

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2019 CHRT 48

Date: December 5, 2019

File No.: T2262/1718

Between:

Goran Petrovic

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

TST Overland Express

Respondent

Ruling

Member: Alex G. Pannu

Motion for Setting Down Hearing Date

A. Background

[1] The Complainant has filed a motion pursuant to Rule 3(1) of the Canadian Human Rights Tribunal (the “Tribunal”) Rules of Procedure. The motion asks the Tribunal to deem the Respondent as having waived all rights with respect to further notice or participation in this proceeding, and for the hearing of this matter to be set down without further notice to the Respondent.

[2] The Complainant’s motion alleges that there has been undue delay in the proceedings before the Tribunal since the referral of the complaint by the Commission. He alleges that these delays were caused solely by the Respondent.

[3] The Canadian Human Rights Commission has filed a letter supporting the motion, while adding that the Tribunal should keep the Respondent informed of the status of the file, including of the date of the hearing.

[4] The Respondent has not filed a submission on the motion.

B. Facts

Complainant’s Motion

[5] The complaint was filed with the Commission in November 2014 and referred to the Tribunal in March 2018. A Case Management Conference Call (CMCC) between all the parties and the assigned Tribunal member was scheduled on December 3, 2018 in order to determine the progress of the matter and what procedural items needed to be completed for the matter to proceed to a hearing. The Respondent was the only party who did not attend.

[6] The parties’ Statements of Particulars were filed in March 2019. The Complainant provided the Respondent and Commission with its expert’s report in March 2019 as well. On April 3, 2019, the Complainant sent an email to the Respondent to ask whether he intended to produce its own expert report. The Respondent did not respond to the Complainant’s inquiry.

[7] Starting May 6, the Registry Officer from the Tribunal attempted to arrange a CMCC in order to address disclosure issues and determine whether the matter was ready to proceed to a hearing.

[8] After several attempts by the Registry Officer to contact the Respondent, a CMCC was finally scheduled for June 10. For the second time, the Respondent was the only party who did not attend.

[9] The Registry Officer then sent a letter to all parties on June 11, asking the Respondent to confirm whether it intended to file an expert's report in reply to the Complainant's expert report, and for the parties to provide their availabilities for a four-day hearing in July or August 2019.

[10] On June 14, the Respondent finally produced its list of documents and the documents listed therein only after I specifically ordered their production by that date. The Respondent also stated that he and his witnesses were not available on any of the hearing dates provided by the Complainant.

[11] The Respondent did not respond to further emails from the Registry Officer on June 19 and July 5 requesting available dates for hearing.

[12] Finally, the Complainant filed his motion with the Tribunal on September 4th, 2019.

C. Law and Analysis

[13] Section 50 of the Canadian Human Rights Act ("CHRA") grants the Tribunal a broad discretion to craft its processes as it sees fit, while subsection 48.9(1) mandates that proceedings be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. S. 48.9(2) also gives the power to the Chairperson of the Tribunal to adopt rules of procedure.

[14] In *Canada (Canadian Human Rights Commission) v Canada Post Corp*, 2004 FCA 363 [Cremasco], the Federal Court said "Administrative tribunals are masters of their own procedure. As Sopinka, J. stated in *Prasad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560, at pages 568-569:

In order to arrive at the correct interpretation of statutory provisions that are susceptible of different meanings, they must be examined in the setting in which they appear. We are dealing here with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.”

[15] The Tribunal is within its powers to set down hearing dates requested by one party without the requirement to canvass all parties on their availability because of the undue delay caused by one party in failing to respect timelines agreed upon by the parties or imposed by the Tribunal.

[16] The Respondent’s acts of omission in failing to comply with disclosure deadlines, consistently failing to meet the timelines set by the Tribunal, failing to attend pre-arranged CMCCs and failing to provide dates of availability for a hearing, constitute undue delay. The duty of fairness requires the Tribunal to accept the Complainant’s motion.

D. Orders

[17] Having considered the argument submitted by the Complainant and Commission, I make the following orders:

- A. The Tribunal Registry will ask the Complainant and the Commission for their earliest availability dates for a hearing on this matter.
- B. The Complainant will advise the Tribunal Registry of the estimated number of days required to hold the hearing and the location of the hearing in order for logistical arrangements to be made.
- C. The Tribunal Registry will advise all parties of the dates and location of the hearing.

Signed by

Alex G. Pannu
Tribunal Member

Ottawa, Ontario
December 5, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2262/1718

Style of Cause: Goran Petrovic v. TST Overland Express

Ruling of the Tribunal Dated: December 5, 2019

Motion dealt with in writing without appearance of parties

Written representations by:

Sherry Shir, for the Complainant

Daphne Fedoruk, for the Canadian Human Rights Commission

Patrick-James Blaine, for the Respondent