Federal Court Cour fédérale

Date: 20231206

Docket: T-906-19

Citation: 2023 FC 1631

Toronto, Ontario, December 06, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

DWIGHT CREELMAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant, a self-represented inmate, seeks judicial review of a re-determination decision made by the Assistant Commissioner, Policy [Assistant Commissioner] of the Correctional Service of Canada [CSC] denying the Applicant's grievance about a change in the CSC's policy concerning the processing of Canada Pension Plan [CPP] cheques [Direction].

[2] For the reasons that follow, I am dismissing the application for judicial review. The Assistant Commissioner considered the Applicant's arguments that the Direction was arbitrary and discriminatory, and provided intelligible, justified and transparent reasons for denying his grievance.

II. Background

A. The Direction

[3] In 2013, the Direction was issued by the CSC's National Headquarters stating that all offenders' CPP cheques were to be deposited when they are received by an institution's finance department, rather than divided over a number of pay periods, as was the practice.

[4] The Applicant elected to start receiving his CPP benefits at the age of 60 in April 2015. In August 2015, the Applicant received a letter from the Warkworth Finance Department informing him that effective September 1, 2015, his monthly CPP cheques would no longer be split between two-week pay periods, but rather would be processed and deposited once a month when they were received. The Applicant was advised that National Headquarters had mandated that the Warkworth Institution implement this accounting change pursuant to the Direction as it was the only institution at that time that did not comply.

[5] All inmates of federal institutions have an Inmate Trust Fund, comprising of a current account and a savings account: *Corrections and Conditional Release Regulations*, SOR/92-620, s 111(2) [*CCRR*]. Deductions are made from an offender's income (including income paid from a

government source such as CPP benefits) before their earnings are deposited into their account: *Corrections and Conditional Release Act*, SC 1992, c 20, s 78(2)(a) [*CCRA*]; *CCRR*, s 104.1(3).

[6] In accordance with the Commissioner's Directive 860, entitled "Offender's Money" [CD 860], the maximum allowable amount that may be deposited in an inmate's current account is $69 per pay period. The balance is to be deposited into the inmate's savings account.

[7] Prior to the Direction being implemented, the amount of $69 was deposited into the Applicant's current account every two weeks in respect of his CPP benefits. Following Warkworth Institution's implementation of the Direction, only one monthly payment of $69 is deposited in the Applicant's current account for the pay period within which his CPP cheque is processed.

B. The Applicant's Grievance

[8] The Applicant filed a grievance with the CSC challenging the Direction. He argued that the Direction was arbitrary because the CPP cheque was intended to cover an entire month, but that the CSC is treating the CPP benefits as though they only cover the two-week pay period in which the funds arrive. The Applicant further argued that the Direction was discriminatory on the basis of age, contrary to the *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*], because his pension income was treated differently than other sources of income. The Applicant's grievance was denied.

[9] The Applicant successfully challenged the grievance decision before this Court on judicial review. By decision dated May 14, 2018, Justice Favel determined that the decision was

unreasonable for a number of reasons. First, Justice Favel concluded that the decision-maker failed to examine whether the Direction is discriminatory in its effects. More particularly, the decision did not address whether pension payments were, as the Applicant alleged, the only type of income that cannot be managed so that deposits are made every two weeks in the inmate's current account. Second, the Court found that the decision failed to engage with any of the Applicant's arguments on arbitrariness: *Creelman v Canada (Attorney General)*, 2018 FC 507.

C. The Assistant Commissioner's decision

[10] The Applicant's grievance was re-determined by the Assistant Commissioner on April 8, 2019. It is this re-determination decision that is under review.

[11] After considering the Applicant's arguments that the Direction was arbitrary and discriminatory, the Assistant Commissioner denied the Applicant's grievance, concluding that:

> In consideration of the aforementioned, review at the National level has determined that CSC's decision to input cheques in the pay period they are received is in accordance with legislation and policy pertaining to the management of offender's money for release, and the safety of persons and the security of institutions. Furthermore, it has been determined that CSC did not engage in a discriminatory practice given that other types of payments are processed once a month, and thus cannot be divided over different pay periods. Consequently, your grievance is denied.
>
> Offender Final Grievance Response dated April 8, 2019 at p 4 [Decision].

III. Issue and Standard of Review

[12] The issue for determination in this application is whether the Assistant Commissioner erred in denying the Applicant's grievance. In his grievance, the Applicant claimed that the Direction was arbitrary and discriminatory.

[13] In his Memorandum of Fact and Law, however, the Applicant makes extensive submissions on an issue that was not raised in his grievance. More particularly, the Applicant asserts that it is discriminatory for the CSC to deduct a higher percentage (30%) for food and accommodation on prescribed sources of income, including CPP benefits, than it does from inmate pay (22%): Applicant's Memorandum of Fact and Law at paras 26-32, 63-66, 85, 92(2).

[14] As I explained during the hearing, on judicial review before this Court, an applicant is precluded from raising issues that were not before the decision-maker: *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 86, 98. As a result, I did not consider this legal issue as it was not grieved by the Applicant and thus not considered by the Assistant Commissioner. Further, while the Applicant raised a procedural fairness issue in his Notice of Application, he did not pursue it in his written or oral submissions. I therefore did not consider that issue either.

[15] The standard of review applicable to the CSC's decisions is reasonableness: *Ewert v Canada (Attorney General)*, 2018 FC 47 at para 15; *McMaster v Canada (Attorney General)*, 2017 FC 25 at para 21; *Skinner v Canada (Attorney General)*, 2016 FC 57 at para 21; *Fischer v Canada*

(Attorney General), 2013 FC 861 at para 22. 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*].

[16] Further, this Court has determined that the CSC is owed a high degree of deference in grievance matters due to its expertise in inmate and institutional management: *Ewert v Canada (Attorney General)*, 2019 FC 733 at para 29 [*Ewert 2019*]; *Johnson v Canada (Attorney General)*, 2018 FC 582.

IV. Analysis

A. Assistant Commissioner's decision is reasonable

[17] Reading the Assistant Commissioner's reasons globally, the decision is reasonable. The decision addresses the two grounds raised by the Applicant's grievance, namely that the Direction was arbitrary and discriminatory, and after considering relevant factors, the Assistant Commissioner denied the grievance.

(1) Reasonable determination that the Direction is not arbitrary

[18] As a starting point, defining the term "arbitrary", as it is commonly understood, is a useful exercise. Arbitrary is defined as "made without consideration of or regard for facts, circumstances, fixed rules, or procedures": *Black's Law Dictionary*, 11th edition. The Oxford English Dictionary defines it in similar terms, "[d]erived from mere opinion or preference; not based on the nature of

things": *Oxford English Dictionary*, 3rd edition. These definitions assist in considering whether the Assistant Commissioner's assessment of the arbitrariness of the Direction is reasonable.

[19] As set out below, I find that the Assistant Commissioner reasonably justified the rationale of the Direction with reference to relevant legislative and policy objectives. In that vein, it is a reasonable conclusion that the Direction is not arbitrary. Notably, this Court has found that government actions that have a legislative basis are justified, not arbitrary: *Fortune Dairy Products Limited v Canada (Attorney General)*, 2020 FC 540 at paras 108-109.

[20] In his grievance, the Applicant alleged that the Direction was "arbitrary given that CPP cheques are meant to cover a month's worth of living". The Applicant further claimed that the new method of inputting CPP cheques had "resulted in less money being deposited into [his] current account": Decision at p 1.

[21] In addressing the Applicant's allegations, the Assistant Commissioner first considered the CSC legislation and policy related to the management and processing of offenders' money. Subsection 5(c) of the *Corrections and Conditional Release Act*, SC 1992, c 20 [*CCRA*] provides that the CSC is "responsible for the preparation of inmates for release". The Assistant Commissioner explained that this legislative provision "is to be read in conjunction with CD 860": Decision at p 2.

[22] One of the main purposes of CD 860 is to "encourage offenders to budget their money so they have funds for authorized expenditures and for their release". As noted by the Assistant

Commissioner, in accordance with CD 860, a maximum of $69 per two week pay period may be deposited into an offender's current account. The balance – 10% or the excess of $69, whichever is more – is deposited to an offender's savings account: Decision at p 2.

[23] As a result of the Direction, while offenders in receipt of CPP benefits would have less money deposited into their current account than when the cheques were split over pay periods, more monies are deposited into their savings account and thus available to them upon their release.

[24] Another purpose of CD 860 is to "control the flow of money in institutions to ensure the safety of persons and the security of institutions". The Assistant Commissioner reasoned that by depositing CPP cheques at the time they are received, the CSC "limits the amount of offenders who each the maximum gross inmate pay level of $69 per pay period": Decision at p 3.

[25] The Assistant Commissioner further explained that the Direction was consistent with the CSC's practice with respect to monetary deposits in that "all types of payments are inputted in the pay period during which they are received": Decision at p 2.

[26] Finally, the Assistant Commissioner addressed the Applicant's argument that CPP cheques are meant to cover a month of expenses and that he now has less access to funds in his current account. The Assistant Commissioner noted that offenders' living expenses, namely housing, clothing, food, health care, dental care, and basic needs, are "primarily assumed by the federal government": Decision at p 3.

[27] The Assistant Commissioner also noted that the CSC recognizes that offenders may need access to additional funds. On that basis, CD 860 provides for: (i) the transfers of monies from an offender's savings account to their current account on a case-by-case basis, up to a maximum annual amount; (ii) requests for disbursements directly from an offender's savings account above the annual limit in certain circumstances; and (iii) an additional, annual disbursement from the savings account for the holiday canteen: Decision at p 3.

[28] The Applicant argues that the Direction is arbitrary as it "would appear to be in violation of s. 78(1)(b) of the *CCRA*": Applicant's Memorandum of Fact and Law at para 11. Subsection 78(1)(b) provides that the CSC may make payments to offenders to "facilitate their reintegration into the community":

Payments to offenders	**Rétribution**
78 (1) For the purpose of **(a)** encouraging offenders to participate in programs provided by the Service, or **(b)** providing financial assistance to offenders to facilitate their reintegration into the community, the Commissioner may authorize payments to offenders at rates approved by the Treasury Board.	**78** (1) Le commissaire peut autoriser la rétribution des délinquants, aux taux approuvés par le Conseil du Trésor, afin d'encourager leur participation aux programmes offerts par le Service ou de leur procurer une aide financière pour favoriser leur réinsertion sociale.

[29] As recognized by the Applicant, subsection 78(1) concerns payments to offenders by the CSC: Notice of Application at para 20. In that regard, it is of no relevance to the processing of CPP cheques and it was therefore reasonably not considered by the Assistant Commissioner.

However, as set out above, the Assistant Commissioner did consider the similar and relevant legislative and policy objective of preparing offenders for release: Decision at p 2.

[30] The Assistant Commissioner ultimately concluded that the "CSC's decision to input cheques in the pay period they are received is in accordance with legislation and policy pertaining to the management of offender's money for release, and the safety of persons and the security of institutions" [emphasis added]: Decision at p 4. While the Assistant Commissioner did not use the term "arbitrary", this concluding paragraph nevertheless suggests that the Direction is not arbitrary because it is consistent with the CSC's legislative and policy objectives.

[31] While the Assistant Commissioner's decision could have been clearer, administrative decision-makers' reasons are not to be held to a standard of perfection: *Vavilov* at para 91. A reviewing court must instead be satisfied that the decision-maker's reasoning "adds up": *Vavilov* at para 104. In my view, there is no question here that the Assistant Commissioner's reasoning "adds up".

[32] Based on the foregoing, the Assistant Commissioner's reasons concerning the arbitrariness of the Direction are justified, transparent, and intelligible. As such, there are no grounds for this Court to intervene.

(2) Reasonable determination that the Direction is not discriminatory

[33] While the Assistant Commissioner did not expressly apply the relevant legal framework in determining whether the Direction discriminates on the basis of age, the Assistant Commissioner's

approach is consistent with the jurisprudence. The relevant test for discrimination is set out in *Moore v British Columbia (Education),* 2012 SCC 61:

> [33] As the Tribunal properly recognized, to demonstrate *prima facie* discrimination, complainants are required to show that they have a characteristic protected from discrimination under the *Code*; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under human rights statutes. If it cannot be justified, discrimination will be found to occur.

[34] In assessing whether the Direction is discriminatory, the Assistant Commissioner followed the approach to claims of discrimination that is set out in the Commissioner's Directive 081 entitled "Offender Complaints and Grievances". As the Assistant Commissioner explained, the first step is to determine whether the allegations, if proven, would meet the prescribed definition of "discrimination". Discrimination is defined based on the prohibited grounds of discrimination in subsection 3(1) of the *CHRA:* Decision at p 2.

[35] Here, the Assistant Commissioner determined that the Applicant's allegation that the Direction is discriminatory based on age would, if proven, meet the prescribed definition of discrimination. Consequently, the Assistant Commissioner proceeded to determine whether discrimination had occurred: Decision at p 2. In other words, whether there was an adverse impact on the Applicant based on his age.

[36] In his grievance, the Applicant alleged that the Direction constitutes a discriminatory practice based on age because CPP payments are treated differently than other sources of income. However, based on the evidence before him, the Assistant Commissioner stated that "all types of

payments are inputted in the pay period in which they are received by the Institution's Finance Department" [emphasis added]: Decision at p 3.

[37] In terms of the Assistant Commissioner's reference to "all types of payments", the evidence before the Assistant Commissioner confirms that other types of payments, such as private pensions, work release payments, hobby profit transaction/inmate business, and paycheques from private companies during an offender's time in the community are similarly treated: Certified Tribunal Record at p 52. While private pensions may be payable based on age, the other types of payments are not age-based.

[38] The Assistant Commissioner further noted that other payments whether received monthly or less frequently, such as Workers' Compensation benefits, are processed upon receipt, rather than divided over separate pay periods: Decision at p 3. As the Respondent points out, Workers' Compensation benefits are not granted based on age, but rather are provided as compensation to workers who are either injured in the course of employment or who suffer from occupational disease: Respondent's Memorandum of Fact and Law at para 22.

[39] I am satisfied that the Assistant Commissioner reasonably assessed whether the Direction is discriminatory. In particular, the Assistant Commissioner assessed the effects of the manner in which CPP cheques are processed relative to other types of income and reasonably determined that the CSC "did not engage in a discriminatory practice given that other types of payments are processed once a month": Decision at p 4. On this basis, there is no reviewable error.

B. Costs

[40] Although the Applicant did not succeed in this application, I decline to exercise my discretion under Rule 400 of the *Federal Courts Rules*, SOR/98-106 to award costs against him.

[41] The Applicant asks this Court to award him costs as a result of his success on his original judicial review application in T-1323-17: Applicant's Memorandum of Fact and Law at paras 33-35. In *Ewert 2019*, Justice Leblanc (as he then was) denied a similar request, finding that the "request cannot be sustained as it is only in the course of the disposition of this other matter that the costs issue in that matter could be determined": *Ewert 2019* at para 55. I agree with this approach and accordingly deny the Applicant's request for costs in relation to his previous application. His request is more appropriately considered by the judge who rendered the judgment in that proceeding.

JUDGMENT in T-906-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-906-19
STYLE OF CAUSE:	DWIGHT CREELMAN v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VIDEOCONFERENCE
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