

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2021 CHRT 16

Date: April 21, 2021

File No.: T2351/1019

Between:

Jonathan Moniz

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Fedex Ground Package System Ltd

Respondent

Ruling

Member: George E. Ulyatt

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I. Facts

[1] This matter concerns a complaint under section 7 of the *Canadian Human Rights Act*, R.S.C 1985, c. H-6 (“the Act”) where the Complainant, Mr. Moniz, alleges that he was discriminated against during the course of his employment with the Respondent, FedEx Ground Package Systems Limited (“FedEx Ground”), on the basis of disability.

[2] This ruling addresses a motion brought by the Respondent under Rule 3 of the Canadian Human Rights Tribunal *Rules of Procedure* (03-05-04) (the “*Rules*”) requesting that Mr. Moniz disclose all arguably relevant documents in his possession or control in respect to the issues in the present complaint, as required by Rule 6 of the *Rules*.

[3] In particular, FedEx Ground seeks disclosure of the following items:

(a) Medical documentation, including:

- (i) A list of all medical professionals that Mr. Moniz has seen since January 1, 2015.
- (ii) A signed, unaltered *Consent and Authorization for Release of Medical Information* form (“the Authorization”) in connection with the Oshawa Clinic Group (117 King Street East, Oshawa ON, L1H 1B9, fax: 905-721-6658, attn.: Dr. Jamie Tepper);

(b) Financial disclosure for the purposes of determining compensation, including:

- (i) At the exclusion of the disability benefit payments received, confirmation of any payments received from any source since Mr. Moniz commenced a leave of absence from FedEx Ground on or around February 22, 2016 (and supporting documents), including but not limited to payments in connection with the following sources:
 - i. Life-INOX Supply Co.;
 - ii. Black Watch Tattoos;
 - iii. ProPen North America / ProPen Tattoo Club / GoPro.tattoo;
 - iv. Allegory BLAK INK Canada;
 - v. Saniderm;
 - vi. Crocodile Stencil Solution;
 - vii. Toronto Tattoo Show NIXX 2018;

- viii. Van Isle Tattoo Expo 2018, Victoria, British Columbia;
- ix. Calgary Tattoo & Arts Festival, 2018;
- x. Tatlantis Ink & Art Festival, Bahamas, November 1-3, 2019;
- xi. Joinville Tattoo Convention, Brazil, November 29-30 and December 1, 2019;
- xii. work or services provided in Cinta Costera, Panama City;
- xiii. Brewsky Vapor; and/or
- xiv. tattooing, building or repairing of tattoo machines (including Iron Inx Machines), or any other tattoo-related work or services generally.

Alternatively, written confirmation that no such payments have been received from any source during this period.

- (ii) Any tax filings in connection with any company Mr. Moniz is or was principal of since January 1, 2015. Alternatively, written confirmation that no such tax filings exist. Alternatively, written confirmation that no such tax filings exist.
- (iii) Mr. Moniz's 2019 Notice of Assessment.

II. Legal Framework

[4] Pursuant to section 50(1) of the *Act*, parties before the Tribunal must be given a full and ample opportunity to present their case:

Conduct of inquiry

50 (1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all 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.

[5] In order to pursue this opportunity, parties must, among other things, disclose to opposing party all arguably relevant information in their possession or care before the hearing of the matter (*Warman v. Bahr*, 2006 CHRT 18 at para 6). This disclosure of information allows each party to know the case it is up against and thus adequately prepare

for the hearing (*Kayreen Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28 [*Brickner*] at para 5).

[6] For this reason, when there is a rational connection or nexus between a document and the facts, issues or forms or relief sought in the case, including those identified by other parties, the document should be disclosed as required by paragraphs 6(1)(d) and 6(1)(e) of the *Rules* (*Yaffa v. Air Canada*, 2014 CHRT 22 [*Yaffa*] at para 3; *Brickner* at para 6; *Egan v. Canada Revenue Agency*, 2017 CHRT 33 [*Egan*] at para 40; *Allan Shaw v. Bell Canada*, 2019 CHRT 24 [*Shaw*] at para 6). This is not particularly a high standard to meet (*Guay v. Canada (Royal Canadian Mounted Police)*, 2004 CHRT 34 [*Guay*] at para 42; *Egan* at para 40; *Shaw* at para 6).

[7] Paragraphs 6(1)(d) and 6(1)(e) of the *Rules* read as follows:

Statement of Particulars

6(1) Within the time fixed by the Panel, each party shall serve and file a Statement of Particulars setting out,

...

d. a list of all documents in the partys possession, for which no privilege is claimed, that relate to a fact, issue, or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;

e. a list of all documents in the partys possession, for which privilege is claimed, that relate to a fact, issue or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;

...

[8] However, a request for disclosure should not be speculative or amount to a “fishing expedition” (*Guay* at para 43; *Egan* at para 32; *Shaw* at para 22). This caveat aims to prevent production of documents for purposes that are disruptive, implausible, meritless, and time-consuming (*Day v. Department of National Defence and Hortie*, Ruling No. 3, 2002/12/06, 45 CHRRD/350 [*Day*] at para 7; *Shaw* at para 5). The description of the documents shouldn’t be too broad, and the requesting party should be able to identify the

documents in question with reasonable particularity (*Guay* at para 43; *Yaffa* at para 4; *Shaw* at para 7).

[9] Additionally, despite the arguable relevance of the document, its probative value could be outweighed by the prejudicial effects of its disclosure. For this reason, the Tribunal can exercise its discretion to deny a motion for disclosure in order to ensure the informal and expeditious conduct of the inquiry, as long as the principles of procedural fairness and the *Rules* are respected (*Brickner* at paras 7, 8). For instance, the Tribunal should be reluctant in ordering onerous and far-reaching searches (*Yaffa* at para 4), especially when it could cause substantial delays to the inquiry or when the documents solely relate to a side issue rather than the main issues in dispute (*Brickner* at para 8).

[10] The Tribunal must also consider other possible interests such as confidentiality and privilege. Arguably relevant documents may not be ordered to be disclosed, or conditions may be placed on their disclosure, if there are privilege or privacy concerns to be addressed (*White v. Canadian Nuclear Laboratories*, 2020 CHRT 5 at para 9).

[11] The fact that arguable relevant documents have been disclosed does not mean that the information will be admitted in evidence at the hearing of the matter or that significant weight will be given to it in the decision-making process (*Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28 at para 4; *Brickner* at para 9).

[12] Lastly, it must be reminded that as per the *Rules*, a party is only required to disclose documents in its possession (*Brickner* at para 10). Therefore, “[t]he plain meaning of the words “in its possession” suggests that parties are not required to create documents for disclosure” (*Gaucher v. Canadian Armed Forces*, 2005 CHRT 42 at para 17).

III. Issues

[13] The matter before me is whether the Tribunal should order Mr. Moniz to disclose the documents sought by FedEx Ground as referred to in paragraph 3 above. More precisely, the Tribunal will have to determine whether the above-mentioned documents are arguably relevant to the fact, issues or forms of relief identified by the parties in this case and in the

affirmative, whether or not the probative value of their disclosure are outweighed by its prejudicial effects on the proceedings.

IV. Partie's Arguments

Medical Documents

(a) Respondent

[14] FedEx Ground states that Mr. Moniz's health and related medical issues are connected to the allegations raised in this complaint. In his Statement of Particulars, Mr. Moniz references his health and medical restrictions, both physical and mental, as the reason he couldn't perform his regular work duties and also alludes to how he continues to suffer to this day in connection to these medical issues.

[15] Although Mr. Moniz has provided some medical disclosure, FedEx Ground argues that the medical disclosure provided thus far has created further questions and that consequently, further disclosure is required.

[16] In particular, as a result of case management call conferences in January and February 2020, and further discussions between the parties, Mr. Moniz authorized in April 2020 the release of his medical information relating to records dating from January 15, 2015 to present, held by Pickering Urgent Care and more specifically, by Dr. Andrea Woloszczuck.

[17] Upon review of the documents disclosed, FedEx Ground learned, among other things, the following information:

1. Fax dated October 25, 2017 from Dr. Jamie Tepper, an allergist from the Oshawa Clinic Group to Dr. Andrea Woloszczuck at the Pickering Urgent Care:
 - following a consultation request, Dr. Jamie Tepper informs Dr. Andrea Woloszuik that Mr. Moniz is banned from the Oshawa Clinic Group
2. Letter dated July 6, 2017 from Dr. Simon Harris, orthopedic spine surgeon, to Dr. Chern Lim:
 - references to Mr. Moniz's drug addiction history
3. Letter dated July 7, 2016 from Dr. Chern Lim to Dr. Woloszczuck:
 - states that Mr. Moniz denies any alcohol or illicit drug use

[18] Considering these above-mentioned disclosures, FedEx Ground seeks further disclosure of medical records held at the Oshawa Clinic Group as well as a list of all physicians who have seen Mr. Moniz since January 1, 2015. FedEx Ground contends this requested information is rationally connected to the facts, issues, and forms of relief identified by Mr. Moniz in this matter. FedEx Ground also argues that disclosure of these documents will help to clarify the alleged inconsistencies in Mr. Moniz's drug addiction history.

(b) Complainant

[19] In his brief reply, Mr. Moniz states that the disclosure provided by Pickering Urgent Care already provides the answers to FedEx Ground's query regarding the list of physicians he has consulted since January 15, 2015. Mr. Moniz also argues that save from Dr. Chern Lim's July 7, 2016 letter which simply stated Mr. Moniz's denial in the use of any alcohol or illicit drug, no other documentation exists which would reference Mr. Moniz's alleged drug use. Mr. Moniz also denies that he struggles with any issue drug-related issues.

Financial Disclosure

(a) Respondent

[20] FedEx Ground argues that the financial disclosure mentioned above at paragraph 3 is rationally connected to the form of relief identified by Mr. Moniz in his complaint and is necessary to determine alleged lost wages and mitigation efforts. In particular, FedEx Ground argues that it has "good reason" to believe that Mr. Moniz has failed to disclose all his sources of income since his leave of absence with FedEx Ground in February 2016.

[21] FedEx Ground has identified fourteen entities to which it seeks confirmation that Mr. Moniz has not received any income from. FedEx Ground argues that Mr. Moniz's answers are unresponsive to the "detailed and straightforward requests" it has made in this regard. FedEx Ground claims that the requests have not only been described with reasonable particularity, but that, additionally, it will not subject Mr. Moniz or any non-party to this case to an onerous search for documents.

(b) Complainant

[22] Mr. Moniz denies receiving any compensation from any of the above-named businesses or organizations. He also claims that he does not own, solely or in part, any of the listed businesses or organizations. Consequently, he denies that any tax filings were made by a company to which he is or was principle for during the relevant period. Rather, Mr. Moniz claims that FedEx Ground's requests for financial disclosure is speculative and constitutes a "fishing expedition".

V. Analysis

[23] The relevancy of material is to be determined on a case-by-case basis according to the fact and issues raised in each case (*Warman v. Bahr*, 2006 CHRT 18 at para 9). As set forth above, the test for arguable relevancy is not a high bar to meet. It is accepted that there must be a nexus between the documents sought and the facts, issues, and remedies in dispute.

[24] However, as previously noted, there are caveats. The request for disclosure shouldn't amount to a "fishing expedition" and the requesting party should be able to identify the documents with reasonable particularity (*Guay* at para 43). This standard exists to prevent production for purposes that are "speculative, fanciful, disruptive, unmeritorious, obstructive and time-consuming" (*Day* at para 7).

Medical Documents

[25] This Tribunal has repeatedly stated that when a request for disclosure involves medical documents, the interests of confidentiality or privacy at issue which such documents could be overridden by the respondent's right to know the case against it (*Egan v. Canada Revenue Agency*, 2017 CHRT 33 at para 34). In other words, the right to privacy and confidentiality can be renounced when a person puts his or her health in issue (*Clegg v. Air Canada*, 2019 CHRT 3 at para 52).

[26] This notion was elaborated in detail in *Guay*.

[45] [...] In human rights proceedings, when a complainant seeks compensation for physical injuries and for pain and suffering, he/she implicitly

agrees to allow a respondent to have access to medical records or, in general, personal health information. The right to confidentiality of medical records no longer exists. [...] The right to confidentiality is therefore overridden by the Respondent's right to know the grounds and scope of the complaint against it. In human rights proceedings, justice requires that a respondent be permitted to present a complete defence to a Complainant's arguments. If a complainant bases the case on his/her medical condition, a respondent is entitled to relevant health information that may be pertinent to the claim.

[27] In the present case, Mr. Moniz clearly has put his health at issue. Throughout its Statement of Particulars, he references both his physical and mental health to explain why he couldn't continue working for FedEx Ground, as FedEx Ground allegedly failed to accommodate his medical restrictions in the workplace. Mr. Moniz explains that much of his stress and mental health challenges also derive from the Respondent's overall handling of the situation and failure to accommodate. Mr. Moniz also refers to the anxiety and depression that continues to impact his personal life and ability to work.

[28] There is a direct nexus between the documents sought by FedEx Ground and the issues put forward in this complaint. The medical documentation sought, namely the list of all medical professionals Mr. Moniz has seen since January 1, 2015 and the release of his medical information in connection with the Oshawa Clinic Group is arguably relevant to this case. This pertinent medical information will also allow FedEx Ground to adequately respond to the allegations of discrimination against it. This request isn't too broad or oppressive and will not cause undue delay to the proceeding.

Financial Disclosure

[29] FedEx Ground seeks the disclosure or confirmation of any payments Mr. Moniz has received from any source since Mr. Moniz's leave of absence from FedEx Ground on or around February 22, 2016. At the exclusion of the disability benefits Mr. Moniz has received, FedEx Ground seeks confirmation and receipt of supporting documents, including, but not limited to, payments relating to the sources enumerated at paragraph 3 above.

[30] FedEx Ground contends it has good reason to believe that Mr. Moniz has received payments from some sources, including from some or all of the above-mentioned entities. However, FedEx Ground has not provided any basis for its request, other than stating that

it's aware Mr. Moniz travelled to and attended tattoo exhibitions and conventions between 2017 and 2020.

[31] As previously mentioned, Mr. Moniz claims that he does not currently have or had a business during the relevant period of time and denies that any tax filings were filed on behalf of a company he is or was a principal of. In Reply, FedEx Ground argues that Mr. Moniz's responses to FedEx Ground's clear and direct requests are none-responsive.

[32] I accept that Mr. Moniz has made full disclosure in this regard and I have no reason to believe that he is acting in bad faith and failing to comply with Rule 6 of the *Rules*. I am satisfied that Mr. Moniz has already answered FedEx Ground's request for written confirmation that he had no other sources of income during the relevant period of time, including from the fourteen entities listed. Mr. Moniz has already indicated that he has never owned a business during the relevant period of time, and that accordingly, no such tax filings exist.

[33] As formerly explained by this Tribunal, "it is the Tribunal's practice, once such a party's list is complete and any particularized disclosure requests are answered, to accept the disclosure made as the full disclosure of that party, at that time. While parties have ongoing obligations under Rule 6(5), the foregoing is generally sufficient to confirm that the party does not have any other arguably relevant documents in its possession" (*Nicole Grace Valenti v Canadian Pacific Railway*, 2017 CHRT 25 at para 25).

[34] With respect to Mr. Moniz's 2019 Notice of Assessment, the Tribunal is satisfied that FedEx Ground has established relevancy and a sufficient connection between the document sought and the specific forms of relief raised in this complaint. Particularly, disclosure of this document is appropriate and useful to determine the quantum of a potential award for lost wages.

[35] For the foregoing reasons, the motion is allowed in part.

VI. Order

[36] Within 15 days of this Ruling Mr. Moniz is ordered to:

1. Disclose a list of all medical professionals he has seen since January 1, 2015;

2. Sign an unaltered Consent and Authorization for Release of Medical Information form for the release of his medical information in connection with the Oshawa Clinic Group since January 1, 2015;
3. Disclose his 2019 Canada Revenue's Agency Notice of Assessment.

[37] FedEx Ground's request for the disclosure of all other financial documents is denied.

Signed by

George E. Ulyatt
Tribunal Member

Ottawa, Ontario
April 21, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2351/1019

Style of Cause: Jonathan Moniz v. Fedex Ground Package System Limited

Ruling of the Tribunal Dated: April 21, 2021

Motion dealt with in writing without appearance of parties

Written representations by:

Jonathan Moniz, for himself

Patrick Pengelly and Tim Lawson, for the Respondent