

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

**Between:**

**Mungleget Kaur Siddoo**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**International Longshoremen's and Warehousemen's Union, Local 502**

**Respondent**

**Ruling**

**File No.:** T1952/3213

**Member:** David Thomas

**Date:** February 4, 2015

**Citation:** 2015 CHRT 3

## Table of Contents

|  | <b>Page</b> |
|--|-------------|
| I. Introduction.....   | 1           |
| II. Facts .....  | 1           |
| III. Analysis.....   | 3           |
| A.        Jurisdiction.....  | 4           |
| B.        Issue Estoppel .....   | 5           |
| C.        Proper Legal Test for Adding Respondents / Merit of the Requests ..... | 5           |
| IV. Conclusion .....   | 7           |

## **I. Introduction**

[1] Ms. Siddoo is a Complainant before the Canadian Human Rights Tribunal (the “Tribunal”) alleging workplace discrimination. She has recently submitted two motions to the Tribunal, each to add a separate party to the present complaint against the International Longshoremen’s and Warehousemen’s Union, Local 502 (“ILWU”). Specifically, Ms. Siddoo seeks to add as Respondents the British Columbia Maritime Employers’ Association (“BCMEA”) and TSI Terminal Systems Inc. (which is now referred to as Global Container Terminals, hereinafter GCT). As the two motions are virtually identical, save for the named additional Respondents, this Ruling will apply to both motions.

[2] At the time of bringing her complaint against the ILWU, Ms. Siddoo also filed complaints against BCMEA and GCT with the Canadian Human Rights Commission (the “Commission”). The Commission did not find the complaints against BCMEA and GCT warranted an inquiry at the Tribunal. Ms. Siddoo judicially reviewed that decision to the Federal Court, who dismissed her application. She later attempted an appeal to the Federal Court of Appeal who also dismissed her application.

[3] The question before the Tribunal is whether it is proper to now add BCMEA and GCT as Respondents to the present complaint. I am not satisfied, for the reasons below, that it would be appropriate to add BCMEA and GCT to this complaint. Therefore, the two motions are dismissed.

## **II. Facts**

[4] The following facts are the ones most relevant to the Complainant’s motions currently being considered.

[5] Ms. Siddoo filed the following complaints with the Commission:

- (a) On August 30, 2011 against GCT alleging adverse differential treatment and failure to provide a harassment-free environment in violation of sections 7 and 14 of the *Canadian Human Rights Act* (the “Act”);
- (b) On November 7, 2011 against BCMEA alleging adverse differential treatment and failure to provide a harassment-free environment in violation of sections 7 and 14 of the *Act*; and
- (c) On November 7, 2011 against the ILWU raising the allegations of adverse differential treatment and failure to provide a harassment-free environment, in violation of sections 9 and 14 of the *Act*.

[6] All three complaints were the subject of investigations by the Commission in order to determine if inquiry by the Tribunal was warranted pursuant to s. 44 of the *Act*.

[7] On July 2, 2013 the Commission referred the complaint against ILWU to the Tribunal for inquiry. On the same day, the Commission dismissed the complaints against BCMEA and GCT following investigations into both. The Commission concluded there was insufficient evidence to warrant an inquiry by the Tribunal in respect of the two proposed Respondents.

[8] On August 7, 2013, Ms. Siddoo filed an application for judicial review of the Commission’s decisions to dismiss the complaints against BCMEA and GCT, which were later consolidated into a single Court file.

[9] On June 4, 2014, the Federal Court dismissed Ms. Siddoo’s applications, thus upholding the decisions of the Commission (Order dated June 4, 2014, Docket no. T-1341-13).

[10] Ms. Siddoo attempted to appeal the Federal Court's decision, but failed to meet the deadline to serve and file a notice of appeal. Her application for an extension of the deadline was considered by the Federal Court of Appeal and denied (Order dated September 30, 2014, Docket No. 14-A-58).

[11] On October 24, 2014, during a Tribunal case management conference call in the matter against ILWU, Ms. Siddoo raised the possibility that she may seek to add additional parties to the matter.

[12] On December 10, 2014, Ms. Siddoo advised the Tribunal and the Commission that she would be seeking to add BCMEA and GCT as Respondents.

[13] On December 18, 2014, Ms. Siddoo was advised by the Tribunal Chairperson by way of correspondence that if she intended to file a motion to add a respondent, she would have to file such motion by December 31, 2014 in order to ensure that the hearing on the merits against ILWU, scheduled for February 23-27, 2015, could proceed without delay.

[14] On December 30, 2014, Ms. Siddoo filed a motion seeking to add BCMEA as a party and another motion seeking to add GCT as a party to the proceedings against ILWU currently before the Tribunal.

### **III. Analysis**

[15] The issue before the Tribunal is whether it is proper to add BCMEA and/or GCT as Respondents to the complaint against IWLWU currently before the Tribunal.

[16] The Commission argues that there is no merit to the Complainant's request to add the proposed Respondents as parties to the matter. The Commission also argues that the motions should not be granted on the basis of procedural fairness.

[17] The proposed Respondents, BCMEA and GCT, in a joint response to the motions, argue the following: that the Tribunal lacks the jurisdiction to add the proposed Respondents; that the requirements of issue estoppel have been met; that adding the proposed Respondents would amount to an abuse of process; and, that the Complainant has not met the proper legal test for adding respondents. There were no submissions from the ILWU.

[18] In reaching my decision, I have considered every submission of the Commission and of BCMEA and GCT. However, it is not necessary for me to address each one in this ruling.

[19] As the question of jurisdiction has been raised, I must address this argument first.

#### **A. Jurisdiction**

[20] The position of the proposed Respondents is that the Tribunal may only consider a complaint against a respondent that has been referred to it by the Commission. The proposed Respondents cite section 49(1) of the *Act* to support their view that the Tribunal may only institute an inquiry upon a referral by the Commission. Reference is made to paragraph 10 of *Zhou v. National Research Council*, 2009 CHRT 7, to suggest that the Tribunal cannot be requested to institute an inquiry without such a referral.

[21] I don't agree that the Tribunal lacks jurisdiction to add respondents to a complaint that has been referred for inquiry. The present inquiry was instituted by a referral from the Commission. The facts in the *Zhou* decision are significantly different than the present matter before the Tribunal. In *Zhou*, a respondent attempted to institute an inquiry into separate allegations against a co-respondent. Under those circumstances, the Tribunal properly dismissed the attempt to institute a new inquiry in that manner.

[22] Most importantly, on the question of jurisdiction is the wording of the Tribunal's enabling statute. Under section 48.9(2) of the *Act*, the Chairperson has the authority to make rules of procedure governing the practice and procedure before the Tribunal. Section 48.9(2)(b)

of the *Act* specifically provides for rules governing “the addition of parties and interested persons to the proceedings”. Rule 8(3) of the Tribunal’s *Rules of Procedure* instructs parties on the method for seeking the addition of a new party.

[23] In my view, section 48.9(2)(b) of the *Act* makes it clear that Parliament has conferred this jurisdiction on the Tribunal.

### **B. Issue Estoppel**

[24] The proposed Respondents have argued that the doctrine of issue estoppel should apply to the present motions. The decision of the Commission to not add BCMEA and GCT to the complaint has been judicially reviewed by the Federal Court and the application was dismissed.

[25] Notwithstanding the arguments put forward, the issue before the Tribunal is materially different. Whereas the Federal Court’s review was based on the reasonableness of the Commission’s decision not to refer the complaints against the proposed Respondents for inquiry, the question before the Tribunal is different. The question in this case is whether or not it is now appropriate for the Tribunal to add these proposed Respondents to the present complaint.

[26] For this reason, I do not regard the Complainant as issue estopped from bringing the present motions.

### **C. Proper Legal Test for Adding Respondents / Merit of the Requests**

[27] The test for adding respondents to a complaint was set out by the Tribunal in *Syndicat des employés d'exécution de Québec Téléphone, Section locale 5044 du SCFP v. TELUS Communications (Québec) Inc.*, 2003 CHRT 31, as follows:

[30] The Panel is of the opinion that the forced addition of a new respondent once the Tribunal has been charged with inquiring into a complaint is appropriate, in the absence of formal rules to this effect, if it is established that the presence of this new party is necessary to dispose of the complaint of which the Tribunal is

seized and that it was not reasonably foreseeable, once the complaint was filed with the Commission, that the addition of a new respondent would be necessary to dispose of the complaint.

[28] This test has been applied by the Federal Court. (*Canada (Attorney General) v. Brown*, 2008 FC 734, at para. 39).

[29] Although the Tribunal will not conduct a substantive review of the allegations at the time of the motion being made, there nevertheless must be a certain level of particulars provided in the motion in order for the Tribunal to be able to conclude there is any possibility of a tenable connection to the pre-existing complaint such that the proposed respondent might rightly be added thereto.

[30] As a minimum, this would include facts alleged in relation to a specific discriminatory practice linked to a prohibited ground of discrimination under the *Act*. There would need to be sufficient detail in order to properly understand the allegation, the period of time during which the allegation took place, and the nexus between such actions and the proposed respondent. Unfortunately, the motions submitted by Ms. Siddoo do not include such a minimum level of particulars.

[31] In her motions, Ms. Siddoo alleges generally that ILWU, BCMEA and GCT colluded to remove her from two different training sessions, refused to accommodate her, and did not effectively deal with Work Safe British Columbia (WSBC) on her behalf. Of these common allegations raised in her motions, Ms. Siddoo provides some particulars with regard to the training sessions, but there is no clear nexus to the proposed Respondents and a prohibited ground under the *Act*. She also made allegations of harassment by the president of TSI Systems Inc. (now GCT), but again did not establish a nexus with a prohibited ground under the *Act*.

[32] The *TELUS* case cited above is an example of similar circumstances where the Tribunal denied a motion to add a respondent because, *inter alia*, there was insufficient documentation of discrimination provided to warrant inclusion of the proposed party.

**IV. Conclusion**

[33] In light of the foregoing, I dismiss the present motions. The Complainant has not sufficiently explained in her motions why the addition of BCMEA and GCT is necessary for the disposition of the present complaint. Despite a thorough reading of the material presented in support of the Complainant's motions, I find that no discriminatory practice has been clearly alleged against either of these two proposed Respondents, nor has a linkage with a prohibited ground been identified.

*Signed by*

David Thomas  
Tribunal Chairperson

Ottawa, Ontario  
February 4, 2015