

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230119

Docket: A-46-22

Citation: 2023 FCA 14

**CORAM: WOODS J.A.
LASKIN J.A.
MONAGHAN J.A.**

BETWEEN:

NILESH SHREEDHAR

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on January 19, 2023.
Judgment delivered from the Bench at Toronto, Ontario, on January 19, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

LASKIN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 19, 2023).

LASKIN J.A.

[1] The applicant, Mr. Shreedhar, seeks judicial review of a decision of a panel of the Federal Public Sector Labour Relations and Employment Board (indexed as *Shreedhar v. Treasury Board (Canada Border Services Agency)*, 2022 FPSLREB 3). Following a 14-day hearing, the Board decided a number of grievances filed by Mr. Shreedhar against his employer, the CBSA. His application challenges only one element of the decision on one of his grievances—the

portion of the decision in which, having found that in demoting Mr. Shreedhar the CBSA discriminated against him based on disability, the Board ordered his reinstatement only effective February 11, 2020, the first day of the hearing before the Board.

[2] Mr. Shreedhar puts forward two grounds for his application. First, he submits that this element of the Board's decision was procedurally unfair. He states that while he argued before the Board that it should reinstate him to his former position retroactive to either August 2012 or July 2013, the employer made no submissions on the appropriate reinstatement date, and the Board did not put the parties on notice that it was considering a reinstatement date later than July 2013. This silence on the part of the Board, he submits, prevented him from knowing the case he had to meet.

[3] Second, and alternatively, Mr. Shreedhar submits that the Board's decision was unreasonable. He says that the Board failed to take a principled approach to the remedy, and that the result was an arbitrary decision that failed to recognize the harsh financial consequences its order would have for Mr. Shreedhar, and to explain the basis for making the order.

[4] We are all of the view that neither of these grounds is made out.

[5] First, we see no procedural unfairness in the way in which the Board dealt with the date of reinstatement. That issue was squarely in play before the Board; it was therefore incumbent on the parties to make whatever submissions they wished to make in relation to it. Mr. Shreedhar had, and exercised, the right to address the reinstatement date issue in his submissions. The fact

that the employer chose not to do so does not mean that the Board was required to canvass the parties again for their views on the issue before rendering its decision. The Board was fully entitled to fashion a remedy without first consulting the parties on the remedy it proposed to grant: *Canada (Attorney General) v. Canadian Federal Pilots Association*, 2017 FCA 100 at para. 8.

[6] Second, we see no basis to conclude that the Board’s decision was unreasonable.

[7] Under the judicial review framework set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 85, 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.” The burden is on the party challenging a decision to show that it is unreasonable, a conclusion that requires showing that the decision contains a serious flaw: *Vavilov* at para. 100. The reviewing court must, in addition, refrain from reweighing and reassessing the evidence considered by the decision maker: *Vavilov* at para. 125 (internal citations omitted). Reviewing courts must also ordinarily refrain from themselves deciding the issue that was before the decision maker, and must respect the decision maker’s role and expertise: *Vavilov* at paras. 75, 83.

[8] The Board in this case had wide remedial authority—authority to make the order that it considered “appropriate in the circumstances”: subsection 228(2) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2.

[9] In its reasons, the Board set out coherently and rationally the basis for its decision on remedy. It explained that so much time had elapsed from the onset of Mr. Shreedhar’s difficulties—some 14 years in total—that it was hard to determine what remedy would be appropriate. The particulars of the job might have changed, as might have Mr. Shreedhar’s abilities, given his diagnosis, and the fact that he had not been carrying out any of the tasks of the job for almost 10 years. The Board noted that the evidence showed that Mr. Shreedhar lacked many of the skills and competencies required by his former position, and found that the evidence failed to establish that, even with accommodation, Mr. Shreedhar could carry out the functions of the job. The Board was also concerned that Mr. Shreedhar and his bargaining agent had been “complicit” with the employer in not properly participating in the accommodation process as called for by the Supreme Court of Canada in *Central Okanagan School District No. 23 v. Renaud*, 1992 CanLII 81 (SCC), [1992] S.C.R. 970.

[10] As its reasons disclose, the Board thus took into account a series of relevant factors in coming to its conclusion. In our view, Mr. Shreedhar has not shown that the Board’s decision on the date of reinstatement was unreasonable.

[11] For these reasons, the application is dismissed. In accordance with the parties’ agreement, we make no award of costs.

“J.B. Laskin”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-46-22

STYLE OF CAUSE: NILESH SHREEDHAR v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: JANUARY 19, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** WOODS J.A.
LASKIN J.A.
MONAGHAN J.A.

DELIVERED FROM THE BENCH BY: LASKIN J.A.

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