Federal Court of Appeal | Cour d'appel fédérale

Date: 20260113

Docket: A-23-25

Citation: 2026 FCA 5

CORAM: **DE MONTIGNY C.J.**
STRATAS J.A.
BIRINGER J.A.

BETWEEN:

GHANI OSMAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on January 13, 2026.
Judgment delivered from the Bench at Toronto, Ontario, on January 13, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: DE MONTIGNY C.J.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 13, 2026).

DE MONTIGNY C.J.

[1] The applicant, Ghani Osman, seeks judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board ("the Board"). In its decision, 2024 FPSLREB 180 ("the Decision"), the Board dismissed two complaints filed by the applicant pursuant to the *Canada Labour Code*, R.S.C. 1985, c. L-2 ("the Code"), and two grievances filed pursuant to the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22. These complaints and grievances result from some emails sent by the applicant to his managers and others in the workplace in the

Department of Employment and Social Development (“the respondent” or “the employer”). These reasons will focus on the grievances, since the applicant does not challenge the Board’s findings relating to his complaints under the Code.

[2] There is no need to delve too deeply into the facts leading to the dismissal of the application, as they have been extensively addressed by the Board and are not really in dispute. The triggering event was a work refusal initiated in December 2019 because of alleged encounters with another employee who would have told him that he was being watched and that he was on a “watch list”. The employer informed the applicant a few days later that he was to work from home and that it would launch an investigation into the refusal-to-work complaint.

[3] The employer then became concerned about the applicant’s fitness for duty because of subsequent email correspondence he had sent to his managers and other individuals shortly after his work refusal, and due to changes observed in his overall behaviour. At the beginning of January 2020, the employer therefore placed him on leave with pay pending the completion of a fitness to work evaluation (“FTWE”).

[4] Nine months later, the applicant had still not provided a FTWE from his physician and refused to attend at an appointment arranged by the Employer with an independent physician. The employer then changed his leave status to sick leave at the end of October 2020. That change in leave status from leave with pay to sick leave was the subject of his first grievance, whereby the applicant alleged that it was disguised disciplinary action.

[5] After approximately 17 months of unsuccessful efforts to obtain the required information as to the applicant’s fitness to work, the employer terminated his employment on June 9, 2021.

In its termination letter, the employer made it clear that the intention had always been to ensure that the applicant was fit to perform his duties and to ensure the health and safety of all employees. Because the applicant refused to participate in the return-to-work process, the Employer came to the conclusion that the situation could not be sustained any further and terminated his employment.

[6] The applicant filed a second grievance with respect to that decision. He argued that the respondent's termination of his employment was not for cause under paragraph 12(1)(*e*) and subsection 12(3) of the *Financial Administration Act*, R.S.C., 1985, c. F-11 ("the Act"), but a disguised disciplinary action.

[7] After having conducted a thorough review of the evidence and of the arguments submitted by the parties, the Board dismissed both grievances.

[8] With respect to the leave grievance, the Board conducted a detailed analysis of the circumstances. After noting that it is a fact-driven inquiry and that the grievor had the burden of proving on the balance of probabilities that the employer's actions were meant to correct the behaviour of the employee, the Board concluded that the applicant had failed to meet this burden and that it could not discern any disciplinary intent on the employer's part. On the contrary, the employer wanted to resolve the issue of the applicant's fitness to work as expeditiously as possible, and it was the applicant who refused to cooperate.

[9] With respect to the termination grievance, the Board also concluded that the employer had cause to terminate the applicant's employment for non-disciplinary reasons after a detailed review of the relevant legal principles and the evidence. The Board found that the employer had legitimate concerns about workplace safety and the applicant's overall state of mind, and that the applicant had been given "ample opportunity" to provide a report from his treating physician regarding his fitness to work.

[10] The parties agree that the applicable standard of review is reasonableness. When applying that standard, the role of a reviewing court is not to reassess the evidence or to ask itself whether it would have come to the same decision, but rather to focus on the decision maker's decision to determine if it is based on an internally coherent and rational chain of analysis and if it is justified in relation to the relevant facts and law: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 83, 85, and 99-101. As this Court noted in past decisions, the Board is entitled to a high degree of deference because of the factually-suffused nature of its decisions within the specialized employment context: see *Canada (Attorney General) v. National Police Federation*, 2022 FCA 80 at paras. 84-86; *Insch v. Canada (Attorney General)*, 2019 FCA 211 at para. 48.

[11] In the case at bar, the applicant appears to be re-arguing his case in an attempt to achieve a different result. With respect to his first grievance, he claims that the Board failed to consider the punitive nature of the employer's actions and unreasonably concluded that the imposition of forced sick leave with pay did not constitute disguised disciplinary action. The gist of his

argument is that the reclassification of the reason for his absence from paid leave to sick leave with pay was based on his failure to meet the FTWE deadline and was therefore punitive.

[12] In our view, the Board properly identified the test and principles for analyzing a claim of disguised discipline, and did not err in stating that this is a "fact-driven inquiry" as this Court confirmed in *Bergey v. Canada (Attorney General)*, 2017 FCA 30 at para. 37.

[13] In applying the law to the evidence in front of it, the Board demonstrated a rational chain of analysis. It relied on the applicant's own accounts to his employer describing mental health struggles, and turned to the collective bargaining agreement's sick leave provision that reads "[a]n employee shall be granted sick leave with pay when he or she is unable to perform his or her duties because of illness or injury…": Decision at para. 276. In the context of the perceived threats the applicant sent to fellow employees, the Board reasonably concluded that the employer's actions were guided by safety concerns rather than disguised discipline. The employer could arguably have put the applicant on sick leave with pay as soon as it was made aware of the allegedly threatening emails in January 2020; the fact that it waited until October 2020 does not mean that it had no legitimate concerns about the applicant's mental health much earlier.

[14] As for the second grievance relating to the applicant's termination, we also find that the Board's decision was reasonable. Again, the applicant argues that it was unreasonable for the Board to conclude that the employer had just cause under paragraph 12(1)(*e*) of the Act to terminate his employment based on his refusal to undergo a FTWE. He relies on *Burke v. Deputy*

Head (Department of National Defence), 2019 FPSLREB 89 [*Burke*], for the proposition that an employer cannot compel disclosure of personal medical information absent the employee's consent.

[15] Here again, we agree with the Board's reasoning and its interpretation of *Burke* and related Federal Court jurisprudence; the case law stands for the proposition that the applicant's right to privacy and bodily integrity must be balanced with the employer's obligation to ensure a safe workplace: *Canada (Attorney General) v. Grover*, 2007 FC 28 at para. 65.

[16] Subsection 12(3) of the Act provides that termination of employment under paragraph 12(1)(*e*) may be made only for cause. The Board established that the applicant's refusal to participate in the FTWE process was that cause, and that the employer had established reasonable and probable grounds to require the evaluation.

[17] The Board found that the employer was concerned both for the applicant's own health, and for the safety of its other employees. While the applicant claimed before the Board that his assertions to "defend myself by all [and] any mean[s]. I am not afraid of anymore [*sic*] consequences from now on" referred solely to judicial and administrative recourses, the Board correctly noted that "only the grievor knew what he meant by the words that he used in his email" and that an employer "must take seriously statements or utterances that amount to a threat": Decision at paras. 323 and 336.

[18] Having established the need for an evaluation, the Board noted that the employer offered the applicant several options for obtaining a FTWE, encouraged him to reach out to his bargaining agent to discuss the consequences of not participating in the assessment process, and continued to engage in communication with him to resolve the impasse. It was only after 17 months that the employer moved to terminate his employment. The Board's conclusion, that the applicant's refusal to provide evidence of his fitness to work provided cause and "effectively made it impossible for the employer to responsibly return him to the workplace", was well within the range of possible, acceptable outcomes that are defensible in light of the facts and the law.

[19] Accordingly, we will dismiss the application for judicial review, without costs.

"Yves de Montigny"
Chief Justice

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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