Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2019 CHRT 44
Date: November 1, 2019
File No.: T2329/8418

[ENGLISH TRANSLATION]

Between:

Bernadette Josiane Youmbi Eken

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Netrium Networks Inc.

Respondent

Decision

Member: Marie Langlois

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I. Decision

[1] The Tribunal allows the complaint of discrimination on the grounds of sex and disability of Bernadette Josiane Youmbi Eken (the complainant) as a result of her dismissal from Netrium Networks Inc. (the respondent or the employer), for the following reasons.

II. Overview

[2] The respondent is a small company with nine employees that provides network communication management services to its clients. The complainant was hired as a Level 2 network technician In September 2014.

[3] On March 13 or 16, 2015, she informed her supervisor, Mr. Chivaroli, that she was pregnant. On March 18, she felt ill and left work suddenly to go to the hospital. Because of pregnancy-related complications, she was on sick leave from work until May 28, 2015.

[4] She returned to work on June 1, the date of her dismissal.

[5] The complainant believes that she was dismissed because of her pregnancy and illness. She filed a complaint with the Human Rights Commission; this complaint is now before the Tribunal.

[6] The respondent claims that the dismissal actually has to do with shortcomings, the complainant's work performance and her misconduct in the reporting of late arrivals and absences.

III. Issues

[7] These are the issues:

A. Does the complainant have any of the characteristics protected under the *Canadian Human Rights Act*?

B. If so, did she experience an adverse impact with respect to her employment?

C. If so, was or were the protected characteristic(s) a factor in the employer's decision to dismiss the complainant?

D. If so, did the employer justify its decision under section 15 of the *Canadian Human Rights Act* or was it able to limit its liability under section 65 of that Act?

E. If not, what remedies are applicable?

IV. Legal framework

[8] Under paragraph 7(a) of the *Canadian Human Rights Act*[1] (the Act), refusing to continue to employ any individual is a discriminatory practice if the decision to do so is based on one or more prohibited grounds of discrimination under section 3 of the Act

[9] Before dealing with the issues, it should be noted that the complainant bears the burden of establishing *prima facie* that she was a victim of prohibited discrimination (*prima facie* case). Such a case is one which "covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent‑employer."[2]

[10] The case law acknowledges the difficulty of proving allegations of discrimination directly given that discrimination is not a practice that is displayed directly or overtly. It is therefore up to the Tribunal to consider all the circumstances and determine, on a balance of probabilities, whether there was discrimination or whether there was, as described in *Basi*[3], the "subtle scent of discrimination". In short, the Tribunal may draw an inference of *prima facie* discrimination where the accepted evidence makes such an inference more probable than the other possible inferences or hypotheses.[4]

[11] In order to meet her burden, the complainant will have to show, on a balance of probabilities[5], that she has one or more of the characteristics protected under the Act, that she experienced an adverse impact with respect to her employment, and that the

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[1] R.S.C., 1985, c. H-6.
[2] *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 S.C.R. 536, at para. 28 [*Simpsons-Sears*].
[3] *Basi v. Canadian National Railway Company*, 1988 CanLII 108 (CHRT).
[4] Béatrice Vizkelety, *Proving Discrimination in Canada* (Toronto: Carswell, 1987), at p. 142. See also *Khiamal v. Canada (H.R.C.)*, 2009 FC 495, at para. 60.
[5] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39, [2015] 2 S.C.R. 789, at para. 67 [*Bombardier*].

protected characteristic(s)[6] was or were among the factors contributing to the adverse impact.[7] In her evidence, the complainant is not required to prove that the respondent intended to discriminate against her since, as the Supreme Court of Canada held in *Bombardier*, some discriminatory conduct involves multiple factors or is unconscious.[8] Therefore, intent to discriminate is not a determinative factor; rather, it is the result, the adverse effect, that matters.[9]

[12] In addition, it is not essential that the connection between the ground of discrimination and the impugned decision be an exclusive or a causal one; the prohibited ground need only to have contributed to the impugned decisions or actions. In short, the evidence must establish that the prohibited ground of discrimination was a factor in the impugned decision.[10]

[13] Furthermore, it is sufficient if the complainant's pregnancy was one of the factors that led her employer to terminate her employment.[11]

[14] Once this case has been made, the employer may justify its decision by demonstrating, also on a balance of probabilities, that the decision was based on *bona fide* occupational requirements within the meaning of section 15 of the Act or limit its liability by operation of section 65 of the Act. The burden of proof then shifts to the respondent.[12]

V. Analysis

A. Does the complainant have any of the characteristics protected under the *Canadian Human Rights Act*?

[15] The complainant cites disability and sex as the prohibited grounds of discrimination protected under the Act. The Tribunal finds that she is right.

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[6] Called "prohibited grounds of discrimination" in the *Canadian Human Rights Act*.
[7] *Moore v. British Columbia (Education)*, 2012 SCC 61, at para. 33.
[8] *Bombardier*, *supra*, note 3, at paras. 40-41.
[9] *Simpsons-Sears*, *supra*, note 1, at paras. 12, 14.
[10] *Bombardier*, *supra*, note 3, at paras. 45-52.
[11] *A.B. v. Eazy Express Inc.*, 2014 CHRT 35, at para. 16.
[12] *Peel Law Association v. Pieters*, 2013 ONCA 396 (CanLII), at para. 67.

[16] The Act sets out prohibited grounds of discrimination, including disability and sex (subsection 3(1)). Where the ground of discrimination is pregnancy, the discrimination is deemed to be on the ground of sex (subsection 3(2)).

[17] The complainant was pregnant. On March 18, 2015, she felt very sick while she was at work. She left work, went to hospital, and spent several days there. On leaving the hospital on March 21, 2015, she was issued a medical certificate with a diagnosis of hyperemesis gravidarum, a pregnancy complication. Her medical leave was extended until May 28, 2015, as confirmed by medical certificates.

[18] There is therefore no doubt that the complainant has the characteristics that she cites as prohibited grounds of discrimination, namely disability and sex, given that her medical condition and pregnancy are evidence of this. Consequently, the answer to Question A is yes.

B. Did she experience an adverse impact with respect to her employment?

[19] The complainant was dismissed when she returned to work on June 1, 2015. There was a meeting during which Mr. Ciambella and Mr. Bourkas, respectively the company's president and chief executive officer, informed her of the termination of her employment. They criticized her for certain shortcomings, including her performance, and her misconduct in the reporting of late arrivals and absences. The complainant protested and pleaded with them to let her keep her job. The decision to dismiss her was maintained, and she was given a letter.

[20] The Tribunal is of the opinion that the employer's decision to dismiss the complainant entails an adverse effect in relation to her employment within the meaning of paragraph 7(a) of the Act, which provides that refusing to continue to employ an individual is a discriminatory practice if the decision to do so is based on a prohibited ground of discrimination.

[21] The answer to Question B is therefore yes.

C. If so, was her dismissal connected to those characteristics?

[22] The complainant was dismissed upon her return to work on June 1, 2015. The Tribunal is of the opinion that her pregnancy and illness-related absence were the reasons or part of the reasons for her dismissal, for the following reasons.

[23] The complainant was working at the respondent's Network Operation Center (NOC), the company's largest department, which provides services to clients 24 hours a day, 7 days a week.

[24] Her employment contract provided for day shifts, amounting to 40 hours a week, Monday to Friday, from 8:00 a.m. to 5:00 p.m. It also indicated that her schedule was flexible and that her working hours could be adjusted based on her needs or those of the company. It included a three-month probation period.

[25] The complainant explained that, during her September to December 2014 probation period, she worked a great deal of unpaid and uncompensated overtime. She was on call for 24 hours a day, 7 days a week. Sometimes she had to work extra hours without being paid or compensated for them. This last piece of information is disputed by Mr. Bourkas, who testified on behalf of the respondent. He submits that employees who worked overtime were to some extent compensated informally.

[26] At the end of the probation period, in December 2014 or January 2015, the complainant told her employer that she refused to keep working overtime. She wanted to stick to the terms of her contract: 40 hours a week, Monday to Friday, from 8:00 a.m. to 5:00 p.m. At the hearing, the employer contended that, as a Level 2 technician in an NOC, she was responsible for resolving urgent issues outside working hours.

[27] The Tribunal finds that the employer did not rebuke the complainant, be it orally or in writing, for refusing to work outside regular hours. Neither does the evidence show that it rebuked her in any way whatsoever during the probation period.

[28] Yet the facts show that the complainant did indeed work outside her regular working hours, even after she told her employer of her intention to refuse to work overtime in future. In fact, a document filed by the respondent at the hearing includes an email sent

by the complainant on February 26, 2015, at 4:12 a.m., in response to an email sent by a client at 7:00 p.m. the day before.

[29] On March 13 or 16, 2015, she told her supervisor, Mr. Chiavaroli, that she was pregnant, which the respondent does not deny. As noted above, she was off work because of pregnancy-related complications from March 18 to May 28, 2015.

[30] She told Mr. Chiavaroli when she left work on March 18, 2015. She was taken to hospital. The next day, the complainant's spouse texted the supervisor to inform him that she would be absent for the rest of the week. On March 20, Mr. Ciambella called the complainant's spouse, who informed him that she was in hospital.

[31] She left hospital on March 21, 2015, with a medical certificate explaining her absence from work since March 18 and extending it to March 27. She sent the medical certificate to Mr. Chiavaroli and Mr. Bourkas. Mr. Bourkas contacted the complainant to find out what she was suffering from. The complainant told him that she was going to ask her doctor to call Mr. Bourkas to provide him with the necessary explanation. The complainant's doctor later confirmed to the complainant that he had spoken to Mr. Bourkas.

[32] The complainant's medical leave was extended from March 27 to May 1, 2015, and then until May 22, 2015. Medical certificates justifying the absences were issued. The complainant testified that she forwarded them to one of the following individuals at the employer: Mr. Chiavaroli, Mr. Ciambella or Mr. Bourkas.

[33] In the meantime, around April 23, 2015, Mr. Valente, a clerk from the firm that pre-selected her before she was hired, contacted her and told her that she had disappeared from her job and abandoned it. The complainant's spouse therefore sent the firm in question the new medical certificate dated April 22, 2015, along with all the previous ones. A new copy was also sent to Mr. Ciambella on April 29, 2015. In the meantime, the complainant phoned Mr. Ciambella to inform him of her medical leave having been extended to June 1.

[34] It is important to note that the complainant's doctor stated on the medical certificate of April 22, 2015, that the medical leave had been extended to May 22, 2015, subject to a subsequent re-assessment.

[35] On May 28, 2015, the doctor stated that a full-time return to work would be possible on June 1, 2015. The complainant therefore emailed Mr. Ciambella to inform him of her return to work on June 1.

[36] On May 29, 2015, Mr. Bourkas emailed the complainant stating that he had learned that she might return to work on June 1. He wrote as follows: [TRANSLATION] "In view of our findings since your departure and the circumstances surrounding it, please be advised that we intend to meet with you upon your arrival at work at 8:00 a.m. At that time, we will discuss your employment relationship with Netrium."

[37] When the complainant arrived at work on June 1, 2015, she was met by Mr. Ciambella and Mr. Bourkas, who criticized her work. They dismissed her. The complainant protested, and pleaded with them to keep her on. They stood by their decision and handed her a dismissal letter, which reads as follows:

> [TRANSLATION]
>
> Dear Ms. Youmbi:
>
> The purpose of this letter is to confirm in writing the decision that we informed you of today, namely, to terminate your employment relationship with Netrium Networks.
>
> As we explained to you at our meeting, this decision is necessary in view of the many shortcomings we have noted in your performance. These many shortcomings on their own justify severing the employment relationship.
>
> In addition, your misconduct in the reporting of your late arrivals and absences, despite our reminders to that effect, also justifies our decision.

[38] The complainant testified that the employer had never criticized her for anything, be it during her probation period or afterwards. To her knowledge, no client had ever complained about her services. She related that in February 2015 Mr. Bourkas had even commended her for a job where she had checked the equipment twice. She was made

aware of her employer's dissatisfaction for the first time at the dismissal meeting on June 1, 2015, the day of her return to work. She was shocked.

[39] At the hearing, Mr. Bourkas submitted that neither the complainant's pregnancy nor her pregnancy complications had anything to do with her dismissal. He submitted that he understood women who have difficult pregnancies and that he would not wish for anyone to lose their job because of being pregnant.

[40] He explained the reasons for her dismissal, namely misconduct in reporting late arrivals and absences and performance shortcomings.

[41] Regarding the misconduct in reporting late arrivals and absences, Mr. Bourkas testified that there is no policy for managing illness- or pregnancy-related absences, but that in the case of another employee who was absent because of pregnancy complications, they were informed of absences and extensions as they arose. However, in the complainant's case, the leave extensions and the date of her return to work were uncertain, which made him doubt her honesty.

[42] Mr. Bourkas doubted the veracity of the March 21, 2015, medical document justifying a previous absence that started on March 18. He wondered how a doctor could justify an absence that predated his medical certificate. Furthermore, he inferred from the medical record as a whole that the complainant no longer wanted to work. He noted that the complainant was irregular in sending her medical records and that she sent them to various individuals. He sees this as a poor communication of medical records and especially as a sign of dishonesty.

[43] The Tribunal cannot agree with that conclusion because, for the entire time she was on leave, the complainant justified all of her absences with medical certificates. She even asked and allowed her doctor to telephone Mr. Bourkas directly to inform him of her condition. Regarding the March 21, 2015, medical certificate, the Tribunal has no doubt about its validity because the complainant was admitted to hospital on March 18 and discharged on March 21. The medical certificate was definitely issued then to explain her illness starting when she was admitted a few days earlier. There is nothing unusual or dubious about that.

[44] The fact that the doctor planned re-assessments before giving the green light for her return to work and that he provided for a possible return-to-work date is in keeping with the very nature of how diseases develop as well as with how long illness-related absences last.

[45] In addition, the employer has no procedure for illness- or pregnancy-related absences. Under those circumstances, it cannot fault the complainant for not following a procedure. The fact that managing another employee's absence had been simpler does not change the fact that it cannot fault the complainant for not following a procedure that does not exist. Moreover, the complainant sent and re-sent her medical records more than once, even to Mr. Valente of the company that pre-selected her. This shows that the employer would do well to clarify its procedures and communicate them to its staff. The complainant can definitely not be faulted for shortcomings that have to do with the employer itself.

[46] Regarding the performance-related shortcomings, the employer filed a document containing a set of emails, which are summarized below:

- On December 12, 2014, at 11:24 a.m., the complainant wrote to a client about a network access interruption. On the same day, at 11:28 a.m., Mr. Bourkas wrote to the complainant, [translation] "this circuit and cancel please." [The Tribunal is at a loss to understand the essence of the criticism directed at the complainant].

- On January 29, 2015, at 2:00 p.m., the complainant wrote an email to a client regarding multiple outages. At 6:10 p.m. on the same day, Mr. Chiavaroli emailed the Support Team to ask whether the outages had been resolved. The complainant replied on January 30 at 8:49 a.m. that the outages were still going on.

- On February 19 and 20, 2015, an email exchange with a company shows that tests were done to resolve a client's problem. At 1:23 p.m., the complainant sent the test results and stated that there was one remaining problem. On February 26, the company in question asked whether the problem had been resolved.

- On February 21, 2015, at 3:36 pm, a client sent an email about a problem. At 4:14 p.m., Mr. Bourkas asked the complainant in writing to reply to the request.

- On February 23, 2015, at 10:16 a.m., a client sent an email to "Netrium Support" reporting a server access problem. On the same day, at 12:16 p.m., the complainant acknowledged receipt of the client's request, informing them that there

would be an investigation and that they would receive a response. On March 10, the client asked for a response to their request.

- On February 25, 2015, at 7:00 p.m., a client wrote to the complainant about an outage. The complainant responded at 4:12 a.m. the next morning.

- On March 2, 2015, at 9:33 a.m., Mr. Ciambella wrote to the Netrium Support team about [translation] “the video” for another client. The complainant replied at 9:36 a.m. that same day to say that the video had been completed a long time ago and that she would send it again.

- On March 11, 2015, a client wrote to Mr. Bourkas that the migration plan had failed for the third time and that the support person on that occasion was the complainant. He wrote that he found it frustrating to work with her and complained that she was unable to do the job properly. He asked that she be removed from the migration team.

- On March 11, 2015, a client wrote to Mr. Ciambella to say that he was still waiting for his completed network plan. Mr. Ciambella forwarded the message to the complainant asking her to complete the plan.

[47] Mr. Bourkas testified that these emails reveal client complaints and dissatisfaction. The complainant contends that, in her view, some of the criticisms are unjustified because she had not been responsible for the file in question or even because the work had already been done and it was her supervisor who had been supposed to pass the information on to the clients.

[48] In the circumstances of this case, the Tribunal does not have to determine whether the emails are evidence of actual performance shortcomings. The Tribunal does not have to resolve the question of whether the complainant deserves the criticisms her employer is now making against her or whether they should result in dismissal. However, the Tribunal does find that at no time during or after her probation period did the employer share any criticisms at all with the complainant. She did not know that her employer was dissatisfied with her services. Even if we assume that those criticisms were justified, the employer never spoke to her about them and did not give her an opportunity to improve.

[49] The first time that it spoke to her about it was the very day that she returned to work after her sick leave.

[50] The Tribunal infers from all the evidence that the illness-related absence played a role in the decision to terminate her employment. The employer wondered whether the complainant would return from her sick leave and on what date. It doubted her honesty, yet she justified each absence with valid medical certificates. There is no evidence to the contrary. The employer did not know the exact day that she would be returning to work. Indeed, the April 22, 2015, medical certificate shows that the medical leave expired on May 22 and that the doctor would then do a re-assessment.

[51] The complainant can certainly not be faulted for not providing an exact return-to-work date when the doctor deemed that a re-assessment was required in late May. Here, too, the employer did not express its doubts to the complainant during her absence until the day of her dismissal.

[52] The Tribunal finds that the complainant's sick leave because of pregnancy complications was one of the factors that explain the claimant's dismissal, especially since the dismissal letter reveals that the misconduct in the reporting of her late arrivals and absences "also justifie[d]" the employer's decision. However, according to the evidence, the complainant's only late arrivals and absences pertain to her pregnancy and her illness in connection with it.

[53] Other grounds definitely existed in the employer's mind, but the Tribunal does not have to determine whether those grounds were sufficient to result in dismissal. It is enough for the protected characteristic(s), pregnancy and disability, to have been factors in the employer's impugned decision in order for the complainant's complaint to be allowed. In this case, the complainant was pregnant and went on leave because she was ill, and this explains at least in part her employer's decision to terminate her employment; indeed, it was one of the explicit grounds for dismissal in the June 1, 2015, letter.

[54] As discussed above, the fact that the employer did not intend to discriminate against the complainant, as a result of her pregnancy and the complications that kept her away from work for approximately two months, does not have to be considered in the analysis. As was held in *Bombardier*, some discriminatory conduct can even be completely unconscious.

[55] In short, in the case before the Tribunal, the characteristics protected under the Act, sex and disability, were a factor in the employer's decision to dismiss the complainant. As a result, she experienced an adverse effect with respect to her employment as a result of characteristics protected under the Act.

[56] Consequently, the Tribunal finds that the complainant has met her burden of establishing, *prima facie*, on a balance of probabilities, that she was the victim of discrimination, contrary to paragraph 7(a) of the Act.

[57] The answer to Question C is therefore yes.

D. If so, did the employer justify its decision under section 15 of the *Canadian Human Rights Act* or was it able to limit its liability under section 65 of the Act?

[58] The employer did not raise a defence under section 15 of the Act and did not submit any evidence that could justify limiting its liability under section 65 of the Act, meaning that the Tribunal does not have to consider these aspects.

[59] The Tribunal's answer to Question D is therefore no.

E. Remedies

[60] Since the Tribunal has found the complaint to be substantiated, it may order remedies under subsection 53(2) of the Act.

(a) Lost wages

[61] Under paragraph 53(2)(c) of the Act, the Tribunal may order compensation 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. The Federal Court of Appeal notes in *Chopra*[13] that this is a discretion that has been given to the Tribunal. In addition, the Court holds that there must be a causal link between the recognized discriminatory practice and

[13] *Chopra v. Canada (Attorney General)*, 2007 FCA 268, at para. 37.

the alleged lost wages and that, in exercising its discretion, the Tribunal can factor in the principles underlying the mitigation of losses that may apply in other contexts.[14]

[62] The complainant is claiming $6,912.20 in lost wages. This amount can be broken down as follows: $3,584 for lack of income during her leave from March 19 to May 12, 2015, and $3,328.20 for the period from June 15 to September 1, 2015. These amounts reflect the actual loss because they are based on the salary that she would have earned minus the amounts she received in employment insurance or parental insurance benefits for that period.

[63] The complainant specifies in the document entitled [TRANSLATION] "Summary Details of the Remedies Sought" that she attempted to find another job during the time between her dismissal and her maternity leave. She states that she looked for work after June 1, 2015, and attended two interviews in June and July 2015. Those interviews did not lead to job offers [TRANSLATION] "because there was no pregnancy accommodation for the position", according to the complainant's statement. The Tribunal considers this to be an honest and reasonable attempt by the complainant to mitigate her losses.

[64] In addition, there is every reason to believe that, had it not been for the discriminatory practice, the complainant would have kept her job until September 1, 2015, thereby enabling her to earn the amounts claimed. The Tribunal believes that the performance problems noted in the dismissal letter seem like excuses for terminating her employment. In fact, as previously seen, the employer never shared any criticisms with her before dismissing her on her return from her pregnancy-related sick leave. The Tribunal accepts that the amounts claimed for lost wages do indeed result from the employer's discriminatory practice. No evidence to the contrary was administered.

[65] In addition, the Tribunal considers the evidence of the lost wage amounts claimed to be probative.

[66] The complainant did not provide any evidence of other expenses incurred as a result of the discriminatory practice.

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[14] Idem, at paras. 37 and 40.

[67] Consequently, the complainant is entitled to the amount of $6,912.20 as compensation for lost wages, pursuant to paragraph 53(2)(c) of the Act.

(b) Pain and suffering

[68] The complainant is claiming $20,000 in pain and suffering.

[69] The Act provides that, pursuant to paragraph 53(2)(e), the Tribunal may award a maximum amount of $20,000 to compensate a victim of discrimination for any pain and suffering the victim may have experienced.

[70] The case law establishes that this maximum amount is awarded only in the most egregious of circumstances: where the extent and duration of the pain and suffering warrant the full amount.[15]

[71] In order to set a fair amount for pain and suffering, the Tribunal must therefore assess, among other things, the emotional consequences, frustration, disappointment, loss of self-esteem and self-confidence, grief, emotional well-being, stress, anxiety and sometimes even depression, suicidal thoughts and other psychological symptoms resulting from the discriminatory practice. That type of demonstration is not necessarily easy to do.

[72] A medical record can be helpful in proving an individual's emotional state, but it is certainly not mandatory for establishing pain and suffering. In some cases, a medical record can support the evidence for the mental health consequences for a victim of discrimination; in other cases, the testimony of the victim, and of his or her work colleagues and loved ones can shed light on the extent, intensity and duration of the pain and suffering experienced by the victim.

[73] In this case, the complainant testified that she had been very surprised about the dismissal since she had never been criticized for anything prior to it. She had not been expecting it. The financial consequences subsequently caused considerable stress. Her spouse had to take a second job to support the family. The complainant reports that, even

[15] *Closs v. Fulton Forwarders Incorporated and Stephen Fulton*, 2012 CHRT 30 (CanLII), at para. 81.

today, when she thinks back on it, it still upsets her. She lost some of her self-confidence. The situation made her anxious and caused her to doubt her skills and her ability to find a job in her field. However, she started working for a new employer 13 months ago, and things are better. The intensity of the emotional stress was therefore of limited duration.

[74] In these circumstances, the Tribunal believes that an amount of $7,000 is fair compensation for the pain and suffering experienced by the complainant.

(c) Interest

[75] The compensation amounts to a total of $13,912.20, that is, $6,912.20 in compensation for lost wages and $7,000 for pain and suffering. Pursuant to subsection 53(4) of the Act, interest shall be payable on the amount of $13,912.20 awarded as a remedy. In accordance with rule 9(12) of the *Canadian Human Rights Tribunal Rules of Procedure* (03-05-04), this interest shall be simple interest calculated on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada. The interest shall accrue from the date of dismissal until the date of payment of the award of compensation

(d) Systemic remedies

[76] The Commission is seeking the imposition of systemic remedies on the respondent. It is asking that the respondent cease the discriminatory practices and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practices or to prevent the same or similar practices from occurring in future, including:

> [TRANSLATION]
>
> the adoption of guidelines for dealing with and accommodating the needs of pregnant employees in order to create an inclusive workplace for employees; and
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> training for human resources and management staff about human rights obligations with respect to pregnancy in the workplace in order to prevent potential discriminatory practices.

[77] The Tribunal finds that, since the respondent does not have a human resources policy covering sick leave and pregnancy leave and the responsibilities in those areas are not properly defined, systemic measures such as the Commission is seeking are required. In the circumstances, the Tribunal believes that it is appropriate to order the respondent to immediately cease discriminating against its employees who are pregnant or on pregnancy-related sick leave and to adopt, within six months of this decision, in consultation with the Commission, and in accordance with paragraph 53(2)(a) of the Act, measures to prevent subsequent incidents of discrimination on the grounds of pregnancy or disability.

Signed by

Marie Langlois
Tribunal Member

Ottawa, Ontario
November 1, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2329/8418

Style of Cause: Bernadette Josiane Youmbi Eken v. Netrium Networks Inc.

Decision of the Tribunal Dated: November 1, 2019

Date and Place of Hearing: September 12, 2019

Montreal, Québec

Appearances:

Bernadette Josiane Youmbi Eken, for herself

Ikram Warsame, for the Canadian Human Rights Commission

Normand Bourkas, for the Respondent