COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Pereira v. British Columbia (Workers' Compensation Board),* 2023 BCCA 195

Date: 20230502
Docket: CA48585

Between:

Corinne Pereira

Appellant
(Petitioner)

And

Workers' Compensation Board of British Columbia (WorkSafeBC)

Respondent
(Respondent)

Before: The Honourable Mr. Justice Groberman
The Honourable Mr. Justice Hunter
The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated September 22, 2022 (*Pereira v. British Columbia (Workers' Compensation Board)*, 2022 BCSC 1654, Terrace Docket L21416).

Oral Reasons for Judgment

The Appellant, appearing in person (via videoconference):	C. Pereira
Counsel for the Respondent:	B. Parkin M. Bruneau
Place and Date of Hearing:	Vancouver, British Columbia May 2, 2023
Place and Date of Judgment:	Vancouver, British Columbia May 2, 2023

Summary:

Ms. Pereira brought judicial review proceedings challenging a decision of the Review Division of the Workers' Compensation Board. She was successful, and the matter was remitted to the Board for further proceedings. Notwithstanding her success, Ms. Pereira appealed, contending that the judge erred in not granting a declaration that the Board failed to properly administer the Workers Compensation Act. The judge saw the requested declaration as amorphous and declined to grant it. Held: Appeal dismissed. Declaratory relief is discretionary, and deference should be given to the decision of the chambers judge. Further, a declaration ought not be given where it has no practical effect. Here, the declaration sought by Ms. Pereira would not establish the existence of a right, power, duty or status and would not resolve any ongoing dispute between the parties. The judge was right to confine the remedy to a concrete one dealing with the dispute before him.

[1] **GROBERMAN J.A.**: This is an appeal by Ms. Pereira from a judgment in a judicial review proceeding. While Ms. Pereira was successful in that proceeding, she says that the judge erred in not supplementing the substantive remedy he gave with declaratory relief admonishing the Board for its failure to properly deal with her complaint. For reasons that follow, I would dismiss the appeal.

The Underlying Proceedings

[2] In 2020, Ms. Pereira was employed by Dexterra Group as a Guest Service Agent at Crossroads Lodge in Kitimat. Some other employees made complaints about her, and she was given disciplinary warnings. Ms. Pereira was of the view that she was a victim of bullying and harassment, and on June 27, 2020, she made a complaint under the employer's Respectful Workplace Policy. The complaint alleged that some coworkers were engaging in workplace "mobbing" against her, a term that the chambers judge interpreted to mean "[engaging in] coordinated personal attacks in the form of unsubstantiated and generalized false accusations".

[3] On June 30, 2020, Ms. Pereira filed a complaint with the Workers' Compensation Board, to the effect that her employer, by tolerating mobbing, was failing in its obligation to provide a safe workplace. Although the Board promptly assigned an occupational safety officer to investigate the allegation, no report was produced. A second occupational safety officer took over the investigation in late 2021. He issued his report on January 24, 2022. It is a perfunctory document,

containing no details of the inquiries that had been undertaken and providing no indication of what evidence was considered. After what appear to be boilerplate recitals setting out the jurisdiction of the Board and its policies respecting investigations, the report simply stated:

> Based on the evidence provided by the employer, I find the employer's response to this matter is compliant with WorkSafeBC requirements.

[4] On January 28, 2022, Ms. Pereira applied to the Review Division of the Workers' Compensation Board for a review of the initial decision. The Review Officer issued her decision on May 4, 2022. It described the complaint as well as several related proceedings that Ms. Pereira commenced or responded to. The Review Officer discussed the steps the employer followed in investigating the complaint. She also discussed the related proceedings and mentioned complications that the employer faced in its investigations. The review officer found that while the employer did not follow its procedures precisely, its actions were reasonable. She summarized her findings as follows:

> Essentially, the substance of the worker's bullying and harassment complaints have been addressed by the employer's investigation, the subsequent labour relations proceedings, and then the employer's whistle blower investigation. I acknowledge the worker has many concerns with the employer's conduct and its investigation of her complaints, as outlined in her review submissions and the documents in the disclosure file. While I have not addressed each of these concerns individually in this decision, I have considered them. … I find the employer took reasonable actions to investigate the worker's complaints of bullying and harassment, and to comply with its obligation under s. 21(1)(a) of the *Act*. I find the Board's decision not to issue an order to be appropriate in the circumstances.

[5] On May 9, 2022, Ms. Pereira filed a petition in the Supreme Court seeking judicial review of the decision of the Review Division. The petition was a prolix document that concentrated on allegations of impropriety on the part of the Workers' Compensation Board. The following paragraph is characteristic of the petition:

> There is no standard of review as this is not about if the decision was patently unreasonable, this [sic] about a cover-up plain and simple. The decision was based on false, irrelevant and made up facts. The absurdity of the decision alone is enough evidence for a reasonable person to see I'm not speculating.

[6] The chambers judge, to his credit, made an effort to distill the argument and make sense of it. Ultimately, he found merit in what he charitably described as the "heart" of her argument:

> [32] … Echoing her submissions to the Review Officer, she raises many concerns, but the heart of her argument is that Dexterra failed to investigate her mobbing complaint to a conclusion by interviewing her and the subjects of her complaint and determining whether in fact she was made the subject of false accusations as she maintains.

[7] The judge then considered whether the investigation was a reasonable one. He noted that the employer and the Board both acknowledged that the employer's investigation did not conform with its policies. The Review Officer had accepted that the circumstances of the investigation justified deviation from the policies. The judge disagreed:

> [36] The Review Officer reasoned that Dexterra's failure to complete its investigation of the mobbing complaint was reasonable having regard to three considerations.
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> [37] The first consideration is that Ms. Pereira was on medical leave from June 28, 2020 through September 20, when she advised Dexterra that she wished to return to work. Dexterra described a medical leave of absence as a 'protected leave' during which it was inappropriate for the company to contact its employee. Protected or not, the leave was not an obstacle to a meeting that took place on August 5, 2020 with Ms. Pereira and her union representative to discuss a possible resolution of another complaint. But the more substantial problem is that Ms. Pereira's absence from the workplace on a medical leave from June 30 to September 20, 2020 offers no explanation for Dexterra's failure to pursue investigation of the mobbing complaint after September 20.
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> [38] The second consideration referenced by the Review Officer is that investigation of the mobbing complaint was impaired by "labour relations proceedings", which must be a reference to the grievance filed by Ms. Pereira and pursued by her union on her behalf until it was settled in September 2020. The difficulty, again, is that the grievance was resolved prior to September 20 without any finding as to the facts underlying the grievance. Dexterra accepted that it had erred in imposing discipline without approaching Ms. Pereira to obtain her side of the story. There was no determination as to whether Ms. Pereira had been the subject of false accusations.
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> [39] The third consideration referenced by the Review Officer is the termination of Ms. Pereira's employment on September 23, 2020. It is not clear how or why the termination would have prevented Dexterra from pursuing its investigation of the mobbing complaint. It did not prevent

> Dexterra from investigating Ms. Pereira's whistle blower complaint of December 15, 2020.
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> [40] The purpose of an investigation of the mobbing complaint was not a determination of entitlement on the part of Ms. Pereira. Its purpose was to ascertain whether Ms. Pereira's co-workers engaged in bullying and harassment in the workplace. That enquiry remained pertinent after Ms. Pereira's termination.
>
> [41] I conclude that the three considerations listed by the Review Officer do not support her conclusion that it was reasonable for Dexterra not to follow its procedures and pursue investigation of Ms. Pereira's mobbing complaint after September 20, 2020. In this regard, there is a substantial flaw in the reasoning, because the three considerations do not support the conclusion that Dexterra's investigation of the mobbing complaint was reasonable; see *Vavilov* [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65] at paras. 102-104.

[8] The judge also considered that neither the labour relations investigations nor the "whistle blower" investigation were sufficient substitutes for interviews with the employees that Ms. Peirera implicated in workplace mobbing. He concluded that the Review Division's decision was unreasonable and set it aside. He remitted the complaint to a review officer for reconsideration.

[9] We are advised that the Review Division subsequently conducted a second review, and that it referred the matter back with instructions requiring the Board to make an order against the employer for violating s. 21(1)(a) of the statute by failing to conduct an appropriate investigation of the complaint. Ms. Pereira was, then, successful on the judicial review.

The Declaration

[10] The Board did not appeal the judicial review decision, nor has the employer taken steps to intervene in this Court. The appeal is a narrow one. It is brought by Ms. Pereira, who considers that the chambers judge did not go far enough in granting remedies on the judicial review. She says that he ought to have made:

> A declaration that the board failed in its duty to administer the [*Workers Compensation Act*] for the Ministry of Labour, specifically that the Board breached its duty under the *Workers Compensation Act*, Division 2, Section 17 (1) & (2).

[11] The judge dealt with Ms. Pereira's request for such a declaration briefly:

> [68] ... [T]he declaration sought … is not appropriate. The issue before the court involves a particular decision made by a review officer on a particular occasion. It is not for the court to make a general assessment of WorkSafeBC's compliance with its statutory duty to be concerned with occupational health and safety generally, the establishment of standards, and the undertaking of inspections other than those with which this case is concerned.

[12] The judge appears to have interpreted Ms. Pereira's demand as being one for an amorphous statement by the court condemning the Board for the manner in which it administers its home statute. I see nothing unreasonable in the judge's interpretation of the relief sought. His reasons indicate with clarity why it would not be appropriate to grant such a declaration.

[13] On this appeal, Ms. Pereira narrows the ambit of the declaration she is seeking, somewhat, by relating it to various actions the Board took in investigating and resolving her complaint. Even with that change in focus, it is my view that the judge made no error in refusing to grant a declaration.

[14] Superior courts have an inherent power to grant declarations. The power of the Supreme Court of British Columbia to grant a declaration within a judicial review proceeding is both established and circumscribed by the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241:

> 2. On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:
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> …
>
> (b) a declaration … in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

[15] This provision is broad enough to encompass the remedy sought by Ms. Pereira, which relates to the statutory powers of the Workers' Compensation Board.

[16] A declaration, however, is not a mere observation or comment by the court on how it views a situation. Rather, it is a binding statement by the court establishing a right, power, duty or status. A declaration is a discretionary remedy. Even if a person

establishes the existence of a right, power, duty or status, a court will generally not grant the remedy unless it considers that it will have practical effect and resolve an extant legal dispute.

[17] The discretion of courts to grant or withhold declarations is firmly established. The principles were discussed by the Supreme Court of Canada in *Solosky v. The Queen*, [1980] 1 S.C.R. 821, at 830–833:

> The principles which guide the court in exercising jurisdiction to grant declarations have been [831] stated time and again. In the early case of *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd.*, [1921] 2 A.C. 438, in which parties to a contract sought assistance in construing it, the Court affirmed that declarations can be granted where real, rather than fictitious or academic, issues are raised. Lord Dunedin set out this test (at p. 448):
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> > The question must be a real and not a theoretical question, the person raising it must have a real interest to raise it, he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought.
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> In *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government*, [1958] Q.B. 554 (rev'd [1960] A.C. 260, on other grounds), Lord Denning described the declaration in these general terms (p. 571):
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> > .. if a substantial question exists which one person has a real interest to raise, and the other to oppose, then the court has a discretion to resolve it by a declaration, which it will exercise if there is good reason for so doing.
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> …
>
> [832]
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> As Hudson suggests in his article, "Declaratory Judgments in Theoretical Cases: The Reality of the Dispute" (1977), 3 Dal.L.J. 706:
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> > The declaratory action is discretionary and the two factors which will influence the court in the exercise of its discretion are the utility of the remedy, if granted, and whether, if it is granted, it will settle the questions at issue between the parties.
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> The first factor is directed to the "reality of the dispute". It is clear that a declaration will not normally be granted when the dispute is over and has become academic, or where the dispute has yet to arise and may not arise. As Hudson stresses, however, one must distinguish, on the one hand, between a declaration that concerns "future" rights and "hypothetical" rights, and, on the other hand, a declaration that may be "immediately available" when it determines the rights of the parties at the time of the decision together with the necessary implications and consequences of these rights, known as future rights. (p. 710)

> …
>
> [833]
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> Once one accepts that the dispute is real and that the granting of judgment is discretionary, then the only further issue is whether the declaration is capable of having any practical effect in resolving the issues in the case.

[18] These principles continue to guide courts in dealing with applications for declaratory relief. In *Cheslatta Carrier Nation v. British Columbia*, 2000 BCCA 539, this Court said:

> [13] Generally, modern courts have continued to adhere to the principle that declaratory actions should not be entertained where the declaration will serve little or no practical purpose or raises a matter of only hypothetical interest. Conversely, where the pleadings disclose a "real difficulty," present or threatened, the action will lie.

[19] The granting or withholding of declaratory relief is a matter for the judge at first instance, and "an appellate court should not interfere with a judge's exercise of discretion absent an error of law or principle, or a palpable and overriding error of fact". (*Interfor Corporation v. Mackenzie Sawmill Ltd.*, 2022 BCCA 228).

[20] The judge, rightly in my view, considered that his order quashing the decision of the review officer and remitting the matter effectively resolved all legal issues before the court on the judicial review. He saw no utility in supplementing his substantive order with broad declarations.

[21] Quite apart from the requirement to defer to the chambers judge, I am unable to see any merit in Ms. Pereira's demand for declaratory relief. There does not appear to be any legitimate purpose that would be advanced by the granting of declaratory relief in this case.

[22] Ms. Pereira, in her reply factum, says this about the utility of declaratory relief:

> 10. Of course I want to see them chastised and I have a personal interest as I have been personally effected [sic] by their failure, I'm not going to deny that, but that is not the sole purpose of why I'm seeking a declaration. I feel there is an important purpose that can be served with declarations other than simple accountability. I see it as a reprimand, like a formal discipline that works as a means of denunciation and deterrence. An organization such as

> WorkSafe is not going to learn from mistakes or fix a problem if they are in denial of it.

[23] I am not convinced that Ms. Pereira's desire to see the Board chastised or disciplined is a proper purpose for declaratory relief. As I have already said, a declaration constitutes a formal and binding statement establishing the existence of a right, power, duty or status. It is not a mere observation by the court, nor is it a form of admonition to an administrative body.

[24] As Ms. Pereira has not established any error in the judgment below, I would dismiss her appeal.

[25] **HUNTER J.A.**: I agree.

[26] **ABRIOUX J.A.**: I agree.

[27] **GROBERMAN J.A.**: The appeal is dismissed.

"The Honourable Mr. Justice Groberman"