Federal Court  Cour fédérale

Date: 20110620

Docket: T-749-10

Citation: 2011 FC 727

Ottawa, Ontario, June 20, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

RAMANAN THAMBIAH

Applicant

and

MARITIME EMPLOYERS ASSOCIATION

Respondent

SYNDICAT DES DÉBARDEURS DU PORT DE MONTRÉAL

Intervenor

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of a decision of the Canadian Human Rights Tribunal (the Tribunal), dated April 15, 2010, whereby the Tribunal dismissed the applicant's complaint that the respondent had discriminated against him.

I. Background of claim

[2] At the time of the alleged events, the applicant was working as a longshoreman in the Port of Montreal. In October 2005, he became eligible for a first reserve position, which could lead to job security and better benefits. In order to be appointed as a member of the first reserve, the applicant was required to pass a test to become qualified as a “truck operator”. He made two attempts to pass the test, but failed on both occasions. The Maritime Employers Association (the respondent) determined that he had failed on the first occasion (January 25, 2006) because he hit a container while driving the truck and on the second occasion (January 26, 2006) because he was unable to perform requested manoeuvres.

[3] Before the Tribunal and before the Court, the applicant contended that during his first attempt, the evaluator had distracted him and had sabotaged his performance. On his second attempt, he argued that the sunlight had reflected in the truck’s mirrors in such a way as to prevent him from performing certain manoeuvres. In addition, he stated that the trailer’s brakes were faulty and that the evaluator unfairly refused to allow him a third attempt to pass the test.

[4] The applicant filed a complaint with the Canadian Human Rights Commission (the Commission) alleging that he had been a victim of discrimination based on his “ethnicity”, his “age” and his “family status”. At the hearing before the Tribunal, the applicant dropped his claim with respect to the first two grounds of discrimination, i.e. “ethnicity” and “age”. The applicant continued with the allegation that he had been discriminated against on the basis of his “family status”. The applicant alleged nepotism. The argument was that the respondent had rejected the

applicant's candidacy in favour of candidates who had family ties to managers and employees of the respondent. The applicant essentially asserted that, given his lack of family ties to a member of the respondent, he was made to fail the first two driving tests and was not given a third opportunity to pass the test; therefore, he received differential and discriminatory treatment.

[5] Prior to filing a complaint with the Commission, the applicant had filed a complaint against his union with the Canada Industrial Relations Board. The grounds for his complaint were that his union had failed to provide him with adequate representation by refusing to file a grievance to challenge the treatment that the respondent had imposed on him during the promotion process. This complaint was rejected for having been filed outside the time limit and for lack of merit (File number: 2076-C).

II. The Tribunal's decision

[6] The tribunal rejected the applicant's complaint and concluded that he had not been the victim of discrimination on the basis of his family status. The Tribunal's decision was based on several findings.

[7] First, the Tribunal found that the applicant's credibility was "very low". This finding was based on several contradictions in the applicant's testimony. The Tribunal discussed its assessment of the applicant's credibility in the following manner:

> [48] He gave the impression of someone overwhelmed by the consequences of his failure, who was trying desperately to understand what could possibly have happened to him. During the

> hearing, he gave voice to his thoughts and advanced a number of hypotheses.
>
> [49] In his view, discrimination and sabotage by the trainer and the evaluator partly explained his two failed tests. Several outside factors also explained the failed tests. His testimony therefore went in all directions. His hypotheses were sometimes hard to imagine and even harder to verify.
>
> [50] Lastly, the Complainant advanced few substantive facts to support his position and mainly hid behind conjecture or hearsay.
>
> [51] By his testimony, the Complainant clearly showed that he had difficulty distinguishing between the facts of his case and hypotheses that might explain those facts.
>
> [52] In the final analysis, it is difficult to give much weight to the Complainant's version when compared with that of a witness testifying about facts of which he or she has personal knowledge.
>
> [53] In short, in our opinion, the Complainant's credibility is very low.

[8] Second, the Tribunal's assessment of the evidence, including a video, led it to make the following findings:

a. The complainant did hit a container during his first attempt to pass the test, which is an automatic failure;

b. The condition of the truck's breaks cannot explain the applicant's failure to pass the second time and nothing in the evidence establishes that the respondent's representatives committed any deliberate act to cause his failure;

c. The two-test maximum rule was in force prior to the applicant's attempts to pass the test and it was applied regardless of the candidates' age, ethnicity and family ties to members of the respondent;

d. The two-test maximum rule was applied without discrimination against the applicant;

e. There is no evidence of nepotism or favouritism in hiring practices. The explanations regarding the special circumstances which led the respondent to offer a third attempt to certain candidates were satisfactory and do not show any nepotism or favouritism;

f. The Tribunal insisted that it "found no instance of a longshore worker obtaining the truck operator classification because of family ties to members, managers or shareholders of the MAE [the respondent]".

III. Issues

[9] The applicant makes several allegations with regard to the Tribunal's decision that essentially raise the question of whether the Tribunal erred in its assessment of the evidence, and more particularly, in its assessment of the applicant's credibility and of the video.

IV. Standard of review

[10] All the issues raised by the applicant relate to the Tribunal's assessment of the evidence and its appreciation of the applicant's credibility. It is well established that the Court owes deference to the administrative tribunal's assessment of the evidence and credibility and that the applicable standard of review with regard to these findings is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009

SCC 12, [2009] 1 SCR 339). The Court's role when reviewing a decision against the reasonableness standard was described in the following manner in *Dunsmuir*, at para 47:

> **47** Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. 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.

V. Analysis

[11] The applicant contends that the Tribunal committed a number of errors in its assessment of the evidence:

a. The applicant's credibility was corrupted by the Canada Industrial Relations Board's decision which, in turn, was based on "lies" from the Union;

b. The Tribunal erred in its assessment of the evidence regarding the events that led to his failure on his two attempts to pass the test;

c. The Tribunal erred in its assessment of the evidence when it concluded that there was no preferential treatment offered to another candidate during the evaluation;

d. The Tribunal did not completely view the video nor did it understand it;

e. The Tribunal erred in its assessment of the evidence regarding the two-test maximum rule and its application to the complainant.

[12] After a thorough review of the file, of the video and of the Tribunal's decision, I am of the view that this application has no merit.

[13] The complainant's contentions show that he strongly disagrees with the Tribunal's assessment of the evidence. This is not sufficient to warrant the Court's intervention. It is not for the Court to substitute its own assessment of the evidence for that of the administrative tribunal or to reweigh the evidence. The Court will only intervene where the tribunal's conclusions are based on erroneous findings of fact made in a perverse or capricious manner or without regard to the evidence. Nothing leads me to conclude that the Tribunal assessed the evidence in a perverse or capricious manner and its findings are supported by the evidence and are reasonable. Furthermore, its reasoning is clear, the conclusions are well explained and they fall within "the range of possible outcomes which are defensible in respect of facts and the law" (*Dunsmuir*, above, at paragraph 47). I see no reason for the Court to intervene. This application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed with costs.

"Marie-Josée Bédard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-749-10
STYLE OF CAUSE:	RAMANAN THAMBIAH v. MARITIME EMPLOYERS ASSOCIATION
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