

FEDERAL COURT OF APPEAL

B E T W E E N:

TERRY CASPER

- and -

ATTORNEY GENERAL OF CANADA

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
FILED	12-MAY-2023 S. CHOJNACKI
OTTAWA, ON	1

Applicant

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules*, and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 12, 2023

Issued by: Samantha Chojnacki
(Registry Officer)
Federal Court of Canada / Cour
Address of fédérale du Canada
Local office: 90 Sparks St., Ottawa, ON K1A 0H9

TO: Attorney General of Canada

AND TO: Federal Public Sector Labour Relations and Employment Board
C.D. Howe Building
West Tower, 6th Floor
240 Sparks Street
Ottawa, ON K1P 5V2

APPLICATION

This is an application for judicial review in respect of the decision of Adjudicator Knopp of the Federal Public Sector Labour Relations and Employment Board (“FPSLREB” or the “Board”), rendered on April 13, 2023, as it pertains to Grievance File Nos. 566-02-10192 and 566-02-10938.

The decision address eight grievances presented by the Applicant, pursuant to section 208 of the *Federal Public Sector Labour Relations Act*. The two grievances in issue in this application alleged that the Employer, Treasury Board, had breached the No Discrimination provision of the Collective Agreement and the *Canadian Human Rights Act* by failing to accommodate the Applicant to the point of undue hardship when he sought to return to work from a disability-related leave but could not return to his prior workplace for disability-related reasons.

By his decision, dated April 13, 2023, the Adjudicator dismissed Grievances File Nos. 566-02-10192 and 566-02-10938. While the Adjudicator found that the *prima facie* test for discrimination had been met, the Adjudicator concluded that the Employer had acted reasonably in its efforts to accommodate the Grievor.

THE APPLICANT MAKES APPLICATION FOR:

- (a) An Order allowing this application for judicial review, with costs;
- (b) An Order setting aside the decision of the FPSLREB, dated March 7, 2022, with respect to its conclusions on Grievance File Nos. 566-02-10192 and 566-02-10938;
- (c) An Order remitting Grievance File Nos. 566-02-10192 and 566-02-10938 back for reconsideration by the Adjudicator in accordance with the directions of the Court; and
- (d) Such further and other relief as counsel may advise and this Honourable Court will permit.

THE GROUNDS FOR THE APPLICATION ARE:

- (e) The Board erred in law in its application of the test for discrimination, including, but not limited to, by failing to apply the principles applicable to establishing undue hardship in human rights law;
- (f) The Board erred in law in rejecting the Applicant's argument with respect to Grievance File Nos. 566-02-10192 and 566-02-10938, including, but not limited to, by:
 - i. Failing to assess or apply an undue hardship analysis in respect of either grievance;
 - ii. Failing to apply the legal principles and analysis with respect to the duty to cooperate;
 - iii. Drawing a distinction which contradicts human rights principles between a medical leave of absence and a personal leave of absence for medical reasons; and,
 - iv. Misinterpreting and misapplying the established case law on disability discrimination;
- (g) The Board otherwise erred in law in arriving at its decision;
- (h) The Board violated the principles of natural justice or procedural fairness in the course of arriving at its decision;
- (i) The Board based its decision on erroneous findings of fact made in a perverse and capricious manner and without regard to the material before it; and
- (j) Such further and other grounds as counsel may advise and this Honourable

Court may permit.

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- (a) The Affidavit of the Applicant or such further affidavit, including the exhibits attached thereto;
- (b) The complete record of the material that was before the FPSLREB in respect of its decision, dated April 13, 2023;
- (c) Such further and other material as counsel may advise and this Honourable Court may permit.

THE APPLICANT REQUESTS pursuant to Rule 317 of the *Federal Courts Rules* that the FPSLREB send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the FPSLREB to the Applicant and to the Registry:

- (a) The full record of all material in the possession of the FPSLREB at the time of its decision, dated April 13, 2023.

Dated at Ottawa, this 12th day of May, 2023.



Per: Morgan Rowe

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