

Date: 20050816

Docket: T-2029-04

Citation: 2005 FC 1102

Ottawa, Ontario, August 16, 2005

PRESENT: THE HONOURABLE MR. JUSTICE SHORE

BETWEEN:

ABDOURAHMAN MOHAMED SADICK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

INTRODUCTION

[1] Without a previously commenced proceeding or decision for review, no judicial review may be initiated.

NATURE OF JUDICIAL PROCEEDING

[2] This is an application for judicial review of a decision dated October 12, 2004, in which the Public Service Commission Appeal Board dismissed the appeal brought by Abdourahman

Mohamed Sadick pursuant to section 21 of the *Public Service Employment Act*¹ (Act) opposing the extension of three term appointments to the positions of Public Rights Clerk (CR-04) at Citizenship and Immigration Canada. Mr. Sadick also claims that he was wrongfully dismissed from his position and suffered discrimination and harassment in the workplace.

FACTS

[3] On July 31, 2001, Mr. Sadick accepted a position as Public Rights Clerk at CIC for a term ending March 29, 2002. The contract was renewed three times. The third renewal offered to Mr. Sadick covered the period from March 26 to May 26, 2004. At that same time, the CIC's Acting Director General of Executive Services informed Mr. Sadick that, because of his unsatisfactory performance, he had one last chance to show that he could meet the requirements of his position. On April 6, 2004, Mr. Sadick signed the offer of employment for the period March 26 to May 26, 2004.

[4] In June 2004, CIC renewed the contracts of three other employees for the period from June 30, 2004 to March 31, 2005. On June 14, 2004, CIC published notices of right to appeal for the positions. The notices indicated that the appeal period was from June 15 to 28, 2004, and that the area of selection was limited to "persons employed in the Executive Services Branch, of CIC in the National Capital Region". On June 17, 2004, Mr. Sadick appealed to the Public Service Commission Appeal Board against the appointment of the three employees.

¹ R.S.C. 1985, c. P-33.

IMPUGNED DECISION

[5] After holding a teleconference with the two parties and reading their written submissions, the Public Service Commission Appeal Board found that it had no jurisdiction to hear Mr. Sadick's appeal, because the Mr. Sadick did not meet the criteria set out in subsection 13(1) of the Act.

ISSUE

[6] Did the Public Service Commission err in finding that it had no jurisdiction to hear the applicant's appeal because he did not meet the criteria set out in subsection 13(1) of the Act?

[7] Subsection 21(1) of the Act allows an unsuccessful candidate to appeal against an appointment. Subsection 21(1.1) of the Act stipulates that, where an appointment is made from within the Public Service by a process of personnel selection other than a competition, as in the instant case, the appellant must meet the criteria established pursuant to subsection 13(1) of the Act, that is, any geographic, organizational and occupational criteria as may be established by the Public Service Commission. The provisions in question read as follows:

21 (1) Where a person is appointed or is about to be appointed under this Act and the selection of the person for appointment was made by closed competition, every unsuccessful candidate may, within the period provided for by the regulations of the Commission, appeal against the appointment to a board established by the Commission to conduct an inquiry at which the person appealing and the deputy head concerned, or their representatives, shall be given an opportunity to be heard.

(1.1) Where a person is appointed or about to be appointed under this Act and the selection of the person for appointment was made from within the Public Service by a process of personnel selection, other than a competition, any person who, at the time of the selection, meets the criteria established pursuant to subsection 13(1) for the process may, within the period provided for by the regulations of the Commission, appeal against the appointment to a board established by the Commission to conduct an inquiry at which the person appealing and the deputy head concerned, or their representatives, shall be given an opportunity to be heard.

13 (1) The Commission may establish, for competitions and other processes of personnel selection, geographic, organizational and occupational criteria that prospective candidates must meet in order to be eligible for appointment.

21 (1) Dans le cas d'une nomination, effective ou imminente, consécutive à un concours interne, tout candidat non reçu peut, dans le délai fixé par règlement de la Commission, en appeler de la nomination devant un comité chargé par elle de faire une enquête, au cours de laquelle l'appelant et l'administrateur général en cause, ou leurs représentants, ont l'occasion de se faire entendre.

(1.1) Dans le cas d'une nomination, effective ou imminente, consécutive à une sélection interne effectuée autrement que par concours, toute personne qui satisfait aux critères fixés en vertu du paragraphe 13(1) peut, dans le délai fixé par règlement de la Commission, en appeler de la nomination devant un comité chargé par elle de faire une enquête, au cours de laquelle l'appelant et l'administrateur général en cause, ou leurs représentants, ont l'occasion de se faire entendre.

13 (1) En vue des concours ou autres modes de sélection du personnel, la Commission peut fixer les critères géographique, organisationnel et professionnel auxquels les candidats doivent satisfaire pour pouvoir être nommés.

[8] In *Beaudry v. Canada (Attorney General)*,² the Federal Court of Appeal made a very clear determination on the issue of the Appeal Board's jurisdiction:

Sharlow J. (as she then was), as did the Appeal Board itself, determined that an Appeal board did not have such jurisdiction. We agree with their decisions. The relevant statutory provisions simply do not

² [2000] F.C.J. No. 1876 (C.A.) (QL), at paragraph 2.

provide for appeals to an Appeal Board, unless the appellant is a person who, at the time of the selection, meets the criteria established pursuant to subsection 13(1). [Emphasis added.]

[9] Mr. Sadick argued that he was an employee of CIC's Executive Services Branch on June 17, 2004, the date when he appealed against the appointment of the three employees. However, it is clear that Mr. Sadick signed the offer of employment for the term from March 26 to May 26, 2004. In June 2004, when the notices of appeal for the other three positions were posted, Mr. Sadick was no longer, according to section 25 of the Act, a Public Service employee and therefore could not appeal against the appointment of other employees, as he was not a "person employed in the Executive Services Branch, of CIC in the National Capital Region" at the time. Whatever the standard of review used in the case, the Appeal Board correctly concluded that Mr. Sadick did not meet the area of selection criterion at the time of his appeal and, therefore, could not appeal the appointments. As a result, the Appeal Board was correct in finding that it had no jurisdiction to hear Mr. Sadick's appeal.

[10] Mr. Sadick also filed a number of grievances alleging that he had been discriminated against and harassed in the workplace and unlawfully dismissed from his position. Although he challenged the negative decisions resulting from his grievances before a number of administrative tribunals, Mr. Sadick did not apply for judicial review of any of those decisions or indicate the specific errors allegedly committed in the decisions. Moreover, this is not to mention the issues of exhaustion of administrative remedies and the time limit for filing an application for judicial review, which should

also be taken into consideration. In the absence of an administrative decision for review, the Court cannot consider the allegations of discrimination, harassment and unlawful dismissal.

[11] On May 26, 2004, Mr. Sadick also filed a complaint with the Canadian Human Rights Commission, alleging discrimination on the basis of race, colour and national or ethnic origin. In her report dated January 11, 2005, the investigator recommended that the Canadian Human Rights Commission rule on the complaint. No decision by the Commission was introduced in Court, which means that, obviously, the Court cannot review the decision. Only when the Commission has rendered its decision can Mr. Sadick, if he is dissatisfied with the decision, apply to the Federal Court for judicial review within the period of time allotted for that purpose, making certain to specify the errors contained, in his view, in the decision.

CONCLUSION

[12] For these reasons, the Court answers the question in the negative and accordingly dismisses the present application for judicial review.

ORDER

THE COURT ORDERS that

1. the present application for judicial review be dismissed;
2. each party be responsible for its own costs.

“Michel M.J. Shore”

JUDGE

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2029-04

STYLE OF CAUSE: ABDOURAHMAN MOHAMED SADICK
v.
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

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REASONS FOR ORDER AND ORDER: THE HONOURABLE MR. JUSTICE SHORE

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APPEARANCES:

Kibondo Max Kilongozi FOR THE APPLICANT

Alexandre Kaufman FOR THE RESPONDENT

SOLICITORS OF RECORD:

KIBONDO MAX KILONGOZI FOR THE APPLICANT
Lawyer and Notary
Ottawa, Ontario

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada