Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *R. C. v. Minister of Employment and Social Development*, 2017 SSTADIS 562

Tribunal File Number: AD-17-250

BETWEEN:

R. C.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: October 27, 2017

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] This appeal is about whether the Social Security Tribunal of Canada (Tribunal) has scope to remedy what the Appellant, Mr. R. C., perceives is an unfairly low survivor's pension under the *Canada Pension Plan* (CPP).

[3] Mr. R. C. is a CPP retirement pension recipient. After his wife passed away in November 2015, he was dismayed to discover that the combined amount of his retirement and survivor's pension was significantly lower than the two retirement pensions he and his wife would have received had she lived. After the Respondent refused to reconsider its calculation of his pension amount, he appealed to the Tribunal's General Division, stating,

> I am not disputing how the formula was derived and the calculations. I am disputing that there appears to have been little consideration for the outcome of applying numbers against my real-life situation which is trying to run a house on a single (retirement) wage which was geared up for two prior to my wife's death.

[4] On December 30, 2016, the General Division summarily dismissed the appeal, finding that the Appellant had not put forward grounds that had a reasonable chance of success. The Appellant has now submitted an appeal to the Tribunal's Appeal Division, alleging that the General Division did not satisfactorily describe the basis for its decision.

[5] I see no need for a further hearing and have decided this appeal on the basis of the existing documentary record.[1] For the reasons that follow, the General Division's decision must stand.

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[1] Paragraph 3(*a*) of the *Social Security Tribunal Regulations* requires the Tribunal to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUES

[6] The issues before me are as follows:

(a) How much deference should the Appeal Division extend to General Division decisions?

(b) Was the Appellant's CPP survivor's pension calculated correctly?

(c) Did the General Division refuse to exercise its jurisdiction to provide equitable relief?

(d) Did the General Division apply the correct test for a summary dismissal?

ANALYSIS

(a) How much deference should the Appeal Division show the General Division?

[7] The only grounds of appeal to the Appeal Division are that the General Division erred in law, failed to observe a principle of natural justice, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.[2] The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration, or vary the General Division's decision in whole or in part.[3]

[8] Until recently, it was accepted that appeals to the Appeal Division were governed by the standards of review set out by the Supreme Court of Canada in *Dunsmuir v. New Brunswick.*[4] Where errors of law or a failure to observe principles of natural justice were alleged, the applicable standard was held to be correctness, reflecting a lower threshold of deference deemed to be owed to a first-level administrative tribunal. Where erroneous findings of fact were alleged, the standard was held to be reasonableness, reflecting a reluctance to interfere with findings of the body tasked with hearing factual evidence.

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[2] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[3] Subsection 59(1) of the DESDA.
[4] *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9.

[9] The Federal Court of Appeal decision *Canada v. Huruglica*[5] rejected this approach, holding that administrative tribunals should not use standards of review that were designed to be applied by appellate courts. Instead, administrative tribunals must look first to their home statutes for guidance in determining their role. This premise led the Court to determine that the appropriate test flows entirely from an administrative tribunal's governing legislation: "The textual, contextual and purposive approach mandated by modern statutory interpretation principles provides us with all the necessary tools to determine the legislative intent […]"

[10] The implication here is that the standards of reasonableness or correctness will not apply unless those words, or their variants, are specifically contained in the tribunal's home statute. Applying this approach to the DESDA, one notes that paragraphs 58(1)(*a*) and (*b*) do not qualify errors of law or breaches of natural justice, which suggests that the Appeal Division should afford no deference to the General Division's interpretations. The word "unreasonable" is not found in paragraph 58(1)(*c*), which deals with erroneous findings of fact. Instead, the test contains the qualifiers "perverse or capricious" and "without regard for the material before it." As suggested by *Huruglica*, those words must be given their own interpretation, but the language suggests that the Appeal Division should intervene when the General Division bases its decision on an error that is clearly egregious or at odds with the record.

(b) Was the Appellant's CPP survivor's pension calculated correctly?

[11] The Appellant has never taken issue with how the Respondent calculated his survivor's pension according to the formula set out in subsection 58(2) of the CPP. Instead, he suggests that the formula itself is outdated and does not take into account claimants' changing circumstances.

[12] Nonetheless, I have reviewed the documentary record and see nothing to indicate that the Respondent incorrectly determined the Appellant's pension amounts or that the General Division erred in law by endorsing the calculation.

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[5] *Canada (Citizenship and Immigration) v. Huruglica*, [2016] 4 FCR 157, 2016 FCA 93.

(c) Did the General Division refuse to exercise its jurisdiction?

[13] As much as I may sympathize with the Appellant's financial plight and the tragic circumstances that led to it, my hands are tied by the laws that govern the Tribunal.

[14] Neither the General Division nor the Appeal Division is a court; as administrative tribunals, their powers are limited to those conferred by their enabling legislation—in this case, the DESDA. The General Division assessed the record and concluded that none of the Appellant's grounds of appeal had a reasonable chance of success. I am satisfied that the General Division did not breach any principle of natural justice or commit an error in fact or law, and I see no reason to interfere with its decision to summarily dismiss the appeal.

[15] In his submissions, the Appellant expressed bewilderment that the General Division found it had "no jurisdiction to make a decision other than to turn [his] request down." He suggests that the General Division did not take his appeal seriously and always knew there was nothing it could do. He believes the entire appeals process has been a waste of time.

[16] Although I can understand why Mr. R. C. is frustrated, I take a more measured view of the proceedings thus far. When the General Division found it had "no jurisdiction," it was plainly referring only to its lack of authority to simply ignore the letter of the law and do what it thinks is fair. This power is known as "equity," and it has traditionally been reserved for the courts, although they will typically exercise it if there is no adequate remedy at law. However, Parliament has structured the CPP appeals process so that claimants can access the courts only after appeals within the Tribunal have been exhausted.

[17] In this case, the General Division confirmed that the Respondent correctly applied the CPP in determining the Appellant's entitlement to the survivor's pension. It did not have the power to do more than that. Although Mr. R. C. may find this outcome unfair, as a member of the Appeal Division, I can exercise only such jurisdiction as is granted by the DESDA. Support for this position is found in *Canada v. Tucker*,[6] among many other cases, which have confirmed that an administrative tribunal is not a court but a statutory decision-maker and, therefore, not empowered to provide any form of equitable relief.

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[6] *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.

(d) Did the General Division apply the correct test for summary dismissal?

[18] I am satisfied that the General Division used the appropriate mechanism to dispose of the Appellant's appeal. The General Division invoked subsection 53(1) of the DESDA, which permits it to summarily dismiss an appeal that has no reasonable chance of success. In paragraph 3 of its decision, and again at paragraph 20, the General Division correctly stated the wording of the relevant provision. However, I acknowledge that it is insufficient to simply cite legislation without properly applying it to the facts.

[19] The decision to summarily dismissal an appeal relies on a threshold test. It is not appropriate to consider the case on the merits in the parties' absence and then find that the appeal cannot succeed. In *Fancy v. Canada*,[7] the Federal Court of Appeal determined that a reasonable chance of success is akin to an arguable case at law. The Court also considered the question of summary dismissal in the context of its own legislative framework and determined that the threshold for summary dismissal is high.[8] The question to be asked is whether it is plain and obvious on the record that the appeal is bound to fail. The question is *not* whether the appeal must be dismissed after considering the facts, the case law and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that might be submitted at a hearing.

[20] Here, the Appellant conceded that his survivor's pension had been calculated in compliance with subsection 58(2) of the CPP and, in the absence of any recourse to equity, the General Division was within its jurisdiction to summarily dismiss the appeal. In my view, it was plain and obvious on the record that the Appellant's arguments were bound to fail.

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[7] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
[8] *Lessard-Gauvin c. Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; and *Breslaw v. Canada (Attorney General)*, 2004 FCA 264.

CONCLUSION

[21] The Appellant has failed to demonstrate how the General Division erred in law when it summarily dismissed his appeal, having concluded that it lacked jurisdiction to offer equitable relief.

[22] The appeal is therefore dismissed.

Member, Appeal Division