

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220316

Docket: A-94-20

Citation: 2022 FCA 45

**CORAM: BOIVIN J.A.
DE MONTIGNY J.A.
LOCKE J.A.**

BETWEEN:

ANDREW TULK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online videoconference hosted by the registry
on March 16, 2022.

Judgment delivered from the Bench at Ottawa, Ontario, on March 16, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on March 16, 2022).

BOIVIN J.A.

[1] Mr. Tulk, the applicant, challenges a decision of the Federal Public Sector Labour Relations and Employment Board (the Board), rendered on March 3, 2020 (2020 FPSLREB 25). The applicant grieved the conclusions of an investigation pursuant to a harassment complaint.

The Board dismissed the applicant's grievance under paragraph 209(1)(b) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 (the Act).

[2] Before this Court, the applicant essentially argues that the Board ignored evidence. However, the applicant's disagreement with the Board's interpretation of the evidence is not sufficient to warrant the Court's intervention. In fact, the applicant is asking us to reweigh the evidence, which is not the role of this Court (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 125, 441 D.L.R. (4th) 1 (*Vavilov*)).

[3] It was thus open to the Board to find that it had no jurisdiction over this matter as the applicant retired on a voluntary basis. Indeed, pursuant to section 63 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13, retirement is a *de facto* voluntary termination of employment from the federal public service and the record does not demonstrate that the applicant alleged disciplinary action (e.g. resignation letter dated August 2013 (Respondent's record, p. 27); grievance form dated June 2013 (Applicant's record, p.37)). Hence, if a grievance does not relate to a disciplinary action, the Board does not have jurisdiction to hear it under paragraph 209(1)(b) of the Act. It was therefore reasonable for the Board to conclude that it lacked jurisdiction (*Vavilov*).

[4] Lastly, we all agree that no procedural unfairness or bias occurred in this case.

[5] For all of these reasons, the application for judicial review will be dismissed, with costs.

“Richard Boivin”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-94-20

STYLE OF CAUSE: ANDREW TULK v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: BY ONLINE
VIDEOCONFERENCE

DATE OF HEARING: MARCH 16, 2022

**REASONS FOR JUDGMENT OF THE COURT
BY:** BOIVIN J.A.
DE MONTIGNY J.A.
LOCKE J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

APPEARANCES:

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