

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2016 CHRT 18

**Date:** November 2, 2016

**File Nos.:** T2077/7814 and T2078/7914

**Between:**

**Chiyuka Saviye**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Afroglobal Network Inc.**

**- and -**

**Michael Daramola**

**Respondents**

**Ruling**

**Member:** Edward P. Lustig

## Table of Contents

I.	Background.....	1
II.	Parties' Positions on the Motion.....	3
III.	Law and Analysis .....	4
IV.	Decision and Order .....	6

## I. Background

[1] This is a ruling respecting a motion by the Complainant dated August 12, 2016, seeking an order amending the Complaint in this matter against Afroglobal Network Inc. (“Afroglobal”), to include allegations of retaliation, contrary to section 14.1 of the *Canadian Human Rights Act*, RSC 1985, c. H-6 (the “Act”).

[2] The Complaint against Afroglobal is undated and was received by the Commission on September 18, 2013. In it, the Complainant alleges discrimination against her by her employer Afroglobal between September 2011 and July 2013, on the basis of the prohibited ground of sex under section 3(1) of the *Act*, involving allegations of the discriminatory practices of adverse differential treatment and failure to provide a work environment free from sexual harassment, contrary to sections 7 and 14 of the *Act*.

[3] The Complaint against Michael Daramola (“Daramola”) is dated September 18, 2013 and was received by the Commission on September 30, 2013. This Complaint is identical to the Complaint against Afroglobal. In it, the Complainant alleges discrimination against her by Daramola, who at the material times was a director and officer of her employer Afroglobal, on the basis of the prohibited ground of sex under section 3(1) of the *Act*, involving allegations of the discriminatory practice of sexual harassment, contrary to section 14 of the *Act*.

[4] Sections 3(1), 7, 14 and 14.1 of the *Act* provide as follows:

**3.** (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

**7.** It is a discriminatory practice, directly or indirectly,  
(a) to refuse to employ or continue to employ any individual, or  
(b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

**14.** (1) It is a discriminatory practice,  
 (a) in the provision of goods, services, facilities or accommodation customarily available to the general public,  
 (b) in the provision of commercial premises or residential accommodation, or  
 (c) in matters related to employment,

to harass an individual on a prohibited ground of discrimination.

(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

**14.1** It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

[5] By letter dated January 14, 2015 the Commission requested the Canadian Human Rights Tribunal (“Tribunal”) to institute an inquiry into the Complaints pursuant to section 44(3)(a) of the *Act* and requested that the Complaints be consolidated.

[6] The Complainant’s Statement of Particulars, including particulars of the Retaliation claim, dated August 15, 2016 was included with the Notice of Motion. The Statement of Particulars alleges that after Afroglobal received notice of the Complaint from the Commission, in or about October of 2013, an offer of a job promotion that had been made to the Complainant by Afroglobal, in or about the summer of 2013, was resiled by Afroglobal as retaliation for her Complaint.

[7] The Commission’s Statement of Particulars is dated August 12, 2016 and its Reply to the motion is dated September 2, 2016.

[8] Afroglobal’s Statement of Particulars together with a response to the motion is dated September 16, 2016. The Statement of Particulars disputes the allegations of the Complainant respecting retaliation and alleges that the Complainant’s allegations regarding retaliation are not factually correct.

[9] Daramola’s Statement of Particulars is dated September 16, 2016.

[10] The Complainant's reply to Afroglobal's response to the motion is dated September 23, 2016.

## II. Parties' Positions on the Motion

[11] The Complainant's position is that:

- i) The allegations of retaliation arise from the original complaint.
- ii) The allegations of retaliation present a tenable claim.
- iii) The facts relating to the alleged retaliation are known to Afroglobal.
- iv) The amendment of the complaint to include retaliation serves the interests of justice and the fulsome determination of the issues and controversy between the parties.
- v) No prejudice would result in granting the relief sought.

[12] The Commission's position is that:

- i) The Complainant's position on the motion meets all of the requirements which have been established for such amendments according to previous decisions of the Tribunal.
- ii) In addition the Tribunal's analysis in *First Nations Child and Caring Society of Canada et al v. Attorney General of Canada (for the Minister of Indian and Northern Affairs)*, 2012 CHRT 24 ("FNCFCS") is applicable wherein at paragraph 17 thereof the Tribunal held as follows:

Furthermore, the panel is of the view that the Respondent will not be prejudiced by the amendment as it has had ample time and will have ample opportunity to respond to the allegations of retaliation made by the Complainants. To hear both the initial complaint and the allegations of retaliation in the same proceeding, as opposed to creating an artificial separation of the allegations in multiple proceedings, is favourable to all parties and is in the interest of justice.

- iii) There will be no prejudice to Afroglobal as it is well positioned to prepare its defence and argue its position because the allegations of retaliation emanate from the same factual matrix as the initial complaint and the alleged retaliatory events can be linked to the initial complaint.

[13] Afroglobal's position is that:

- i) The issue of prejudice is the predominant factor to be considered in considering whether to allow an amendment.
- ii) It will be prejudiced if the complaint is amended to include the allegations of retaliation because there is no causal link between the original complaint and the amendment alleging retaliation.

### III. Law and Analysis

[14] The Tribunal has the authority to amend a complaint to add an allegation of retaliation. This was affirmed by the Federal Court in *Canada (Attorney General) v. Parent*, 2006 FC 1313 at paragraph 30 as follows:

The Tribunal enjoys considerable discretion with respect to the examination of complaints under subsections 48.9(1) and (2) and sections 49 and 50 of the Act. As for the exercise of that discretion in regard to an amendment request, Mr. Justice Robert Décaré wrote in *Canderel Ltd. v. Canada (C.A.)*, 1993 CanLII 2990 (FCA), [1994] 1 F.C.3, 1993 CanLII 2990 (F.C.A.), that "[...] the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice".

(See also *FNCFCS* supra at para 13.)

[15] Generally speaking, an amendment should be granted unless it is plain and obvious that the amendment sought could not possibly succeed (*Virk v. Bell Canada*, 2004 CHRT ("Virk") at para 7; see also *Palm v. International Longshore and Warehouse Union, Local 500, Richard Wilkinson and Cliff Wellicome*, 2015 CHRT 23 at para 4).

[16] Further, the test to be applied in assessing if the amendment should be allowed is to determine whether the allegations of retaliation are by their nature linked, at least by the complainant, to the allegations giving rise to the original Complaint and disclose a tenable claim for retaliation (see *FNCFC* at paras. 7 and 14; see also *Virk* at para 7).

[17] The Tribunal must consider prejudice that Afroglobal could suffer in allowing the Complainant to amend her Complaint. In *Virk*, the Tribunal explained that it “must at all times ensure that sufficient notice is given to the respondent so that it is not prejudiced and can properly defend itself” (see *Virk* at para 8; see also *FNCFC* at paras. 15 and 17).

[18] In determining whether the motion to amend the Complaint should be granted, the Tribunal should not embark on a substantive review of the merits of the amendment (see *Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 02 (“*Bressette*”) at para 6). The merits of the allegations should be assessed at the hearing when the parties have full and ample opportunity to provide evidence.

[19] Allowing an amendment for retaliation does not itself establish a contravention of the *Act*. In *Bressette* the Tribunal explained this as follows in paragraph 8:

This is not to say that the complainant has established that the respondent did contravene s. 14.1 of the *Act*. This remains to be proven by the complainant at the hearing of the complaint. All that this Tribunal has concluded is that the original complaint should be amended to add an allegation under s.14.1 of the *Act*.

[20] In my opinion, the Complainant’s allegations of retaliation emanate from the same factual matrix as the initial Complaint. The Complainant alleges she was verbally offered a promotion. After filing her human rights complaint with the Commission, she alleges that Afroglobal refused to offer her the promotion and in fact hired others in her place. As such, the allegations of retaliation stem from the same parties and factual matrix as the initial Complaint.

[21] In my opinion, Afroglobal will not be prejudiced by the amendment as it will have ample time and opportunity to respond to the allegations of retaliation made by the Complainant. Afroglobal’s position that there is no causal link between the original Complaint and the amendment alleging retaliation does not, for the purposes of

determining this motion, answer the facts alleged by the Complainant as referred to in paragraph 20 above. Rather it is an argument on the merits which may be argued at the hearing as per the quote from the *Bressette* case in paragraph 19 above.

**IV. Decision and Order**

[22] For the foregoing reasons, the motion to amend the Complaint is granted.

*Signed by*

Edward P. Lustig  
Tribunal Member

Ottawa, Ontario  
November 2, 2016