

CANADA / JUDGMENT

Johnson v. Canada (Attorney General)

2024 FC 1934

COURT

Federal Court

DECIDED

29 November 2024

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Johnson v. Canada (Attorney General)

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2024 FC 1934

File numbers

T-1767-23

Decision Content

Date: 20241129

Docket: T-1767-23

Citation: 2024 FC 1934

Ottawa, Ontario, November 29, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

WILLIAM A. JOHNSON

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Applicant, Mr. Johnson, is an inmate at Warkworth Institution, a medium security institution in Ontario. In June 2022, Mr. Johnson was found guilty of the disciplinary offence of “willfully disobey[ing] a written rule governing the conduct of inmates” at a minor court hearing. The Attorney General states that the “written rule” at issue was a requirement to wear a mask. Throughout the record, and by multiple decision-makers, there is reference to a requirement to wear a mask. Sometimes there is a reference to a “regional direction” and sometimes there is a reference to masks being required during a particular “timeframe”.

[2] The problem is that neither Mr. Johnson nor this Court have been provided with the text of the rule he has been found guilty of disobeying. This is not a minor problem but an alarming one that goes to the core of the issues before the Court.

[3] Mr. Johnson was charged and found guilty of a disciplinary offence because he “willfully disobey[ed] a written rule.” Accordingly, Mr. Johnson must be provided with the text of the “written rule” that he is said to have “willfully disobey[ed].” On this basis alone, the judicial review is allowed and sent back for redetermination. I also find the decision of the Special Advisor to the Commissioner (“the Commissioner”) to be unreasonable with respect to two other issues Mr. Johnson raised in his final level grievance: the unfairness of the minor court hearing process and his harassment allegations.

II. Preliminary Issues: Mr. Johnson’s Affidavit and Service of Materials [4] The Respondent argued that a number of paragraphs in Mr. Johnson’s supporting affidavit should be struck for two reasons: i) the information in the affidavit was not before the decision-maker as is generally required on judicial review and did not fit within any permitted exceptions; and ii) the affidavit contained argument amounting to Johnson’s opinion about the conduct of Correctional Service Canada staff. At the judicial review hearing, Mr. Johnson conceded that some of the paragraphs referenced by the Respondent could be struck for being argumentative.

[5] I have reviewed the affidavit and agree that a number of paragraphs need to be struck either because the information was not before the decision-maker or it is not “confined to facts within the deponent’s personal knowledge” (Rule 81(1) of the Federal Courts Rules, SOR/98-106). As a result, I will not be considering the following paragraphs of Mr. Johnson’s affidavit: 6-17, 19, 22, 24-27, 32-33, 40-46, 48-53.

[6] Prior to the hearing, Mr. Johnson argued that he had not been properly served with the Respondent’s book of authorities. I ensured prior to the hearing that Mr. Johnson had a printed copy of the book of authorities. As I was satisfied that all of the documents in the record were before Mr. Johnson (Rule 147 of the Federal Courts Rules), and there were no requests for adjournments for additional time to review any materials, we proceeded with the judicial review hearing as scheduled.

III. Procedural History [7] On June 20, 2022, Mr. Johnson was charged with a “minor disciplinary offence” for violating section 40(r) of the Corrections and Conditional Release Act, SC 1992, c 20 [CCRA], namely that he “wilfully disobey[ed] a written rule governing the conduct of inmates.”

- [8] Mr. Johnson alleges that Correctional Manager Pitts (“CM Pitts”) directed staff to charge him for not wearing a mask. Mr. Johnson argues that at the time and in the area where this happened, staff and other inmates were not wearing masks. To establish this, three days after he was charged, Mr. Johnson requested video surveillance recordings of the particular area during the time period where he was charged, as well as other video evidence (or an admission) that other staff and inmates do not wear masks in living units and at recreation.
- [9] On June 28, 2022, Mr. Johnson attended the minor court hearing on the mask charge. Mr. Johnson pled not guilty but accepted that he was not wearing a mask at the time he was charged. He was found guilty of the minor disciplinary offence and issued a warning (section 44(1)(a) of the CCRA).
- [10] An inmate can grieve issues regarding the procedures or decisions relating to their disciplinary hearing, including allegations of harassment (section 90 of CCRA; Guidelines 081-1 Offender Complaint and Grievance Process, Annex B). Mr. Johnson filed a grievance on a number of grounds, including: 1) that there was no “written rule” requiring a mask to be wore; 2) that it was unfair for the same correctional manager who had instructed that he be charged be the decision-maker at the minor court hearing; 3) that he was being harassed by being selectively targeted with the mask rule as a reprisal for his previous grievances against this same correctional manager; and 4) that his requests for video surveillance footage were not addressed.
- [11] The Acting Warden dismissed Mr. Johnson’s initial level grievance. Mr. Johnson then filed a final level grievance that was dismissed in part on May 19, 2023 by the Commissioner. It is the Commissioner’s decision that Mr. Johnson is challenging on judicial review.

IV. Issues and Standard of Review [12] Mr. Johnson raises a number of issues on judicial review. It is unnecessary for me to address all of the issues raised. The determinative issue is the failure to provide Mr. Johnson with the written rule that he is said to have violated. I also considered Mr. Johnson’s arguments about the Commissioner’s analysis of the harassment allegation and the procedure followed at the minor court hearing. I see no basis to depart from the presumption that this Court ought to review the merits of the Commissioner’s decision on the basis of the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23).

V. Analysis A. Written Rule Requirement [13] Mr. Johnson was found to have disobeyed a “written rule.” The rule was described in various ways in the record but no text of the rule was provided to Mr. Johnson throughout the charge and grievance process.

- [14] The Inmate Offence Report and Notification of the Charge describes the incident as “Inmate Johnson ... not wearing a mask and has been informed to wear one several times.” There is no reference to any document that sets out the requirement of wearing a mask.
- [15] At the minor court hearing, the correctional manager presiding over the hearing explained the charge at issue in this way:
- ...you were told to wear a mask on June 20. This charge was written in the morning, so I think it was at feeding time. Feeding time is a time when a lot of inmates are in the same area together, all close together and we are every careful with asking to wear a mask and you refused to wear a mask.
- [16] The Acting Warden who dismissed Mr. Johnson’s initial level grievance described the offence as “occur[ring] within a timeframe where inmates were required to wear a mask as per the Regional direction to prevent the spread of COVID 19.”
- [17] The Commissioner’s decision on Mr. Johnson’s final grievance also references the “regional direction.” But neither the Acting Warden nor the Commissioner provided Mr. Johnson with the text of the “regional direction” in the grievance process.
- [18] At the judicial review hearing, Counsel for the Attorney General acknowledged that the “regional direction” being referenced and specifically the “written rule” at issue were not in the record before me. Counsel explained her understanding of the written rule in question as being related to the “integrated risk management framework” but that this framework was not referenced by the decision-makers and therefore it was not provided in the record. Counsel noted that the policy she was referencing “changed frequently” and that it had changed the day before the charge against Mr. Johnson. None of what Counsel was referencing has a foundation in the record before the Court and amounts to counsel giving her own evidence.
- [19] I am left not knowing what the “rule” said, including the particularities of when and to whom it applied, nor do I know when the rule was published and distributed. A general description of the rule is not sufficient. Ultimately, it is unreasonable to discipline an inmate for disobeying a “written rule” and not to tell them exactly what the rule is and where it is “written.”

B. Unfair Process at Minor Court Hearing [20] Once a charge of a disciplinary offence under section 40 of the CCRA is made, section 43(1) requires that a hearing be conducted to establish whether the inmate is guilty. Minor disciplinary offence hearings are conducted by “the institutional head or staff member designated by the institutional head” (section 27(1) of Corrections and Conditional Release Regulations, SOR/92-620 [CCRR]).

- [21] The decision-maker at Mr. Johnson’s minor court hearing was CM Pitts. At the hearing, Mr. Johnson raised his concern that CM Pitts should not preside over the hearing because he was the one who had directed other staff to charge him with the disciplinary offence at issue:

But you were standing right there when I was in the line and you pointed your finger right at me and told staff to charge me while there was other people around walking around without mask and you didn't bother saying anything to anybody else.

- [22] CM Pitts pointed out that another officer formally charged Mr. Johnson on the Notification of the Charge sheet, and a different officer witnessed it. CM Pitts did not recuse himself.
- [23] Mr. Johnson grieved that CM Pitts failed to recuse himself despite having instructed staff to charge him. The Commissioner found that since the requirement to wear a mask was a "regional direction" and "as he was not the charging officer on the Notification of Charge sheet, it was appropriate for the CM to preside over your court hearing." The Commissioner relied on paragraph 28 of the Directive CD 580: Discipline of Inmates (2021-06-28) that states: "Delegated staff members must recuse themselves from conducting the hearing if they were directly involved in incidents leading to the laying of charges."
- [24] The Commissioner does not explain why CM Pitts not having been the "charging officer" puts an end to the inquiry as to whether he had been "directly involved in incidents leading to the laying of charges." The Commissioner's response does not grapple with Mr. Johnson's concern. Mr. Johnson consistently raised the same issue: his view that since CM Pitts had instructed the officer to charge him, CM Pitts had been "directly involved" in the laying of the charges. Without more explanation, the Commissioner's reference to CM Pitts not being the charging officer is not an answer to this concern.

C. Harassment Allegations [25] Mr. Johnson alleged that he was selectively targeted with the mask rule as a reprisal for his previous grievances against CM Pitts. He repeatedly alleged that other staff and inmates were not wearing masks at the time he was charged but he was singled out for discipline.

- [26] The Commissioner found that the process used to address Mr. Johnson's harassment complaint at the initial level grievance stage had not been appropriate. Referencing Guidelines 081-1: Offender Complaint and Grievance Process, the Commissioner noted that there were two stages to evaluating a harassment allegation. The first step requires a determination of whether the allegations, if proven, would meet the applicable definition of harassment. The Commissioner determined that Mr. Johnson's allegations of being targeted as a reprisal for past grievances would meet the definition of harassment if proven.
- [27] At the second stage, the decision-maker "must give consideration to convening an outside investigation into the matter in order to ascertain whether the alleged conduct actually occurred." An outside investigation is not required where the decision-maker determines that they can "respond immediately to the issue(s) raised in the grievance, when they determine that there is sufficient information available to ascertain whether the alleged misconduct actually occurred." In making this assessment, the decision-maker must document the information they relied upon to decide whether the allegation was founded or unfounded.

[28] The Commissioner found the harassment allegations unfounded. The Commissioner found that CM Pitts charged Mr. Johnson because he violated an institutional rule and that there was insufficient evidence that he was charged as harassment for past grievances.

[29] The Commissioner's determination that the harassment allegations are unfounded lacks justification and transparency and is therefore unreasonable. The Commissioner does not explain the basis on which he finds Mr. Johnson's allegations are unfounded and need no outside investigation. Nor does the Commissioner address the main issue repeatedly raised by Mr. Johnson – namely, that he was selectively targeted with a rule not being imposed on others. There is no response to this issue. Even if the charge is a valid one, Mr. Johnson's concern is that he was being singled out for its application. The Commissioner does not directly address this concern.

VI. Disposition [30] I allow the judicial review and send it back to the Commissioner to be redetermined. The Attorney General sought costs in the amount of \$500.00. Given my determination above, I decline to order any costs.

JUDGMENT in T-1767-23

THIS COURT'S JUDGMENT is that:

The application for judicial review is allowed;

The decision of the Special Advisor to the Commissioner, dated May 19, 2023 , is set aside and the matter sent back to the Commissioner for redetermination; and

No costs are awarded to either party.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-1767-23

STYLE OF CAUSE:

WILLIAM A. JOHNSON v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING:

held by videoconference

DATE OF HEARING:

May 23, 2024

JUDGMENT AND REASONS:

SADREHASHEMI J.

DATED:

November 29, 2024

APPEARANCES:

William A. Johnson

For The Applicant ON HIS OWN BEHALF

Ramesha Javed

For The Respondent

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario

For The Respondent

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Prepared on 26 October 2026 · Esheria