T-1919-95

OTTAWA, ONTARIO, THE 24TH DAY OF JANUARY, 1997.

BEFORE: THE HONOURABLE MR. JUSTICE JOYAL.

BETWEEN:

SERGEANT J.E.J.M. TOUPIN,

Applicant,

- and -

HER MAJESTY IN RIGHT OF CANADA,

Respondent.

- and -

A.B. HARVIE, Level II Adjudicator,

Mis-en-cause.

ORDER

The application for judicial review made by the applicant is dismissed.

L. Marcel Joyal
J U D G E

Certified true translation

C. Delon, LL.L.

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BETWEEN:

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A.B. HARVIE, Level II Adjudicator,

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REASONS FOR ORDER

JOYAL J.

The Court had before it an application for judicial review of the decision of an adjudicator, A.B. Harvie, under the grievance procedure for members of the Royal Canadian Mounted Police (hereinafter "the RCMP").

The matter originated on July 9, 1992 when the applicant, an RCMP sergeant against whom certain criminal charges had been made, was suspended from duty with pay. The pay and benefits terminated on September 2, 1992. Immediately, on the following September 11, the applicant challenged the decision by a grievance.

On May 10, 1993, following his acquittal on the criminal charges, the applicant received from the authorities a revocation of the earlier decision and an undertaking to pay him his salary and benefits retroactive to September 2, 1992. However, the suspension order was continued.

On August 24, 1993 the applicant filed a claim for interest in the amount of $124.89 to compensate for the delay in giving him his salary. On August 27, 1992 the RCMP denied his application on the basis of s. 36 of the *Federal Court Act*.

On September 8, 1993 the applicant filed a new grievance claiming interest in the amount of $124.89. In the meantime, he was paid his salary accumulated between September 2, 1992 and May 10, 1993 and the record indicates that on the date of the hearing of his application by this Court he was continuing to receive his salary.

In connection with this new grievance a host of exhibits was entered in the record on the question of interest. The matter ended on August 22, 1994 when the applicant submitted a new application, for $790.98 this time, covering the $124.89 originally claimed and in addition $637.50 which he said he paid in interest on a loan made following the cessation of his salary and $28.59 representing interest on the interest.

To complicate matters, on October 12, 1994 the applicant submitted an action request alleging that the original order imposing the suspension without pay was unlawful and the decision made without statutory authority.

On November 2, 1994 an action request by a committee consisting of three officers recommended that the applicant be paid the sum of $637.50, representing interest on the loan which the latter had allegedly obtained between September 1992 and May 1993.

On December 5, 1994 the applicant's grievance was dismissed on the ground that because of the delay in filing the grievance it was inadmissible.

The record disclosed several appeals and new pleadings in the following months, culminating on May 5, 1995 in a decision at level II by the adjudicator Harvie dismissing the grievance. This decision

was also confirmed on review on August 22, 1995 and is now the subject of an application for judicial review in this Court.

In his challenge the applicant said he had complied with all the accepted rules, that his application for interest was a valid one, that it was filed when the figures were known and that overall the policy and procedure followed by the RCMP was unlawful, unconstitutional, unreasonable and contrary to any principle of natural justice. The applicant accordingly asked that the adjudicator's decision be quashed and that the Court order the RCMP to pay the applicant the interest sought.

Counsel for the respondent, for her part, submitted that the adjudicator's decision was not vitiated by any error of law. Further, the record clearly indicated that the legislation did not give the applicant any right to interest. Counsel therefore argued that the application for judicial review was without basis in fact or in law and should be dismissed.

To clarify the matter the Court will once again review the facts in the record and make the following comments:

1. the decision of May 10, 1993 enabled the applicant to receive his salary and regular benefits but he was still suspended from his duties with pay;
2. the claim for interest dated August 24, 1993 seems to be an afterthought, as the applicant had accepted the settlement of his arrears several weeks before without any mention of interest;
3. it seems clear that the RCMP carefully examined the applicant's arguments regarding the question of entitlement to interest and even filed the most relevant precedents in this connection;
4. the RCMP considered each of the applicant's written representations but it was not until a year later, on August 22, 1994, that the applicant submitted a new claim for interest, increasing the amount from $124.89 to $790.98.

I make only a few comments on the errors of law raised by the applicant:

1. the principle of natural justice has been fully observed by the RCMP throughout in all respects;
2. the applicant had reason to know from the outset that his claim would not be admissible: he was not misled in his efforts to promote his case;

3.the applicant's arguments that the thirty-day deadlines for filing a grievance should be calculated from August 27, 1993, the date of the denial by Inspector Brazeau, are not tenable: as the grievance system specifies, the thirty-day deadlines are from the date on which the injury was sustained or the grievor knew or ordinarily should have known of it;

4.based on the judgment of this Court in *Eaton v. The Queen*[1] and the decisions of the adjudicator in *Dahl and Treasury Board*[2] and *Puxley and Treasury Board*,[3] I must conclude that in the absence of a contractual or statutory provision the applicant is not entitled to any amount for interest.

Conclusions

Analysis of the facts contained in the record, consideration of the applicant's allegations and the Crown's replies and, finally, a review of the applicable legislation and case law leads me to conclude that the arbitral award of the mis-en-cause is valid in fact and in law. I see no basis for intervention by the Court.

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1 [1972] F.C.185.

2 PSSRB No. 166-2-25535, June 21, 1995.

3 PSSRB No. 166-2-22284, July 5, 1994.

The application for judicial review filed by the applicant must therefore be dismissed.

L. Marcel Joyal
J U D G E

O T T A W A, Ontario,
January 24, 1997.

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE No.:T-1919-95

STYLE OF CAUSE:SERGEANT J.E.J.M. TOUPIN,

Applicant,

and

HER MAJESTY IN RIGHT OF CANADA,

Respondent.

and

A.B. HARVIE, Level II Adjudicator,

Mis-en-cause.

PLACE OF HEARING:Montréal, Quebec

DATE OF HEARING:November 19, 1996

REASONS FOR ORDER BY:Joyal J.

DATED:January 24, 1997

APPEARANCES:

Jean-Maurice ToupinTHE APPLICANT REPRESENTING HIMSELF

Marie-Claude CoutureFOR THE RESPONDENT
Raymond Piché

SOLICITORS OF RECORD:

George ThomsonFOR THE RESPONDENT
Deputy Attorney General of Canada