Federal Court of Appeal  Cour d'appel fédérale

Date: 20150212

Docket: A-268-14

Citation: 2015 FCA 43

CORAM: **GAUTHIER J.A.**
NEAR J.A.
SCOTT J.A.

BETWEEN:

NUNO CAMARA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Winnipeg, Manitoba, on February 3, 2015.

Judgment delivered at Ottawa, Ontario, on February, 12 2015.

REASONS FOR JUDGMENT BY: SCOTT J.A.

CONCURRED IN BY: GAUTHIER J.A.
NEAR J.A.

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] Mr. Nuno Camara (the Appellant) is appealing the decision of Mactavish J. of the Federal Court (the Judge) who dismissed his application for judicial review of a decision rendered by the Acting Commissioner of the Royal Canadian Mountain Police (RCMP) denying his Level II Grievance with respect to his suspension without pay and allowances pending the outcome of disciplinary proceedings taken against him by his employer.

[2] For reasons that follow, I believe that this appeal should be dismissed.

[3] In his 42-page decision, the Acting Commissioner dealt with a number of arguments of the Appellant disputing the issuance of a suspension without pay and allowances order (SPAO) against him, several of which are not relevant in this appeal. Of particular importance is the Acting Commissioner's finding that the Appellant was not the victim of undue delay in the issuance of a SPAO and the processing of his grievance. The Acting Commissioner noted that the duration of the SPAO was not unreasonable considering that SPAOs are preventive measures designed to protect the integrity of the RCMP. When applied, SPAOs normally endure pending resolution of the disciplinary proceedings (a process distinct from the grievance process itself). With respect to the delay in the grievance process *per se*, the Acting Commissioner concluded that it was not undue so as to justify granting the grievance.

[4] The Acting Commissioner also found that the SPAO was warranted in the particular circumstances of this case. He held that the Appellant's behaviour constituted a breach of the Code of Conduct of the RCMP and that it was so outrageous as to significantly affect the performance of his duties under the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 (the RCMP Act).

[5] On appeal from a decision of the Federal Court in an application for judicial review, this Court must determine whether the court below selected the proper standard of review and applied it correctly (*Agraira v. Canada (Public Safety and Emergency Preparedness),* 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45).

[6] In the present case, the Judge applied the standard of correctness to the issue of delay as she accepted that it could raise an issue of procedural fairness (reasons of the Judge at paragraph 18) and she assessed the Acting Commissioner's substantive decision on the standard of reasonableness (reasons of the Judge at paragraph 24). Although the Appellant argued in his memorandum that the Judge could have been clearer as to the standard applied to the issue of delay, at the hearing, he did not dispute that she selected the appropriate standards of review for the two questions before her.

[7] Applying the standard of correctness, the Judge concluded that the Appellant had failed to meet his burden of establishing that the delay involved met the required threshold: that it was so oppressive as to taint the proceedings and to cause serious prejudice (reasons of the Judge at paragraph 37). She noted that the Appellant was partly responsible for the delay since he requested several extensions to file his responses at various stages of the grievance process (reasons of the Judge at paragraph 36). The Judge also noted that the Appellant relied on bold assertions of unfairness and prejudice which were not substantiated.

[8] The Judge was satisfied that the Acting Commissioner's conclusion, in respect of the outrageous character of the breach of the code of conduct and his interpretation of the Suspension Policy, was clearly explained and was sufficiently reasoned. In her view, the decision fell within the range of possible outcomes as established in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47 [*Dunsmuir*].

[9] The Appellant challenges the Judge's and the Acting Commissioner's decisions on two grounds. He asserts that the Judge failed to appreciate that it was incumbent on the Respondent to justify the inordinate delay incurred, since seven years had passed before a final decision was released whereas the Commissioner's Standing Order in the RCMP's Administrative Manual II.38 mandates early resolution of this type of grievance. The Appellant also claims that the Acting Commissioner's decision cannot be reasonable because his reasons are insufficient.

[10] I will now examine if the Judge properly applied the standards of review, focussing firstly on the Appellant's argument that the delay involved constituted a breach of procedural fairness and an abuse of process. To do so, I will apply the teachings of the Supreme Court of Canada in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307 [*Blencoe*], where the requirement for prejudice is clearly stated:

> [101] In my view, there are appropriate remedies available in the administrative law context to deal with state-caused delay in human rights proceedings. However, delay, without more, will not warrant a stay of proceedings as an abuse of process at common law. (…) In the administrative law context, there must be proof of significant prejudice which results from an unacceptable delay.
>
> (…)
>
> [115] I would be prepared to recognize that unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised. (…) It must however be emphasized that few lengthy delays will meet this threshold. I caution that in cases where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process. It must be a delay that would, in the circumstances of the case, bring the human rights system into disrepute.
>
> [My emphasis]

[11] It is undisputed that the delay in this matter did not impact the fairness of the hearing. Further, I have not been persuaded that the timeline involved in the Appellant's case directly caused a significant prejudice.

[12] As I review the stages involved in coming to a final decision, I note that from the date of the Appellant's contravention of the Code of Conduct (November 23, 2005) to the implementation of SPAO, four and a half months elapsed. During that time, the Appellant was served with a Notice of Suspension on November 24, 2005, followed by a Notice of Intent to Recommend Stoppage of Pay and Allowances on December 30, 2005. He provided his first response on January 23, 2006. He received a reply on January 25, 2006 and filed a second response on February 16, 2006. He was copied on the Notice to Recommend the Stoppage of Pay and Allowances dated February 22, 2006. The SPAO was applied on April 13, 2006. Not only does this delay appear reasonable, but it could only have benefited the Appellant who received his pay and allowances until the SPAO was issued (reasons of the Judge at paragraph 23).

[13] The Appellant filed his Level I grievance disputing the imposition of the SPAO on May 18, 2006. The documentation supporting the SPAO order was sent on July 11 and delivered on July 13, 2006, according to Canada Post. The Appellant requested that it be forwarded to a different address on August 22, 2006, claiming he had not received the documentation. It was served by fax on August 30, 2006. The Appellant and his representatives requested five extensions; all were granted between September 12 and November 11, when he finally filed his submissions. The Respondent received the Appellant's submissions on November 11, 2006 and filed its response on December 8, 2006. On December 18, 2006, the Appellant received the

Respondent's response and requested an extension until January 16, 2007, which was approved, but he did not file additional materials. The level I decision was issued on May 22, 2008.

[14] It is difficult to conclude that the time taken for the above-mentioned steps is inordinate, given that the Appellant provided no information as to how long this process normally takes. This is especially so considering the number of extensions he requested.

[15] The Appellant indicated his intention of appealing the Level I decision on June 5, 2008 but requested an extension of time to file his appeal submissions until October 15, 2008 because his sentencing hearing was scheduled for August 29, 2008. The extension was granted. However, the Appellant was convicted of one count of theft under $5000, after he pleaded guilty in Manitoba Provincial Court. He resigned from the RCMP on September 23, 2008, before the disciplinary process was concluded.

[16] Following the Appellant's resignation, however long the delay to obtain a decision on the Level II grievance, the only issue at stake was the reimbursement of the pay he would have received up to his resignation.

[17] It is true that the External Review Committee (the ERC), an independent body set up to review labour matters within the RCMP pursuant to subsection 33(1) of the RCMP Act, took a very long time to issue its recommendations (about three and a half years). No one knows why this is so. The ERC is beyond the control of either party. There is no evidence that the Appellant made any attempt to speed up the process.

[18] Once the ERC issued its recommendation, the Acting Commissioner took about six months to issue his final decision. Considering that the Appellant was no longer a member of the RCMP at the time, there is no indication or evidence that this delay was inordinate. Consequently, I reject the Appellant's first argument.

[19] I now turn to the Appellant's second argument. Like the Judge, I find that the Acting Commissioner's decision was reasonable. His decision was based on his interpretation of the RCMP Suspension Policy, in which he has significant expertise. The Acting Commissioner considered all of the arguments that were submitted and determined that the Appellant's conduct met the criteria found in sections d.9 and d.10 of the RCMP Suspension Policy since he stole evidence that had been obtained in the course of what he believed was a valid investigation. As previously mentioned, the Acting Commissioner concluded that such behaviour was outrageous. While the Appellant's interpretation of the Suspension Policy could also have been adopted, the interpretation and conclusion of the Acting Commissioner were open to him. The Acting Commissioner's decision is owed deference and I find that his decision was reasonable.

[20] The Appellant would clearly have preferred more detailed reasons from the Acting Commissioner and argued that the reasons given were insufficient. I see no valid reason to set the Acting Commissioner's decision aside on this basis. The reasons were thorough enough to explain how the Acting Commissioner reached his conclusion and for the Federal Court to judicially review the said decision (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 at para. 16).

[21] In sum, I conclude that the Judge properly applied the standards of review.

[22] The appeal should be dismissed with costs. At the hearing, the parties agreed that a lump sum of $1,400 would be appropriate to cover either party's costs.

"A.F. Scott"

J.A.

"I agree
Johanne Gauthier J.A."

"I agree
D.G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-268-14
(APPEAL FROM A JUDGMENT RENDERED BY THE HONOURABLE MADAM JUSTICE MACTAVISH OF THE FEDERAL COURT OF CANADA, DATED MAY 9, 2014 (2014 FC 446)	
STYLE OF CAUSE:	NUNO CAMARA v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	FEBRUARY 3, 2015
REASONS FOR JUDGMENT BY:	SCOTT J.A.
CONCURRED IN BY:	GAUTHIER J.A. NEAR J.A.
DATED:	FEBRUARY 12, 2015

APPEARANCES:

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