

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2020 CHRT 40  
**Date:** December 24, 2020  
**File No.:** T2385/4419

**Between:**

**Rodney Torraville**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Jazz Aviation LP**

**Respondent**

**Ruling**

**Member:** Colleen Harrington

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## I. Background to Motion

[1] Rodney Torraville (Complainant) has been employed by Jazz Aviation LP (Respondent) since 2001, initially as a Sheet Metal Apprentice, and then as a Sheet Metal Engineer. During the course of his employment, the Complainant has taken various disability-related leaves of absence, the most recent of which began in October of 2015. He has not returned to work since then.

[2] In May of 2017, the Complainant filed a complaint with the Canadian Human Rights Commission (Commission or CHRC). His complaint alleges that the Respondent discriminated against him on the basis of his disability and refers mainly to requests he made to use his employee travel benefits to fly stand-by to Newfoundland between December of 2015 and March of 2017. These requests were denied by the Respondent, which took the position that his medical restriction to avoid unnecessary stress meant he could not fly stand-by without the provision of further information from his physicians. In addition to the denial of stand-by flights, the complaint refers to a September 25, 2012 arbitrator's decision against the Respondent for forcing him back to work without a proper medical release. The Complainant also alleges that, in August of 2011, his supervisors tried to remove the chair he was using as a medical accommodation while working.

[3] The Commission investigated the complaint and, on May 16, 2019, wrote to the parties and to the Canadian Human Rights Tribunal (CHRT or Tribunal) to advise that, after reviewing the Investigation Report and the submissions of the parties, it had decided, pursuant to subsection 44(3) of the *Canadian Human Rights Act*<sup>1</sup> (CHRA or the Act), to request that the Chairperson of the Tribunal institute an inquiry into the complaint. Accompanying the letters was the Commission's "Your Complaint" form completed and signed by Mr. Torraville in May of 2017, as well as an original and an amended Summary of Complaint form prepared by the Commission's staff.

[4] I note that, in completing the Commission's "Your Complaint" form in May of 2017, the Complainant did not indicate when the alleged discrimination began. However, the

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<sup>1</sup> RSC 1985, c H-6.

Summary of Complaint forms state that the “Date of Alleged Discrimination” is 2015 and ongoing.

[5] The Chairperson assigned me to inquire into the complaint and, as part of the case management proceedings, the Complainant and Respondent filed Statements of Particulars (SOP). In its SOP, the Respondent noted that, while it had confined its particulars and disclosure to three denials of stand-by travel in 2015 and 2017, the Complainant had referred to alleged discriminatory practices going back to 2008. The Respondent stated that such allegations should not be considered by the Tribunal, as any broadening of the complaint at this stage would be highly prejudicial to the Respondent.

[6] During a case management conference call, the Respondent raised the issue of the scope of the complaint before the Tribunal. The Complainant confirmed that his complaint is about the denial of stand-by flights. However, he is of the view that there has been a pattern of discriminatory treatment of him by the Respondent. He said that the historical information in his SOP provides context to understand the more recent incidents that triggered his complaint.

[7] The Respondent has brought a Motion to strike portions of the Complainant’s SOP. It argues that the Complainant’s SOP contains allegations that expand the temporal and subject matter scope of the complaint that was referred to the Tribunal by the CHRC.

## **II. Issues**

- i. What is the scope of the complaint referred to the Tribunal for an inquiry?
- ii. Should the scope of the complaint be amended?
- iii. Should any of the paragraphs in the Complainant’s SOP be struck, thereby limiting the scope of evidence he will be permitted to call at the hearing?

## **III. Positions of the Parties**

### **A. Respondent**

[8] The Respondent’s position is that the complaint that was accepted and investigated by the Commission, and referred to the Tribunal for an inquiry, is confined to whether the

Respondent discriminated against the Complainant on the basis of disability when it denied the approval of three stand-by travel requests he made on November 4, 2015, December 15, 2015, and March 10, 2017. It says that some of the allegations contained in the Complainant's SOP refer to events that happened more than ten years prior to the date of the complaint and thus go beyond the substance of the referred complaint, such that they amount to separate specific complaints. The Respondent says the subject matter of these out-of-time allegations include:

- i. Harassment by supervisors;
- ii. Failure to accommodate;
- iii. General discrimination by the Respondent's officials;
- iv. Dishonesty on the part of the Respondent's representatives;
- v. Collusion between various representatives of the Respondent and its disability insurer, Great West Life (GWL); and
- vi. The Complainant being forced back to work when he was unable.

[9] The Respondent notes that the Commission is the gatekeeper in the human rights complaint process, tasked with winnowing down the masses of incoming complaints to those that ought to proceed to hearing. It argues that, because the Commission's Investigation Report focused on the denial of stand-by travel in 2015 and 2017, this encompasses the scope of the complaint that the Investigator recommended be referred to the Tribunal for an inquiry.

[10] The Respondent argues that the Tribunal should not consider issues that the Commission decidedly did not deal with or did not specifically refer for an inquiry. It says it would be manifestly unfair to allow the Complainant to expand the temporal and subject matter scope of the Complaint by adding numerous allegations that are factually discrete and do not relate to the substance of the stand-by travel complaint. The Respondent says that, in order to fairly and properly respond to these historical allegations, it would be required to lead extensive evidence from witnesses not identified in the witness lists of either party, and to introduce a substantial number of new documents.

[11] The Respondent also submits that, because the Commission did not provide reasons for its decision to refer the complaint to the Tribunal, it agreed with, and adopted, the recommendation of the Investigator that the complaint was about the denial of travel

privileges starting in 2015. If the Commission intended the scope of the complaint to be broader than what was investigated, it could have provided reasons to this effect, but it did not do so. This is despite the fact that the Complainant, in his submissions to the Commission, offered to provide information relating to allegations dating back to 2008.

[12] The Respondent points out that the Commission did not take the opportunity to consider further documentation regarding the historical allegations, but rather sent the referral letter to the Tribunal along with the original complaint and the Summary of Complaint forms. The Respondent argues that, by including the Summary of Complaint forms, the Commission gave them weight, thus supporting the argument that this is a complaint about stand-by travel requests and denials that started in 2015.

[13] The Respondent says the case law supports its argument that the Summary of Complaint forms, along with the overall history of the complaint, can help to define the “substance of the complaint” and the scope of jurisdiction granted to the Tribunal by the Commission.<sup>2</sup> In *Casler v. Canadian National Railway*,<sup>3</sup> the Tribunal agreed that, in order to determine the scope of the complaint, it need not rely solely on the Commission’s letter requesting the Chair to institute an inquiry. Rather, consideration may be given to the original complaint and the Summary of Complaint form prepared by the Commission in order to ensure that there is a link to the allegations giving rise to the original complaint, and that it is not bypassing the Commission’s referral mandate.<sup>4</sup>

[14] The Respondent submits that allowing the Complainant to refer to allegations outside of the temporal and subject matter scope of the complaint referred to the Tribunal would disregard the very purpose of s.44(3)(a) of the *Act* and the administrative screening function of the Commission as a gatekeeper, and would amount to an abuse of the Tribunal’s process.

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<sup>2</sup> See, for example, *Waddle v. Canadian Pacific Railway and Teamsters Canada Rail Conference*, 2016 CHRT 8 (CanLII) [“*Waddle 2016*”] and *Waddle v. Canadian Pacific Railway and Teamsters Canada Rail Conference*, 2017 CHRT 24 (CanLII) [“*Waddle 2017*”] at paras 67-68.

<sup>3</sup> 2017 CHRT 6 (CanLII) [“*Casler*”]

<sup>4</sup> *Ibid*, at para 7.

[15] It argues that the Complainant is attempting a second go at unrelated issues that the Commission chose not to examine and that were excluded from the scope of the complaint encompassed by the Amended Summary of Complaint form. Attempting to usurp the gatekeeper function of the Commission also disregards the fact that the *Act* allows parties who are dissatisfied with the Commission's decision to judicially review that decision in the Federal Court. As the Complainant did not do so, the Respondent suggests it would be an abuse of process to allow him to expand his complaint at this stage. Unlike the Federal Court, the Tribunal does not have the jurisdiction to review the decision of the Commission.

[16] The Respondent says the Complainant is asking the Tribunal to consider the historical issues not only as examples of discrete instances of discrimination, but also to draw significant causal conclusions about the impact of these alleged actions on his ability to continue to work for the Respondent. The Complainant ties these historical allegations to his remedial claim of over \$1.5 million in lost wages, as he says in his SOP that his inability to obtain gainful employment has also been a consequence of the treatment he has received from the Respondent. The Respondent disputes that this is meant to provide context or a general narrative to his stand-by denial complaint. Rather, it amounts to a new complaint that has not been referred to the Tribunal for inquiry.

[17] The Respondent submits that permitting the Complainant to include these additional SOP allegations does not warrant the prejudice it would cause to the Respondent.

[18] Finally, the Respondent concedes that, if the Complainant wishes to raise historical evidence related to how the Respondent has dealt with stand-by travel requests in the past, this historical context is relevant to considering whether the Respondent's application of its stand-by travel policies in 2015 and 2017 was discriminatory as alleged.

## **B. Commission**

[19] The Commission is not participating in the inquiry into the complaint and does not take a position on whether the Tribunal should or should not strike any portions of the Complainant's SOP. Rather, it has provided submissions that set out general legal principles the Tribunal should apply when considering a motion to define the scope of a complaint.

[20] For example, the Commission says that, where it has referred a complaint to the Tribunal for an inquiry, the entirety of the complaint is referred unless the Commission expressly says otherwise in its letters of decision sent to the parties, or referral letter sent to the Tribunal Chairperson.<sup>5</sup>

[21] The Commission also says that documents prepared by Commission staff such as the Investigation Report and Summary of Complaint forms do not, by themselves, limit or define the scope of the complaint, or any subsequent Tribunal inquiry.<sup>6</sup> Instead the focus should remain on the complaint and on the Commission's letters of decision and referral.

[22] The Commission does not argue, however, that such documents can never be relevant to a determination of the scope of an inquiry. Rather, it says there may be rare cases, like *Waddle 2016*, where there is evidence that a complainant endorsed or expressed agreement with the content of a document from Commission staff. In such circumstances, the document and related interaction might be relevant when clarifying the scope of an inquiry or in deciding whether it might be an abuse of process for a complainant to proceed with a particular allegation.

[23] The Commission also notes that the Tribunal may strike allegations from SOPs in appropriate cases, if a complainant pleads matters that do not have a sufficient nexus with the original complaint, and effectively amount to the filing of a substantially new complaint.<sup>7</sup>

### **C. Complainant**

[24] The Complainant disagrees with the Respondent's motion to limit the scope of his complaint. He is of the view that the case law the Commission refers to supports his argument that all relevant historical events can be considered by the Tribunal. He says the Respondent has failed to show that the more recent stand-by flight denials are not connected to the historical context they are attempting to strike out of the complaint.

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<sup>5</sup> See *Connors v. Canadian Armed Forces*, 2019 CHRT 6 (CanLII) ["*Connors*"] at paras 42-43.

<sup>6</sup> *Ibid*, at paras 37-41 and *Waddle 2016*, *supra* note 2 at para 33.

<sup>7</sup> *AA v. Canadian Armed Forces*, 2019 CHRT 33 (CanLII) ["*AA*"] at paras 58-59, citing *Casler*, *supra* note 3 at paras 7-11.



[25] The Complainant says it was always his understanding and intention that his complaint was about more than just the denial of stand-by flights and that the Respondent's position is unfair and prejudicial to him. He says the denial of the stand-by flights referred to in his complaint were merely the end result of several years of harassment, discrimination and bullying, the ultimate goal of which was to end his employment relationship with the Respondent. As such, he says that all historical events, up to and including the denial of his stand-by flight requests, are related and should not be excluded from the scope of the complaint.

[26] He disputes the Respondent's characterization of him attempting a "second go" at issues the Commission did not examine, saying he did submit correspondence and responses referring to these earlier events.

#### **IV. Statutory Roles of the Commission and the Tribunal**

[27] In determining the scope of the complaint, it is useful to consider the relationship between the Commission and the Tribunal, and their respective roles under the *Act*.

[28] The *CHRA* "sets out a complete mechanism for dealing with human rights complaints" in the federal sphere,<sup>8</sup> establishing two separate institutions, the Commission and the Tribunal, each of which has a distinct role. The Federal Court has described the Commission's role as central to the complaint mechanism:

Under the scheme of the *Act*, the Commission is the body empowered to accept, manage and process complaints of discriminatory practices. The Tribunal has no statutory mandate under the *Act* with respect to its administration, except as set out in s. 50 which provides that 'it shall inquire into the complaint' when a request is made by the Commission that it do so.<sup>9</sup>

[29] Section 40(1) of the *Act* empowers the Commission to receive complaints of discrimination in a form it deems acceptable. Upon receipt of a complaint, the Commission may designate a person to investigate the complaint.<sup>10</sup> Once the investigator has concluded

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<sup>8</sup> *Canadian Human Rights Commission v. Lemire and al*, 2012 FC 1162, also cited as *Canada (Human Rights Commission) v. Warman*, 2012 FC 1162 (CanLII) ["*Warman*"] at para 55.

<sup>9</sup> *Ibid.*

<sup>10</sup> s.43(1) of the *CHRA*, *supra* note 1

the investigation, they are to submit to the Commission a report of the findings of the investigation.<sup>11</sup>

[30] The Commission is not an adjudicative body. The adjudication of human rights complaints is reserved for the Tribunal.<sup>12</sup> Rather, when the Commission receives an investigation report, it may either dismiss the complaint or refer it to the Tribunal for further inquiry if it is satisfied that, “having regard to all the circumstances of the complaint”, either course of action is warranted, pursuant to s.44(3) of the *Act*.

[31] The Commission may adopt the recommendations of an investigation report, rather than providing full reasons for its decision. Where it does so, however, “the investigation report will be viewed as constituting the Commission’s reasoning for the purpose of a decision under section 44(3) of the *Act*.”<sup>13</sup>

[32] The Tribunal acquires its jurisdiction over human rights complaints when the Commission asks the Tribunal’s Chairperson to institute an inquiry into a complaint pursuant to subsection 49(1) of the *Act*. Once the Commission has made this request, the role of the Tribunal is not to review the Commission’s decision-making process, but rather to adjudicate the complaint:

[T]he Tribunal has no jurisdiction over the exercise of the Commission’s discretion under *CHRA* s 44(3) (rejecting or referring a complaint) ... The proper way to challenge a Commission decision in respect of such matters is through judicial review by the Federal Court.<sup>14</sup>

## V. Analysis

[33] The Respondent is asking the Tribunal to strike certain portions of the Complainant’s SOP in order to make it conform with what it says is the true scope of the complaint. The Respondent’s view of the complaint’s scope is very narrow, relating only to the three denials of stand-by travel requested by the Complainant between 2015 and 2017.

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<sup>11</sup> s.44(1) of the *CHRA*, *supra* note 1.

<sup>12</sup> *Cooper v. Canada (Human Rights Commission)*, [1996 CanLII 152 \(SCC\)](#).

<sup>13</sup> *Canadian Union of Public Employees (Airline Division) v. Air Canada*, 2013 FC 184 (CanLII) at para 72.

<sup>14</sup> *Warman*, *supra* note 8 at para 56.

[34] The Respondent is asking me to strike part of paragraph 2, as well as paragraphs 4 to 37 of the “Facts” section of the Complainant’s January 6, 2020 SOP. The disputed portion of paragraph 2 states: “Despite my periodic decline in health and requiring time to rehabilitate and recover, my employer continued to target me in the workplace through ongoing harassment and bullying and colluding with my Disability Health Care Provider, Great West Life, in an attempt to discredit the validity of my disability and terminate my relationship with them.” Paragraphs 4 to 37 set out some of the Complainant’s history of illness and allegations about how he was treated by his employer from 2008 until 2013.

[35] The Respondent further objects to paragraphs 3 and 5 in the “Legal Issues” section of the Complainant’s January 6, 2020 SOP. Paragraph 3 states that the Respondent’s “ongoing actions against me have caused and aggravated an already known delicate state of health to the point where it has severely affected my quality of life and ability to cope with otherwise seemingly trivial tasks and interactions with people.” Paragraph 5 says: “My ability to obtain gainful employment has also been an unfortunate consequence of the treatment I received from Jazz Aviation LP. ... My endless battles with ongoing harassment and workplace bullying ultimately took its toll, resulting in a deeper depression, increased anxiety, PTSD and physiological effects stemming from recurrent stroke-like episodes that I am still receiving follow-up for.”

[36] In the Complainant’s February 20, 2020 Reply to the Respondent’s SOP, the Respondent objects to portions of paragraphs 7 and 9. Paragraph 7 relates to alleged prior collusion between the Respondent and GWL, including an incident from 2008. Paragraph 9 describes allegations of recent treatment of Crew Chiefs by a Director of Maintenance and information the Complainant intends to call about bullying behaviour used by management.

- (i) **The scope of the complaint the Tribunal will inquire into relates to discriminatory practices beginning in 2015 that are alleged to contravene sections 7 and 10 of the Act**

[37] In order to determine whether the Complainant’s disputed SOP allegations amount to an attempt to amend or expand his complaint at this stage, I must determine the scope of the complaint referred to the Tribunal by the Commission.

[38] The Tribunal has previously concluded that it has the power to define the scope of a complaint as part of its discretionary powers conferred by the *CHRA* and that, in doing so, it is defining the scope of its inquiry: “The Tribunal therefore has the power to limit or define the scope of the allegations made before it so that they respect the scope of the original complaint or the request to the Tribunal to institute an inquiry.”<sup>15</sup>

[39] The contextual information that informed the Commission’s referral is relevant in determining the scope of what was referred to the Tribunal in this case. The Commission’s May 16, 2019 letter to the Tribunal’s Chairperson states that the Commission reviewed Mr. Torrville’s complaint and decided “to request that you institute an inquiry into the complaint as it is satisfied that, having regard to all the circumstances, an inquiry is warranted. A copy of the complaint form is enclosed.” I agree with the Respondent that, by attaching the Summary of Complaint forms along with the “Your Complaint” form, the Commission has given them weight.

[40] The “Your Complaint” form completed by Mr. Torrville in May of 2017 allowed him to indicate which grounds of discrimination applied to his case. However, there was not a similar option to choose which discriminatory practices were alleged. This information was included in the Summary of Complaint forms instead.

[41] Also, while the “Your Complaint” form asks when the alleged discrimination started and ended, Mr. Torrville only wrote that the last date of discrimination was March 10, 2017. He did not indicate the start date. However, it is apparent that, even before completing the “Your Complaint” form, Mr. Torrville had spoken to someone from the Commission about the temporal scope of his complaint. In the section of the “Your Complaint” form that asks “How and when were you treated differently, based on each ground of discrimination you have identified? Summarize and give the dates of each event” he stated that, based on his discussions with the Commission, he would reference the most recent acts of alleged discrimination, even though he felt the Respondent’s behaviour over the last several years showed a pattern of ongoing harassment, discrimination and bullying that went against his

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<sup>15</sup> *Connors*, *supra* note 5 at para 20.

doctors' recommendations and led to his current state of disability, where he is unable to be gainfully employed. He goes on to say:

When this was initially discussed with the commission I was told that all historical facts would be considered, especially if it demonstrated a pattern of behaviour or conduct that would support my case. To that end I have a 300 page document that was filed with the Federal Labour Relations Board that is also available for your viewing and consideration.

[42] The Respondent provided the Tribunal with a copy of a CHRC File Note from July 14, 2017 that says a Commission staff person spoke with the Complainant, who confirmed the Commission could use 2015 as the start date. The Summary of Complaint form indicates the Date of Alleged Discrimination was June 2015 and ongoing, while the Amended Summary of Complaint changes this to November 2015 and ongoing.

[43] In a section entitled "Scope of Investigation" the Commission's Investigation Report states that the Complainant had confirmed during an intake call with a Commission Analyst that certain information included in his complaint was provided for context only. He also confirmed that he did not expect the Commission to investigate allegations relating to the Respondent forcing him to return to work while he was on medical leave in 2008, or to the Respondent harassing him in September 2011, August 2013, and September 2015. The Report also notes that "the Commission's Summary of Complaint Form has been amended to reflect the timeline of the alleged discriminatory acts" based on information obtained during the investigation.

[44] In making its referral decision, the Commission considered the Investigation Report and submissions of the parties filed in response to the Report. In his submissions, the Complainant stated that, while he had advised the Commission about incidents that went back to 2008, he was told that they could not be considered for investigation because they surpassed the limitation period allowed for the Commission's investigation. He went on to state:

As I'm uncertain of how this could or could not be considered, the historical pattern of behaviour I was subjected to from Jazz Aviation, up to and including the most recent actions, fundamentally illustrates unnecessary, ongoing, sustained pressure and harassment that ultimately lead (*sic*) to a level of health decline whereby I could no longer be employed.

[45] He indicated in his submissions that information relating to these historical incidents could be provided to the Commission if requested. I agree with the Respondent that the Commission had the opportunity to request the historical information offered by the Complainant, but instead made its decision to refer “the complaint” to the Tribunal based on the information before it, which did not include the historical incidents.

[46] I agree that, in the particular circumstances of this case, the Summary of Complaint forms do “form part of the Complaints and can help to define the scope of jurisdiction of the Tribunal.”<sup>16</sup> In this case, as in *Waddle 2016*, the Complainant spoke to the Commission about the scope of the complaint that was being considered. While he may not have agreed with the Commission, and would have liked for it to consider allegations going back many years, the Commission was consistent in ensuring the Complainant knew there were temporal limits on the scope of the complaint it had accepted and investigated, and ultimately decided to refer to the Tribunal for an inquiry.

[47] I conclude that the temporal scope of the complaint that was referred to the Tribunal for an inquiry is 2015 and ongoing. By this I mean I will inquire into alleged discriminatory practices under sections 7 and 10 of the *Act* that occurred starting in 2015.

**(ii) I do not agree to permit the Complainant to expand the scope of the complaint**

[48] The Tribunal in *Casler, supra* noted that the original complaint filed with the Commission “does not serve the purposes of a pleading in the Tribunal’s adjudicative process leading up to a hearing. Rather, it is the Statements of Particulars filed with the Tribunal that set the more precise terms of the hearing.”<sup>17</sup> The allegations in the parties’ SOPs must have a reasonable nexus to the complaint. As long as the substance of the original complaint is respected, initial allegations may be clarified and elaborated upon before the matter goes to hearing in order to determine the real questions in controversy between the parties.<sup>18</sup> “However, an amendment will not be permitted if it will introduce a

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<sup>16</sup> *Waddle 2016, supra* note 2 at para 31.

<sup>17</sup> *Casler, supra* note 3 at para 9.

<sup>18</sup> *AA, supra* note 7 at para 36.

substantially new complaint, lacking a nexus in fact or law with the original complaint. Further, an amendment must not cause 'real and significant' prejudice to the other parties that cannot be cured."<sup>19</sup>

[49] In this case, the Complainant's SOP includes many allegations that were not included in his complaint to the Commission and that were not investigated by the Commission.

[50] The Respondent says it did not apply for judicial review of the Commission's decision to refer the complaint to the Tribunal because it understood that there were temporal and subject matter limits to the complaint. It says it would face prejudice at this stage if it were required to respond to a complaint that it understood was not accepted or investigated by the Commission, nor referred to the Tribunal. I agree.

[51] In my view, the Complainant cannot reasonably make a similar argument. It would be unreasonable for him to suggest that he did not judicially review the Commission's referral decision because he understood that the Commission had referred to the Tribunal a complaint involving allegations that go back to 2008 relating to discriminatory harassment. It is clear that the Complainant understood throughout the Commission's screening process that the complaint that was accepted and investigated was limited to events surrounding the denial of stand-by flights starting in 2015. As such, he does not face prejudice by having the Tribunal inquire into allegations of discrimination relating to or stemming from the denial of stand-by flights, because the temporal limitations were made clear to him from the outset. I agree that it would be unfair to the Respondent to allow the Complainant to bring in allegations of discrimination or harassment from prior to 2015 at this stage.

[52] The temporal limitation on the scope of the inquiry means that the Complainant will not be permitted to call evidence to prove that he was discriminated against by the Respondent prior to 2015. He cannot seek a remedy for historical discrimination because I will not make any findings about historical discrimination. However, this does not mean that the Complainant cannot refer to events or records from prior to 2015 for the purpose of

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<sup>19</sup> *Ibid*, citing *Tabor v. Millbrook First Nation*, 2013 CHRT 9 (CanLII); *Blodgett v. GE-Hitachi Nuclear Energy Canada Inc.*, 2013 CHRT 24 (CanLII); *Cook v. Onion Lake First Nation*, 2002 CanLII 61849 (CHRT). See also *Casler*, *supra* note 3 at para 11.

providing information or context relating to the Respondent's decision to deny his stand-by flight requests in 2015 and 2017.

[53] The Respondent relies on section 15 of the *Act*, saying its refusal of the Complainant's stand-by travel requests was not discriminatory because the refusals were based on a *bona fide* occupational requirement. It says the standard it relied on as the basis for its denial of the Complainant's stand-by requests - medical fitness to travel – is clearly justified and rationally connected to the objective of ensuring that employees on a medical leave do not further aggravate their health, thereby interfering with their ability to return to work or with a treatment program, or with the travel of members of the public. The Respondent also says that the standard of fitness to travel was reasonably necessary and fairly applied to the Complainant. It says it made its determination based on all relevant background, including a travel demands analysis prepared by an Occupational Therapist, recent workplace incidents involving the Complainant, and expert medical advice. The Respondent intends to rely on three different independent medical examination reports from 2015 that were obtained to assist with the assessment of: the Complainant's medical leave benefits; his fitness to work; and possible accommodations in the workplace, including the Respondent's capacity to accommodate him.

[54] The Complainant may wish to call evidence to address the Respondent's section 15 defence, or to counter the Respondent's position that its standard or policy was fairly applied to him, as a longstanding employee with a history of medical leaves of absence and accommodation requests.

[55] I also agree with the Respondent that, if the Complainant wishes to call evidence relating to how the Respondent dealt with his stand-by travel requests in the past, such historical context may be relevant to his complaint.

[56] The Complainant may also call evidence relating to his allegation that the discriminatory denial of stand-by flights has impacted his ability to work, as this was mentioned in his "Your Complaint" form. It appears, at least at this early stage, that the Complainant alleges a factual nexus between the denial of stand-by flights and his current state of disability, which affects his ability to carry out his employment duties at this time. It



is ultimately up to the Complainant to prove the allegations and to establish a link between the alleged discriminatory practices and the remedies he is seeking.

**(iii) I agree to strike some, but not all, of the disputed portions of the Complainant's SOP**

[57] In order to decide whether the disputed portions of the Complainant's SOP should remain or be struck, I have examined them in light of my decision about the scope of the complaint before the Tribunal, to determine whether they share the necessary nexus with the complaint.

[58] I decline to strike paragraphs 7, 9, 17, 22, 23, 24, 27, 32, and 35 (or the requested parts thereof) from the "Facts" section of the January 6, 2020 SOP because some paragraphs appear to contain particulars relating to prior requests to fly stand-by, which may or may not be relevant to the present complaint, especially given how long ago they occurred. Also, some paragraphs are related to medical records in which the Complainant's physicians indicated that he should avoid stressful situations or circumstances. These may be relevant, given the Complainant's position that he has had the limitation or restriction to avoid stressful situations in the past, and this did not interfere with his ability to fly stand-by using his employee benefits. To be clear, references to these events prior to 2015 may be relevant to provide context only.

[59] I also decline to strike the portion of paragraph 2 in the "Facts" section and paragraphs 3 and 5 in the "Legal Issues" section of the January 6, 2020 SOP that the Respondent disputes. It is my view that there is a sufficient nexus between the complaint referred to the Tribunal for inquiry and these paragraphs to justify their continued inclusion.

[60] However, I agree to strike the following, as I am not satisfied that the events described in these paragraphs are factually and logically connected to the substance of Mr. Torrville's complaint that has been referred to the Tribunal for an inquiry:

**January 6, 2020 SOP:**

“Facts” section

Paragraph 4: I agree to strike this portion only: “often shortly after unnecessary ongoing conflict with management and Health Services.”

Paragraph 5: I agree to strike this portion only: “I was repeatedly singled out, bullied, harassed and subjected to unnecessary stress on a regular basis.”

All of paragraphs 6, 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 25, 26, 28, 29, 30, 31, 33, 34, 36, 37

**February 20, 2020 SOP:**

Paragraph 7: as requested by the Respondent, I agree to strike the portion from “Given the evidence...” to “...ensuring a safe return to work.”

Paragraph 9: as requested by the Respondent, I agree to strike the portion from “I have also been...” to “...for everyone’s viewing and consideration.”

**VI. Order**

The Tribunal orders that, by January 21, 2021, the Complainant is to provide to the Tribunal and to the parties, a revised version of both his January 6, 2020 and February 20, 2020 SOPs, with the portions identified in paragraph 60 of this Ruling struck out.

*Signed by*

Colleen Harrington  
Tribunal Member

Ottawa, Ontario  
December 24, 2020

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal File:** T2385/4419

**Style of Cause:** Rodney Torraville v. Jazz Aviation LP

**Ruling of the Tribunal Dated:** December 24, 2020

**Motion dealt with in writing without appearance of parties**

**Written representations by:**

Rodney Torraville, for himself

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