Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2021 CHRT 10
Date: February 22, 2021
File Nos.: T2478/3520

Between:

Warren Fick

Complainant

- and -

Canadian Human Rights Commission

Commission

- and –

Loomis Express

Respondents

Ruling

Member: Alex G. Pannu

Table of Contents

A. Overview

[1] The Complainant Warren Fick filed a motion asking the Tribunal for summary judgement against the Respondent Loomis Express. He is asking that the matter be advanced "to the Legal Submissions & the Legal Remedies available under the CHRA" (Complainant's Motion for a Summary Judgment, p.4). The Tribunal's understanding is that Mr. Fick is asking the Tribunal to render a decision on the merits of the case, without going through a normal inquiry process. The Complainant submits that the material facts in his case are undisputed and that no genuine issue for a hearing exists.

[2] The Respondent objects to the motion and submits that the conditions required to grant the Complainant's motion have not been met and that there are important factual disagreements between the parties.

[3] The Canadian Human Rights Commission (CHRC) is participating in this matter but takes no position on the Complainant's motion. Its submission to the Tribunal contains a summary of applicable legal principles.

B. Decision

[4] The motion for summary judgment is dismissed. While the Tribunal recognizes its ability to deal with such motions, this power should only be exercised cautiously and only in the clearest of cases. The Tribunal shall continue case management of this matter and will convene a Case Management Conference Call with the parties to complete any remaining procedural matters with a view to setting dates for hearing.

C. Issue

[5] There is one issue to decide in this ruling: Should the Tribunal grant Mr. Fick's motion in summary judgment and proceed to render a decision on the merits of his complaint without a hearing?

D. Factual Context

[6] Mr. Fick operated a business as a sole proprietor in Slave Lake, Alberta, picking up and delivering packages for Loomis Express. From 2006 to 2011, Mr. Fick made pick-ups and deliveries for a company called DHL. In 2011, DHL was bought by another company, which began operating under the name Loomis Express. Mr. Fick claims that he had a contract with DHL, which was continued with Loomis Express, while Loomis Express believes the agreement had only ever been verbal. Mr. Fick suffered a heart attack in January 2016 and was unable to continue providing services for Loomis for several months. In April 2016, Loomis terminated its business relationship with Mr. Fick.

[7] In 2016, the Complainant filed a human rights complaint at the CHRC against the Respondent, alleging adverse differential treatment in employment (s. 7 CHRA) on the basis of his disability. The CHRC finished its investigation on Mr. Fick's complaint in May 2019 and in September of the same year, referred it to the Tribunal for an inquiry.

[8] At about the same time as the file was progressing before the CHRC, and then before the Tribunal, Mr. Fick filed a complaint for unjust dismissal under the *Canada Labour Code* (CLC).

[9] In January 2018, a CLC adjudicator dismissed Mr. Fick's complaint of unjust dismissal, finding that he was not an "employee" for purposes of the CLC. Mr. Fick then filed for judicial review of the CLC adjudicator decision with the Federal Court.

[10] In May 2019, the Federal Court granted Mr. Fick's application and quashed the CLC adjudicator's ruling, sending the matter back for redetermination by a different adjudicator. The Respondent appealed the Federal Court's decision to the Federal Court of Appeal.

[11] In January 2021, the Federal Court of Appeal allowed the Respondent's appeal, set aside the Federal Court's decision, and dismissed the judicial review application. The initial adjudicator's decision was reinstated.

[12] The Tribunal is aware of these proceedings, but for the time being, they have had no impact on its own inquiry.

[13] Before the Tribunal, the Complainant has filed a Motion in Summary Judgment on October 25th, 2020. The CHRC and the Respondent both filed their submissions on November 20th, 2020.

[14] The Complaint seeks to obtain a summary judgment on the merits of his case, which would allow his complaint to move directly to a potential remedies order.

E. Law

(a) Jurisdiction and Jurisprudence

[15] The Tribunal infrequently considers motions for summary judgement. Motions for summary judgement are not specifically provided for under the CHRA or the Tribunal's Rules.

[16] However, section 50 of the CHRA grants the Tribunal a broad discretion to craft its process 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, and 48.9(2) gives the Chair power to make procedural rules.

[17] In *Canada (Human Rights Commission) v. Canada (Attorney General)* 2012 FC 445 (CanLII), at para 131-132 [FNCFCS, 2012] the Federal Court (affirmed by the FCA) said: "

> [131] Nothing in either the Act or the Tribunal's Rules of Procedure limits the type of motions that can be brought before the Tribunal. Consequently, I see no statutory or regulatory impediment that would preclude the bringing of a motion to have the Tribunal determine a substantive issue in advance of a full hearing of the complaint on its merits.

[18] Nor is there anything in the Act or the Tribunal's Rules that would preclude the Tribunal from deciding such a motion, as long as it provides the parties with a "full and ample opportunity" to adduce the evidence necessary to decide the issue and to make submissions. The process followed by the Tribunal in relation to the hearing of the motion must also be fair, and the rules of natural justice must be respected. All the parties have

expressly accepted the jurisdiction of the Tribunal to make a ruling on the Complainant's motion.

[19] The Supreme court of Canada set out the legal framework that applies to motions for summary judgment in *Hrniak v. Mauldin* 2014 SCC 7. First, the judge must determine if there is a genuine issue requiring a trial. There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment, based on the evidence before him. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and a less expensive means to achieve a just result.

[20] In *First Nations Child and Family Caring Society and Assembly of First Nations v. Attorney General of Canada (representing the Minister of Indian Affairs and Northern Development,* 2011 CHRT 4 [FNCFCS, 2011], the Tribunal said that the CHRA did not require the Tribunal to hold a hearing with witness in every case. The Federal Court confirmed this part of the Tribunal's reasoning and wrote:

> [143] That said, there may be cases where a full hearing involving *viva voce* evidence is not necessarily required. As the Tribunal noted, this could include cases where there is no dispute as to the facts, or where the issue is a pure question of law. (FNCFCS, 2012, para 143).

[21] In FNCFCS, 2011, the Tribunal said that the party seeking the motion for summary judgement had the onus to demonstrate that the issues to be raised could be properly adjudicated in the context of a motion, while ensuring all parties have a full and ample opportunity to be heard.

[22] The Federal Court in FNFCS, 2012, at para 141-142 however warned that:

> [141] Most human rights cases are highly dependant on their individual facts and those facts are often hotly contested. As a result, many cases involve serious issues of credibility. While it is open to the Tribunal to receive evidence by way of affidavit, the more contested the facts and the greater the issues of credibility, the less appropriate this will be. Such cases may well require a full hearing on their merits, including *viva voce* evidence in chief and cross-examinations held in the presence of a Tribunal member.

> [142] Similarly, where the issues of fact and law are complex and intermingled, it may well be more efficient to await the full hearing before ruling on the preliminary issue: see *Newfoundland (Human Rights Commission) v. Newfoundland (Department of Health)* (1998), 1998 CanLII 18107 (NL CA), 164 Nfld. & P.E.I.R. 251, 13 Admin. L.R. (3d) 142 at para. 21.

[23] Motions for summary judgments before the Tribunal are usually motions to dismiss and involve a breach of natural justice such delay, an abuse of process or where the issues have been heard and conclusively resolved in another forum. These are the criteria I have to keep in mind when ruling on the complainant's motion. I am not aware of a motion before the Tribunal before this motion where the Tribunal was asked to rule on the merits of the case without a hearing.

F. Analysis

[24] I understand from my overview of the jurisprudence that the first and main criteria the Tribunal needs to analyze is whether there is a genuine issue requiring a trial. While the Commission did not take position on this question, the Complainant and the Respondent submitted opposed views.

[25] The Complainant says that there is no genuine issue for a hearing because the material facts are undisputed. The Complainant claims that the Respondent did not provide an alternate, non-discriminatory explanation for its conduct in ending their business relationship. Mr. Fick also says that he established that there was a contractual relationship between him and Loomis Express.

[26] The Respondent, on the other hand, submitted that the contractual relationship between Loomis Express and Mr. Fick was not an employee relationship that fell within the purview of the CHRA and therefore the Tribunal has no jurisdiction to hear this matter. Should the Tribunal find that an employer-employee relationship existed, the Respondent did not treat him in an adverse differential manner and did not discriminate against Mr. because of his disability.

[27] In light of the parties' submissions on the motion and Statements of Particulars, I find that there are genuine issues to be heard by the Tribunal at a hearing. Indeed, the parties strongly disagree on many of the facts of the complaint.

[28] The Complainant's position is that he was an employee of Loomis Express. He alleges that the Respondent discriminated against him by terminating him after he suffered a heart attack and could no longer continue his services for Loomis.

[29] The Respondent says that Mr. Fick was not an employee but a contractor. They say they ended their business relationship because Mr. Fick did not supply alternate drivers to pick up and deliver their packages after Mr. Fick's heart attack prevented him from continuing service.

[30] The issue of whether the Respondent discriminated against the Complainant and whether the Tribunal has jurisdiction based on the definition of "employee" under the CHRA has yet to be determined and this is an issue on which the parties disagree strongly.

[31] Further, I believe that s. 50(1) of the *Canadian Human Rights Act* (CHRA) makes it clear that parties should have their issues decided after a full hearing, but for exceptional circumstances as explained by the Federal Court in FNCFCS, 2012. Section 50(1) says that the Tribunal member shall give "…parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations."

[32] I have reviewed the documents appended to the motion and reply from the parties. Their disagreement on the facts of the complaint is so significant that I cannot rule on the merits of the case without a full hearing. At a hearing I will be able to hear sworn testimony from the parties. They will be able to enter documents into evidence . It is impossible for me to properly adjudicate the matter based solely on the motion and responses of the parties.

[33] In conclusion, I find that the parties fundamentally disagree on important factual issues such as the nature of their relationship and why it ended. I thus find that the first part of the test to be applied to motions in summary judgment, as established by the Supreme

Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII), has not been met since there is a genuine issue requiring a trial. The proper way to adjudicate this matter fairly and justly is to hold a hearing where the parties have a full and ample opportunity to provide evidence and make submissions. Therefore, I dismiss the Complainant's motion for summary judgement.

Signed by

Alex G. Pannu
Tribunal Member

Ottawa, Ontario
February 22, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2478/3520

Style of Cause: Warren Fick v. Loomis Express

Ruling of the Tribunal Dated: February 22, 2021

Motion dealt with in writing without appearance of parties

Written representations by:

Bonnie Kruger, for the Complainant

Patrick-James Blaine for the Respondent

Sarah Chênevert-Beaudoin, for the CHRC