

Federal Court



Cour fédérale

Date: 20220322

Docket: T-112-21

Citation: 2022 FC 374

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 22, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

BRUNO FORTIER

Applicant

and

THE Attorney GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Bruno Fortier, is seeking judicial review of the decision rendered by the Canada Revenue Agency [the Agency] on December 15, 2020, denying his application for the Canada Emergency Response Benefit [CERB].

[2] In its decision, the Agency informs Mr. Fortier that he is ineligible for the CERB because he did not stop working or have his hours reduced due to COVID-19. The Agency then tells Mr. Fortier, among other things, that if he received a CERB payment for which he was ineligible, he will have to repay the amount.

[3] On January 15, 2021, Mr. Fortier filed his Notice of Application with the Court. He essentially asks the Court to (1) revoke the Agency's decision to refund CERB amounts obtained in May, June, and July 2020; and (2) order the Agency to pay him the September 2020 CERB in the amount of \$2,000.

[4] The Attorney General of Canada [the AGC] conceded that Mr. Fortier's CERB application must be referred back to the Agency for reconsideration because of a breach of procedural fairness. However, he added that there are otherwise no grounds for the Court to intervene and impose the decision it deems most appropriate.

[5] I agree with the parties that Mr. Fortier experienced a breach of procedural fairness such as to invalidate the Agency's decision. On the other hand, I was not persuaded that the circumstances warranted any remedy other than the usual one of sending the matter back to the Agency for reconsideration. Accordingly, and for the reasons more fully described below, I will grant Mr. Fortier's application for judicial review and send the matter back to the Agency for reconsideration by a different officer.

II. Background

[6] On June 2, 2020, Mr. Fortier submitted an application for the CERB. Mr. Fortier's application was reviewed by the Agency to determine if Mr. Fortier met the requirements.

[7] On October 2, 2020, an Agency official verbally informed Mr. Fortier that his CERB application was denied because the reviewing official concluded that Mr. Fortier did not meet the criteria. On October 8 and November 11, 2020, Mr. Fortier submitted additional documentation by fax and requested a new review of the decision denying his eligibility and an opportunity to demonstrate that he meets the criteria.

[8] An Agency officer was assigned to conduct the second review of Mr. Fortier's eligibility for CERB. During her review, the officer examined the additional documents sent by Mr. Fortier, including his Record of Employment. The officer noted that, on the Record of Employment, Mr. Fortier's employer recorded the code "A00" in the box entitled "Reason for Issuing this Record of Employment". The officer contacted Mr. Fortier's former employer, and the former employer told the officer that Mr. Fortier's employment was terminated because his contract had ended.

[9] The officer did not contact Mr. Fortier to give him an opportunity to comment, but nevertheless concluded that he did not lose his job for a reason related to COVID-19. On December 15, 2020, the officer sent Mr. Fortier the letter informing him that he is ineligible, and that is the decision challenged in this proceeding.

III. Decision

[10] Mr. Fortier raised several grounds in support of his application for judicial review, but one on its own is sufficient to allow his application: that of breach of procedural fairness.

[11] Mr. Fortier argues at paragraph 107 of his memorandum that the Agency officer would have come to different conclusions had she applied the rules of procedural fairness. At paragraph 96 of his memorandum, Mr. Fortier also appears to argue that his right to be heard was not respected.

[12] The AGC responds that it agrees with Mr. Fortier on this point. According to the AGC, [TRANSLATION] “although [t]he decision maker relied on the evidence before her to conclude that the applicant was not separated from employment for a reason related to COVID-19, she did not give the applicant an opportunity to present his position on this second test”.

[13] Citing the Court’s decision in *Tiben v Canada (Citizenship and Immigration)*, 2020 FC 965 at paragraph 17, the AGC submits that in matters of procedural fairness, the Court must be satisfied that the procedure followed by the decision maker is fair in light of all the circumstances. Thus, a decision maker who has required representations on only one specific test cannot reject the CERB application on the basis that the applicant is inadmissible under a different test.

[14] I agree with the parties and find that the Agency officer violated the principles of procedural fairness. As Justice Gascon wrote in paragraph 28 of his decision in *Haba v Canada (Citizenship and Immigration)*, 2017 FC 732, the duty to act fairly “has two components: the

right to a fair and impartial hearing before an independent panel and the right to be heard (*Therrien (Re)*, 2001 SCC 35 at paragraph 82). The nature and scope of the duty of procedural fairness can vary depending on the attributes of the administrative tribunal and its enabling statute, but in every case, its requirements refer to the procedure and not to the substantive rights determined by the tribunal. The principle of procedural fairness protects individuals and allows the Court to intervene if needed, when a decision does not respect a person's right to a fair and equitable proceeding".

[15] The Federal Court of Appeal discusses the principles of procedural fairness in *Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 at paragraph 56, stating that "[n]o matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. It would be problematic if an a priori decision as to whether the standard of review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice – was the party given a right to be heard and the opportunity to know the case against them? Procedural fairness is not sacrificed on the altar of deference".

[16] Thus, the issue is whether Mr. Fortier was heard and given the opportunity to hear the evidence he was required to rebut. In this case, it is clear that Mr. Fortier was not given the opportunity to make a statement to the officer as to why his employment was terminated and to respond to his former employer's proposal. The Court concludes that this constitutes a breach of procedural fairness, such that it invalidates the December 15, 2020 decision.

[17] Mr. Fortier also asks the Court to consider his explanations as to why the contract was terminated. However, these explanations were not presented to the agent and consequently, the Court cannot examine them (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19; *Brink's Canada Limited v Unifor*, 2020 FCA 56 at para 13).

[18] I agree with the AGC's position regarding the appropriate remedy. In fact, in the case of procedural or substantive errors, the usual remedy where the Court cannot uphold an administrative decision is to set it aside and send it back to the decision maker for reconsideration (*Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at para 99; *Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 at paras 30 to 32 [*Dugarte de Lopez*]) The Court's discretion not to send the case back for reconsideration must be limited to those rare and exceptional cases where the context can only lead to one result and where the outcome is beyond doubt (*Dugarte de Lopez* at para 32, see also *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 142).

[19] This exception is not applicable in this case since there is not a single possible conclusion and it is not an exceptional case (*Hasselsjo v Canada (Attorney General)* (September 22, 2021), Toronto T-197-21 (FC); *Hayat v Canada (Attorney General)*, 2022 FC 131 at paras 14 and 15; *Christen v Canada (Revenue Agency)*, 2021 FC 1440 at paras 23 and 24).

[20] Mr. Fortier's application for judicial review will therefore be allowed and the matter sent back to the Agency for reconsideration by another officer.

[21] Furthermore, pursuant to subsection 303(2) of the *Federal Courts Rules*, SOR/98-106, only the AGC should be named as a respondent. Accordingly, the Court will replace "Canada Revenue Agency" and "Mr. St. Louis" with "the Attorney General of Canada" as the respondent in the style of cause.

JUDGMENT in T-112-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The case is sent back to the Canada Revenue Agency for reconsideration by another officer.
3. The Canada Revenue Agency and Mr. St-Louis are replaced by the Attorney General of Canada as the respondent in the style of cause.
4. No costs are awarded.

“Martine St-Louis”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-112-21

STYLE OF CAUSE: BRUNO FORTIER v CANADA (ATTORNEY GENERAL)

PLACE OF HEARING: MONTRÉAL, QUEBEC, VIA VIDEOCONFERENCE

DATE OF HEARING: MARCH 15, 2022

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: MARCH 22, 2022

APPEARANCES:

Bruno Fortier

FOR THE APPLICANT
(self-represented)

Jonathan Bachir-Legault

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bruno Fortier
Montréal, Quebec

FOR THE APPLICANT
(self-represented)

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT