Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2018 CHRT 14
Date: May 24, 2018
File No.: T1828/5812

Between:

Jessica Stanger

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Post Corporation

Respondent

Decision

Member: David L. Thomas

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I. Remedy for Substantiated Complaint

[1] This is a decision regarding the appropriate remedy for a substantiated complaint of discrimination in *Stanger v. Canada Post Corporation*, 2017 CHRT 8 (the "Decision").

[2] Ms. Jessica Stanger brought forward this complaint against Canada Post Corporation, as Respondent, alleging it discriminated against her on the basis of her disability and marital status. At the hearing, Ms. Stanger gave evidence about 18 separate events which she alleged constituted prohibited discrimination under the *Canadian Human Rights Act* (the *Act* or *CHRA)*. In the Decision, I found only one of the alleged events to be a substantiated claim of discrimination.

[3] At the hearing, Ms. Stanger did not come prepared with submissions or documentary evidence related to her claimed financial losses. Respondent counsel suggested that the hearing be bifurcated, and that any evidence and submissions on damages could be presented if and when the Tribunal found liability. The parties and the Tribunal agreed to the bifurcation.

[4] After the release of the Decision, the parties were invited to file documentary evidence and arguments on the subject of remedy. In the Decision, the parties were reminded of the importance of bearing in mind the specific provisions of section 53 of the *CHRA*, and also, the extent to which they require a causal link between the discriminatory practice and the loss claimed. (See, *Chopra v. Canada (Attorney General),* 2007 FCA 268 ("*Chopra*") at para. 37.)

[5] Moreover, the parties were asked to address the question of whether, and if so, to what extent, the Tribunal should apply the doctrine of mitigation of losses to any claim for compensation (see *Chopra, supra*, at para. 40). The parties were also invited to refer to any additional legal authorities they deemed relevant to the remedial claim in this case.

[6] Final submissions were received in October 2017 and this decision orders remedy based on the reasons below.

II. Law

[7] Upon a finding that a complaint or a portion thereof is substantiated, section 53 of the *CHRA* authorizes the Tribunal to make an order against a respondent, providing for compensation and other forms of redress. Section 53 reads as follows:

> Complaint dismissed
>
> (1) At the conclusion of an inquiry, the member or panel conducting the inquiry shall dismiss the complaint if the member or panel finds that the complaint is not substantiated.
>
> Complaint substantiated
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> (2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:
>
> (a) that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including
>
> (i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or
>
> (ii) making an application for approval and implementing a plan under section 17;
>
> (b) that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities or privileges that are being or were denied the victim as a result of the practice;
>
> (c) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;
>
> (d) that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice; and

> (e) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.
>
> Special compensation
>
> (3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.
>
> Interest
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> (4) Subject to the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.

III. Remedies Sought

A. Lost Wages & Instatement

[8] Ms. Stanger asks to be awarded lost wages under paragraph 53(2)(c) of the *Act*. She claims that as a result of the discriminatory practice that prevented her from attending the Career Leadership Development Program (CLDP) in February 2008, she was denied a supervisor position that would have paid her higher wages. She requests the Tribunal compensate her for the difference in wages between her present level (PO4) and the supervisor level (AP1, or APOC 1) from 2008 until the date "the discrimination ceases". In addition, Ms. Stanger wishes to be compensated for any bonuses paid to AP1 employees that she might have received or will receive during such periods. Ms. Stanger provides calculations in her submissions and advises that the lost wages for the 10 year period of 2008-2017 inclusive would be $71,988.80. No figures concerning bonuses were submitted.

[9] Ms. Stanger also asks the Tribunal to instruct Canada Post to offer her an indeterminate APOC 1 position with a seniority date based on the APOC B seniority list for new supervisors or, in the alternative, to pay her as an APOC supervisor with all the financial benefits of that position until her retirement, should the Respondent be unable to

offer the Complainant an AP1 position or should the Complainant be unable to obtain an AP1 position. (Presumably she means a position under the "Association of Postal Officials of Canada" which I understand to be the bargaining unit for Canada Post supervisors.)

[10] The Respondent rejects all claims for lost wages. The Respondent argues that Ms. Stanger has conflated getting an opportunity to attend the CLDP, where one is assessed on one's qualifications for a possible supervisor position, with actually getting a supervisor position. As a result of the discrimination, Ms. Stanger lost an opportunity to attend an assessment program, not the actual supervisor position itself.

[11] Canada Post argues that even if Ms. Stanger attended the CLDP session, she might not have been deemed suitable for promotion. Canada Post filed a document as evidence at the hearing which showed that 5 of the 15 employees that attended the CLDP session in February of 2008 were not successful and were not deemed suitable for promotion to a supervisor position.

[12] Canada Post also argues that all new supervisor employees are subject to a 6 month probationary period. Evidence was submitted to show that at least one employee had not successfully passed the 6 month probationary period.

[13] With all of these existing conditions, Canada Post argues that it was far from certain that Ms. Stanger would have ended up with a supervisor position even if she had not been denied participation in the February 2008 CLDP. The Respondent also points out the Complainant's own admission in her final argument at the hearing that there was no guarantee that her selection for the CLDP would have resulted in an offer of a supervisor position.

[14] The Respondent argues in the alternative that if the Tribunal decides that compensation should be awarded for lost wages, then such amount should be reduced because of Ms. Stanger's failure to mitigate her damages. The submissions of the Respondent included an affidavit by one of its human resources managers, Dawn Koop. Ms. Koop states that a new system for promotion to supervisor positions replaced the CLDP process and was implemented and communicated to all employees in July of 2009. Under the new system, an employee must create an online career profile before making

an application for a supervisor or other position. Ms. Koop states her understanding is that Ms. Stanger has never completed an online career profile which would be the first step in applying for a supervisory position under the system implemented in 2009.

[15] Canada Post argues that Ms. Stanger knew as of July 2009 that the CLDP process had ceased to exist and that to apply for a supervisor position, she had to apply online and start by creating a career profile. As Ms. Stanger made no effort to apply for a supervisor position from July 2009 to present, Canada Post argues, any award for lost wages that might be granted should be reduced accordingly.

B. Tribunal Decision Regarding Lost Wages and Instatement

[16] Ms. Stanger has not satisfied the Tribunal that there is a causal link between the discrimination and the lost wages claimed. Notwithstanding her submissions on remedy, the evidence at the hearing was clear that the CLDP was designed as a tool to assess employees for a possible promotion to a supervisor position. Attendance at the CLDP cannot be conflated with actually receiving the promotion. The Tribunal considered a similar scenario in *Leblanc v. Canada (Canada Post Corporation) (1992)* D.C.D.P. No. 7, (1992) CHRD No. 7 (1992) (*Leblanc*):

> Undoubtedly the Acceptable rating which he received denied Le Blanc his opportunity for the promotion. But neither he nor the Commission led any evidence to suggest Le Blanc would have received the promotion even with a Fully Satisfactory rating. The qualifications of the 19 other candidates were not before us nor any details about the selection process for the positions in question. In order to succeed under this head of compensation, Le Blanc must at least have demonstrated on the evidence that he would have had a reasonable possibility of obtaining the promotion absent discriminatory treatment. In our view he has failed to meet this onus and we therefore dismiss this claim for compensation.

[17] The evidence at the hearing was clear that success at the CLDP would not guarantee a successful placement into a supervisor position. Therefore, Ms. Stanger has failed to establish a direct causal link to a supervisor position she believes she otherwise would have obtained, but for the discriminatory practice.

[18] Furthermore, there was no evidence that Ms. Stanger would have successfully completed the assessment at the CLDP. Although she may have been successful, there was evidence led that not all candidates were indeed successful at that session.

[19] Ms. Stanger did lead evidence about the subsequent promotion of a fellow employee named Sarah Lennox. Later in 2008, after a term supervisor named Mr. Yuen stepped down from his position, Ms. Lennox was appointed to replace him. The Complainant argued at the hearing that this was evidence that the Respondent had discriminated against her, by promoting the more junior Ms. Lennox instead of her. There was evidence at the hearing that Ms. Lennox had also not attended the CLDP session. As this did not preclude Ms. Lennox from being appointed to replace Mr. Yuen, then I must conclude that Ms. Stanger's missed opportunity to attend the CLDP was not related to the decision to give this position to Ms. Lennox.

[20] Ms. Sherri Aiken gave an explanation at the hearing that Ms. Lennox had far less union seniority than Ms. Stanger and that this was a deciding factor in offering the initial, temporary job to Ms. Lennox. Ms. Lennox was inserted into this non-union supervisor position on a temporary basis. There was no guarantee that she would remain at the level. If she returned to her unionized position after working as a supervisor, Ms. Lennox would lose all of her union seniority, Ms. Aiken testified. On the other hand, if Ms. Stanger was inserted into a temporary supervisor position and then subsequently returned to her unionized position, then Ms. Stanger would lose her union seniority which she had accumulated over the previous 19 years.

[21] Ms. Stanger stated she should have been given the opportunity to take on the temporary assignment, notwithstanding the risk to her seniority. Perhaps she may have had reason to grieve that decision in a normal labour relations context. However, I do not see Ms. Stanger being overlooked for the temporary assignment as the result of discriminatory behaviour, as the decision appeared to be wholly unrelated to her inability to attend the CLDP.

[22] Regarding instatement, Ms. Stanger takes the position that the discriminatory conduct denied her a promotion and requests that the Tribunal, under section 53(2)(b) of

the *Act*, order Canada Post to offer her a supervisory position. Specifically she requests an indeterminate APOC 1 position with a seniority date based on the APOC B seniority list for new supervisors, or to pay her as an APOC supervisor with all the financial benefits of that position until her retirement.

[23] I do not find the Respondent liable for lost wages because Ms. Stanger did not successfully establish a direct causal link from the discriminatory behaviour (refusing to positively endorse the CLDP application) and the failure of her to be promoted to a supervisor position. Notwithstanding her submissions on remedy, the evidence at the hearing was clear that the CLDP was designed as a tool to assess employees for a possible promotion to a supervisor position. It was not proven that the mere attendance at the CLDP would automatically result in receiving a promotion. For these reasons, I would similarly be disinclined to make an order under section 53(2)(b) to have Ms. Stanger instated into a supervisor position. (See *Tahmourpour v. Canada (Royal Canadian Mounted Police)* 2008 CHRT 10 at para. 212.)

[24] Ms. Stanger makes an unconvincing assertion that she has remained all these years under the impression that her candidacy for promotion was still under consideration. The affidavit of Ms. Koop confirms that Ms. Stanger has never taken the steps necessary to be considered for a promotion in the almost 9 year period since the recruitment process was changed. Surely, if Ms. Stanger was sincerely interested in becoming a supervisor with Canada Post, she would have taken such steps by now.

[25] In her reply submissions, Ms. Stanger makes the assertion that, “The victim of harassment is under no obligation to mitigate their loss.” However, the Federal Court of Appeal, in *Chopra, supra*, states that, “A tribunal may well find that the principles underlying the doctrine of mitigation of losses in other contexts apply equally in the context of claims for lost wages under the Act” (at para.40). In any event, in the context of both lost wages and instatement, the point is moot as I do not find that Ms. Stanger has proven a causal link between the discriminatory behaviour and her subsequent failure to be promoted to the position of supervisor.

[26] In what I regard as a kind gesture of good faith, Canada Post has offered that if Ms. Stanger still wishes to be a supervisor, they will consider her application on a priority basis once she has completed the online career profile. The Respondent has asked that if the Tribunal directs this consideration under paragraph 53(2)(b) of the *Act*, then a time limit should be put upon the Respondent's obligation to consider Ms. Stanger's application on a priority basis. Accordingly, the Tribunal orders that Canada Post consider Ms. Stanger's application to become a supervisor on a priority basis and that this obligation will expire 180 days from the date of the release of this decision. Ms. Stanger will have the obligation to complete the online career profile within 30 days of this ruling if she wishes to avail herself of this opportunity.

C. Compensation for Leave Without Pay

[27] At the hearing, Ms. Stanger gave evidence that she left her workplace on June 22, 2008 and did not return to work until December 2008 (at a different location). Her medical benefits ran out and for a portion of this period, Ms. Stanger was deemed to be on a leave without pay ("LWOP"). She requests to be compensated for that period when she received no income. Although her submissions refer to an attached wage calculation for this amount, there was no such calculation included, nor any specific amount claimed.

[28] The Respondent did not make a direct reply concerning this claim.

D. Tribunal Decision regarding Compensation for Leave Without Pay

[29] At the hearing, it was Ms. Stanger's evidence that she decided not to return to the workplace after a co-worker, Ms. Darlene Schultz, was angry and agitated at her on June 22, 2008. After Ms. Stanger's unannounced departure from the workplace, she applied for sick leave which provided her with benefits that ran out in early September 2008. Thereafter, she applied for special leave benefits, but this request was denied. This resulted in Ms. Stanger remaining on a LWOP status until she started her new position in December 2008. The discriminatory behaviour regarding the CLDP

recommendation occurred in January 2008, approximately 5 months before Ms. Stanger ceased working.

[30] On August 5, 2008, Ms. Stanger attended a return-to-work meeting organized by the insurance company, Manulife Financial, which was also attended by Ms. Stanger's supervisor and a union representative. The Return to Work Specialist from Manulife, Ms. Stephanie Hutchins, prepared a report on the meeting dated August 7, 2008, which was entered as an exhibit at the hearing. The report stated that there were no process barriers or functional barriers identified as preventing Ms. Stanger's return to work. Interpersonal barriers were identified in the report and they were consistent with Ms. Stanger's oral testimony at the hearing. Ms. Stanger indicated she felt harassed because of her relationship and marriage to Superintendent Stanger. Ms. Stanger stated she had no interest in discussing these matters with representatives of Canada Post's human rights specialists. She also indicated that she had applied for a Mail Service Courier position and had no intention of returning to the Victoria Mail Processing Plant.

[31] It is unfortunate that Ms. Stanger did not cooperate with the human rights representatives from Canada Post back in 2008 as it might have resulted in an earlier return to work for her. It was not Ms. Stanger's evidence at the hearing that the sole reason she chose not to return to work was because Ms. Aiken refused to endorse her CLDP request. Rather, Ms. Stanger suggested that the interaction with Ms. Schultz was just the final straw in what she believed was a long history of discrimination and harassment based on her disability and marital status. Although I rejected the other 17 claims for the reasons given in the Decision, it is true that discrimination was substantiated in this one instance. To the extent that this might possibly have been a legitimate contribution to Ms. Stanger's absence from work during this period, I award Ms. Stanger a portion of the lost wages during this LWOP period.

[32] While there were no specific amounts claimed in Ms. Stanger's submissions, it is not hard to surmise elsewhere in the submissions that her pay at this time was $22.87 per hour and she worked 40 hours per week. While Ms. Stanger requests to be compensated from June 22 until December 2008, she acknowledges that she did receive sick benefits until early September 2008. I will conclude from this that Ms. Stanger was on a LWOP for

13 weeks. The Tribunal orders that Ms. Stanger be paid for two weeks of the missed pay, which is $1,829.60 subject to the normal employee source deductions. Interest under section 53(4) of the *Act* will be payable on the net amount from December 1, 2008 to the date of this ruling at the rate specified in Rule 9(12) of the Tribunal's *Rules of Procedure (03-05-04)*.

E. Compensation for Missed Pension Contributions

[33] Ms. Stanger asked to be compensated for pension expenses she incurred during her LWOP in 2008. Unfortunately her submissions were not detailed and it is difficult to ascertain which payments she claimed are for what. She submitted copies of correspondence with Canada Post's Pension Centre and copies of cheques written to the pension plan. The total amount claimed is $1,135.72.

[34] The Respondent points out that the correspondence from the Pension Centre, dated September 18, 2008, indicates these payments are related to 3 separate matters: pension contributions for a previous LWOP; payment for her decision to buy back some elective service; and pension contributions during her then-current LWOP.

[35] In any event, the Respondent argues, the Complainant has failed to show these expenses, or any others during her LWOP, were incurred as a result of the discriminatory practice as required pursuant to section 53(2)(d) of the *CHRA*.

F. Tribunal Decision Regarding Compensation for Missed Pension Contributions

For the reasons above, Ms. Stanger was awarded the gross pay of $1,829.60 for her leave of absence in the fall of 2008. Accordingly, the Tribunal awards Ms. Stanger the corresponding pension benefit on this amount calculated in accordance with Canada Post's standard benefit policies.

G. Medical Expenses

[36] Ms. Stanger submitted receipts from a doctor and a counsellor totalling $1,977.10. Unfortunately, her submissions provide little information about what these appointments were for or how they were connected to the discriminatory practice.

[37] The Respondent objected to this claim on several grounds. Firstly, the Complainant provided no explanation as to why they were incurred as a result of the discriminatory practice. Secondly, under the Extended Health Care Plan of the Respondent, which covered both her and her husband, Ms. Stanger should have been entitled to reimbursement of 80% of most of these expenses.

[38] Finally, the Respondent notes that Ms. Stanger did not present any medical evidence at the hearing to substantiate her claim that there was a causal connection between her absence from the workplace and the discriminatory conduct.

H. Tribunal Decision Regarding Medical Expenses

[39] Ms. Stanger submitted fifteen (15) medical receipts with her submissions totalling $1,977.10. Thirteen (13) of those receipts were for expenses incurred between May and December of 2008. There was a small receipt ($12.10) in 2012 and a final receipt dated September 7, 2013. Ten (10) of these invoices (totalling $1,475.00) are for professional services in 2008 described only as “sessions” from Dr. Ulrike M. Koechling, a Registered Psychologist in Sydney, B.C. There are two (2) unexplained receipts (totalling $90.00) in the fall of 2008 from a “Doctors Medical Clinic” in Victoria. However, on the face of these receipts, there is no indication of what these payments were for. The last three invoices are from Dr. Koechling (totalling $412.10) for services described as “Report” (in 2008), “Photocopies” (in 2012), and “Letter” (in 2013).

[40] The Tribunal makes no award to Ms. Stanger with respect to these medical expenses. At the hearing, Ms. Stanger did not present any medical evidence which may have substantiated a causal connection between these claimed expenses and the discriminatory conduct. Moreover, Ms. Stanger did not provide any explanation in her

submissions on remedy to explain what these receipts represent. I am drawn to conclude that if there was a tenable connection between the discrimination and these expense receipts, Ms. Stanger would have provided evidence.

I. Miscellaneous Administrative Out-Of-Pocket Expenses

[41] Ms. Stanger claims administrative out-of-pocket expenses totaling $1,251.16 incurred in bringing forward her human rights complaint. Included in the claim are receipts representing her husband's cell phone bill, meals at the hotel on the day of the hearing, parking while attending the hearing, postage paid, photocopying and other stationery purchases.

[42] The Respondent submits that only reasonable expenses that are causally connected to the discrimination should be compensated.

J. Tribunal Decision Regarding Administrative Out-Of-Pocket Expenses

[43] Ms. Stanger has submitted various receipts for what she describes as "expenses that the complainant incurred in bringing forward" her complaint. The receipts are for items such as photocopies, postage, cell phone charges, binders, tabs and paper, and parking and meals while attending the hearing in Victoria.

[44] In *Grant v. Manitoba Telecom Services Inc.* 2012 CHRT 20 ("*Grant*"), the Tribunal considered a similar request at paragraph 20:

> [20] The Complainant seeks compensation with regards to the expenses she incurred related to the hearing of this matter, and filed an expense chart in this regard at the July 10, 2012 hearing. The Complainant seeks $2,000.00 for lodging, meals, parking, and travel. In *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 [*Mowat*], the Supreme Court of Canada found that the text, context and purpose of the *Act* clearly showed that there was no authority in the Tribunal to award legal costs. According to the same reasoning in *Mowat*, and considering there is no link between the particular types of compensation described in section 53 and the costs claimed by the Complainant here, I fail to see any authority in the *Act* that would allow the Tribunal to award compensation for the expenses that the Complainant incurred in relation to

> the hearing of this matter. Therefore, no compensation can be provided for these costs.

[45] I agree with the Tribunal's decision in *Grant, supra,* based on the Supreme Court of Canada's reasoning in *Mowat, supra,* in that the *Act* does not intend for these "administrative" costs, incurred in connection with presenting the complaint at hearing and beforehand, to be reimbursed under section 53. Accordingly, I do not award any amount for the administrative expenses claimed.

K. Pain and Suffering

[46] Ms. Stanger claims she suffered from distress and anxiety because of the discrimination that she endured. She states that Ms. Aiken's apology letter is evidence of her distress and that Ms. Aiken and her actions were the direct cause of her distress. Ms. Stanger also claims that she missed substantial time off work and incurred significant medical expenses due to the stress that was caused by Ms. Aiken's discrimination. Accordingly, Ms. Stanger asks the Tribunal to award her the maximum amount permitted under section 53(2)(e) of the *Act*, which is $20,000.

[47] In its submissions, the Respondent concedes that a victim of discrimination is entitled to some monetary compensation if there is some evidence that the victim experienced some pain and suffering. However, Canada Post argues that any monetary amount awarded in this case should not be towards the upper limit, but in the lower range of such awards for the following reasons: in this case, the discrimination was not public but rather in a private meeting; the Complainant did not accept Ms. Aiken's explanation and escalated her concerns to another superior in Vancouver; and there was nothing repetitive about the discriminatory practice, as a few weeks later, on March 6, 2008, Ms. Aiken admitted she was wrong and told Ms. Stanger she would not be denied for recommendation to the next CLDP. In light of the foregoing, the respondent argues that any award made ought to be in the lower range.

[48] Canada Posts also submits that Ms. Stanger did not provide any evidence that she suffered pain or suffering as a result of Ms. Aiken's denial of her application to attend the

CLDP. Ms. Aiken's apology letter, which Ms. Stanger relies upon as proof, states: "Please accept my apology for any concern or distress you may have experienced due to the delays that resulted in missing the February session" (emphasis added in Respondent's submissions). Ms. Aiken's speculation that Ms. Stanger may have experienced distress is not, the Respondent argues, proof that the Complainant actually experienced distress.

[49] The Respondent suggests the evidence indicates Ms. Stanger was not distressed about missing the CLDP session. At paragraph 71 of the Decision, it was Ms. Aiken's evidence that Ms. Stanger did not appear disappointed to have missed the session.

[50] Although Ms. Stanger claims that the denial led directly to her missing work, the Respondent points out that Ms. Stanger did not leave the workplace until 5 months later. Furthermore, Canada Post points out that in paragraph 61 of her submissions, Ms. Stanger states that the stress she encountered in the workplace was attributable to the conflict of interest situation she found herself in as a result of her marital relationship to the superintendent and the perception of receiving favouritism. The denial of the recommendation to attend the CLDP session was, according to paragraph 62 of Ms. Stanger's submissions, "also" a cause of her distress.

[51] The Respondent also highlights the credibility findings about the Complainant in the Decision. As the Tribunal was reluctant to rely solely on Ms. Stanger's oral evidence in the substantive decision, they suggest that the Tribunal should take the Complainant's uncorroborated evidence about pain and suffering "with a grain of salt."

L. Tribunal Decision Regarding Pain and Suffering

[52] Ms. Stanger claims she suffered from distress and anxiety because of the discrimination that she endured and asks the Tribunal to award her the maximum amount permitted under section 53(2)(e) of the *Act*, which is $20,000.

[53] At the hearing, Ms. Stanger's complaint about the CLDP endorsement refusal was but one of several allegations raised. It was not presented as a particularly wounding event in contrast to the 17 other events alleged. I am more persuaded by the evidence of Ms. Aiken that it was not until Ms. Stanger brought her human rights complaint forward

some months later that she was even aware that Ms. Stanger was upset about missing the CLDP.

[54] Notwithstanding the conflicting evidence, I am convinced that Ms. Stanger should receive some compensation under section 53(2)(e) for the effects of the discriminatory behaviour. However, I do not find this to be a case where an award in the higher range would be appropriate. There are several factors which mitigate any pain and suffering felt by Ms. Stanger. This was a private matter between Ms. Aiken and Ms. Stanger and other co-workers were not aware of what transpired. Secondly, the discrimination occurred only one time and, as pointed out in the Decision, was rectified quite quickly by the Respondent. It was unfortunate timing that the CLDP was never offered again, resulting in the missed opportunity for Ms. Stanger. However, there was no compelling evidence that this particular event was the cause of great pain and suffering for Ms. Stanger. Therefore, I would agree that any award should be in the lower end of the range. Accordingly, the Tribunal orders Canada Post to pay Ms. Stanger the sum of $2,500 (Two Thousand Five Hundred Dollars) for pain and suffering under section 53(2)(e) of the *Act*.

M. Willful or Reckless Practice

[55] Ms. Stanger argues that she should be awarded the maximum $20,000 permitted under section 53(3) of the *Act* for the willful and reckless conduct of the Respondent. Specifically, Ms. Stanger claims that Canada Post's Human Rights Officer, Ms. Roxanne Ayers, and Human Resources Director, Mr. Scott John, should have followed up to ensure that Ms. Aiken actually did reverse her decision about the CLDP recommendation. As Ms. Stanger was never given a seat at a future CLDP session, she wonders if there ever was a positive recommendation, or even a "pending file" where the recommendation was supposedly held until a future session was announced.

[56] Ms. Stanger states that Ms. Ayers and Mr. John did not contact her and did not follow up on her complaint of discrimination. She also claims that Canada Post could have given her a supervisor position in Victoria that was instead given to another employee, Ms. Lennox.

[57] The Respondent suggests the Tribunal should dismiss any claims for compensation under section 53(3) of the *Act*. Paragraph 87 of the Decision is cited where the Tribunal states: "Canada Post should be commended for quickly realizing their error and they immediately took action to reverse Ms. Aiken's decision not to approve the CLDP recommendation form."

[58] Canada Post also cites the Tribunal's decision in *Cassidy v. Canada Post Corporation*, 2012 CHRT 29, where at paragraph 201, the Tribunal states:

> I wish to add that, just because an employer did not exercise "all due diligence", does not mean *per se* that the employer was "reckless" or "willful", attracting such compensation pursuant to section 53(3) of the *CHRA*.

N. Tribunal Decision Regarding Willful or Reckless Practice

[59] Ms. Stanger requests she be awarded $20,000 for the willful and reckless conduct of the Respondent based partly on her assertion that nothing was done to follow up on her human rights complaints. The evidence at the hearing was that there were a number of times when Ms. Stanger refused to cooperate with the human rights investigators at Canada Post. She did not cooperate when asked to give them details of her allegations in writing. Manulife observed at her return-to-work meeting that Ms. Stanger stated she had no interest in discussing her allegations with the human rights department at Canada Post.

[60] With respect to the one event where the alleged discrimination was substantiated, there was no evidence of willful and reckless conduct. On the contrary, I found Ms. Aiken to be acting with well-intentioned prudence on behalf of her employer, not with malice or reckless conduct. Upon receiving advice that Ms. Stanger's CLDP recommendation form should have been endorsed, Ms. Aiken reversed her position and advised Ms. Stanger of this upon her return from Hawaii in March of 2008. As I stated in the Decision, at paragraph 87:

> Canada Post should be commended for quickly realizing their error and they immediately took action to reverse Ms. Aiken's decision not to approve the CLDP recommendation form.

[61] I make no finding of willful or reckless conduct by Canada Post. Accordingly, the Tribunal makes no award under section 53(3) of the *Act.*

Signed by

David L. Thomas
Tribunal Member

Ottawa, Ontario
May 24, 2018

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1828/5812

Style of Cause: Jessica Stanger v. Canada Post Corporation

Decision of the Tribunal Dated: May 24, 2018

Remedies dealt with in writing without appearance of parties

Written representations by:

Patrick Stanger, for the Complainant

Debra Rusnak, for the Respondent