Federal Court  Cour fédérale

Date: 20110330

Docket: T-1285-10

Citation: 2011 FC 393

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 30, 2011

PRESENT: The Honourable Madam Justice Gauthier

BETWEEN:

RICHARD TIMM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Considering the applicant Richard Timm's application for judicial review against the decision by Correctional Service Canada (the decision-maker) rejecting his third level grievance because it was submitted well after the timeframe in Commissioner's Directive 081 (CD 081).

[2] After reviewing the records and considering the parties' oral representations at the video-conference hearing on March 29, 2011.

[3] Considering that the applicant contends that the decision is unreasonable because the decision-maker itself noted that it could not be [TRANSLATION] "conclusively" established that the applicant received the second level decision on or about September 24, 2009.

[4] Considering that the applicant also maintains that the decision-maker should have extended the timeframe for filing his third level grievance under paragraph 34 of CD 081 so that justice on the merits could be ensured.

[5] Considering that, in this case, the primary issue in this grievance is whether Patrick Johnson, Correctional Manager, Operations, who is responsible for the major court at La Macaza, breached paragraph 8 of the *Offender Complaint and Grievance Manual* by responding to the request made by Johanne Visocchi, grievance and complaints coordinator, to provide the two documents requested by the applicant in a complaint form that indicated the complaint was [TRANSLATION] "against Patrick Johnson" and by signing the response to the complaint.

[6] Considering that the interpretation and application of this internal procedures manual is not a pure question of law (*Dearnley v. Canada (Attorney General)*, 2007 FC 219 at paragraph 33). Also considering that, prior to rejecting the grievance because it had been filed several months beyond the timeframe, the decision-maker clearly indicated that there was nothing to show that a real conflict of interest existed instead of a simple problem of applying paragraph 8 of the manual too

literally to a complaint that was, in fact, nothing more than a request to provide documents for which Mr. Johnson was ultimately responsible. In addition, considering that the applicant clearly stated at the hearing that he had just followed the instructions of the coordinator, complaints and grievances, who had told him to file a complaint to obtain the documents.

[7] Considering that the personnel responsible for implementing the manual should be more careful to avoid mistakes like this. The Court understands why the applicant, who is self-represented, contested the decision because, on its face, it appears that the administration did not comply with its own manual.

[8] Nonetheless, the Court is satisfied that there is no evidence of a breach of the duty of procedural fairness and that the only issue to be determined on this application is whether the decision-maker could validly reject the grievance because it was filed a number of months after the timeframe under CD 081.

[9] Considering that the reasonableness standard applies to this question of mixed fact and law. As the Supreme Court of Canada stated in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraphs 47 to 50, this means the following:

> [47] . . . Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[10] Considering, as the decision-maker stated, that paragraph 36 of CD 081 applies because this is a third level grievance, and not paragraph 34 cited by the applicant, which applies to a first level grievance.

[11] Considering that, unlike paragraph 34, paragraph 36 does not provide that the 20-day timeframe prescribed therein can be extended.

[12] Considering that, as stated at the hearing, the decision-maker had to determine, on a balance of probabilities, whether the applicant did in fact receive the second level decision on or about September 24, 2009.

[13] The Court is satisfied that there is no real inconsistency between the decision and the passage noted by the applicant when read in its context. It is clear that, since inmates do not have to sign an acknowledgement of receipt when these types of decisions are given to them, it could not be [TRANSLATION] "conclusively" established that he in fact received it. The decision-maker had to assess the probative value of the evidence before it, including the circumstantial evidence. That is exactly what it did in this case, and its conclusion was justifiable on the facts and the law. The decision clearly sets out the factors it considered and is reasonable. Absent a reviewable error as in this case, there is no basis for the Court to intervene to exercise its own discretion in the place and stead of the decision-maker.

[14] The Court also notes that, although it is not essential to discuss this evidence because the decision does not refer directly to it, grievance V30A00038383 cited in the applicant's letter dated

February 19, 2010 (tab “P”), and referred to by the respondent in its memorandum at paragraphs 40 and 41, does not support the applicant’s position. Indeed, unless another part of the November 5, 2009, decision that is not before me indicates otherwise, the only thing that the passage cited by the applicant shows is that on September 9, 2009, the date that grievance V30A00038383 was analyzed, the regional administration had not yet responded to grievance V30A00034834, which had been submitted at the second level on April 23, 2009. In this case, the second level decision was actually rendered shortly thereafter, on September 16. Since the regional administration agreed that the delay of more than 99 days (ending on September 9) was excessive, there was no logical reason to check the system again on or just before November 5. Thus, there is no apparent inconsistency in the record between the decision on the other grievance and the decision that is the subject of this dispute.

[15] For these reasons, this application for judicial review is therefore dismissed.

[16] The respondent is insisting on costs. Considering all the circumstances, the Court awards costs and fixes them at $200 (inclusive of disbursements).

ORDER

The application is dismissed. The respondent is entitled to costs fixed at $200 (all-inclusive).

"Johanne Gauthier"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1285-10
STYLE OF CAUSE:	RICHARD TIMM v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	March 29, 2011
REASONS FOR ORDER AND ORDER:	Gauthier J.
DATED:	March 30, 2011

APPEARANCES:

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Nicholas Banks	FOR THE RESPONDENT

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