Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2021 CHRT 32
Date: August 30, 2021
File No.: T2463/2020

Between:

Angelle Levasseur

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Post Corporation

Respondent

Ruling

Member: Gabriel Gaudreault

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I. Background of the Motion

[1] In this ruling, the Canadian Human Rights Tribunal (the "Tribunal") is disposing of the motion to strike filed by the Canada Post Corporation (the "Corporation" or the "Respondent") on May 7, 2021.

[2] The Corporation is asking the Tribunal to strike some of the allegations made in the amended statement of particulars ("SOP") and in the reply of Angelle Levasseur (the "Complainant" or "Ms. Levasseur"), as well as some of the allegations made in the SOP of the Canadian Human Rights Commission (the "Commission"), as follows:

- The last sentence of paragraph 7, paragraphs 23, 31, 40 and 41, as well as the second sentence of paragraph 42 of the Complainant's amended SOP;
- Some portions of paragraphs 11, 24 and 26 of the Complainant's reply; and
- Paragraphs 29 and 30 of the Commission's SOP.

[3] In its reply, the Corporation states that it would also ask paragraph 39 of the Complainant's amended SOP to be struck.

[4] The Corporation is essentially arguing that these allegations are outside the scope of the complaint before the Tribunal.

[5] Ms. Levasseur and the Commission object to the Respondent's motion and are asking the Tribunal to preserve these allegations in the inquiry, arguing that they are within the scope of the complaint before the Tribunal.

[6] For the following reasons, the Tribunal grants part of the Respondent's motion, specifically in respect of the arguments based on section 5 and paragraph 14(1)(c) of the *Canadian Human Rights Act* (the "CHRA"). The rest of the motion is dismissed.

II. Legal Foundation

[7] The legal foundation for motions to strike is inevitably the same as the guiding principles the Tribunal has developed to determine the scope of a complaint. This is a natural

connection insofar as a party can ask for allegations to be struck when, for example, it finds that the allegations do not fall within the scope of the complaint referred to the Tribunal.

[8] I am essentially reiterating here what was said by my colleague Member Edward P. Lustig in *AA v. Canadian Armed Forces*, 2019 CHRT 33 (CanLII), at paragraph 55 [*AA*].

[9] The principles guiding the Tribunal in this matter are well established (see, for example, *AA*, at paragraphs 56 to 59; *Karas v. Canadian Blood Services and Health Canada*, 2021 CHRT 2, at paragraphs 9 to 31 [*Karas*]; *Casler v. Canadian National Railway*, 2017 CHRT 6, at paragraphs 7 to 11 [*Casler*]; *Gaucher v. Canadian Armed Forces*, 2005 CHRT 1, at paragraphs 9 to 13 [*Gaucher*]).

[10] The procedure through which litigants can file a complaint regarding discriminatory practices within the purview of matters coming within the legislative authority of Parliament is set out in the CHRA. It is the Commission's role to, among other things, receive and investigate complaints (subsections 40(1) and 43(1) of the CHRA), a role that distinguishes the Commission from the Tribunal, whose role it is to institute inquiries into the complaints referred to it (subsections 44(3), 49(1) and 50(1) of the CHRA).

[11] The process is triggered by the filing of a formal complaint with the Commission through a specific form. In that form, the complainant describes the events that, in the complainant's opinion, led to the alleged discriminatory practices. The complainant thus provides a review of their version of the facts leading them to believe that they are, or have been, a victim of discrimination, as of the date of filing of the complaint. The discrimination may be ongoing or persistent, depending on the circumstances described.

[12] After investigating, the Commission determines whether the circumstances justify the complaint being referred to the Tribunal (subsection 49(1) of the CHRA) and, as required, sends a letter to the Chairperson of the Tribunal to that effect. The parties receive a separate letter confirming that the complaint has been referred for inquiry. If the Commission does not express any limitations or exclusions in its letter to the Tribunal Chairperson, and unless the Commission instructs otherwise, the Tribunal assumes that the complaint has been referred in its entirety.

[13] The jurisprudence also recognizes that the Commission's letter is not the only tool the Tribunal has at its disposal to determine the scope of a complaint. The parties' statements of particulars, filed right at the beginning of the proceeding before the Tribunal, are the constituent procedural vehicle underlying the complaint. The SOP clarifies, refines and elaborates on the alleged discrimination, and it is inevitable that new facts or new circumstances are revealed after the initial complaint is filed. It follows that complaints can be refined.

[14] Since the SOP is the procedural vehicle used in the Tribunal's inquiry, the original complaint filed before the Commission and forms such as the complaint summary and other administrative documents are not pleadings as such during the inquiry stage.

[15] It does not follow that an SOP may include aspects that have no logical connection to the complaint filed by the complainant. In fact, **the substance of an SOP must reasonably respect the factual foundation and the allegations set out in a complainant's initial complaint**. And when the Tribunal receives a motion to modify, amend or expand the scope of a complaint or, as in this case, a motion to narrow the scope of the complaint or to strike certain items, it must use the tools and the material at its disposal to rule on the issue.

[16] So, to decide on this issue, the Tribunal must necessarily determine the substance and the scope of the complaint before it. It therefore has to examine the material and the submissions it has received, determine the scope of the complaint and **reach a conclusion on whether there is a sufficient connection or nexus between the allegations in the SOP and the original complaint filed before the Commission**. A complaint should not be unduly restricted by form over substance, thereby limiting the Tribunal's review of the real and essential matters in dispute, but there must be some factual foundation in the complaint that establishes a reasonable nexus with what is in the SOP. In the absence of a sufficient (or reasonable) nexus with the original complaint, the allegations constitute a completely new complaint.

[17] In determining the scope of a complaint, and depending on the material before it, the Tribunal may consult, among other things, the Commission's investigation report and the

letters sent by the Commission to the Chairperson and the parties, the original complaint and any administrative forms. In other words, “the Tribunal may consider the documents and information made available to it in order to develop an overall understanding of the complaint, its history and the general context. This allows the Tribunal to determine the scope of the complaint before it” (*Karas*, at paragraph 30).

[18] The Tribunal will review the Respondent’s motion to strike keeping these principles in mind.

III. Issue

[19] The issue is a straightforward one:

Should the Tribunal allow the Respondent’s motion to strike?

[20] To answer this question, the Tribunal must, among other things, determine whether there is a sufficient nexus between the allegations identified by the Corporation and covered by the motion to strike on the one hand and Ms. Levasseur’s complaint on the other.

IV. Analysis

[21] In the interests of brevity and to conduct the proceeding as expeditiously as possible (subsection 48.9(1) of the CHRA), the Tribunal will focus solely on the elements it considers to be necessary, essential and relevant in making this decision (*Turner v. Canada (Attorney General)*, 2012 FCA 159, at paragraph 40; *Constantinescu v. Correctional Service Canada*, 2020 CHRT 3, at paragraph 54; *Karas*, at paragraph 32).

[22] In her response to the motion, the Complainant tried hard to rectify certain facts alleged by the Respondent. The Tribunal notes that in the context of this motion, the goal is not to make any findings of fact or to draw any inferences whatsoever regarding the complaint. The Tribunal will not deal with the merits of the allegations (*Karas*, at paragraph 147; *Constantinescu v. Correctional Service Canada*, 2020 CHRT 4, at paragraph 204). The Tribunal will be able to make findings of fact and draw inferences from

the evidence in the hearing of this matter. The Complainant will therefore be able to present her evidence and submissions on the matter in due course.

A. Post–September 2016 Allegations

[23] For the purpose of this decision, suffice it to say that Ms. Levasseur started working for the Corporation in 2005. During her career with the Corporation, she was away from work on various occasions because of health problems related to a back injury she suffered in 2003.

[24] She was off work from February 2015 to January 2016. In January 2016, Ms. Levasseur returned to work under a progressive return-to-work plan. In February 2016, the Complainant left work again because of her health problems; she returned in June 2016.

[25] Ms. Levasseur's last day of work was September 27, 2016: she would not return to work for the Corporation after that date. Over two years later, on November 20, 2018, Ms. Levasseur retired on medical grounds, thereby definitively ending her employment with the Corporation.

[26] In its motion to strike, the Respondent mainly objects to the Complainant's addition of allegations concerning events that occurred **after September 2016** (the "post–September 2016 allegations") and related **remedies**. The Respondent is asking the Tribunal to exclude all of Ms. Levasseur's allegations postdating September 2016 and concerning her medical retirement in November 2018. Among other things, Ms. Levasseur is in fact submitting that her medical retirement was caused by the Respondent's failure to accommodate her particular needs. The Corporation argues that these allegations do not fall within the scope of the complaint before the Tribunal.

[27] Without going into the details of the Commission's and Ms. Levasseur's submissions, suffice it to say that both the Commission and Ms. Levasseur object to the motion to strike, generally arguing that the discrimination experienced by Ms. Levasseur had in fact been ongoing. The discrimination allegedly went on not only during Ms. Levasseur's employment with the Corporation, but even after September 2016, ultimately leading to her medical

retirement. In short, the Commission and Ms. Levasseur argue that there is a sufficient nexus with the original complaint and that these allegations are included in the complaint.

[28] In her amended SOP and her reply, Ms. Levasseur alleges that her health problems got worse because of the Corporation's failure to accommodate her medical restrictions.

[29] More specifically, she is arguing that the Corporation's failure to accommodate her physical disability led to a deterioration of her mental health problems, which prevented her from coming back to work for the Respondent. If the Respondent had taken her needs into consideration properly, she submits, she would not have had to retire on medical grounds in November 2018. As a result of this, she is claiming damages for her future wage losses caused by the Corporation's actions (or inaction).

[30] Moreover, Ms. Levasseur's complaint was filed under section 7 of the CHRA. This provision concerns the field of employment. The Complainant alleges that she experienced adverse differential treatment as a result of her disability (paragraph 7(b) of the CHRA). The Tribunal reviewed the original complaint filed by the Complainant since it was filed by the Commission as part of its submissions on this motion.

[31] In her original complaint, the Complainant not only mentions her back-related health problems, but also addresses her mental health, speaking about her suicidal thoughts as a result of the pain in her back and her other mental health issues, including diagnosed post-traumatic stress disorder, depression, anxiety, borderline personality disorder and bipolar disorder.

[32] The Complainant clearly states in her original complaint that some of the Respondent's measures worsened her back-related medical condition and thereby also led to a deterioration in her mental health.

[33] The Commission also filed its investigation report (the "Report") in support of its submissions. As the Corporation argued correctly, it is true that the investigator's Report is specific: the investigation only concerns the events that are alleged to have occurred between February 12 and June 27, 2016 (Report, at paragraph 4). However, it must be remembered that it is not the Commission's objective to investigate all allegations included

in complaints filed with it. On the contrary, the Federal Court has clearly determined that in exercising its power to investigate complaints, the Commission performs more of a screening function (*Desgranges v. Canada (Administrative Tribunals Support Services)*, 2020 FC 315 (CanLII), at paragraph 29).

[34] In addition, the Tribunal has read the letters the Commission sent to the Tribunal and to the parties upon finding it necessary to refer the complaint for inquiry. The letter received by the Tribunal Chairperson on February 6, 2020, does not determine the scope of the complaint. The same is true of the letters sent to Ms. Levasseur and the Corporation on March 22, 2019. The fact is that these letters neither limit nor specify the scope of the complaint.

[35] As the Tribunal noted in *Karas*, the fact that the letters do not specify or limit the scope of the complaint also does not give the Tribunal carte blanche to include allegations by a complainant that have nothing to do with the original complaint. The Tribunal has been consistent on this point, namely, that there has to be a sufficient nexus between the allegations and the complainant's original complaint (*Karas*, at paragraph 112; *AA*, at paragraph 59; *Gaucher*, at paragraph 10; *Casler*, at paragraph 7).

[36] It should be noted that the Commission received Ms. Levasseur's complaint on November 22, 2016. Ms. Levasseur argues that she retired on medical grounds in November 2018, over two years after she filed her complaint. It is impossible to ignore this: how could Ms. Levasseur have anticipated or foreseen in November 2016, when she filed her complaint with the Commission, an event that would happen two years later? This is precisely what the Tribunal means when it writes that complaints can evolve over time (*Karas*, at paragraph 138; *Gaucher*, at paragraph 11; *Casler*, at paragraph 9; *AA*, at paragraph 59).

[37] Similarly, the Respondent believes that the Complainant should not be able to raise facts that occurred four years after she filed her complaint in her amended SOP and her reply. The Tribunal agrees with what the Commission has to say in the sense that this argument once again completely disregards the possibility of a complaint evolving over time (*Karas*, at paragraph 138).

[38] In this regard, the Respondent relies on *Karas*, at paragraph 24, arguing that the substance of the Complainant's SOP must reasonably respect the facts and the allegations of discrimination contained in the original complaint. The Respondent seems to be moving away from the Tribunal's reasoning or at least to be circumventing it, even though paragraph 24 of *Karas* clearly refers to paragraph 59 of *AA*, among other things. This paragraph **must** be read in context, namely, that there has to be a sufficient nexus between the allegations made in the SOP and the original complaint. That is precisely what paragraph 24 of *Karas* is referring to; a sufficient nexus with the original complaint is at the centre of the Tribunal's analysis.

[39] The Respondent argues that the Complainant merely stated in passing both during and at the very end of the Commission's investigation that she retired on medical grounds because of the Corporation's failures to accommodate her. According to the Respondent, this indicates that this issue is not central to her complaint. That is not the analysis the Tribunal has to perform for this type of motion. The Tribunal has to determine whether there is a sufficient nexus between the allegations and the original complaint. Here, the Tribunal has already found that there is. The argument is therefore not determinative in the circumstances.

[40] The Respondent also states that there is no documentary evidence to support Ms. Levasseur's allegations that her mental health deteriorated as a result of the failure to accommodate her needs. The Tribunal acknowledges the Respondent's argument, but notes that the time for assessing Ms. Levasseur's evidence will be at the hearing. The Tribunal has clearly held that for the type of motion filed by the Corporation, which concerns the scope of the complaint, the purpose of the Tribunal's review is not to determine whether the complainant's allegations have merit (*Karas*, at paragraph 147). The fact that there is no documentary evidence to support the Complainant's allegations is irrelevant at this stage. Ms. Levasseur's allegations will be tested at the hearing in light of the evidence being presented. The burden on the Complainant will be to establish her case on a balance of probabilities. The Corporation, on the other hand, will have an opportunity to submit a rebuttal or a defence and to present its arguments to the Tribunal.

[41] The Tribunal also acknowledges the Respondent's arguments regarding the dispute between Ms. Levasseur and her insurance company, Sun Life. The Corporation submits among other things, that Ms. Levasseur's allegations before the Tribunal are the opposite of what she argued in that dispute. This argument is also irrelevant for the Tribunal at this stage of the proceeding, as well as not being persuasive in the circumstances. It will be open to the Corporation to present this evidence at the hearing and to provide arguments on this subject in due course. As the Complainant pointed out, the Corporation could, for example, present arguments to the Tribunal on the remedies that could be granted, in light of the existence of this dispute.

[42] The Respondent adds that the Complainant did not provide any substantive facts to establish a nexus between her medical retirement in November 2018 and her complaint. Once again, the Tribunal notes that the purpose of its analysis is not to determine whether Ms. Levasseur's allegations have merit (*Karas*, at paragraph 147), but simply to determine whether there is a sufficient nexus between her original complaint on the one hand and the allegations in her SOP and her reply on the other.

[43] The Tribunal is satisfied that the Complainant has established that there is a sufficient nexus. The Complainant was able to demonstrate that the alleged discrimination is part of continuum. She argues that the Corporation's failure to accommodate her physical disability led to a decline in her mental health, thereby preventing her from returning to work for the Corporation. The Complainant claims that a return to work ultimately became impossible, arguing that she had no other choice but to retire on medical grounds despite not having planned this.

[44] The Tribunal is convinced that the allegations the Complainant raised that involve facts after September 2016 are sufficiently linked to her original complaint. It would be difficult to reach a different conclusion. The addition of these allegations does not constitute a new complaint as submitted by the Corporation. The Complainant was able to link these allegations to the very basis of her initial complaint and is fully within her rights to add these allegations to clarify and refine her allegations.

[45] To be clear, Ms. Levasseur specifically noted in her original complaint that the alleged failure of the Corporation to accommodate the medical restrictions related to her back would have exacerbated her mental health issues. The Corporation seems to ignore part of the Complainant's reasoning in paragraph 27 of her motion. The Complainant alleges that she was absent from work due to her mental health that was allegedly exacerbated by the Corporation's failure to correctly address her needs. Several years later, she alleges that she had no other choice but to take medical retirement for this reason. The link is clear and definitely sufficient for the Tribunal. The Corporation seems to completely isolate the Complainant's medical condition as if her back condition and her mental health condition were evolving in separate silos. After reading Ms. Levasseur's original complaint, the Tribunal understands there is a connection between the two: one seems to affect the other. The Corporation is attempting to exclude this connection between the two conditions.

[46] And yet, in Ms. Levasseur's original complaint, she made note of this link, this connection between the two medical conditions. For example, she explained that she tried to end her life in order to stop the intense pain from her back. She also wrote that her physician had supported her transfer to another facility due to the physical condition related to her back, but also for mental health reasons. Lastly, she wrote that during one of her returns to work, she was assigned to a route that required her to use many stairs, causing an aggravation to her back condition. She is specific and stated that this caused her mental health to deteriorate, while attempting to perform work that she could not do and that caused her pain.

[47] The Tribunal is convinced that there exists of a sufficient nexus between the Complainant's original complaint and the allegations in her SOP and her response. And if the Respondent feels that the Complainant does not meet the burden of proof on a balance of probabilities as developed in *Moore v. British Columbia (Education)*, [2012] SCR 61, it can very well present its evidence and submissions at the hearing on this.

[48] The Corporation did not convince the Tribunal that the Complainant's allegations were a moving target, to use the terms the Tribunal used in *Starblanket v. Correctional Service of Canada*, 2014 CHRT 29, at paragraph 25. As noted above, the Complainant's allegations are static and clear, and sufficiently linked to Ms. Levasseur's original complaint.

[49] Lastly, the Tribunal does not feel there would be a real and irremediable harm if these allegations were added to the complaint, contrary to the Corporation's arguments. It must be said that the proceeding is still in the early stages. The Corporation did not present any evidence to allow the Tribunal to find there was a prejudice that, additionally, would be irremediable.

[50] No hearing date has been scheduled and it is highly possible that the parties will ask the Tribunal for authorization to amend their SOPs, lists of witnesses and lists of documents, if necessary further to this decision. Moreover, the parties will be required to disclose all the potentially relevant documents they have in their possession that are related to these post–September 2016 allegations. If it has not yet been done, and the Tribunal mentions it in passing, Ms. Levasseur will certainly have documentation to provide on this subject and since she is raising her medical conditions in the Tribunal's proceeding, she will have to provide the other parties with all the potentially relevant documents on this subject.

[51] The Corporation also argued that the addition of these allegations will have a significant effect on the duration of the hearing. Again, the Respondent has not convinced the Tribunal that adding these allegations would have a disproportionate impact on the duration of the hearing, thereby creating irreparable harm.

[52] For all these reasons, the Tribunal dismisses the motion to strike these items.

B. Tribunal's Jurisdiction

[53] At paragraphs 33 et seq. of its motion, the Corporation, relying on section 118 of the *Workplace Safety and Insurance Act, 1997*, SO 1997, c. 16, Schedule A (the WSIA), argues that the Tribunal does not have jurisdiction to address the post–September 2016 allegations since, in its opinion, the allegations are under the exclusive jurisdiction of the Ontario Workplace Safety and Insurance Board (WSIB).

[54] Indeed, according to the Respondent, the Complainant's mental health issues, once they had been exacerbated by the Corporation's alleged failure to accommodate the Complainant, would constitute chronic mental stress and as such, would be an injury covered by the WSIA. The Respondent is of the opinion that the Complainant could have

addressed the WSIB and if she had shown that she met the prescribed criteria, she would have been eligible for WSIB benefits.

[55] The Supreme Court of Canada developed a two-step analysis in *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Québec (Attorney General),* 2004 SCC 39 (CanLII) [*Morin*].

[56] Although the facts in this case are different from those in *Morin*, the Supreme Court comments are entirely relevant to the present case. Paragraphs 7 to 10 read as follows:

> 7 There is no easy answer to the question of which of two possible tribunals should decide disputes that arise in the labour context where legislation appears to permit both to do so. As explained in *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC), [1995] 2 S.C.R. 929, three outcomes are possible.
>
> 8 The first possibility is to find jurisdiction over the dispute in both tribunals. This is called the "concurrent" jurisdiction model. On this model, any labour dispute could be brought before either the labour arbitrator or the courts or other tribunals.
>
> 9 The second possibility is the "overlapping" jurisdiction model. On this model, while labour tribunals consider traditional labour law issues, nothing ousts the jurisdiction of courts or other tribunals over matters that arise in the employment context, but fall outside traditional labour law issues.
>
> 10 The third possibility is the "exclusive" jurisdiction model. On this model, jurisdiction lies exclusively in either the labour arbitrator or in the alternate tribunal, but not in both.

[57] There is no default rule regarding the exclusive jurisdiction of a decision-maker (whether it is a tribunal, court, adjudicator, etc.) and the Supreme Court reminds us that it is a question that is to be asked in each case (*Morin*, at paragraph 14).

[58] Thus, the question is whether Ms. Levasseur's new allegations fall under the **exclusive** jurisdiction of the WSIB. In other words, the Tribunal must ask whether the relevant legislation, the WSIA, as it applies to this case in its factual context, grants exclusive jurisdiction to the WSIB.

[59] The Tribunal answers this question in the negative.

[60] The two steps developed in *Morin*, at paragraph 15, are the following:

1) Examine the provisions of the enabling legislation and what it says about the decision-maker's jurisdiction; and

2) Determine whether the dispute is under the mandate conferred by law; the nature of the dispute must be considered and a determination made as to whether it is under the exclusive jurisdiction of one decision-maker or the other.

[61] The Tribunal will analyze these two steps in a combined and succinct manner. To summarize, the WSIB's and this Tribunal's jurisdictions are fundamentally different and according to the dispute, there may be concurrent jurisdiction that does not automatically exclude the jurisdiction of either of the two decision-making bodies. There is not necessarily exclusive jurisdiction for either of these tribunals in their own respective area of jurisdiction.

[62] Under section 118 of the WSIA, the WSIB has exclusive jurisdiction to examine, hear and decide matters that arise under the WSIA. Therefore, the WSIB must, among other things, decide whether the bodily harm or death was caused by an accident or whether the accident arose out of and in the course of an employment (subsections 118(1), (2) and (3) of the WSIA).

[63] As for this Tribunal, its jurisdiction is to hear complaints before it and determine whether they are substantiated (subsections 49(1), 53(1) and 53(2) of the CHRA). These complaints only involve human rights and more specifically, those related to discrimination, since discriminatory practices are set out in the CHRA at sections 5 to 14.1. The CHRA does not give the Tribunal exclusive jurisdiction on issues involving human rights and discrimination.

[64] The Tribunal concedes that the WSIB has exclusive jurisdiction *to determine issues under the WSIA* (see *Snow v. Honda of Canada Manufacturing*, 2007 HRTO 45 (CanLII)). However, section 118 of the WSIA does not automatically exclude the possibility of concurrent jurisdiction with another tribunal on issues that spring from the same field, in this case, the field of labour (*Frankson v. Workplace Safety and Insurance Board,* 2011 HRTO 2107 (CanLII), at paragraph 99).

[65] We must note that the role of the Tribunal is to determine whether there is discrimination: it is not to consider the issue of whether there is an employment injury or workplace accident. When it makes a determination on the issue of discrimination and rules on the complaint, the Tribunal is exercising its own jurisdiction under its own enabling legislation, the CHRA.

[66] In this case, the Tribunal must decide whether Ms. Levasseur was the victim of discrimination by the Corporation, with regard to the evidence submitted. As for the post–September 2016 allegations, Ms. Levasseur alleges that the Corporation's failure to accommodate her specific needs exacerbated her mental health issues, with the consequence of precipitating her medical retirement in November 2018. The Corporation will have the opportunity to refute the Complainant's allegations, to rely on a statutory defence as provided in section 15 of the CHRA, and even limit its liability when relevant (section 65 CHRA). In no case will the Tribunal encroach on the WSIB's jurisdiction under the WSIA by addressing these issues.

[67] If the Tribunal finds there is discrimination, it will be able to make remedial orders pursuant to subsections 53(2), (3) and (4) of the CHRA. The goal of the remedial orders set out in the CHRA is to restore the victim of the discrimination to the position they would have been in had the discrimination not taken place (*André v. Matimekush-Lac John Nation Innu*, 2021 CHRT 8, at paragraphs 156 and 157; *Brooks v. Canada (Minister of Fisheries and Oceans)*, 2005 CHRT 14, at paragraph 10; *Public Service Alliance of Canada v. Canada Post Corporation*, 2005 CHRT 39, at paragraphs 933 and 934; *Canada (Attorney General) v. Morgan (C.A.)*, 1991 CanLII 8221 (FCA), at paragraph 19). The WSIB determines whether the loss of earnings has resulted from an injury, whether the permanent impairment has resulted from an injury, and the degree of the impairment as well as the amount of the person's average earnings and net average earnings (subsections 118(2), (7), (8) and (9) of the WSIA).

[68] For all these reasons, the Corporation has not convinced the Tribunal that the WSIB has exclusive jurisdiction and that, as a result, the Tribunal lacks jurisdiction to consider the post–September 2016 allegations and potentially make remedial orders.

[69] The Tribunal therefore dismisses this argument.

C. Allegations Based on Paragraph 14(1)(c) of the CHRA and Other Pre–January 2016 Allegations

(i) Allegations Based on Paragraph 14(1)(c) of the CHRA

[70] The Corporation objects to Ms. Levasseur's addition of allegations based on paragraph 14(1)(c) of the CHRA with regard to the harassment in matters related to employment that she allegedly suffered because of her mental health status.

[71] After carefully reviewing the Complainant's amended SOP and her original complaint, the Tribunal notes that the Complainant's allegations of harassment are intrinsically linked to the pre–January 2016 allegations.

[72] For example, in Ms. Levasseur's amended SOP, at paragraph 12, she addresses incidents of harassment and intimidation that she allegedly experienced from November 2013 until February 2014.

[73] The Tribunal is faced with an unusual situation: the parties have announced to the Tribunal that they agree that the pre–January 2016 allegations will not be included in the scope of the complaint. They agree that these allegations were added for context only and not for the Tribunal to use in its determination as to whether there was discrimination. These submissions and this consent were included in the summaries of the case management conference calls between the Tribunal and the parties, as reflected in the Tribunal's official record.

[74] Neither the Complainant nor the Commission, in their submissions regarding the Respondent's motion, indicated that this agreement between the parties was no longer valid. It is also surprising that the Commission did not present any argument that would rebut the Corporation's statements about the addition of the allegations based on paragraph 14(1)(c) of the CHRA.

[75] The Complainant provided few submissions on this addition. Although she argues that the harassment and intimidations continued following the filing of her complaint, none

of these allegations are in her amended SOP, as the only references to harassment involve events that occurred in 2013 and 2014.

[76] Considering the parties' agreement and the submissions presented by the Corporation, the Tribunal concludes that the allegations based on paragraph 14(1)(c) of the CHRA are not included in Ms. Levasseur's complaint.

[77] The Tribunal therefore allows this item to be struck.

(ii) Other Pre–January 2016 Allegations

[78] As for the other pre–January 2016 allegations, the Tribunal is in the same situation: the parties joined together and informed the Tribunal that they were included only for context.

[79] Again, neither the Commission nor the Complainant indicated in their submissions that this agreement was no longer valid. It would therefore be difficult for the Tribunal to reach a different finding when these are merely submissions that were made during case management conference calls.

[80] For clarity and transparency, the Tribunal restates what was already decided by the parties and was recorded in the case management summaries: the pre–January 2016 allegations are only included for context.

V. Allegations Based on Section 5 of the CHRA

[81] In its reply, the Corporation addresses the Complainant's argument that she did not object to the addition of allegations based on section 5 of the CHRA presented in paragraph 39 of Ms. Levasseur's amended SOP.

[82] In its reply, the Respondent has a clear position and objects to the addition of this discriminatory practice, arguing that section 5 of the CHRA does not apply in the circumstances. The Complainant feels that the allegations based on section 5 of the CHRA are an integral part of her complaint.

[83] The Tribunal does not intend to address at length the addition of allegations based on section 5 of the CHRA to Ms. Levasseur's complaint.

[84] For one, the Tribunal must ask itself whether there is a sufficient nexus between Ms. Levasseur's original complaint and the allegations based on section 5 of the CHRA. On the face of it, this nexus does not exist. The complaint was submitted pursuant to section 7 of the CHRA, which is an employment issue. Section 5 of the CHRA involves the provision of goods, services, facilities or accommodations.

[85] The Tribunal reviewed the entire original complaint by Ms. Levasseur, the investigation report, and the letters sent by the Commission. There is nothing that allows it to find that section 5 of the CHRA applies, directly or indirectly, to the allegations Ms. Levasseur raised; there is simply no sufficient nexus between these allegations and her complaint.

[86] The Tribunal therefore allows this item to be struck.

VI. Order

[87] For the above reasons, the Tribunal grants the Canada Post Corporation's motion in part:

- Paragraphs 39 and 40 are deemed to have been struck.

[88] The Tribunal does not grant the motion to strike for the following items:

- The last sentence of paragraph 7;
- Paragraphs 23, 31, 41 as well as the second sentence of paragraph 42 of the Complainant's amended SOP; and
- The portions identified by the Respondent of paragraphs 11, 24 and 26 of the Complainant's reply.

[89] The Tribunal does not grant the motion to strike for the following items either:

- Paragraphs 29 and 30 of the Commission's SOP.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
August 30, 2021

English version of the Member's decision

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2463/2020

Style of Cause: Angelle Levasseur v. Canada Post Corporation

Ruling of the Tribunal Dated: August 30, 2021

Motion dealt with in writing without appearance of parties

Written representations by:

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