

CANADA / JUDGMENT

Ayangma v. Canada (Treasury Board)

2007 FC 400

COURT

Federal Court

DECIDED

18 April 2007

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T-917-06 Citation: 2007 FC 400 Ottawa, Ontario, April 18, 2007 PRESENT: The Honourable Mr.
Justice Hugessen BETWEEN: DR. NOEL AYANGMA Applicant and THE TREASURY BOARD OF
CANADA Respondent and PUBLIC SERVICE LABOUR RELATIONS BOARD Respondent REASONS
FOR ORDER AND ORDER

INTRODUCTION

- [1] This is an appeal by way of motion pursuant to Rule 51 of the Federal Courts Rules (SOR/98-106) from a decision of the case management prothonotary which allowed in part only the applicant's motion to amend his application for judicial review of a decision of an adjudicator appointed under the Public Service Labour Relations Act (2003, c.22, s.2) (the Act) dismissing his grievance and upholding his suspension and subsequent termination of employment. PRELIMINARY PROCEDURAL MATTER
- [2] The respondent objects to the applicant's affidavit produced in support of his appeal. That affidavit is posterior in date to the decision of the prothonotary and to the extent that it attempts to introduce evidence that was not before the latter, it cannot be allowed. It also fails to comply with the requirements of Rule 81 in that it is tendentious, argumentative, opinionated and repetitive, although it must be said that the same is the case with virtually all the other materials produced by the applicant. I have limited my consideration to the affidavits and other materials which were before the prothonotary at the time that she considered and decided the decision under appeal.

BACKGROUND

- [3] The applicant, who lives in Charlottetown, was employed by Health Canada. His work required him to travel extensively, mostly in the Maritimes. Suspicions having arisen about some of his claims for travel expenses, an investigation was undertaken which resulted, first in his suspension and later, in his dismissal. He lodged a grievance which was in due course heard by an adjudicator appointed under the Act. After a lengthy hearing extending over

several days at two different periods of time, the grievance was dismissed and both the suspension and the termination of employment were confirmed. These judicial review proceedings ensued.

- [4] Before the adjudicator the applicant made numerous requests for disclosure of materials allegedly in the employer's possession but it seems that not all of these demands were satisfied before the time came for the applicant to put in his own case. The adjudicator offered to adjourn the hearing to allow the employer time to comply but the applicant decided to withdraw his requests for disclosure and elected not to give evidence on his own behalf.
- [5] I reproduce here the adjudicator's summary of his conclusions on the principal questions of fact which he had to determine: 253 It is clear from the above analysis of the grievor's travel claims that the grievor made false travel claims on a number of occasions. I estimate that the total of the above false travel claims is \$19,586.26. As above, I have found that a small number of the employer's allegations have not been proven. For this reason, the total amount is something less than the estimated amount, but it is still substantial. 254 The positive mitigating circumstances in favour of the grievor include about five years of discipline-free service. The grievor also received at least one award for his work (Award for Team Excellence, June 2002) and he was active in minority and equity issues within the public service. He neither charged for nor took time off in lieu of overtime. His supervisor, while the grievor worked in an acting capacity, testified that he trusted the grievor "completely" and he had no reason to doubt him. 255 There are aggravating factors as well. The most significant is the lack of remorse and lack of any acceptance of wrongdoing. When he spoke with Mr. Cuthbert, the grievor acknowledged that he stayed at home while claiming for personal accommodation expenses. Apart from this, he has never admitted that his travel claims were false. Indeed, his response to being confronted with them was, first of all, to refuse to cooperate by providing information as requested by his supervisor. He then asked for another person to review his claims. Then, when he was confronted with the result of the audit of his claim, he could only get visibly angry and make intimidating statements at the meeting in December 2003. But, significantly, while getting agitated, the grievor never denied the employer's allegations. 256 I also note that this is not a case of an honest mistake. Nor is it a matter of claiming inflated amounts; that would be serious enough misconduct. Rather, the grievor in this case claimed expenses for travel that never took place, or for personal travel such as taking his family on a holiday or spending a weekend in Montreal or appearing in court for personal litigation. The grievor certified with his signature that his travel was for the purposes of government business and he must have known when he signed his name that the claims were false. I can only conclude that there is a strong element of premeditation in this case. 257 Instead of taking responsibility for his false travel claims the grievor has an acute sense of being the victim of a conspiracy, or vendetta, against him and this has coloured virtually every aspect of his grievances. The allegation about the beginnings of the conspiracy - the allegation that the appointment of the grievor in 1999 was sabotaged - amounts to a suggestion that he was hired to be fired. Apart from the

logical problems with this assertion, it is not supported in the evidence. The other elements of the grievor's theory of a conspiracy are also unsupported, especially the assertion that the false travel claims were fabricated, somehow through collusion between people in Halifax and Ottawa. No evidence of fabrication was presented. I reject the grievor's submission that the employer fabricated the evidence in this case to reach a pre-determined result, the termination of his employment. 258 A related matter is that, in the numerous skirmishes over evidentiary and procedural issues that arose over the course of the hearing of his grievances, the grievor submitted that certain witnesses for the employer "lied under oath". That assertion is not based on any facts. It is also inflammatory and grossly unfair to the people who gave evidence. While the grievor's belief in the righteousness of his cause is obvious, I can only conclude that it is not founded on any evidentiary basis.

- [6] As demonstrated by the foregoing, from the outset the applicant has maintained that the representatives of the employer and the witnesses against him were engaged in a conspiracy, had fabricated evidence, and had perjured themselves. This leads us directly into the prothonotary's decision and the applicant's attack upon it. THE APPEAL
- [7] As already stated, the prothonotary allowed the applicant's motion to amend and to introduce new evidence in part only. The present appeal takes issue principally with her decision not to allow an amendment alleging perjury, fraud and similar misconduct on the part of the employer's representatives and to produce various pieces of evidence in support thereof. The applicant's argument turns primarily on the fact that, subsequent to the launching of his judicial review application there were certain additional disclosures made by the employer, notably in the form of tapes, transcripts and notes of interviews and that these serve to prove his allegations of perjury.
- [8] In dealing with this argument the prothonotary said as follows: In essence, it is alleged that Mr. Cathcart, an investigator who interviewed Dr. Ayangma and gave evidence before the tribunal whose decision is impugned, perjured himself by allegedly making statements that were then contradicted by documents only recently disclosed to the applicant. The documents on which the applicant relies are the handwritten notes of Mr. Cathcart taken on the first day of his interview with the applicant (Exhibit O) and, the transcript of the first day of that interview (Exhibit R). According to the proposed supplementary affidavit of Dr. Ayangma, contrary to "notes" that the applicant took, or caused to be taken at the hearing before the adjudicator, Mr. Cathcart lied about the existence of the transcript and handwritten notes (Exhibits O and R). ... The alleged perjury is entirely premised on what Dr. Ayangma claims Mr. Cathcart to have said at the hearing. Notably the hearing was not recorded and there is no way to verify the veracity of the applicant's allegation. Moreover, Dr. Ayangma's allegations are contradicted by the affidavit evidence of Mr. Cathcart sought to be filed by the Crown, in the event leave is granted to the applicant. Neither the existence of these new documents nor of their substance supports a claim for perjury. Dr. Ayangma doesn't take issue with the substance of Mr. Cathcart's notes and says at paragraph 63 of his affidavit that the transcript of the interview (Exhibit R) accurately relates the information

that Dr. Ayangma, the applicant, provided Mr. Cathcart in the course of the investigation of the applicant. The allegation of perjury, in my view, is unsubstantiated and self serving. As such, the proposed amendment, rather than being helpful in determining the real question in controversy will serve instead to obscure it, leading the Court to the examination of contradicted and unverifiable evidence on a peripheral issue. It is also not in the interests of justice to allow the transcript of the applicant's interview to be adduced into evidence. To do so is to allow Dr. Ayangma, who chose not to give evidence at the hearing, to get his side of the story on record. This is essentially a splitting of the applicant's case, allowing Dr. Ayangma to introduce evidence by the back door that he declined to do directly. THE STANDARD OF REVIEW

- [9] It is common ground that, this being a discretionary decision by the prothonotary, this Court is only justified in intervening if the impugned decision is vital to the final determination of the case or is manifestly erroneous.
- [10] In my view, the applicant does not meet either branch of the test.
- [11] The "case" to which the first branch refers must I think, at least where the decision is to refuse and amendment or the introduction of new evidence, be the case as it stood immediately prior to the rendering of the impugned decision. Otherwise, every decision of this nature would automatically be open to unlimited appellate review without regard to any of the principles of deference which underlie the whole purpose of the rule.
- [12] Be that as it may, however, and even if I am wrong in this view, I am not persuaded that the decision is wrong, let alone manifestly wrong. The fact that different witnesses may give different versions of events does not mean that either or both of them are perjured. The prothonotary's description of the issues dealt with by such evidence as "peripheral" is entirely correct, it being the case that the matters dealt with at the interviews in question did not form part of the employer's case to the effect that the applicant had made false travel claims. Merely showing that a witness has been mistaken on some point in his evidence which is not relevant to the questions in issue does not establish that he has "perjured" himself. The pursuit ad nauseam of contradictions on matters wholly collateral to the main issues does not lead to the just, most expeditious and least expensive resolutions of the real matters in controversy. If I were deciding the matter de novo I would reach the same conclusions as the prothonotary.
- [13] The appeal must be dismissed. COSTS
- [14] The applicant is very free with allegations of perjury and similar conduct. He has made them before the adjudicator without success. He attempted them again on an earlier motion before this Court and in the Court of Appeal. On the latter occasion Sharlow J.A. had this to say: The respondent asks for cost of this motion on a solicitor and client basis because Dr. Ayangma has made scandalous and unsubstantiated allegations that a Crown investigator, counsel for the respondent, and the Crown's deponent have lied to the Court. These allegations are tantamount to accusations of perjury. While a party is entitled to disagree

with another party's version of the facts of the case, and is also entitled to allege that there are inaccuracies in the evidence or submissions of another party, it is an abuse of process to make an unsubstantiated allegation of perjury. Such an abuse of process may justify an award of costs on a solicitor and client basis. In this case, however, given the highly emotional circumstances, it seems more appropriate simply to fix the costs of this motion at a higher than normal scale, in the hope that Dr. Ayangma will be deterred from making further unsubstantiated allegations of this nature. Costs of this motion are fixed at \$3,000, inclusive of fees, disbursements and GST, payable by Dr. Ayangma to the respondent forthwith.

[15] Regrettably, Justice Sharlow's hope has not been realized. Not only has the applicant persisted in his abusive conduct but the unnecessary length and complexity of his materials justifies an even higher award of costs which I fix at \$5,000. ORDER THIS COURT ORDERS that The appeal is dismissed with costs to the respondent fixed in the amount of \$5,000 inclusive of fees and disbursements and GST, payable forthwith and in any event of the cause. "James K. Hugessen" Judge FEDERAL COURT NAME OF COUNSEL AND SOLICITORS OF RECORD DOCKET: T-917-06 STYLE OF CAUSE: DR. NOEL AYANGMA v. THE TREASURY BOARD OF CANADA and PUBLIC SERVICE LABOUR RELATIONS BOARD MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF PARTIES REASONS FOR ORDER AND ORDER : HUGESSEN J. DATED: APRIL 18, 2007 WRITTEN REPRESENTATIONS BY: DR. NOEL AYANGMA FOR THE APPLICANT RICHARD E. FADER FOR THE RESPONDENT (THE TREASURY BOARD OF CANADA) SOLICITORS OF RECORD: JOHN H.SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA FOR THE RESPONDENT (THE TREASURY BOARD OF CANADA)

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