

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240206

Docket: A-277-22

Citation: 2024 FCA 26

**CORAM: BOIVIN J.A.
LEBLANC J.A.
ROUSSEL J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

LOUISE LYONS

Respondent

Heard at Ottawa, Ontario, on February 1, 2024.

Judgment delivered at Ottawa, Ontario, on February 6, 2024.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

CONCURRED IN BY:

**LEBLANC J.A.
ROUSSEL J.A.**

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] In 2020, the Federal Public Sector Labour Relations and Employment Board (the Board) allowed the respondent's grievance on the merits, determining that the termination of her employment as a correctional officer with Correctional Service Canada was excessive (2020 FPSLREB 122). The Board substituted the termination of employment by a one-month suspension without pay. The applicant did not seek judicial review of that decision.

[2] Two years after the merits decision, the Board rendered a subsequent decision with respect to damages (2022 FPSLRB 95) whereby it ordered aggravated damages for psychological harm suffered by the respondent (\$135,000) as well as punitive damages for the denial of the respondent's right to natural justice (\$75,000) and obstruction to the administration of justice (\$100,000). This is the decision challenged by the applicant before our Court.

[3] Essentially, the applicant contends that the aggravated and punitive damage awards are unreasonable as they do not accord with the applicable jurisprudential framework.

[4] During the hearing before our Court, the debate mostly centered around the Supreme Court's leading decision on punitive damage awards, *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595 (*Whiten*), and, more particularly, the principle of "proportionality". The applicant contends that the Board misapplied the *Whiten* factors and thus failed to consider the "proportionality" of the punitive damages awarded in the present case.

[5] The applicant's contention is unpersuasive when considered in light of a careful reading of *Whiten*. Indeed, although the Board does not explicitly refer to a proportionality analysis in its reasons, this is not fatal to the decision. The Board weighed the relevant factors set forth by the Supreme Court in *Whiten* and, in particular, considered the other damages award, addressed the need for additional damages (punitive), and it is clear, when the reasons are read as a whole, why, in the Board's view, the punitive damages award was not disproportionate in the context of the specific circumstances of this case, hence falling within the "bounds of rationality" (*Whiten* at paras 123, 128). The Board's 67-page decision, again, when read as a whole, addresses the

relevant factors throughout its analysis, as is evidenced at paragraphs 179–86, 231–35, 240, 243–44.

[6] Overall, the Board’s decision is detailed and it thoroughly addresses the evidence and relevant jurisprudence. The Board’s decision bears the hallmark of reasonableness: it is justified, transparent, and intelligible and falls within the range of acceptable outcomes (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1).

[7] In reality, the applicant disagrees with the Board’s decision and has sought to challenge it by putting form over substance. In doing so, the applicant invites our Court to reweigh the evidence, make our own findings, and conclude that the quantum of aggravated and punitive damages is disproportionate and unreasonable. This is not our role on reasonableness review. On the particular facts of this case, I see no error that would warrant our intervention.

[8] For these reasons, I would dismiss the application for judicial review with costs in the all-inclusive amount of \$2000.

"Richard Boivin"

J.A.

"I agree.
René LeBlanc J.A."

"I agree.
Sylvie E. Roussel J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-277-22

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. LOUISE LYONS

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 1, 2024

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: LEBLANC J.A.
ROUSSEL J.A.

DATED: FEBRUARY 6, 2024

APPEARANCES:

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