fees, Mr. Kouridakis submits that the Labour Code does not prescribe or set out that legal fees are awarded in extreme situations only and that he incurred damages-legal fees as a direct result of being wrongfully terminated.

[35] The CIBC responds that (1) the Adjudicator correctly exercised his discretion according to the Code, the doctrine and the case law; and (2) the Decision on the quantum does not contain any reviewable error.

[36] First, the CIBC submits that it is commonly established by the doctrine and case law that subsection 242(4) of the Labour Code confers on the adjudicator a discretionary power to grant each of the three redress measures enumerated, separately or collectively. The CIBC adds that a "make whole" approach does not impose an obligation to allow remedies on each of section 242's subsections. The CIBC cites the doctrine for the proposition that most of the adjudicators

will either grant an indemnity for loss of salary under paragraph 242(4)(a) or grant an indemnity equivalent to the reasonable notice under civil law or common law (citing *Le congédiement en droit québécois* at paragraph 42 of the CIBC's Memorandum).

[37] The CIBC adds that the Adjudicator's reference to doctrine and cases show he took Mr. Kouridakis' demands into account. The CIBC submits that the Adjudicator's error in citing Mr. Kouridakis' claim for one year salary rather than 16 months, is not material, and that, under its protective clause, it had the right to make errors (*Canadian Assn. of Industrial, Mechanical and Allied Workers, Local 14 v Paccar of Canada Ltd,* [1989] 2 SCR 983 at p 453).

[38] Ultimately, the CIBC contends that the Adjudicator's detailed reasons show that he understood that his authority to assess damages was not limited to the amount of severance pay under section 235 of the Labour Code and properly referred to the Court's decision in *Kouridakis 2019*.

[39] Second, the CIBC argues that the Decision on the quantum does not contain any reviewable error as (a) the Decision on the quantum is clear and intelligible; (b) the Adjudicator correctly exercised his jurisdiction in considering the Applicant's contributive misconduct in assessing the Applicant's claims; (c) the Adjudicator correctly exercised his jurisdiction regarding his finding relating to the Applicant's absence of mitigation of damages; and (d) the Adjudicator correctly exercised his jurisdiction regarding the rejection of indemnity for the alleged mental distress and regarding the legal fees.

[40] First, the CIBC contends that the Decision on the quantum is clear and intelligible, and point notably to the fact the Adjudicator referred to the relevant doctrine and case law where there is a situation of unjust dismissal, but the contributive fault of the employee is to be considered in the evaluation of the indemnity (Respondent's memorandum at para 61). The CIBC also outlines that the Adjudicator's conclusion that the Applicant's efforts at finding alternate employment were minimal is explained and based on the proof made available by the Applicant (Decision on the quantum at para 12).

[41] The CIBC responded to the Court's concerns that the Adjudicator had referred to doctrine relating to section 124 of the *Loi sur les normes du travail* rather than to section 242 of the Labour Code, when considering the contributive fault of the employee in the evaluation of the indemnity and the right to reinstatement (which was not in play in the Decision on the quantum). The CIBC noted that the contributive fault can be considered and that the same principles are used in federal case law rendered in similar context. The CIBC then oddly referred only to doctrine and case law that relates to the employee's contributive fault when assessing whether or not to reinstate them. This was not in play before the Adjudicator in the Decision on the quantum.

[42] The CIBC argued that the Adjudicator had not erred in law in referring to these doctrinal excerpts since consistent doctrine and case law show that the same principles are applicable. It adds that, if the Adjudicator did erred in law, it is not material as, again, the principles are the same and as the errors do not meet the appropriate test to justify the Court's intervention, particularly given the privative clause.

[43] Second, the CIBC argues that the Adjudicator correctly exercised his jurisdiction in considering the Applicant's contributive misconduct in assessing the Applicant's claim. Again, the CIBC contends that it is well established in the doctrine and case law that damages may be reduced and proceeds to cite the proper chapter of the doctrinal book *Le congédiement en droit québécois.*

[44] Third, in relation with the Applicant's absence of mitigation of damages, the CIBC responds that it is well established that an employee, when unjustly dismissed, has the duty to mitigate their damages, and that this principle is applied by adjudicators appointed under section 242 of the Labour Code (*Le congédiement en droit québécois* at para 43.3.7).

[45] The CIBC adds that the Adjudicator did not ignore or fail to apply the precedent in *Red Deer College* as he did expressly analysed said decision and distinguished it. In addition, the CIBC adds that Mr. Kouridakis' argument was already dealt with and rejected by both the Federal Court and the Federal Court of Appeal. These courts found that employers are not required to put forward specific evidence to establish that positions exist entitling employee to certain salaries. In fact, the Applicant's own testimony is enough for the Adjudicator to decide (*Bauer v Seaspan International Ltd*, 2004 FC 1441, confirmed 2005 FCA 292).

[46] The CIBC adds that the Adjudicator did not introduce new evidence and could take judicial notice of the fact that the Montreal economy is generally reported as "booming" and that mundane clerical jobs were most likely readily available.

[47] Finally, the CIBC responds that the Adjudicator properly applied the principles set forth by the jurisprudence that such claims for moral damages can only be awarded as long as evidence of bad faith, abuse, malice or vexatious behaviour is demonstrated (*Wallace*). The CIBC adds that solicitor-client costs should only be made in circumstances that are clearly exceptional.

V. Standard of review

[48] It is first necessary to confirm the applicable standard of review. I agree with the parties that the Adjudicator's Decision on the quantum must be reviewed against the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 6 [*Vavilov*]; *Bank of Montreal v Li*, 2020 FCA 22 at paras 23-24 (Request for leave to appeal before the Supreme Court of Canada denied); *Bell Canada v Hussey*, 2020 FC 795).

[49] Under the reasonableness standard, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine if the decision is based on "an internally consistent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must consider "the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). The Court must examine "whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" *(Vavilov* at para 99, citing *Dunsmuir v*

New Brunswick, 2008 SCC 9 [*Dunsmuir*] at paras 47 and 74 and *Catalyst Paper Corp v North Cowichan* (*District*), 2012 SCC 2 at para 13).

[50] Where reasons for decision are required, the decision "must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies" (*Vavilov* at para 86). A reasonableness review is concerned with both the outcome of the decision and the reasoning process leading to the outcome (*Vavilov* at para 83). The court must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the decision the Court itself would have reached.

[51] In *Vavilov*, the Supreme Court confirmed its earlier guidance from *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador* (*Treasury Board*), 2011 SCC 62 [*Newfoundland Nurses*] that reviewing courts cannot speculate when the reasons are inadequate: they must be able to "connect the dots":

> Indeed, Newfoundland Nurses is far from holding that a decision maker's grounds or rationale for a decision is irrelevant. It instead tells us that close attention must be paid to a decision maker's written reasons and that they must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made. We agree with the observations of Rennie J. in Komolafe v. Canada (Minister of Citizenship and Immigration), 2013 FC 431, 16 Imm. L.R. (4th) 267, at para. 11:
>
> > Newfoundland Nurses is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that Newfoundland Nurses, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to

> supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. Newfoundland Nurses allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn . . . . (*Vavilov* at para 97).

[52] As the CIBC outlines, a reasonableness review is not a "line-by-line treasure hunt for error" and the standard is not one of perfection. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived".

[53] However, the Court is also mindful that it should not fashion its own reasons in order to buttress the administrative reasons (*Vavilov* at para 96) and that it must not make its own yardstick and then use that yardstick to measure what the administrator did *(Vavilov* at para 83). I must consider only whether the decision made by the administrative decision maker - including both the rationale for the decision and the outcome to which it led - was unreasonable.

[54] Finally, I agree that deference is particularly the norm where the enabling legislation contains a strong privative clause, such as the one found in section 243 of the Labour Code regarding decisions rendered by adjudicators appointed under section 242 of the Labour Code.

VI. Decision

[55] After careful and respectful consideration, and in light of the instructions of the Supreme Court and of the Federal Court of Appel on the standard of review, I find the Adjudicator's Decision on the quantum unreasonable. I have not found in the Adjudicator's Decision on the quantum an internally coherent and rational chain of analysis. The CIBC essentially asks the Court to analyse the proper doctrine and case law in order to subsequently buttress the Adjudicator's reasons.

[56] First, I find the Adjudicator's treatment of the "make whole" approach incoherent. The Adjudicator cites what he understands to be the principle at paragraph 7 of his Decision on the quantum. In any event, he indicates that subsection 242(4) is to "empower the adjudicator, as near as may be, to put the wronged employee in the position of not suffering and employment related disadvantage as a result of his unjustified dismissal". However, once the Adjudicator outlines this overarching principle, he discusses it no more. We are essentially left to guess whether the Adjudicator applied the principle he himself outlined or if he did not apply it. It may well be possible that the principle to "put the wronged employee in the position of not suffering an employment related disadvantage as a result of his unjustified dismissal" suffers exceptions and nuances. The Adjudicator may have discretionary power to grant each of the three redress measures enumerated in the Code, separately or collectively. However, he did not examine this. I find it incoherent for the Adjudicator to outline the "make whole" approach while, without explanation, failing to place the complainant in the same position as he would have been in but for the unjust dismissal (*Kouridakis 2019*). The decision itself does not allow for reconciliation

between the overarching principle and the compensation that was actually ordered to Mr. Kouridakis.

[57] Second, the Adjudicator relies on doctrine and case law that pertains to the *Loi sur les normes du travail* without any indication as to their equivalence to the ones pertaining to section 242 of the Labour Code. In other to connect the proverbial dots, the Court and the parties must complete their own research and analysis and compare its results with the Adjudicator's. This seems contrary to the exercise the Court is asked to conduct in judicial review: it requires the Court to buttress the Adjudicator's reasons with the Respondent's arguments. Assuming the case law and doctrine on both legislation are in effect interchangeable as the CIBC submits, the Court cannot confirm that the Adjudicator knew or turned his mind to this issue, while the principles relied upon by the Adjudicator in relation to the provincial legislation were central to his determination.

[58] I agree with the CIBC that the fact that the Adjudicator twice cited Mr. Kouridakis' demand for one-year salary rather than 16 months is not a determinative error on its own. However, in the context of the other errors identified, it adds some uncertainty as to whether or not the Adjudicator was fully committed to the issues raised by the Applicant.

[59] I cannot conclude that the Decision on the quantum is based on “an internally consistent and rational chain of analysis”, nor that it bears the hallmarks of reasonableness - justification, transparency and intelligibility.

[60] I will consequently return it to the Adjudicator for a new redetermination.

JUDGMENT IN T-304-20

THIS COURT'S judgment is that:

1. The Application for judicial review is allowed;

2. The matter is sent back to the Adjudicator for a new determination;

3. Costs are awarded in favor of the Applicant.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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