



## RCMP

Appeal from Federal Court judgment (2018 FC 1122) granting respondent's application for judicial review of decision of Level II Adjudicator appointed under *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 — Adjudicator denying respondent's grievance in which respondent seeking service pay included in lump sum payout of annual leave he received when retiring from RCMP — Respondent then seeking judicial review before Federal Court — Federal Court finding that Adjudicator's decision unreasonable, remitted matter back with directions for Adjudicator to adopt interpretation upholding respondent's position — Before retiring, respondent regular member of RCMP; had 37 years of service with Force; held rank of staff sergeant — When employed, respondent entitled to paid annual leave, service pay, amount paid to entitled RCMP members on each bi-weekly pay cheque which based on their length of service — At time of retirement, respondent receiving service pay at maximum rate of 10.5% of his staff sergeant's salary — Just prior to retirement in 2012, respondent accumulated 1,398 hours of annual leave that he had not been able to use during his career — In such situation, respondent chose to retire, electing to be paid out unused annual leave in lump sum rather than taking leave, postponing retirement date until after leave credits exhausted — Following respondent's retirement, discharge from Force, RCMP paid respondent value of his accumulated annual leave credits but did not add amount for service pay on annual leave — RCMP's Administration and National Compensation Manuals set out terms, conditions of service for RCMP members — Key provision in present appeal was s. 7.1 in chapter 19.1 of Administration Manual, which provided at relevant time that when member discharged from RCMP or dies, member or his/her estate will be paid amount equal to number of days of earned but unused annual leave to member's credit, **calculated at his/her substantive salary** on date of discharge or death — Terms "substantive salary", "substantive" not defined in either manual — RCMP's National Compensation Manual, at relevant time, provided in "Definitions" section that term "salary" meaning annual **rate of pay; not an allowance** or any other compensation — Respondent filing grievance seeking among other things, payment of disputed service pay — At time, Act, *Commissioner's Standing Orders (Grievances)*, SOR/2003-181 provided for two-level grievance process, where second level hearings conducted on *de novo* basis — Whether Federal Court properly reviewed Adjudicator's decision — *Per* Boivin J.A. (Rivoalen J.A. concurring): Adjudicator's decision reasonable — Although it would have been preferable for Adjudicator to acknowledge definition of "allowance" in finding that service pay was "allowance" that is excluded from definition of "salary", this alleged shortcoming not justifying finding that decision unreasonable as a whole — Not only does record demonstrate that definition of "allowance" not central to respondent's submissions at administrative stage but not determinative of matter — Whether service pay considered to be "allowance" that is excluded from definition of "salary" or not, Adjudicator still required to address effect of term "substantive" in s. 7.1 of RCMP's Administration Manual — Adjudicator doing just that, making other findings that were independent from notion that service pay is "allowance", that justified her ultimate conclusion that respondent not demonstrating that payout he received inconsistent with relevant legislation, policies — On basis of record before her, Adjudicator appropriately observing that crux of dispute concerned definition of "substantive salary" in s. 7.1 of Chapter 19.1 of RCMP's Administration Manual; signalled her focus on this chapter, which pertains to annual leave — Instead of relying on her finding that service pay was "allowance", Adjudicator also addressed impact of word "substantive" in s. 7.1 — In circumstances where "substantive salary" not defined in applicable policy manuals or enabling legislation at relevant time, Adjudicator reasonably concluded that term "substantive" having restrictive connotation, denoted basic salary void of any other form of compensation — Adjudicator also responsive to respondent's argument that excluding service pay from "substantive salary" in s. 7.1 of Chapter 19.1

of RCMP's Administration Manual created inequity — Furthermore, Adjudicator provided coherent, intelligible explanation for why service pay not tied to annual leave but to member's bi-weekly salary instead, which discharged member no longer receives — None of these additional findings depended on notion that service pay is "allowance" but instead demonstrated appropriate analysis of s. 7.1 of RCMP's Administration Manual in context, leading to transparent, intelligible, justifiable conclusion that payout of annual leave respondent receiving was appropriately calculated to exclude service pay in accordance with relevant legislation, policies — Adjudicator also not required to explicitly address, in reasons, amendment to RCMP's National Compensation Manual subsequent to respondent's retirement regarding service pay; such omission relatively insignificant — Adjudicator's decision reasonable; her reasons demonstrated as much — Federal Court correctly identified applicable standard of review as reasonableness — However, it conducted its own analysis of how relevant provisions of RCMP's Administration Manual and National Compensation Manual should be interpreted — Consequently, Federal Court insufficiently deferential, clearly engaged in disguised correctness review, erroneously focused on its own interpretation of RCMP's policy manuals, compared that interpretation to that of Adjudicator, using its own interpretation as yardstick to measure what Adjudicator did — Appeal therefore allowed, Federal Court judgment set aside, application for judicial review dismissed, Adjudicator's decision restored — *Per* Gleason J.A. (dissenting): Adjudicator's decision unreasonable, had to be set aside — Level II Adjudicator's consideration of meaning to be given to term "substantive", consideration of dictionary definitions of that term entirely irrelevant to issues Adjudicator called upon to decide — Term "substantive" term of art used in Federal Public Service to denote permanent position to which employee has been appointed as opposed to acting assignment — Term "substantive" simply meaning in context of relevant provisions in RCMP Manuals that salary to be paid out on retirement is that applicable to retiring member's permanent or substantive position — Leaving unanswered question that was crux of issue before Adjudicator, namely, whether salary for such position including service pay or not — Central to key issue were questions Adjudicator failed to grapple with, namely, how to reconcile conflicting definitions in Manuals of "salary", "allowance", one of which would include service pay in substantive salary, other of which would not — Failure to grapple with this conflict, as raised by respondent, rendering Level II Adjudicator's decision unreasonable — Appeal allowed, Gleason J.A. dissenting.

CANADA (ATTORNEY GENERAL) V. ZALYS (A-406-18, 2020 FCA 81, Boivin and Gleason JJ.A., reasons for judgment dated April 28, 2020, 43 pp.)