

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2023 CHRT 16
Date: May 4, 2023
File No.: HR-DP-2788-22

Between:

Sabrina Rizzo

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Air Canada

Respondent

Ruling

Member: Marie Langlois

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I. OVERVIEW

[1] On February 23, 2023, Air-Canada filed a motion with the Canadian Human Rights Tribunal (the Tribunal) requesting amongst other demands that 1) allegations regarding discrimination on the basis of “sex” be struck out of the Complainant’s Statement of Particulars as a prohibited ground of discrimination and 2) the time period of the alleged incidents be 2014-2018.

[2] On March 17, 2023, the Canadian Human Rights Commission (the Commission) filed its arguments on Air Canada’s motion stating that the discrimination on the basis of sex is properly within the scope of the complaint. In its written arguments, the Commission is silent on the issue of the time period of the alleged incidents.

[3] Ms Sabrina Rizzo (the Complainant) has not provided written arguments on Air Canada’s motion or the Commission’s arguments.

II. DECISION

[4] The Tribunal grants in part Air Canada’s motion and declares 1) that “sex” is not a discrimination ground included in the complaint; 2) that paragraphs 7 and 10 of Ms. Rizzo’s Statement of Particulars are not to be struck out; and 3) that the time period of the alleged discriminatory incidents in the proceeding is restricted to the period from 2014 to 2018.

III. ISSUES

[5] This ruling determines two issues:

- A) Does the Tribunal have the jurisdiction to determine the scope of the complaint?
- B) If so, are the limits requested by Air Canada justified?

IV. Analysis

A. Does the Tribunal have the jurisdiction to determine the scope of the complaint?

[6] For the following reasons, the Tribunal considers that it has jurisdiction to determine the scope of the complaint.

[7] The *Canadian Human Rights Act*, R.S.C., 1985, c. H-6. (the Act or CHRA) gives the Tribunal member hearing a matter under inquiry the power to decide all questions of law or fact necessary to determining the matter (CHRA, section 50(2)). The member must give the parties full and ample opportunity to present evidence and make representations (CHRA, section 50(1)).

[8] In *Prasad (Prasad v. Canada (Ministry of Employment and Immigration))*, 1989 CanLII 131 (CSC), [1989] 1 SCR 560) the Supreme Court of Canada stated that as a general rule, administrative tribunals are considered to be “masters in their own house”. The Supreme Court adds that “In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.”

[9] The case law states that the Tribunal has the jurisdiction to amend, clarify or determine the scope of the original discrimination complaint (*Casler v. Canadian National Railway*, 2017 CHRT 6, paras. 7-11) [*Casler*]; provided that no prejudice is caused to the other parties (*Canada (Human Rights Commission) v. Canadian Telephone Employees Assn.*, 2002 FCT 776, paras. 30 et 31) [*Canadian Telephone Employees Assn.*]). As part of the authority to determine the scope of the complaint, the Tribunal has the power to strike portions of a Statement of Particulars that exceed the scope of the complaint (*Canada (Attorney General v. First nations Child and Family Caring Society of Canada*, 2021 FC 969 at para. 154). In the present case, neither the Commission nor Ms. Rizzo has challenged this power of the Tribunal.

[10] For these reasons, in accordance with the Act and considering the case law, the Tribunal concludes that it has the jurisdiction to determine the scope of the complaint.

B. If so, are the limits requested by Air Canada justified?

(i) Is sex a ground of discrimination to be considered by the Tribunal?

[11] The Tribunal is of the opinion that “sex” is not part of the complaint and therefore is not a ground of discrimination that should be analysed through the proceedings.

[12] As noted above, the Tribunal has the power, in certain circumstances, to define and therefore limit the scope of allegations.

[13] Moreover, the inquiry into the case may not deal with a new complaint that the Commission has not considered since, under the Act (section 44(3) and section 49), a request to the Tribunal to institute an inquiry into a complaint may be made only if the Commission has considered the complaint (CHRA, subsection 44(3) and section 49). Indeed, the Supreme Court of Canada in *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, para. 48 states that the Act sets out a complete mechanism for dealing with complaints and that the Commission is central to that mechanism.

[14] Note that, in *Dillman (IMP Group Limited v. Dillman)* (1995), 24 C.H.R.R. D/329 the Nova Scotia Court of Appeal criticizes the administrative tribunal established under Nova Scotia’s *Human Rights Act* (*Human Rights Act*, R.S.N.S. 1989, c. 214) for allowing an amendment that extended the facts of the original complaint to the point where it constituted a new complaint that the Nova Scotia Human Rights Commission had not considered, as required under the *Human Rights Act*. The original complaint was related to harassment by a co-worker, while the amendment was related to the employer’s refusal to give the complainant a promotion. The events referred to in the amendment had not been considered by the Human Rights Commission; therefore, the process set out in the legislation had been bypassed. The Court of Appeal found that the proposed amendment constituted a new complaint that had not been referred to the administrative tribunal by the Human Rights Commission, contrary to the requirements of the *Human Rights Act*. The

original complaint and the subsequent amendment were in essence two different complaints. For these reasons, the Nova Scotia Court of Appeal allowed the appeal.

[15] These principles have also been articulated in well-established case law including by the Tribunal and the Federal Court in *Casler* and in *Canadian Museum of Civilization Corporation v. Public Service Alliance of Canada (Local 70396)*, 2006 FC 704. The scope of the dispute before the Tribunal may not introduce a new complaint that has not already been considered by the Commission and that does not respect the Commission's request to institute an inquiry. The Tribunal therefore does not have the power to deal with a complaint that has not been dealt with first by the Commission and that has not been referred to the Tribunal for inquiry (see *Cook v. Onion Lake First Nation*, [2002] C.H.R.D. No. 12) [*Cook*]). It is therefore necessary to confine oneself to the complaint and the Commission's decisions with respect to the complaint, in particular the request for inquiry that the Commission has made to the Tribunal.

[16] The concept of a complaint is nevertheless broad enough to be interpreted in a way that encompasses the full extent of the complainant's allegations (*Cook*, para. 11). A complaint is the first step in the process and it is inevitable that new facts and circumstances will come to light in the course of the Commission's investigation (*Casler*). The complaint is refined and clarified as the process moves forward (*Gaucher v. Canadian Armed Forces*, 2005 CHRT 1, para. 11) [*Gaucher*]). However, a limit is necessary when the amendment to a complaint can no longer be considered a simple amendment but is instead more like a new complaint (*Gaucher*). Likewise, upon reading the complainant's Statement of Particulars, the allegations of facts to be analyzed by the Tribunal for purposes of determining the dispute must somehow emanate from or arise out of the complaint itself but must not depart from it in such a way as to constitute a new complaint.

[17] The Tribunal considers that the prohibited ground of discrimination raised by a complainant is part of their theory of the case. The theory is their own. The complainant may choose to include or not to include a ground of discrimination, just as they may raise one argument or another to justify the findings they are seeking, as long as they respect the substance of the original complaint (*Casler*, *Canadian Telephone Employees Assn.*).

[18] In her complaint filed December 18, 2018, Ms. Rizzo identifies disability as the prohibited ground of discrimination and she describes events in relation to this ground of discrimination. She specifically writes “I am filing a complaint on the grounds that I have two disabilities and the action taken by Air Canada was to terminate my employment pending discharge July 20, 2017” ... “I was discriminated more than once and for more than one illness”. She specifies that her disabilities consist of a brain disease and a mental illness. The discriminatory events that she describes in her complaint are comments, decisions (including the termination of her employment) and the lack of accommodation from her employer all in relation with her disabilities.

[19] In her complaint, there is no reference, not even an implicit reference, to any alleged discriminatory comment or event or decision from her employer based on the fact that she is a woman. There is no allegation related to discrimination on the basis of sex. Therefore, “sex” was not a ground of discrimination, not even in an implicit way in Ms. Rizzo’s complaint.

[20] Therefore, the Tribunal concludes that “sex” is not a ground of discrimination to be considered in the present proceedings.

(ii) Should some paragraphs of her Statement of Particulars be modified or struck out?

[21] The Tribunal is of the opinion that the Statement of Particulars should remain as is.

[22] As seen earlier, as part of the authority to determine the scope of the complaint, the Tribunal has the power to strike portions of a Statement of Particulars that exceed the scope of the complaint (*Canada (Attorney General) v. First nations Child and Family Caring Society of Canada*, 2021 FC 969 at para. 154). However, the Tribunal must exercise its authority “cautiously” and only in the “clearest of cases” (*Richards v. Correctional Service Canada*, 2020 CHRT 27 at para. 86).

[23] Air Canada is asking the Tribunal to refuse to consider allegations related to discrimination on the basis of sex. It asks the Tribunal not to consider allegations made in paragraphs 7 and 10 of Mrs. Rizzo’s Statement of Particulars filed in January 2023.

[24] In paragraph 7, 10, 11 and 12 Ms. Rizzo states as follows:

7. MAY 2015 in the meeting with steve and donato ac manager, they told me that since “you are a woman and most women tend to react more with hysteria to situations” . “men react differently” according to ac managers.

10. The very same night, May 2015 I called Steve and donato that I felt there report was “BIASED” as you can not investigate yourself and arrive at fair conclusion, you cannot tell me I imagined it and it is very wrong to tell me “reacted with hysteria because I was a woman”. And you took away my right to union representation at this meeting.

11. The very next day, the manager called me and told me that I was “Held out of service because I needed to be medically examined” His name was Basil hardtman.

12. I called my manager a few days later, her name is Mona Begum, and asked why I was held out of service and she said “I must have a severe psychological disorder to have said the word BIAS”

[25] While one could infer from paragraphs 7 and 10 that Ms. Rizzo is adding “sex” as a new ground of discrimination not sought in her initial complaint, the Tribunal is not convinced that it is the case and that paragraphs 7 and 10 have to be struck out.

[26] The Tribunal is of the opinion that considering the context of the complaint and the Statement of Particulars, it is not clear that this is what Ms. Rizzo is doing. One cannot isolate paragraphs 7 and 10 from the context of the complete Statement of Particulars, especially paragraphs 11 and 12 adjacent to paragraphs 7 and 10. It seems that Ms. Rizzo is stating conversations that happened with Air Canada’s managers to prove that these people discriminated against her because of her disability.

[27] Ms. Rizzo did not file an argument following Air Canada’s motion or the Commission’s arguments. The Tribunal cannot conclude that paragraphs 7 and 10 add “sex” as a new ground of discrimination.

[28] Therefore paragraphs 7 and 10 of the Statement of particulars will be considered as allegations relating to events in relation with disability as a ground of discrimination. They are not to be struck out.

(iii) What is the time period of the alleged incidents of discrimination?

[29] Air Canada requests direction from the Tribunal confirming that the time period in consideration in this proceeding is 2014 to 2018. Air Canada contests the time period identified in paragraph 40 of Ms. Rizzo's Statement of Particulars that reads as follows: "I was disciplined, targeted, bullied and psychologically abused by Air Canada from 2014-2023."

[30] The Commission did not make any representations on the request by Air Canada to restrict the inquiry to the period between 2014 to 2018. As noted above, Ms. Rizzo did not file any argument on Air Canada's motion.

[31] On February 15, 2022, in its referral letter to the Tribunal, the Commission stated: "The Commission decided, pursuant to subparagraph 44(3)(a)(i) of the Canadian Human Rights Act, to request that you institute an inquiry into the allegations in the Complaint between 2014 and 2018, as it is satisfied that, having regard to all circumstances, an inquiry is warranted".

[32] As the Commission requested that the Tribunal institute an inquiry into allegations of discrimination for the period of 2014 to 2018, and in the absence of any arguments to the contrary from the Complainant or the Commission, the Tribunal concludes that the period for its inquiry is between 2014 and 2018.

V. ORDER

[33] The Tribunal grants in part Air Canada's motion and concludes that:

- the prohibited ground of discrimination raised by the complaint is disability; sex is not a ground of discrimination in the proceedings;
- paragraphs 7 and 10 of Mrs. Rizzo's Statement of Particulars are not to be struck out;
- the time period of the alleged incidents of discrimination is from 2014 to 2018.

Signed by

Marie Langlois
Tribunal Member

Ottawa, Ontario
May 4, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: HR-DP-2788-22

Style of Cause: Sabrina Rizzo v. Air Canada

Ruling of the Tribunal Dated: May 4, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

Sabrina Rizzo, Complainant on her own behalf

Jonathan Robart, for the Canadian Human Rights Commission

Megan Beal, for the Respondent