

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2019 CHRT 36

Date: August 28, 2019

File No.: T2156/3016

Between:

Rosanne Harrison

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Curve Lake First Nation and Canada Post Corporation

Respondents

Ruling

Member: Lisa Gallivan

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I. Background

[1] This Decision determines a Motion by Canada Post for an Order setting aside 2018 CHRT 7, and directing a re-hearing of the motion to add Canada Post as a necessary party to the within matter.

[2] On March 9, 2018, the Canadian Human Rights Tribunal (the “Tribunal”) granted the Respondent’s motion to add Canada Post Corporation (“Canada Post”) as a Respondent party to this matter (the “Decision”).

[3] On June 22, 2018, Canada Post brought a motion seeking an Order reconsidering or setting aside the Decision on the basis that the motion had not been properly brought to its attention.

[4] This Ruling focuses strictly on the issue of whether the Tribunal’s Ruling of March 9, 2018 will be reopened. It does not focus on the merits of the overall Complaint. Therefore, the only facts that are relevant to this Ruling relate to the disputed delivery of the motion materials to Canada Post.

[5] Briefly, by way of background, the Respondent filed a Motion to add Canada Post as a party to this matter on October 28, 2016. The motion materials were sent to Canada Post by courier to the attention of Anne Therese MacEachern, Vice-President, Human Resources, at the Canada Post headquarters in Ottawa, Ontario.

[6] Service is confirmed by a Purolator slip indicating that “Nancy” at the “Ship Dock” of Canada Post accepted the delivery.

[7] Canada Post did not participate in the Motion and claims that it first became aware of the motion on April 20, 2018.

II. Issues

[8] Should the Tribunal reopen its ruling of March 9, 2018 and consider the motion of Canada Post?

[9] Is the Tribunal *functus officio*?

[10] Was service properly effected on Canada Post?

III. The Law

A. Should the Tribunal reopen its ruling of March 9, 2018?

[11] The first question to be answered to determine whether the Tribunal should reopen its ruling of March 9, 2018 is whether it has jurisdiction to do so. When considering jurisdiction in this regard the Tribunal must consider whether it is prevented by the doctrine of *functus officio* from exercising further jurisdiction.

[12] In *Chandler v. Alta Assoc. of Architects*, [1989] 2 SCR 848, the Supreme Court of Canada confirmed that where a court has reached a final decision on a matter, the principle of *functus officio* prevents the decision from being reopened except where there has been an error in expressing its manifest intention of the court or there has been an error in drawing up the decision. The Court also confirmed that this principle is applicable to administrative tribunals. These exceptions do not apply to the present case.

[13] As noted in *Constantinescu v. Correctional Services Canada*, 2018 CHRT 8 at paras 5-6, a decision to reopen a decision is rare and exceptional and should only be exercised in extra ordinary circumstances:

The Tribunal finds that this motion before it raises issues which were previously resolved by the Tribunal in a conference call. I remind the parties that filing a motion so that the Tribunal will reconsider, re-examine or determine issues already judged is an extraordinary remedy. I am of the view that, if it were otherwise, this type of motion could negatively affect the principles related to the definite character of the decisions made by courts of law and tribunals, as well as the integrity of the administration of justice.

Generally it is not the Tribunal's practice to re-examine an issue that has already been resolved.

[14] This case is not such a rare or extra-ordinary circumstance. We will therefore consider whether the decision may be opened on the basis that the Tribunal is master of

its own procedure and has the authority to do so and should exercise such judgment on the basis of a denial of natural justice or procedural fairness.

B. The Tribunal is Master of its Own Procedure

[15] In *Aubut v. Minister of National Revenue*, [1990] FCJ No. 1100 at p. 2, the Federal Court of Appeal concluded that administrative tribunals have the power to reconsider their own decisions when such decisions have been made without regard to natural justice. Thus, in situations where, as argued by Canada Post, a party has been denied procedural fairness, a Tribunal has jurisdiction to cure a procedural defect by rehearing the matter.

[16] I must therefore consider whether the facts of this case support the argument that Canada Post has been denied procedural fairness.

[17] Canada Post has asked the Tribunal to reopen its decision on the basis that it was denied the opportunity to participate in the original motion to add it as a party to the complaint. In order for me to agree with this contention, I must first conclude that the failure of Canada Post to participate in the original motion was a result of lack of notice of the application. This requires consideration of the facts surrounding service of the motion materials and consideration of the statutory Rules of Procedure governing service.

C. Rules of Procedure

[18] Rule 2(2)(c) of the Tribunal's *Rules of Procedure* states:

2(2)(c) Service may be effected by delivering the document to the party,
or the party's representative, by the following means:

- (a) Facsimile communication, where the document does not exceed 20 pages;
- (b) Bailiff or process server;
- (c) Registered mail, ordinary mail, courier; or
- (d) Delivery in person.

[19] The Respondent has provided affidavit evidence that motion materials were sent by Purolator Courier to the headquarters of Canada Post in Ottawa, on October 31, 2018. These materials were received by an employee in the “Ship Dock” named “Nancy”.

[20] As noted above, the *Rules of Procedure* confirm that documents may be served by courier. Personal service is not required. Sending the materials by courier is therefore an acceptable means to effect service. I must then consider whether receipt of the motion materials has been established.

[21] Rule 2(3)(a) is clear that an affidavit of service is sufficient to prove service:

2(3)(a) Service may be proven by

- (a) Affidavit of service;
- (b) Written statement signed by the person who effected service
- (c) Solicitor’s certificate;
- (d) Admission of the party served; or
- (e) Sworn testimony before the Panel.

[22] The Respondent has provided an Affidavit of Service establishing that motion materials were served on Canada Post on October 31, 2016, at 8:58 am received by “Nancy” at the Ottawa headquarters. This meets the criteria of Rule 2(3)(a).

[23] In reaching this conclusion I have taken account of the submission of Canada Post that preparation of the Affidavit of Service nearly 18 months after service was effected should be considered. I conclude that there should not be a negative inference drawn from this fact given that there is no requirement in the Rules for the affidavit to be prepared contemporaneously with service or at any particular point in time.

[24] I have also considered the position of Canada Post that I should question the fact that “Nancy’s” original signature on a courier slip was not provided. While a signature from “Nancy”, to whom the package was delivered on October 31, 2016, would be ideal, given the passage of time and the policy of Purolator which is clearly stated on its courier slips that signatures are only held for one year after delivery, I draw no negative inference from this fact. The Affidavit of Service provided by the Respondent from the delivering courier is sufficient to establish under the *Rules* that service was effected.

[25] Finally I have considered Rules 3(2)(a) and 8(3) of the *Rules* which provide:

3(2)(a) Upon receipt of a Notice of Motion, the Panel

(a) Shall ensure that the other parties are granted an opportunity to respond

...

8(3) Where the Commission, a respondent or a complainant seeks to add a party to the inquiry, it may bring a motion for an order to this effect, which motion shall be served on the prospective party, and the prospective party shall be entitled to make submissions on the motion.

[26] Canada Post submits that these Rules support its motion to re-open the Decision.

[27] In order for me to conclude that Canada Post was denied an opportunity to respond to the original motion, I must conclude that it was not provided with notice of the motion. As noted above, I have concluded that service was properly effected on Canada Post. Although Canada Post did not respond to the motion it was not denied the opportunity to do so.

[28] Canada Post has also provided authority for nullifying a decision because written submissions have been overlooked. This is a distinctly different situation than that before the Tribunal. In the present case, the Tribunal did not overlook written decisions or fail to consider arguments contained therein. There were no written submissions provided. The merits of potential arguments that may have been made had submissions been provided is beyond the scope of this inquiry. In the present case, service was effected on Canada Post as required by the *Rules*. Canada Post did not respond to the motion.

[29] Based on the above, I conclude that service of the motion materials was properly effected on Canada Post on October 31, 2018.

IV. Ruling

[30] After analyzing the relevant evidence and applicable case law, I have concluded that the Tribunal should not exercise discretion to reopen its decision of March 9, 2018.

[31] The Motion to re-open the Tribunal's decision of March 9, 2018 is denied.

Signed by

Lisa Gallivan
Tribunal Member

Ottawa, Ontario
August 28, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2156/3016

Style of Cause: Rosanne Harrison v. Curve Lake First Nation and Canada Post Corporation

Ruling of the Tribunal Dated: August 28, 2019

Motion dealt with in writing without appearance of parties

Written representations by:

Christopher Pigott and Tala Khoury, for the Respondent, Canada Post Corporation

Brian Smith, for the Canadian Human Rights Commission

Candice S. Metallic, for the Respondent, Curve Lake First Nation