

CANADA / JUDGMENT

Castillo v. Service d'administration P.C.R. Ltée

2023 FC 526

COURT

Federal Court

DECIDED

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Decision Content

Date: 20230412

Docket: T-621-22

Citation: 2023 FC 526

[ENGLISH TRANSLATION]

Toronto, Ontario, April 12, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

JOSE MIGUEL REYES CASTILLO

Applicant

and

SERVICE D'ADMINISTRATION P.C.R. LTÉE

Respondent

JUDGMENT AND REASONS

I. Overview

- [1] The applicant, Jose Miguel Reyes Castillo, is seeking judicial review of a decision made on February 16, 2022 [Decision], by adjudicator Jean-Alain Corbeil [Adjudicator]. The Decision deals with the remedies awarded to Mr. Reyes Castillo as compensation for his unjust dismissal.
- [2] In an initial decision dealing with Mr. Reyes Castillo's unjust dismissal complaint [Initial Decision], the Arbitrator found that Mr. Reyes Castillo's dismissal was unjust, but reserved jurisdiction over the remedy to be awarded. Mr. Reyes Castillo asserts that, in the Decision, the Adjudicator erred in refusing to exercise his jurisdiction and that the claim for damages should have been allowed in light of the wrongful acts of the respondent, Service d'administration P.C.R. Ltée [PCR]. Mr. Reyes Castillo is asking the Court to set aside the Decision and determine the remedy that should have been awarded or, in the alternative, to refer the case to another Adjudicator.
- [3] The sole issue is whether the Adjudicator's Decision was reasonable.
- [4] For the following reasons, Mr. Reyes Castillo's application for judicial review will be dismissed. Having considered the Adjudicator's reasons, the evidence and the applicable law, I see no reason to set aside the Adjudicator's Decision. Taking into account the relevant factual and legal constraints, there are no fundamental flaws in the Adjudicator's reasoning or in the resulting outcome that would render the Decision unreasonable. Mr. Reyes Castillo has simply failed to meet his burden of showing that the Decision is unreasonable.

II. Background

A. Facts [5] Mr. Reyes Castillo began working as a pallet repairer for PCR in late August 2014. PCR is a subsidiary of Groupe Robert Inc., a trucking company. It provides labour services to other entities of Groupe Robert Inc.

- [6] On September 16, 2015, Mr. Reyes Castillo injured his back while moving a pallet at his workplace. He submitted a claim to the Commission des normes de l'équité, de la santé, et de la sécurité du travail [CNESST] under the Act respecting industrial accidents and occupational diseases, RSQ, c A-3.001 [AIAOD]. On October 1, 2015, the CNESST concluded that Mr. Reyes Castillo had suffered an employment injury, but it later rejected his relapse, recurrence or aggravation [RRA] claim. Mr. Reyes Castillo was therefore forced to return to work part-time and then, as of July 2016, full-time. He did so against his will but with the consent of his attending physician.

- [7] After the CNESST rejected his RRA claim, Mr. Reyes Castillo challenged the CNESST's decision before the Administrative Labour Tribunal [ALT]. On August 28, 2017, the ALT determined that Mr. Reyes Castillo had suffered a lumbar sprain that aggravated a personal condition of early degenerative disc disease and that he had therefore suffered an employment injury on September 16, 2015, followed by an RRA of the employment injury starting on January 19, 2016. Accordingly, the ALT stated that Mr. Reyes Castillo was entitled to the benefits set out in the AIAOD, including an income replacement indemnity equal to 90% of his wages. Consequently, Mr. Reyes Castillo received an income replacement indemnity and other benefits under the AIAOD, retroactive to September 16, 2015, as well as after his employment was terminated.
- [8] Meanwhile, after he returned to work full-time on September 14, 2016, Mr. Reyes Castillo was dismissed by PCR on grounds of inappropriate behaviour and language. PCR accused him of shouting and gesticulating at a colleague with whom he had had a dispute, deliberately shoving the colleague in the cafeteria and calling the colleague a "viejo maricón" in front of other employees.
- [9] On October 18, 2016, Mr. Reyes Castillo made an unjust dismissal complaint pursuant to sections 240 et seq. of the Canada Labour Code, RSC 1985, c L-2.
- [10] On April 9, 2019, the Adjudicator made the Initial Decision relating to Mr. Reyes Castillo's unjust dismissal complaint. The Adjudicator stated that Mr. Reyes Castillo had indeed been unjustly dismissed by PCR and ordered his reinstatement, subject to certain conditions, insofar as his health allowed. However, the Adjudicator reserved jurisdiction to award an appropriate remedy in a subsequent decision, as it could not yet be determined whether Mr. Reyes Castillo would be able to return to work. In the Initial Decision, the Adjudicator concluded that Mr. Reyes Castillo had committed misconduct warranting discipline but that dismissal was too severe.
- [11] PCR sought judicial review of the Initial Decision before this Court, but the application was dismissed (*Service d'administration PCR Ltée v Reyes*, 2020 FC 659 [Reyes]). After the application was dismissed, the Adjudicator heard the parties again and rendered the Decision on February 16, 2022, dealing exclusively with the remedy to be awarded to Mr. Reyes Castillo. The Decision is the subject of this application for judicial review.

B. Impugned decision [12] At the hearing before the Adjudicator, Mr. Reyes Castillo sought nearly \$260,000 in lost wages and severance pay, \$85,000 in aggravated damages, \$200,000 in punitive damages, as well as legal expenses. In a lengthy Decision of more than 300 paragraphs, the Adjudicator dealt with each of the heads of compensation claimed by Mr. Reyes Castillo.

- [13] The Adjudicator declined to award an income replacement indemnity and severance pay because Mr. Reyes Castillo was entitled to benefits under the AIAOD in that regard. In the Adjudicator's opinion, awarding additional amounts under these heads of damages would constitute [translation] "unjust enrichment". The Adjudicator also declined to compensate Mr. Reyes Castillo for the period of suspension without pay and for the period during which

he had received lower wages because of his gradual return to work, since the Adjudicator believed that he had jurisdiction only in matters of dismissal under section 240 of the Canada Labour Code.

- [14] Regarding aggravated damages, that is, moral damages, Mr. Reyes Castillo argued before the Adjudicator that PCR had committed a series of wrongful acts, including unfairly cutting off his employment opportunities, forcing him to return to work despite his pain, unlawfully following him, damaging his reputation in the community and unlawfully retaliating against him. PCR also allegedly committed a series of wrongful acts in a meeting with Mr. Reyes Castillo to inform him of his dismissal. Specifically, Mr. Reyes Castillo stated that PCR had refused to allow his lawyer to speak, refused to provide evidence of his misconduct, failed to immediately provide a copy of his disciplinary record, failed to obtain his version of the facts, ordered him not to contact his co-workers, and adopted a condescending, disparaging and disrespectful tone towards him.
- [15] In the Decision, the Adjudicator considered each argument, first explaining why he lacked jurisdiction in respect of some of them, and then stating why the other incidents could not be regarded as wrongful acts giving rise to a remedy for moral damages in the context of labour law. Ultimately, the Adjudicator determined that the only wrongful act attributable to PCR in the unjust dismissal of Mr. Reyes Castillo was segregating him upon his return to work, which, in the circumstances, was a punitive measure intimately linked to the dismissal itself. The Adjudicator therefore awarded Mr. Reyes Castillo \$5,000 in compensation for the mental distress caused by that wrongful act.
- [16] The Adjudicator stated that punitive damages are very limited in Quebec. Although the Canada Labour Code applies first, the Adjudicator submitted that the applicable civil law—in this case Quebec law, since PCR is domiciled in Quebec—also applies, but in a suppletive manner. Relying on article 1621 of the Civil Code of Québec, CQLR c C-1991, and section 49 of the Charter of Human Rights and Freedoms, CQLR c C-12 [Charter], the Adjudicator concluded that the evidence did not allow for the awarding of punitive damages, since no Charter right had been violated and since no other legislative provision would allow for the awarding of punitive damages.
- [17] Lastly, the Adjudicator declined to award the legal expenses sought by Mr. Reyes Castillo on the grounds that only an abuse of the right to litigate could give rise to such compensation. Finally, Adjudicator concluded that Mr. Reyes Castillo had failed to demonstrate that PCR had acted improperly in the procedures relating to his dismissal.

C. Standard of review [18] At the hearing before the Court, counsel for Mr. Reyes Castillo submitted that the standard of reasonableness applied to the Adjudicator's findings on all heads of damages except income replacement indemnity and severance pay. Mr. Reyes Castillo submitted that the standard of correctness applied to the award of these damages because the Adjudicator had in fact wrongly declined jurisdiction by declining to award a number of heads of damages because of the AIAOD. Mr. Reyes Castillo believed that that was a question of

jurisdictional boundaries as set out in paragraphs 63 and 64 of *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

- [19] PCR submitted that the reasonableness standard applied to all the heads of damages because the Adjudicator had acted fully within his exclusive jurisdiction in interpreting the AIAOD. Therefore, there was no question of jurisdictional boundaries to which the standard of correctness would have to be applied under Vavilov.
- [20] I agree with PCR regarding the applicable standard of review.
- [21] The standard of reasonableness is presumed to apply whenever a reviewing court must decide an application for judicial review of the merits of an administrative decision. There are two exceptions where this presumption is rebutted and the standard of correctness, required: where the legislature's intention so provides by means of a statutory appeal mechanism and where the rule of law requires that the standard of correctness be applied (Vavilov at para 17). The second situation will be the case for certain categories of questions, "namely constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to the jurisdictional boundaries between two or more administrative bodies" (Vavilov at para 17).
- [22] The jurisdictional questions that require the application of the correctness standard are limited to those regarding the jurisdictional boundaries between two or more administrative bodies (Vavilov at para 63). The rule of law requires "courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is incompatible with the jurisdiction of another" (Vavilov at para 64; *Canada (Public Safety and Emergency Preparedness) v Gaytan*, 2021 FCA 163 at para 24).
- [23] However, Mr. Reyes Castillo's arguments regarding income replacement indemnity and severance pay do not raise a question of jurisdictional boundaries. As described by Professor Paul Daly, this category is defined as one of "overlapping jurisdiction" (Paul Daly, "Exceptional Circumstances? O.K. Industries Ltd. v. District of Highlands, 2022 BCCA 12" (January 14, 2022), online (blog): Administrative Law Matters <<https://www.administrativelawmatters.com/blog/2022/01/14/exceptional-circumstances-o-k-industries-ltd-v-district-of-highlands-2022-bcca-12/>>). This is also the interpretation given by Sara Blake, who states that the standard of correctness applies to jurisdictional questions only in the case of "conflicting tribunal orders":

If a tribunal order prohibits what an order of another tribunal compels, such that compliance with both orders is not possible, the court applies a correctness standard to its review of each tribunal's statutory authority to issue its order. This is the one exception to the reasonableness standard of review of questions of statutory interpretation.

Sara Blake, *Administrative Law in Canada*, 7th ed. (Toronto: LexisNexis, 2022) at 246.

- [24] The correctness standard therefore applies only in those rare cases where one administrative body's interpretation of its authority is incompatible with the jurisdiction of another. As the Supreme Court of Canada pointed out in *Vavilov* at paragraph 64, "[t]he rationale for this category of questions is simple: the rule of law cannot tolerate conflicting orders and proceedings where they result in a true operational conflict between two administrative bodies, pulling a party in two different and incompatible directions" [emphasis added]. In this case, I see no risk of conflicting decisions; in fact, the Adjudicator restricted his jurisdiction in light of all the applicable legislative provisions precisely to avoid coming into conflict with the provisions of the AIAOD.
- [25] Rather, Mr. Reyes Castillo's arguments regarding income replacement indemnity and severance pay are questions of jurisdiction in the broad sense and not questions of boundaries. As the Supreme Court of Canada stated in *Vavilov* at paragraph 66, "in theory, any challenge to an administrative decision can be characterized as 'jurisdictional' in the sense that it calls into question whether the decision maker had the authority to act as it did". This is why such questions are now reviewed on a reasonableness standard. In *1120732 BC Ltd v Whistler (Resort Municipality)*, 2020 BCCA 101, at paragraph 35, the British Columbia Court of Appeal incidentally noted the importance of distinguishing between questions of jurisdiction in the broad sense and those relating to jurisdictional boundaries between two or more administrative bodies:
- [35] For the purposes of [the *Vavilov* appeal], the [Supreme Court of Canada] decided that, while the rule of law requires the correctness standard to be applied to questions related to the jurisdictional boundaries between two or more administrative bodies, it does not require the correctness standard to be applied to all jurisdictional questions. The Court specifically stated that jurisdictional questions will no longer be recognized as a distinct category attracting correctness review: para. 65. The result is that the jurisdictional power of an administrative body is to now be reviewed on the reasonableness standard unless there is a competing administrative body that may have jurisdiction.

[Emphasis added]

- [26] I would add that, in *Reyes*, regarding judicial review of the Initial Decision, the Court also found that Mr. Reyes Castillo's case did not raise "jurisdictional questions" or any jurisdictional dispute merely because the AIAOD had a bearing on the Adjudicator's analysis (*Reyes* at paras 9, 39). The mere fact that an administrative decision maker takes into account rules or principles derived from statutes other than their home statute is not a jurisdictional dispute as contemplated in paragraphs 63 and 64 of *Vavilov* (*Reyes* at para 39).
- [27] In this case, assessing the income replacement indemnity and severance pay is more a matter of interpreting the statute and legislation governing the Adjudicator's jurisdiction (*Kilgour v Canada (Attorney General)*, 2022 FC 472 at para 12). It has been clear since *Vavilov* that the legality of an administrative decision on such questions must be determined on a standard of reasonableness. Moreover, the Court has recognized on a number of occasions

that the standard of reasonableness applies to questions regarding the remedy chosen by an adjudicator under section 242 of the Canada Labour Code (*Première Nation de Atikamekw de Manawan v Boisvert*, 2020 FC 1057 [Atikamekw de Manawan] at para 12; *Tl'azt'en First Nation v Joseph*, 2013 FC 767 at para 22; *Opaskwayak Cree Nation v Booth*, 2009 FC 225 at paras 23–24).

- [28] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). To make this determination, the reviewing court asks “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74). The focus of the reasonableness standard is on the decision made by the decision maker, including both the decision maker’s reasoning process and the outcome (*Vavilov* at paras 83, 87). The burden is on the party challenging an administrative decision to show that it is unreasonable.
- [29] Reasonableness review must entail a robust evaluation of administrative decisions. However, a reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with “respectful attention” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an appropriate posture of restraint, intervening only “where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). The reasonableness standard finds its starting point in the principle of judicial restraint and deference, and requires reviewing courts to demonstrate respect for the distinct role that the legislature has chosen to confer on administrative decision makers rather than on the courts (*Vavilov* at paras 13, 46, 75). A decision cannot be set aside simply on the basis of superficial or peripheral errors, and the role of a reviewing court is not “reweighing and reassessing the evidence considered” by the administrative decision maker (*Vavilov* at para 125). To warrant the intervention of a reviewing court, the impugned decision must have serious shortcomings, such as an internally inconsistent reasoning (*Vavilov* at paras 100–101).

III. Analysis

- [30] Mr. Reyes Castillo submits that the Adjudicator’s Decision is unreasonable because the Adjudicator failed to consider all the relevant circumstances leading to his unjust dismissal and, in determining the various heads of damages, the Adjudicator ignored his own findings of fact in the Initial Decision. Mr. Reyes Castillo believes that the Adjudicator erred in analyzing and determining each of the heads of damages he had claimed, namely income replacement indemnity and severance pay, aggravated damages (or moral damages), punitive damages, and legal expenses. I will examine each one.

A. Findings of fact in Initial Decision [31] Before dealing with the various items Mr. Reyes Castillo has claimed, I will dwell briefly on the findings of fact made by the Adjudicator in the Initial Decision, which Mr. Reyes Castillo is asking the Court to accept as proven.

[32] At paragraph 25 of his written submissions, Mr. Reyes Castillo set out 18 findings of fact that he claimed the Adjudicator reached, which showed that PCR forced Mr. Reyes Castillo to return to work while he was still medically unable to perform his duties and that PCR did everything possible to make his life at work miserable and difficult.

[33] However, I note that, contrary to Mr. Reyes Castillo's statements, a number of the findings of fact that he attributed to the Adjudicator actually reflect the evidence and position that Mr. Reyes Castillo presented to the Adjudicator on various facts, not the findings that the Adjudicator made. Therefore, I am not prepared to accept Mr. Reyes Castillo's position as to the scope of the findings of fact that the Court may consider to be proven and believe instead that a more nuanced approach should be taken.

B. Income replacement indemnity and severance pay [34] Mr. Reyes Castillo is claiming an income replacement indemnity and severance pay in an amount equivalent to the difference between the wages he claims to have lost from PCR and the indemnities he received from the CNESST. Mr. Reyes Castillo submits that the Adjudicator erred by confusing the damages to be awarded for loss of employment resulting from his employment injury with the damages available for his unjust dismissal. He also argues that the Adjudicator erroneously applied the civil immunity of employers under section 438 of the AIAOD to all the civil faults committed by PCR.

[35] I respectfully disagree with Mr. Reyes Castillo.

[36] I do not dispute the principle that an unjustly dismissed employee is entitled to additional compensation where reinstatement is impossible. However, in Mr. Reyes Castillo's case, it must be taken into account that there are two overlapping actions: an action under the AIAOD seeking compensation for an employment injury and an action under the Canada Labour Code for unjust dismissal.

[37] Paragraph 242(4)(c) of the Canada Labour Code states clearly that the additional powers of arbitrators are intended to "remedy or counteract any consequence of the dismissal". The Adjudicator was therefore justified in refusing to award amounts for an income replacement indemnity and severance pay, because these heads of damages are compensatory in nature. Mr. Reyes Castillo was already receiving an indemnity under the AIAOD for the very purpose of replacing wages he would have been earning had he not suffered an employment injury and RRA and had he still been able, therefore, to perform his job as a pallet repairer. In these circumstances, there was no longer "any consequence of the dismissal" to counteract because Mr. Reyes Castillo was already in the economic position that he would have been in had he not been dismissed.

- [38] Moreover, the Adjudicator clearly noted in the Decision (at paragraphs 17 and 18) that the AIAOD authorities had determined that Mr. Reyes Castillo was no longer able to carry out the duties of his job as a pallet repairer because of his industrial accident in September 2015 and his RRA in January 2016. In other words, at the time of his disciplinary dismissal, Mr. Reyes Castillo was no longer able to carry out his work as a pallet repairer because of his functional limitations.
- [39] It is true that the indemnity received under the AIAOD did not represent 100% of the wages that Mr. Reyes Castillo had been receiving before his industrial accident. However, that was exactly the situation that Mr. Reyes Castillo would have been in had he not been dismissed. In effect, Mr. Reyes Castillo was already receiving the CNESST indemnity even before he was dismissed. The Adjudicator could therefore reasonably conclude that there was no need to award a new income replacement indemnity, since the consequences of the dismissal had already been counteracted.
- [40] Contrary to Mr. Reyes Castillo's assertion, the civil immunity of employers under section 438 of the AIAOD precludes any action seeking to make up the difference between lost wages and indemnities received as a result of an employment injury. In *Béliveau St-Jacques v Fédération des employées et employés de services publics inc.*, [1996] 2 SCR 345 at paragraph 133, the Supreme Court of Canada stated that the AIAOD represents a compromise that offers certain advantages but precludes civil liability actions seeking another form of compensation:

I am therefore of the view that s. 438 has the effect of validly barring the victim of an employment injury from bringing an action for damages under the Charter. By making this exclusion, the AIAOD clearly does not violate any of the rights guaranteed in ss. 1 to 38 of the Charter. Moreover, victims of employment injuries are not denied all forms of monetary compensation. Rather, they are subjected to a special scheme, which offers a number of advantages but which allows them to obtain only partial, fixed-sum compensation. In this sense, and although the point is not determinative, it is worth noting that this Court has already held that a similar ban on civil liability actions by victims of work accidents did not violate s. 15 of the Canadian Charter of Rights and Freedoms (*Reference re Workers' Compensation Act, 1983* (Nfld.), [1989] 1 S.C.R. 922).

- [41] The system put in place by the AIAOD is a compromise. And this compromise means that compensation is more readily available to an employee who suffers an employment injury, but the employee must accept partial compensation while foregoing the possibility of bringing a civil action. In other words, the AIAOD provides easier access to compensation for employment injuries but also sets certain guidelines and limits as to the quantum of that compensation. In this case, the undisputed evidence shows that Mr. Reyes Castillo cannot return to his previous job as a pallet repairer because of his employment injury. Whether he was dismissed or not, his income would match the amount of the indemnities paid under the AIAOD. Even if he were to find a different job, Mr. Reyes Castillo would continue to receive an indemnity to make up the difference between the income from his new job and the income established under the AIAOD for the job he held at the time of his employment

injury.

- [42] The same is true for the severance pay claimed by Mr. Reyes Castillo. The purpose of this indemnity is to provide additional compensation to workers who lose their jobs so that they can find equivalent employment. Mr. Reyes Castillo refers to 9179-8538 Québec inc c Leclerc, 2011 CanLII 97989 (CA SA) at paragraphs 34 and 35, where an adjudicator states that such compensation is intended to [translation] “counteract any consequence of the dismissal” and is subject to the adjudicator’s discretion.
- [43] With respect, I am of the opinion that this passage actually reflects the Adjudicator’s reasoning in the Decision and in no way supports Mr. Reyes Castillo’s arguments. In Mr. Reyes Castillo’s case, the Adjudicator found that the consequences of the dismissal had already been counteracted by the indemnities received under the AIAOD. Mr. Reyes Castillo did not need severance pay to give him time to find an equivalent job because the indemnity under the AIAOD would be paid to him as long as his employment injury had not consolidated, even though his employment with PCR had been terminated. It was therefore open to the Adjudicator to conclude that Mr. Reyes Castillo [translation] “did not suffer any damage as a result of having been dismissed because, had he not been dismissed, he would not have been able to perform his work” (Decision at para 130).
- [44] In Brochu c Commission des relations du travail, 2009 QCCS 3309 [Brochu], an argument similar to that of Mr. Reyes Castillo was made by the applicant, who had been dismissed without cause but was receiving an income replacement indemnity under the AIAOD for an employment injury she had suffered. The member in charge of the case had ruled that, despite her having been dismissed without good and sufficient cause, the exceptional situation created by the indemnity paid under the AIAOD and the impossibility of returning to work for the employer meant that no money was owed to the applicant as an income replacement indemnity (Brochu at para 51). The Superior Court of Québec found that the member’s reasoning was entirely reasonable. In that case, the court reiterated the statements made by the reviewing members, who emphasized that severance pay is not punitive but compensatory, which means the entitlement to severance pay is not automatic and it is therefore up to the member to determine whether severance pay is necessary in light of the circumstances of the case (Brochu at para 52).
- [45] Consequently, given the existence of an income replacement indemnity under the AIAOD and the compensatory function of the income replacement indemnity and severance pay that Mr. Reyes Castillo is claiming, I am of the opinion that the Adjudicator reasonably exercised his discretion in concluding that no additional compensation should be awarded to Mr. Reyes Castillo. As discussed earlier, the consequences of the dismissal have already been counteracted. Mr. Reyes Castillo has failed to show how this conclusion is unreasonable.

- [46] Mr. Reyes Castillo is also seeking compensation for the discipline he received before he was dismissed, submitting that it cannot be separated from the dismissal itself because it was part of an attempt at constructive dismissal orchestrated by PCR. Mr. Reyes Castillo asserts that the Adjudicator declined to exercise his jurisdiction by minimizing his discretion to grant further remedies under paragraph 242(4)(c) of the Canada Labour Code.
- [47] Again, I am not persuaded by Mr. Reyes Castillo's argument. Mr. Reyes Castillo has failed to demonstrate how these earlier disciplinary measures are [translation] "inseparable" from the dismissal itself. In fact, the disciplinary measures in question were taken in response to events quite separate from those that led to the dismissal. The sanctions in Mr. Reyes Castillo's disciplinary record related only to the quality of his pallet repair work, not his behaviour. Moreover, it does not appear that these disciplinary measures were challenged in the Initial Decision—quite the contrary. In his submissions (summarized by the Adjudicator), Mr. Reyes Castillo himself described his earlier disciplinary record as being different in nature from the misconduct for which he was dismissed (see Initial Decision at para 180). In the Initial Decision, Mr. Reyes Castillo argued that [translation] "[t]he alleged misconduct [with respect to the dismissal] ha[d] no connection with [his] previous disciplinary record". That statement by Mr. Reyes Castillo considerably undermines the argument to the contrary that he is now making before this Court.
- [48] The Adjudicator's analysis of the disciplinary measures taken before the dismissal therefore bears all the hallmarks of a reasonable decision.
- [49] In short, on all aspects of income replacement indemnity and severance pay, the Adjudicator's Decision takes into account the relevant factual and legal constraints, and I can find no fundamental flaw that would cause me to lose confidence in the Adjudicator's Decision.
- C. Aggravated damages [50] I will now deal with aggravated damages. Mr. Reyes Castillo submits that PCR has damaged his psychological well-being, physical health, dignity and reputation by the way in which he was dismissed, and that he should therefore receive appropriate compensation. Mr. Reyes Castillo submits that the Adjudicator erred in downplaying the wrongfulness of PCR's conduct.
- [51] I disagree with Mr. Reyes Castillo.
- [52] As PCR points out, citing *Atikamekw de Manawan* at paragraph 47, "[i]t is one thing to conclude that the grounds relied on to terminate [the worker's] employment are insufficient to justify his dismissal, it is quite another to conclude that they give rise to moral and punitive damages". Relying on *Honda Canada Inc v Keays*, 2008 SCC 39 [Keays] at paragraph 60, the Court in *Atikamekw de Manawan* pointed out that moral damages are "still intended to be compensatory" (*Atikamekw de Manawan* at para 47).

- [53] Having carried out a detailed analysis of the complaints made against PCR, the Adjudicator began by ruling out moral damages for complaints regarding PCR's conduct in relation to the employment injury. Since these moral damages were unrelated to the unjust dismissal, the Adjudicator declined jurisdiction to provide compensation for them. There is nothing unreasonable in this conclusion. The Adjudicator found only one fault in PCR's conduct in relation to the circumstances of the dismissal, namely PCR's negligence in assigning Mr. Reyes Castillo, on his return to work after his RRA, to a work station away from his co-workers that was not as well supplied with pallets by the forklift operators. In the Adjudicator's opinion, this was contributory negligence that fuelled Mr. Reyes Castillo's frustration and anger and ultimately led to his excessive behaviour. The Adjudicator awarded reasonable moral damages of \$5,000 to compensate for this misconduct, but nothing more.
- [54] I also note that, in the Decision, the Adjudicator dwelt at length (in close to 100 paragraphs) on the wrongful acts that, according to Mr. Reyes Castillo, PCR had committed during the dismissal meeting. The Adjudicator went through the facts surrounding Mr. Reyes Castillo's allegations one by one, ultimately concluding that PCR had committed no wrongful act during the meeting that would warrant moral damages.
- [55] The Adjudicator had the discretion to determine the damages to be awarded. This exercise was closely tied to the circumstances of Mr. Reyes Castillo's dismissal, and the Court must defer to the Adjudicator's factual findings in this regard (Vavilov at para 125; Mudjatik Thyssen Mining Joint Venture v Billette, 2020 FC 255 at para 70). Here, the Adjudicator's analysis is thorough, and the Decision provides detailed and intelligible reasons for each of the wrongful acts alleged by Mr. Reyes Castillo. Mr. Reyes Castillo raises no serious shortcoming that would cause me to lose confidence in the outcome reached by the Adjudicator (Vavilov at para 106). Mr. Reyes Castillo also provides no specific evidence that the Adjudicator failed to take into account in analyzing the alleged wrongful acts. Rather, his argument is that the Adjudicator gave little weight to these incidents in awarding aggravated damages. What Mr. Reyes Castillo is suggesting is therefore more a re-examination of the evidence. However, in the context of reasonableness review, it is not the role of the reviewing court to reassess the evidence (Vavilov at para 125; Canada (Canadian Human Rights Commission) v Canada (Attorney General), 2018 SCC 31 at para 55) and substitute its own assessment for that of the administrative decision maker.
- [56] When the Court reviews factual findings on a reasonableness standard, it is not for the Court to reassess the relative weight given by the decision maker to the relevant factors or evidence. These findings of fact require deference and restraint on the part of the reviewing court. In other words, Mr. Reyes Castillo has failed to persuade me that the Adjudicator's conclusions are not based on the evidence that was actually before him (Vavilov at para 126) or that he fundamentally misapprehended or failed to account for the evidence before him.

D. Punitive damages [57] Mr. Reyes Castillo, relying primarily on *Whiten v Pilot Insurance Co*, 2002 SCC 18, is seeking \$200,000 in punitive damages from PCR. Mr. Reyes Castillo alleges that the Adjudicator's decision not to award punitive damages is unreasonable, given the factual findings and case law on which he relied.

[58] Again, I disagree with M. Reyes Castillo. As the Adjudicator correctly pointed out, in Quebec, these damages can only be awarded where they are specifically provided for by a specific enabling enactment (*Cinar Corporation v Robinson*, 2013 SCC 73 at para 113). The Adjudicator duly considered the possibility that section 49 of the Charter might allow punitive damages to be awarded but concluded that there had in fact been no breach of the Charter that would give rise to the application of that section. The Adjudicator also pointed out that he could not identify any other legislation that would allow punitive damages to be awarded in this case.

[59] There was therefore no evidence of intent to harm or of legislation that could justify awarding punitive damages to Mr. Reyes Castillo (*Keays* at paras 62–68; *Quebec (Public Curator) v Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 SCR 211 at para 121).

[60] In light of these legal and factual constraints, I see nothing unreasonable in the Decision with respect to punitive damages.

E. Legal expenses [61] Lastly, Mr. Reyes Castillo states that it would be [translation] “fair and consistent with case law” if he were compensated for his counsel's fees in respect of the proceedings brought before both the ALT and the Court, considering the unfair and malicious nature of the dismissal and considering that PCR did not try to settle out of court. Mr. Reyes Castillo again submits that the Adjudicator's findings are unreasonable in this regard, as they unduly restrict his discretion under paragraph 242(4)(c) of the Canada Labour Code. He argues that awarding legal expenses is not limited to abuses of the right to litigate, as the Adjudicator concluded.

[62] I disagree. As PCR correctly argued, the Adjudicator rightly pointed out that the reimbursement of legal expenses is the exception rather than the rule. This type of damages “is meant to punish the conduct of one of the parties during a proceeding and not the employer's conduct at the time of the dismissal” (*Atikamekw de Manawan* at para 63). Here, however, it is PCR's conduct during the procedures relating to the dismissal that is at issue.

[63] I do not see how the Adjudicator was unreasonable in declining to award legal expenses. Mr. Reyes Castillo has not provided or identified any evidence that would substantiate any abusive, outrageous or bad faith conduct on the part of PCR during the proceedings that would make it possible to award such costs.

[64] In his submissions, Mr. Reyes Castillo tries to rely on two decisions that are not really helpful to him. The first, *Morel c Société canadienne des postes*, 2003 CanLII 43818 (QC CS), was reversed on appeal (*Société canadienne des postes c Morel*, 2004 CanLII 21187 (QC CA)) and is therefore not a precedent that can be accepted. The second, *Viel c Entreprises immobilières du terroir Ltée*, 2002 CanLII 41120 (QC CA), confirms that an abuse of rights on the merits does not necessarily lead to an abuse of the right to litigate.

[65] Again, the Adjudicator's analysis in the Decision is thorough, clear and consistent with the legal and factual constraints that bear on it. There is no reason for the Court to intervene.

F. Conclusion on reasonableness [66] A reasonable decision is one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (Vavilov at para 85). I am satisfied that this is the case here, and Mr. Reyes Castillo has not persuaded me that there are sufficiently serious shortcomings in the Adjudicator's Decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (Vavilov at paras 96, 97, 100).

[67] This is not a situation where the logical process by which the facts were deduced from the evidence was flawed, or a situation where the Adjudicator fundamentally misapprehended or failed to account for the evidence before him, or a situation where he drew a conclusion that was contrary to the bulk of the evidence (Vavilov at para 126). The adjudicator had all the facts before him and considered the relevant factors. In other words, the errors alleged by Mr. Reyes Castillo do not reveal any fatal flaws in terms of rationality or overarching logic and do not cause me to doubt the outcome reached by the Adjudicator (Vavilov at para 122).

[68] According to Vavilov, the reasons given by a decision maker are the starting point of the analysis. They are the primary mechanism by which administrative decision makers "show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner" (Vavilov at para 79). In this case, I am satisfied that the Decision explains the conclusions drawn by the Adjudicator in a comprehensive, transparent and intelligible manner (Vavilov at para 81).

[69] In the context of an application for judicial review, it is not the role of the reviewing court to reweigh and reassess the evidence (Vavilov at para 125). Mr. Reyes Castillo has not demonstrated anything other than his disagreement with the conclusions drawn by the Adjudicator, which is not a ground for the Court to intervene. The Adjudicator's reasoning is based on the evidence that was before him and is justified in light of the applicable law. The internal rationality of his reasons is flawless, and it is not for the Court to substitute a conclusion that it might consider preferable. In this case, Mr. Reyes Castillo has failed to demonstrate that the Decision is unreasonable and that the intervention of this Court would be warranted.

[70] Both in his written submissions and in his oral argument before the Court, counsel for Mr. Reyes Castillo repeated, with passion and conviction, that it was unreasonable not to allow Mr. Reyes Castillo's claims and that it should have been possible to do so because of PCR's

wrongful acts. He strongly argued that the Adjudicator's Decision was a perverse and unjust outcome that should in no way be endorsed by the Court. In his opinion, the injustice suffered by Mr. Reyes Castillo in being unjustly dismissed is flagrant, and [translation] "common sense" can only lead to one conclusion, namely that the Adjudicator's Decision, which declines to grant any form of appropriate remedy to Mr. Reyes Castillo, must be invalidated and set aside.

- [71] I can understand Mr. Reyes Castillo's frustration with the Adjudicator's very modest award of \$5,000, when the Adjudicator's Initial Decision had found unjust and wrongful dismissal.
- [72] However, the test that a reviewing court must apply in a judicial review such as this one is the standard of reasonableness. Reviewing courts must always consider the conclusions of an administrative decision maker from a perspective of reasonableness and restraint, with respectful attention to the reasons and expertise of the decision maker. This judicial restraint requires the reviewing courts to exercise discipline. On judicial review, it is not for the reviewing court to substitute its point of view for that of the decision maker, even if it could have come to a different conclusion. The reviewing court must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached if it had been in the decision maker's shoes.
- [73] A reviewing court should not conclude that the decision of an administrative decision maker is unreasonable simply because it does not like the outcome, because the outcome seems unfair, or because it could have decided otherwise. Even in situations where the factual context of an application may arouse some sympathy, the reviewing court must resist the temptation to rule on the application for judicial review on the basis of the conclusion that it could have itself drawn had it occupied the place of the decision maker (*Braud v Canada (Citizenship and Immigration)*, 2020 FC 132 at paras 51–52).
- [74] In *Trigonakis v Sky Regional Airlines Inc*, 2022 FCA 170, the Federal Court of Appeal recently noted that the role of reviewing courts is limited. It is useful to reproduce the statements it made at paragraph 9:
- [9] In oral argument, the appellant emphasized, with passion and eloquence, what he personally viewed as the general injustice of this situation, especially in light of his background and motives and his employer's conduct and motives. However, when conducting reasonableness review, the task of the Federal Court and this Court is limited: in cases like this, we can only vet the acceptability and defensibility of an administrative decision, such as the decision of the adjudicator here, based on the legal standards set in the legislation, any other legal documents such as contracts, and the facts found in the evidentiary record. We cannot operate outside of these constraints. We cannot do whatever might strike someone—or us—as right or just in a general sense.

[75] I must adopt these principles set out by the Federal Court of Appeal. Contrary to what counsel for Mr. Reyes Castillo suggested, this is not an easy solution for reviewing courts responsible for overseeing administrative decision makers. On the contrary, the standard of reasonableness imposes a discipline on the courts, which must respect the legislature's choice and not usurp the decision-making authority with which the legislature has entrusted administrative decision makers.

IV. Conclusion

[76] For all these reasons, Mr. Reyes Castillo's application for judicial review is dismissed. The reasons provided in the Adjudicator's Decision justify all the conclusions in relation to the various heads of damages claimed by Mr. Reyes Castillo and enable the Court to trace the Adjudicator's reasoning (Vavilov at paras 86, 104). Mr. Reyes Castillo has not established any fundamental flaws that would require the Court to intervene (Vavilov at para 100).

[77] PCR is entitled to its costs. In the exercise of my discretion, I believe that a lump sum of \$2,000 is reasonable in the circumstances.

JUDGMENT in T-621-22

THIS COURT'S JUDGMENT is as follows:

The application for judicial review is dismissed. Costs are payable by the applicant to the respondent in the amount of \$2,000, including taxes and disbursements.

"Denis Gascon"

Judge

Certified true translation

Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

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T-621-22

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JUDGMENT AND REASONS:

GASCON J.

DATED:

APRIL 12, 2023

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