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EMPLOYMENT LAW

Applications for judicial review of decisions by labour adjudicator appointed under *Canada Labour Code*, R.S.C., 1985, c. L-2 (CLC), Division XIV allowing LF's complaint for unjust dismissal against Canada Mortgage Housing Corporation (CMHC) — LF chartered accountant since 2003, began to work for CMHC in 2007 as Senior Auditor — LF's employment went smoothly until 2011, when alleged issue of conflict of interest arose with organization he was auditing — LF later disciplined with 5-day suspension by CMHC for having failed to adequately disclose conflict of interest — In 2012, CMHC concerned about LF's work performance, ability to work in collaboration with colleagues — Decided to offer severance package to LF or, if he refused, put him on three-month probation, notice — However, before CMHC could make offer, LF went on leave — While LF remained on leave, CMHC dismissed him from his position on "without cause" basis — LF challenged dismissal under CLC, s. 240 — Complaint heard by adjudicator — Shortly after hearing into complaint commenced, Supreme Court in *Wilson v. Atomic Energy of Canada*, 2016 SCC 29, [2016] 1 S.C.R. 770 found that CLC not permitting "without cause" dismissal — CMHC conceded that LF's dismissal "unjust" under CLC — Adjudication hearing proceeded solely on issue of remedy — Adjudicator concluded that deterioration of relationship between LF, CMHC not supporting reinstatement — Decided to award LF twelve months' salary in lieu of notice — Denied LF's request for back pay — LF was receiving benefit payments when terminated; would have continued to receive such payments had he not been terminated — Therefore, LF remained "whole", without necessity to award back pay — Adjudicator ordered CMHC to pay aggravated damages (\$45,000), costs in partial indemnity — Main issues: in docket T-2060-17, whether adjudicator's decision refusing to reinstate LF to his position at CMHC, failure to award back pay, unreasonable; in docket T-2081-17, whether adjudicator's award of \$45,000 reasonable; in docket T-894-18 whether adjudicator's award of costs on partial indemnity, instead of full indemnity, reasonable in circumstances — Adjudicator's decision that LF could not return reasonable, consistent overall with evidence, arguments presented before her — Adjudicator entitled to prefer overwhelming evidence suggesting that LF could not return to CMHC in previous role — Did not have to sift through each record, explain why she relied on some records but dismissed others — Entitled to prefer evidence of CMHC over that of LF — Adjudicator's assessment of credibility of LF reasonable — While reinstatement under CLC, s. 242(4)(b) is remedy available to an adjudicator that can "make whole" dismissed employee, there is no right to reinstatement — Reinstatement one of number of remedies open to adjudicator to grant on its own, or in conjunction with other remedies, even where dismissal found to be unjust — Adjudicator's conclusion that LF should not be reinstated open to her on basis of evidence, arguments presented, was authorized by CLC, was reasonable — As for possibility of awarding reinstatement in different position, adjudicator reasonably followed applicable case law in this regard — While common law principles of wrongful dismissal allowing remedies on concept of reasonable notice, statutory remedy under s. 242(4) different, granting broader spectrum of remedial relief — In context of s. 242(4)(a), while aim is to make employee "whole," award of back pay not automatic — When determining that reinstatement not appropriate, an adjudicator is entitled not to order back pay, instead calculate "an appropriate award of compensation under paragraph 242(4)(a)" — "Make whole" remedy requiring employer to compensate employee for actual loss, not notional loss — Adjudicator here reasonably refused to order back pay because LF was on benefits, continued to receive same revenue that he would have continued to receive had he not been terminated — In other words, LF was currently "whole", continued to be "whole" because he was still

in receipt of his benefits — Adjudicator reasonably applied “make whole” approach to remedies under CLC, followed precedents set by courts, previous adjudicators — Properly exercised her discretion in granting remedy to LF — Properly applied well-established principles applicable to costs — Decision to grant costs in partial indemnity in consideration of CMHC’s offer to settle intelligible, transparent, and justified in light of surrounding factual, legal context of cost awards in these types of proceedings — Applications dismissed.

LF V. CANADA MORTGAGE AND HOUSING CORPORATION (T-2060-17, T-2081-17, T-894-18, 2024 FC 452, Régimbald J., confidential reasons for judgment dated March 22, 2024, 75 pp.)