

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2024 CHRT 126

**Date:** November 19, 2024

**File No.:** T2664/4021

**Between:**

**K.L.**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Canada Post Corporation**

**Respondent**

**Ruling**

**Member:** Colleen Harrington

## Contents

I.	BACKGROUND .....	1
II.	MOTION.....	1
III.	DECISION.....	2
IV.	PRINCIPLES OF DISCLOSURE .....	2
V.	ANALYSIS .....	4
	(i) 2019 MPP vacation data for Association of Postal Officials of Canada (APOC) management .....	4
	(a) Positions of the Parties .....	4
	(b) Decision .....	5
	(ii) Reported data of key performance indicators .....	10
	(a) Positions of the Parties .....	11
	(b) Decision .....	12
	(iii) 2019 Employment Engagement Survey Report .....	14
	(a) Positions of the Parties .....	14
	(b) Decision .....	15
	(iv) APOC benefits package.....	16
	(a) Positions of the Parties .....	16
	(b) Decision .....	18
	(v) Human resource complaints relating to the MPP Plant Manager D.M. and Superintendent T.T. ....	19
	(a) Positions of the Parties .....	19
	(b) Decision .....	21
	(vi) Detailed table documenting all union (APOC and CUPW) grievances filed against or involving Plant Manager D.M. and/or T.T. for the entire time period to date of their active APOC/Canada Post Corporation employment.....	22
	(a) Positions of the Parties .....	22
	(b) Decision .....	24
VI.	DIRECTION .....	25
VII.	ORDER .....	25

## **I. BACKGROUND**

[1] K.L. (Complainant) was employed by the Respondent, Canada Post Corporation (Canada Post) as a temporary Relief Supervisor at one of its Mail Processing Plants (the MPP) for approximately four months. Her initial contract was from December 2, 2018 to February 19, 2019, which was then extended to April 27, 2019. The contract was eventually shortened by two weeks, to April 13, 2019.

[2] In her human rights complaint and amended Statement of Particulars (SOP), K.L. alleges that she experienced discrimination in employment on the basis of family status, sex and disability, contrary to section 7 of the *Canadian Human Rights Act*, R.S.C. 1985, c.H-6 [CHRA]. Specifically, K.L. alleges that she was treated adversely through shift scheduling and by being denied training opportunities, and that her employment was terminated. She says this unfavourable treatment and termination occurred after she disclosed that she was a victim of intimate partner violence and likely had PTSD, and because of a rumour in the workplace that she had a substance abuse issue.

[3] Canada Post denies that it discriminated against K.L. in relation to her employment. It says that her contract was shortened by a couple of weeks for legitimate business reasons and in compliance with the terms of her employment contract.

[4] The Tribunal has previously ordered that certain information in this matter be anonymized or protected pursuant to a confidentiality order, including the names of the Complainant and the parties' witnesses (to be indicated by initials), as well as geographic locations, aside from the names of provinces (*K.L. v Canada Post Corporation*, 2023 CHRT 29).

## **II. MOTION**

[5] The parties have already exchanged documents as part of their disclosure obligations under the *Canadian Human Rights Tribunal Rules of Procedure*, 2021 SOR/2021-137 [Rules of Procedure]. As she is of the view that Canada Post has not

disclosed all arguably relevant documents in its possession, K.L. has filed a motion pursuant to Rule 26 of the Rules of Procedure, asking the Tribunal to order production of further documents.

[6] In her motion, K.L. requests six categories of documents from Canada Post. She suggests that the requested documents can be relied on as supporting evidence to assess if there was a need for her services as a temporary supervisor at the time of her dismissal and in the future. K.L. says the documents can also help the Tribunal to assess how Canada Post engages its employees and whether it complies generally with its human rights obligations.

[7] The Canadian Human Rights Commission (Commission), which is a separate party to this inquiry, supports some aspects of K.L.'s motion for disclosure, and suggests possible alternatives to some of the documents requested by K.L.

[8] Canada Post disputes that the documents requested by K.L. are arguably relevant to her complaint and asks the Tribunal to dismiss the motion. It says that K.L.'s request for production of these documents constitutes a "fishing expedition" for records and sensitive personal information, some of which is privileged. Canada Post also rejects the Commission's proposed alternatives to the documents requested by K.L.

### **III. DECISION**

[9] K.L.'s motion is allowed in part. The Tribunal agrees to order Canada Post to disclose some, but not all, documents as requested or that I consider to be reasonable alternatives to those requested by the Complainant in her motion.

### **IV. PRINCIPLES OF DISCLOSURE**

[10] The Commission and Respondent both accurately set out the principles applicable to requests for disclosure. The requirement to ensure all parties are treated fairly in the Tribunal's process is enshrined in the CHRA. Section 50(1) of the CHRA says the Tribunal must give all parties a "full and ample opportunity" to "present evidence and make

representations.” This includes the right to receive disclosure from the other parties prior to the hearing.

[11] The Tribunal’s Rules of Procedure require the parties to disclose all non-privileged documents in their possession “that relate to a fact or issue that is raised in the complaint or to an order sought by any of the parties” (see Rules 18(1)(f), 19(1)(e), 20(1)(e) and 23(1)). This disclosure obligation is ongoing (Rule 24(1)).

[12] In deciding whether to order a party to disclose certain documents, the Tribunal must consider whether the information at issue is “arguably relevant” to the complaint before the Tribunal (*Brickner v RCMP*, 2017 CHRT 28 [*“Brickner”*] at para 5). Receiving all arguably relevant documents helps ensure that parties are aware of the case they are facing and can adequately prepare for the hearing (*Egan v Canada Revenue Agency*, 2019 CHRT 8 at para 4).

[13] While arguable relevance is not a very high threshold, a party seeking production of documents must still demonstrate that there is a rational connection between the document sought and a fact, issue or remedy at play in the inquiry. The parties’ Statements of Particulars serve as a guide for determining whether a document is arguably relevant or not (*Brickner* at para 6).

[14] Although the threshold for production is not particularly high, when considering requests for documents, the Tribunal must keep in mind that its proceedings are to “be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow” (s.48.9(1) of the CHRA). The Tribunal should also be mindful of the principle of proportionality. Requests for production should not be speculative or amount to “fishing expeditions”, nor should they subject recipients to onerous and far-reaching searches (*Nwabuikwu v RCMP*, 2020 CHRT 9 [*“Nwabuikwu”*] at para 16).

[15] Even if the Tribunal orders documents to be produced at the pre-hearing stage, this does not necessarily mean they will be admitted as evidence at the hearing or given significant weight if they are admitted.

## **V. ANALYSIS**

### **(i) 2019 MPP vacation data for Association of Postal Officials of Canada (APOC) management**

[16] Within this request, K.L. seeks the following information in respect of “APOC managers” at the MPP where she worked: (i) the total number of vacation days and hours they were entitled to for 2019, including “any rollover vacation time required to be taken in 2019”; (ii) the total number of vacation days they took in the first quarter of 2019 (ending March 30, 2019); (iii) the total number of their “scheduled vacation hours rolled over into 2020”; and (iv) a calendar showing the dates of each APOC operations manager’s “approved/scheduled vacation time for 2019” with an indication of “which APOC supervisor covered each vacancy.”

#### **(a) Positions of the Parties**

[17] Canada Post suggests that, as managers are not members of the APOC union, K.L. is actually seeking data related to supervisors, which are APOC-represented positions.

[18] KL’s position is that these vacation leave-related documents must be disclosed because they will show that there would have been a continued need for her services past the April 27, 2019 end date of her extended contract, to assist with vacation coverage, especially in the summer.

[19] The Commission supports this request, noting that, in her SOP, K.L. said that, while she was hired by Canada Post on a contract basis as a Peak Relief Supervisor, she was led to believe that she would receive an offer of permanent employment, which did not happen. Instead, she says that, not long after she disclosed that she was a recent victim of intimate partner violence and missed work for related reasons, Canada Post sent her home early with pay and then did not renew her contract because of a shortage of available work. K.L. disputes that there was a shortage of work.

[20] The Commission says that, based on the allegations in K.L.'s SOP, the Tribunal will be asked to determine whether or not there was a shortage of work for K.L. as a Relief Supervisor at the material times in and after April of 2019. The Commission submits that documents showing the overall workloads and vacation entitlements and schedules of operations managers are rationally connected to this inquiry and so are arguably relevant.

[21] Canada Post points out that it has never pled that K.L.'s contract might have been extended if other supervisors took vacation time after April of 2019. It does not dispute that supervisors at the MPP would be on vacation from time to time. As such, it argues that the vacation data sought by K.L. relating to MPP supervisors "will have absolutely no bearing on, and will not assist the Tribunal in determining, the issue of whether or not the shortening of and non-renewal of [her] employment contract was for reasons relating to her sex, disability or family status, as the Complainant alleges."

[22] Canada Post further argues that it is not the Tribunal's job to determine whether K.L. can build a business case for the extension of her temporary fixed term contract beyond the original termination date of April 27, 2019. Rather, it argues that the Tribunal must decide whether or not Canada Post's decision to shorten her temporary fixed-term contract by two weeks was based on discriminatory considerations.

[23] Canada Post says K.L.'s request for this information is "a classic example of a fishing expedition", as she is seeking information to see if she can make an argument that supports her case, rather than seeking specific records that are relevant to and will help the Tribunal to determine a specific issue in dispute.

## **(b) Decision**

[24] I agree to order Canada Post to disclose certain documents related to this request, as specified below.

[25] I do not agree with Canada Post that K.L.'s request for the vacation-related information of MPP supervisors and managers is an example of a fishing expedition. K.L. has articulated in her SOP and Reply to the Respondent's SOP that, for various reasons, she believed that she would continue to be employed at the MPP beyond April 27, 2019.

Her position is that, but for the alleged discriminatory termination, she would have continued to be employed at the MPP as a Relief Supervisor, and eventually hired on permanently. In support of this position, she notes that she was invited to apply for a permanent supervisor position with Canada Post, that her contract was extended from February to April of 2019, and that her CORE supervisor training was scheduled to take place in May, after her contract end date.

[26] Canada Post confirms in its SOP that K.L. applied for a permanent supervisor position for which she was not the successful candidate. It agrees that her original contract was extended for ten weeks because she had gained knowledge of running the various sections at the MPP and was determined to be well-positioned to provide the necessary relief coverage as a floating supervisor while several other supervisors received their CORE training. Canada Post also confirms that K.L.'s supervisor training was rescheduled from March to April of 2019 because of staffing shortages requiring her to provide supervisory coverage for the MPP's operations and was then further rescheduled to May of 2019 because the training was not being offered in the region in April.

[27] K.L. also alleges that her employment was terminated for a discriminatory reason and Canada Post is correct that the Tribunal must decide whether or not its decision to shorten her contract by two weeks was based on discriminatory considerations. In doing so, the Tribunal will consider Canada Post's position as set out in its SOP that it had a legitimate, non-discriminatory business reason for shortening her contract. Canada Post states that, when its other supervisors began returning to work from annual leave and training, it no longer had productive work for K.L. to perform as a floating relief supervisor and so her contract was shortened.

[28] K.L. disputes Canada Post's position that there was a change in operational requirements that justified ending her contract earlier than April 27, 2019, or at all. Her position in her SOP and Reply to the Respondent's SOP is that there would have been ongoing work for a relief supervisor like her because Canada Post's own data did not reflect any business need to reduce the number of supervisors. She notes that two other contract supervisors did not have their contracts shortened and says that Canada Post had difficulty retaining supervisors on her shift. In addition, she states in her Reply to the Respondent's



SOP that “Canada Post grants many weeks of vacation to its supervisors. Vacation coverage, in itself, would warrant the extension of my contract.”

[29] I understand K.L.’s position to be that, as other supervisors and managers would be taking vacation in the months beyond her contract end date of April 27, 2019, which includes the summer months, there would have been an operational need for her to cover their shifts while they were on leave.

[30] The vacation leave-related documents requested by K.L. relate to an argument she intends to make in response to Canada Post’s defence to her complaint. She says the requested documents are arguably relevant to her case because they may assist her to refute Canada Post’s position that it had a non-discriminatory explanation for its conduct.

[31] K.L. is entitled to information that may assist her to show that Canada Post’s explanation for shortening her contract may have been a “pretext to conceal discrimination” (see *Moffat v Davey Cartage Co. (1973) Ltd.*, 2015 CHRT 5 at para 38, citing *Khiamal v Canada*, 2009 FC 495 at para 58). As such, the requested vacation-related records may in fact help the Tribunal to determine a specific issue in dispute.

[32] Related to her position that her employment would have continued beyond the end of her contract but for the alleged discrimination, K.L. is seeking the remedy of lost wages for the remainder of 2019. In her Reply to the Respondent’s SOP, she also says she believes that Canada Post should be ordered to pay the difference between her Relief Supervisor salary at Canada Post and her current salary. She says that, as “a result of the discrimination and the repercussions that followed” she has been unable to achieve a comparable salary and continues to suffer financially as a direct consequence of Canada Post’s actions.

[33] I agree that there is a rational connection between the vacation-related information being sought by K.L. and facts, issues and a remedy being sought in this matter. As such, I must determine what information must be disclosed by the Respondent. As it is the Respondent that is in possession of these business-related records, the Complainant, Commission and Tribunal are all at a disadvantage in terms of knowing exactly how Canada Post keeps track of the vacation-related leave taken by its MPP supervisors and operations managers.

[34] For example, K.L. seeks a calendar showing the dates of each APOC operations manager's "approved/scheduled vacation time for 2019" with an indication of "which APOC supervisor covered each vacancy." Canada Post says that it does not possess such a calendar and so cannot produce one. The Tribunal's caselaw says that the duty to disclose arguably relevant documents in a party's possession does not extend to taking information in its possession and creating a new document for disclosure (*Nur v Canadian National Railway Company*, 2018 CHRT 16 at para 39; *Gaucher v Canadian Armed Forces*, 2005 CHRT 42 at para 17). I note, however, that even if a particular document containing this information does not exist, K.L. could still ask questions about this information through her cross-examination of Canada Post's witnesses.

[35] Both the Commission and K.L. offer suggestions as to what documents Canada Post could disclose "in the alternative" to those requested in K.L.'s motion. The Commission submits that there may be other, more proportionate, ways of gathering the type of evidence K.L. is seeking that would allow the Tribunal to make the required determinations. For example, it suggests that a more direct approach may be to require Canada Post to disclose documents showing which supervisors (temporary and otherwise) were scheduled to work at the facility and on what shifts in the six months before and after the end of K.L.'s employment in April of 2019. The Commission says this could assist the Tribunal to assess whether Canada Post brought in someone new to take over any ongoing duties K.L. would have continued to perform, but for the impugned decisions to send her home with pay and to not continue her employment.

[36] Despite having the opportunity to respond to the Commission's suggestion in its motion submissions, Canada Post has instead taken the position that K.L. did not ask for these documents in her motion, and so it was improper of the Commission to suggest an alternative to what K.L. is seeking. Canada Post says that the Commission has not followed the ordinary process of requesting these documents from the Respondent and receiving a response and suggests that the Tribunal should direct the Commission to proceed in this fashion first. It relies on the case of *Amalki v Air Canada*, 2016 CHRT 3 [*Amalki*] to support this position.

[37] In *Amalki* the respondent alleged that the complainant had filed a disclosure motion without first having requested the records from the respondent. The Tribunal disapproved of having to “unnecessarily wad[e] into the disclosure process between the parties”, concluding that it “is in the interest of all parties to make disclosure requests directly to each other, and to bring disclosure motions before the Tribunal only when the parties are in disagreement” (at para 8).

[38] That is not the situation in this case. In the course of motion submissions, the Commission has proposed what it suggests may be a simplified reasonable alternative to the particular documents being requested by the Complainant, that may still contain the information sought. The Respondent had the opportunity to respond to this suggestion and chose not to. Even if I were to require the Commission to make another, separate request for disclosure outside of this motion, it seems likely that the Respondent would refuse to provide these documents on the basis that they are not arguably relevant to the complaint, because they presumably contain the same information that is being sought in this motion. Proceeding as suggested by Canada Post would be contrary to the requirement that the Tribunal proceed as expeditiously as possible while still being fair to the parties.

[39] In her reply to the Commission’s and Respondent’s motion submissions, K.L. says that she would be satisfied to receive from Canada Post the timecards of all APOC supervisors and managers that worked Shifts 1,2 and 3 at the MPP in 2019, specifically from February to August inclusive and that these timecards could be anonymized. She says it would be “beneficial to be able to see how many managers were on vacation in February and March” and compare that to how many managers were planning to take vacation in May, June, July and August. K.L. says this would help show if her own training offer was rescinded due to an actual need for her to cover vacations and could also help the Tribunal to assess whether there would have been an obvious need for the continuance of her employment contract.

[40] I view K.L.’s “in the alternative” request for documents related to vacation leave to be congruent with that suggested by the Commission. However, I agree that K.L.’s shorter time period is more appropriate than the Commission’s suggestion of 6 months before the end of K.L.’s employment in April of 2019. According to Canada Post’s SOP, K.L. was originally

hired to cover the busy holiday season starting in December of 2018 as a Supervisor Relief – Peak Operations. After her contract was extended in February of 2019, and following the end of Canada Post’s peak season in or around March of 2019, she was laterally transferred into the position of temporary Supervisor Relief Operations. Canada Post acknowledges in its SOP that, as a temporary relief supervisor, K.L. was responsible for stabilizing the work floor by supervising mail operations when other supervisors were away from work or attending training.

[41] I agree to order Canada Post to disclose timesheets and other documents showing which APOC supervisors (temporary and otherwise) on shifts 1,2 and 3 were scheduled to work at the MPP, and on what shifts, for the following time period: February – October, 2019 inclusive. Keeping in mind Canada Post’s comment that managers are not represented by APOC, I would order the same information to be disclosed (for the same shifts) in relation to operations managers at the MPP only if their vacation leave is covered by APOC-represented supervisors (temporary and otherwise).

[42] Canada Post should advise the parties of any proposed redactions to the documents prior to disclosing them. If the parties are unable to agree on redactions, the Respondent may bring the issue to the Tribunal, which will consider and determine the request after hearing from all parties.

[43] With regard to K.L.’s request for vacation-related documents for the Plant Manager, D.M., I note that, as she is listed as a witness by Canada Post, K.L. can ask D.M. questions in cross-examination, including about when she took vacation leave during K.L.’s employment with Canada Post. I decline to order Canada Post to disclose any of D.M.’s vacation leave-related documents.

## **(ii) Reported data of key performance indicators**

[44] In this category, K.L. requests data specific to APOC operational managers and temporary supervisors for Shifts 1,2 and 3 at the MPP and at Canada Post generally from October of 2018 to December of 2019 relating to the following: (i) the number of open APOC management positions; (ii) APOC supervisor cost per hire, including recruitment; (iii) attrition

rate; (iv) turnover rate and cost; (v) retention rate; (vi) average time to productivity; (vii) absenteeism rate; (viii) overtime hours worked; (ix) labour costs versus budget; (x) projected number of temporary supervisor positions required; (xi) profit and loss statement of financial profitability.

**(a) Positions of the Parties**

[45] K.L. suggests that the information she is requesting in this category includes “commonly tracked metrics” that can provide “quantitative evidence of the plant and company’s performance and effectiveness.” She says the information will show how well the plant and company recruit, retain and engage their employees, as well as the profitability and effectiveness of the departments in which she worked. K.L. says this information will be used to refute Canada Post’s claim that her contract was terminated due to a shortage of work.

[46] The Commission’s position with respect to this category of documents is the same as for the first category, above. It says that, based on the allegations in K.L.’s SOP, the Tribunal will be asked to determine whether or not there was a shortage of work for K.L. as a Relief Supervisor at the material times in and after April of 2019. It submits that, in addition to documents showing vacation entitlements and schedules of operations managers, those showing overall workloads are rationally connected to this inquiry and so are arguably relevant. Again, however, the Commission submits that there may be other, more proportionate, ways of gathering this type of evidence that would allow the Tribunal to make the required determinations.

[47] Canada Post argues that K.L.’s request for this category of documents should be denied as it is vague, overbroad and “seeks records that are completely irrelevant to this matter.” It submits that the expansiveness of the information sought will not assist the Complainant to prove that she was discriminated against in her four months of employment, from December 2018 to April 2019. It also disputes the Commission’s argument that the data sought by K.L. can be characterized as being about “overall workloads” and says in any event such data is irrelevant to the Tribunal’s inquiry into this complaint.

[48] Canada Post submits that there is nothing in the complaint or the SOPs that puts its data related to “key performance indicators” comprised of financial and employee data at issue. It says the Tribunal’s role is to adjudicate the individual claim of discrimination before it, not to conduct a “massive and detailed inquiry into Canada Post’s general performance and effectiveness.” It characterizes this request as a fishing expedition, saying that K.L.’s reference to Canada Post generally seeks data from approximately 68,000 employees, and is irrelevant to her complaint. Canada Post says it does not have all of the requested data available to produce at this time and would have to conduct a wide and resource-intensive search for documents that are not arguably relevant to the complaint. It says this request does not adhere “in any sense to the widely accepted principles of proportionality in litigation.”

[49] In reply, K.L. argues that the information she requests under this category is commonly tracked and reported and used by most companies to assess the overall performance of their operations and their future employment needs. She says she seeks mainly human resources data which will help the Tribunal assess if Canada Post would arguably need to hire in the future, which would help determine whether it would have a continuing need for her employment.

[50] The Complainant says that, if the “very specific data” she has requested does not already exist, she would ask for “enough numerical data relating to the recruitment and financial performance of” the MPP and Canada Post Corporation “to be able to help the Tribunal assess” if there was actually a shortage of work or if she was terminated due to discrimination.

## **(b) Decision**

[51] I agree to order Canada Post to disclose a limited number of documents related to this request, as specified below.

[52] I agree with Canada Post that this request for documents is overbroad and, with one exception, lacks arguable relevance to a fact, issue or remedy in this matter. The complaint before the Tribunal is about K.L.’s experience at the MPP and the shortening of her contract.

K.L. disputes Canada Post's defence to her complaint, that K.L.'s contract was shortened because it no longer had productive work for her. K.L. argues that there would have continued to be ongoing work for her as a Relief Supervisor at the MPP beyond April of 2019.

[53] I also agree with Canada Post that it is not the Tribunal's role to conduct an inquiry into the entire Corporation's performance. Canada Post's overall performance, profitability and effectiveness as well as its ability to recruit, retain and engage employees is not arguably relevant to K.L.'s complaint.

[54] The overall performance and effectiveness of the MPP, to the extent that the documents requested could show this, is also not in issue in this complaint. K.L. has indicated that she was led to believe she would continue to be employed, either through contract or permanently, as a supervisor at the MPP, beyond April of 2019. She has not explained how information relating to how much it costs to recruit and hire APOC supervisors, and the general rate of retention and turnover of these positions, nor labour costs versus budget or any of the other information sought would help to support her position about the possible continuation of her own employment at the MPP.

[55] The specific information requested is quite extensive, even in relation to the MPP alone. The Tribunal has previously stated that it should be "cautious about ordering searches where a party would be subjected to an onerous and far-reaching search for documents where this search would add substantial delay to the efficiency of the inquiry or where the documents are merely related to a 'side issue rather than the main issues in dispute'" (*Nwabuikwu* at para 16, citing *Brickner* at para 9).

[56] The performance and effectiveness of the MPP cannot be characterized as a main issue in dispute before the Tribunal and ordering documents relating to this issue would not be in keeping with the Tribunal's duty to be fair, expeditious and proportionate. As the Federal Court of Appeal has stated:

Proportionality takes into account the fact that evidence has degrees of significance and connection to the case. It also takes into account the burden required to obtain the information, the scope of the request and the availability of information from other sources, to mention but some of the considerations

*(Hospira Healthcare Corporation v Kennedy Trust for Rheumatology Research, 2020 FCA 177 at para 9).*

[57] Of the many documents requested by K.L. in this category, I see only the “turnover rate” and the number of open APOC supervisor positions at the MPP as being arguably relevant to the issue of whether there was no longer productive work for K.L. beyond April of 2019, something K.L. argues can be refuted. I agree to order Canada Post to disclose all documents in its possession related to the turnover rate or to job vacancies for APOC supervisors on Shifts 1,2 and 3 at the MPP for the period of January to October of 2019 inclusive. This should include any internal and external job postings or invitations to apply in relation to such jobs during this time period.

[58] As before, Canada Post should advise the parties of any proposed redactions to the documents prior to disclosing them. If the parties are unable to agree on redactions, the Respondent may bring the issue to the Tribunal, which will consider and determine the request after hearing from all parties.

### **(iii) 2019 Employment Engagement Survey Report**

#### **(a) Positions of the Parties**

[59] K.L. says this survey was conducted in the year she was dismissed and “can accurately provide an assessment of the corporation’s employee engagement and satisfaction.” She says the survey will provide “a multitude of data, most of which can be used to assess the overall culture and can assist in determining whether employees are treated respectfully.”

[60] The Commission submits that, if such a document exists, “it would presumably include employees’ views about how Canada Post handles issues of accommodation and human rights in the workplace.” The Commission suggests that any such information would be arguably relevant to the issues in this case, including to the issue of public interest remedies if discrimination is found. It notes that the request is for a specific document that should not be difficult to locate and produce.



[61] The Respondent argues that this request must be refused because it is “vague, overbroad, and seeks information that is not arguably relevant to any of the issues in this matter.” It also says it is unclear what report the Complainant is seeking, what is in the report and why it is arguably relevant to the issues raised in this matter.

[62] Canada Post says the 2019 Employee Engagement Survey itself would likely address the views of thousands of employees at Canada Post on a number of topics that are irrelevant to the complaint. It says further that it is unclear on what basis the views expressed by Canada Post employees about their own employment are relevant to the Complainant’s individual complaint of discrimination, which is based on its own limited set of facts and circumstances.

[63] In reply, K.L. says that a company’s employee culture is reflective of the way its management team treats its employees. She says the survey is “a synopsis of the entire corporation and was conducted in the same year” she suffered discrimination and so “if there is a culture that tolerates poor treatment of its employees”, the Tribunal should “hear” this from all of the employees who participated in that survey. K.L. says the report exists and is easily accessible.

## **(b) Decision**

[64] As set out below, I direct Canada Post to provide further information in relation to whether any reports were generated as a result of the 2019 Employee Engagement Survey, following which I will decide whether any such report should be disclosed.

[65] I find part of Canada Post’s response to this request to be rather unhelpful. It is not saying that no report was generated from the survey. Rather, it says it is unclear what report K.L. is seeking. Only Canada Post would know if one or more reports were generated as a result of the 2019 Employee Engagement Survey it conducted and what is in the report(s).

[66] As previously stated, the Tribunal has determined that the arguable relevance standard is not particularly high and, if a rational connection is identified, the information should be disclosed. As the Commission submits, if such a document exists that includes employees’ views about how Canada Post handles issues of accommodation and human

rights in the workplace, such information may be rationally connected to K.L.'s complaint. I appreciate that K.L. and the Commission are seeking public interest remedies if discrimination is proven in this matter. These remedies relate to policies and training that they argue should apply to Canada Post as an employer, in all of its various workplaces. The requested report may relate to remedies sought in the proceeding. The question of whether such requested information should become evidence at the hearing would remain to be determined.

[67] I note, however, that simply because public interest remedies are being sought if discrimination is proven, this does not mean K.L.'s complaint is systemic in the sense that she would be seeking to call evidence of similar types of discrimination against other employees of Canada Post. The allegations of discrimination clearly relate to K.L.'s unique circumstances.

[68] As it is unclear if a report was generated out of the 2019 Employee Engagement Survey conducted by Canada Post, the Tribunal directs Canada Post to advise the parties and Tribunal whether any reports were generated as a result of the Survey and, if so, to provide a description of the type of information included in the report(s). Once this information has been provided a determination will be made as to whether such report(s) should be disclosed.

#### **(iv) APOC benefits package**

##### **(a) Positions of the Parties**

[69] K.L. seeks the APOC benefits package that was in effect in March of 2019, including the eligibility requirements for Supervisors and Temporary Supervisors. She requests this information to determine her eligibility and potential access to the benefits provided by APOC to Canada Post employees.

[70] The Commission says that, based on statements made in the SOPs of the Complainant and Respondent, the issue of whether K.L. had access to certain employee benefits as a temporary Peak Relief Supervisor will be before the Tribunal during the inquiry.

Specifically, the Commission notes that, in its SOP, Canada Post says it gave K.L. information about its Employee Assistance Program (EAP) at the time of hire and that it attempted to support her in March of 2019 by, among other things, making efforts to refer her for benefits under its short-term disability program. This is disputed by K.L. in her SOP and Reply to the Respondent's SOP.

[71] The Commission says that, in response to inquiries exchanged among the parties, Canada Post advised in a letter dated July 19, 2023 that, at the time of K.L.'s employment, it did not offer its EAP to fixed-term or temporary employees, so K.L. did not have access to the EAP. The Commission notes that Canada Post stated that it was unable to confirm what documents, if any, it gave to K.L. about the EAP at the time of her hire and so, unless it has uncovered additional material to disclose in connection with the EAP, there may be no additional materials to disclose.

[72] Canada Post argues that this request should be denied because, as the Commission points out, Canada Post has already confirmed that K.L. was not eligible for the EAP. To the extent that she seeks documents regarding additional benefits for which she was not eligible during her employment, Canada Post argues these are not arguably relevant. It states that, as far as it is aware, there is no dispute about the benefits for which K.L. was eligible while a temporary employee with Canada Post and in the APOC bargaining unit. Also, Canada Post says that the Complainant's employment offer letter and contract extension letter, which contain the terms and conditions of her employment, have already been produced.

[73] In reply, K.L. states that the documents she seeks are relevant because they show that APOC employees are eligible for a very generous and large range of benefits after they have been employed by Canada Post for 6 months, whether they are contract or permanent employees. She says that, at the time of her alleged premature termination, she was in her fifth month of employment and, had her services been required in May, then the documents sought will show all of the benefits that she would have been eligible for had she not been terminated in April. She says this will help the Tribunal determine the willfulness of the alleged discrimination and help it to assess how tragic her suffering was as a result of the discrimination.

[74] Following receipt of K.L.'s Reply submissions, Canada Post filed a letter stating that, as K.L. had raised new arguments in her Reply to which it did not have the chance to respond, the Tribunal should not consider these arguments.

**(b) Decision**

[75] I decline to order Canada Post to disclose the APOC benefits documents requested by K.L. in this motion.

[76] It appears that the issue of the disclosure of documents relating to any APOC benefits to which K.L. was entitled during her employment with Canada Post has already been addressed between the parties. With respect to information about APOC benefits that may have become available to K.L. if she had continued to be employed with Canada Post, K.L. has not established the arguable relevance of such documents to a fact, issue or remedy raised in the parties' SOPs.

[77] K.L. will of course be permitted to provide evidence at the hearing related to her request for damages, including how the alleged discriminatory treatment by Canada Post caused her pain and suffering, and how it may have been willful or reckless. If she is able to establish that the APOC benefits to which she may have been entitled had she continued working for Canada Post for at least six months are arguably relevant to an issue before the Tribunal, it is possible that Canada Post may be required to produce this evidence at that time, but the arguable relevance of such documents has not been established in this motion.

[78] Canada Post of course has an ongoing obligation to disclose arguably relevant documents in its possession, so if it does uncover additional material related to its benefits program, including the EAP, that it gave to K.L. when she was hired, it should disclose such documents to the other parties.

**(v) Human resource complaints relating to the MPP Plant Manager D.M. and Superintendent T.T.**

[79] K.L. seeks documentation of all human resource related incidents for both APOC and CUPW<sup>1</sup> that resulted in coaching, corrective action, transfer/suspension and/or any disciplinary action for both D.M., Plant Manager, and T.T., Superintendent for the entire duration of their APOC/Canada Post Corporation employment to date.

**(a) Positions of the Parties**

[80] K.L. says this information is requested to provide “past empirical and numerical performance data for both D.M. and T.T. to assess their performance and compliance in supporting employee rights in the workplace and can be used to assess their overall Human Resource/Employee Relations competencies.”

[81] The Commission’s response applies to both this category (v) and to category (vi) below. The Commission provides background relating to these two requests by indicating that K.L. reported to T.T. (Superintendent) who in turn reported to D.M. (Plant Manager). It notes that the parties’ SOPs include allegations that both were “key management figures at Canada Post” who were aware of K.L.’s experience of intimate partner violence and made or influenced decisions about K.L.’s employment at Canada Post.

[82] The Commission takes the position that K.L.’s request as framed is overbroad. The Commission submits that documents relating to grievances involving these managers about matters far removed in subject or time from the current human rights complaint would be of little or no relevance to this inquiry.

[83] However, the Commission refers to case law in which the Tribunal has ordered documents to be produced by a respondent relating to other complaints or grievances with some relation to the issues before the Tribunal, and that are timely (*Nwabuikwu, supra; Yaffa*

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<sup>1</sup> I understand this request to mean human resource related complaints made by Canada Post employees who were represented by either the APOC union or CUPW union.

*v Air Canada*, 2014 CHRT 22). The Commission says it would support an order requiring Canada Post to produce documents relating to any complaints or grievances (formal or informal) that: (a) were made against or involve D.M. or T.T.; (b) include allegations that these managers and/or Canada Post failed to respond appropriately to issues relating to an employee's fears or experiences of intimate partner violence; and (c) were made from January 1, 2018 to the present. The Commission says it would be appropriate to redact personal information including the names of any individuals who made such complaints or grievances.

[84] Canada Post argues that the Commission's position conflates K.L.'s individual claim with systemic discrimination without any legitimate foundation for this in the SOPs. It says that the cases relied upon by the Commission are distinguishable from the present case, as they involved systemic discrimination claims, and neither involved or considered issues of privilege, which it raises in respect of the requested information. Specifically, Canada Post argues that the information requested by K.L. is protected by privacy laws and by "labour relations privilege."

[85] Canada Post argues that this request is "an overbroad and vague fishing expedition" that involves interference in the privacy of employees who are not parties to this inquiry. It says that its disciplinary process is treated as confidential and it suggests that K.L.'s request would be a serious intrusion into both the privacy rights of T.T. and D.M., as well as those of any complainants not involved in the Tribunal's proceedings.

[86] The Respondent also says this information is not being sought for a reason that is arguably relevant to the complaint. It submits that the request is speculative and that there is no foundation for it. Canada Post says that it is "entirely irrelevant" whether D.M. and T.T. were involved in human resources issues that had nothing to do with K.L. or her complaint allegations. It submits that, since K.L.'s is an individual complaint about her own unique circumstances, any documentation about the interactions between D.M. and T.T. with other employees will not assist the Tribunal to determine K.L.'s complaint.

[87] Canada Post suggests that this request “appears designed to impugn the character and integrity of” D.M. and T.T. by seeking information about how they may have been subject to discipline in their employment in situations unrelated to the complaint. It describes this request as vexatious and argues it must be denied outright.

[88] In reply, K.L. argues that the documents requested in this category are relevant to her complaint because “past performance is the greatest predictor of future performance.” She also disputes Canada Post’s privacy concerns in light of the confidentiality ruling already made in this case.

[89] She says that, because her performance is in question, it is “obvious, and relevant, that the performance of the supervisors who terminated [her] contract prematurely, in an act of willful discrimination, should ALSO be in question.” She suggests that, if there are a “multitude of incidents” relating to these managers, a dated synopsis of the incident with certain information should suffice to indicate a performance problem or pattern.

[90] K.L. disagrees with the Commission’s proposal of more limited disclosure, saying that, because intimate partner violence is not commonly discussed in the workplace due to its “taboo of silence”, all incidents involving allegations of discrimination in any form should be disclosed.

## **(b) Decision**

[91] I agree with Canada Post that the documents requested in this category lack arguable relevance to a fact, issue or remedy in this matter and I decline to order their production.

[92] As previously stated, this is not a systemic complaint, despite the request for public interest remedies. The complaint itself is based on K.L.’s own unique facts and circumstances. K.L. does not suggest in her complaint or SOP that there is a larger problem with similar types of discrimination at Canada Post and in fact specifically rejects the Commission’s proposal to seek documents related specifically to complaints or grievances involving intimate partner violence.

[93] In addition, even if K.L.'s "performance" is in question in this proceeding, this does not mean the Tribunal's inquiry may be broadened to consider or evaluate general performance concerns of others that are not relevant to the complaint.

[94] The Tribunal's process is not to be used to conduct a search - a fishing expedition - to look for evidence of a larger problem, which is what K.L.'s request for documents in this category would do, as would the Commission's "in the alternative" proposal.

**(vi) Detailed table documenting all union (APOC and CUPW) grievances filed against or involving Plant Manager D.M. and/or T.T. for the entire time period to date of their active APOC/Canada Post Corporation employment**

[95] As part of this request, K.L. requests that the following information be included in the table: the date, file number, names of accused APOC Managers and employees involved or affected, a summary of the grievance, the investigation findings, the number of witnesses who wrote statements, the resolution or corrective action, and action plan and follow-up documentation.

**(a) Positions of the Parties**

[96] K.L. requests such documented incidents to show a pattern of human resource-related infractions conducted by her direct supervisors over the course of their employment, which could help determine whether or not they would be likely to discriminate based on their past performance.

[97] The Commission's response to category (v) above applies to category (vi) as well, with the proviso that the Tribunal has held that a party's disclosure obligation is limited to documents that are in its possession, and that they cannot be ordered "to generate or create new documents for disclosure" (*Peters v Peters First Nation*, 2023 CHRT 40 at para 14).

[98] The Commission submits that, unless the table that K.L. is seeking already exists, the Tribunal cannot order Canada Post to create it. It says that, at most, the Tribunal could order Canada Post to disclose existing documents containing the underlying information sought by K.L.



[99] Canada Post submits that this request ought to be denied as it would require the creation of a document not already in its possession. It also opposes disclosing any grievance files that may be sought in the alternative on the basis that the request is speculative and seeks information that is not arguably relevant to the complaint. It says the disclosure of such information will neither assist K.L. to prove her complaint nor the Tribunal to decide the complaint.

[100] The Respondent points out that K.L. is seeking this information in order to show a pattern of infractions by these supervisors, yet this is not a case involving any systemic claims. As such, it argues that the request is a “transparent and impermissible attempt to broaden the scope of the Complaint and seek to embarrass or unnecessarily impugn the character of certain of Canada Post’s employees and likely witnesses in this proceeding.”

[101] Canada Post submits that it is irrelevant whether or not certain supervisors engaged in human-resource related infractions as it is not the Tribunal’s role to assess the overall conduct and performance of Canada Post’s supervisors in relation to all of the employees they have supervised during their lengthy employment with Canada Post (more than 30 years for D.M. and 22 years for T.T.).

[102] Canada Post argues that this request would require it to search for records over a more than 20-year period and seeks extensive personal information about other employees not related to this complaint. It says this would constitute a substantial privacy intrusion and that much of this information may be privileged as it relates to grievance procedures. It argues that the collective agreement between Canada Post and APOC recognizes the importance of maintaining the privacy rights of bargaining unit members in grievance proceedings.

[103] In reply, K.L. says the documents sought in this category are relevant because of her experience in the Commission’s process. She says the Commission would not even look at her complaint against Canada Post until she could prove she had attempted to resolve the issue using the grievance process, as it is available to all employees.

[104] K.L. says the data requested will show the Tribunal all the human rights related complaints made against Canada Post that were resolved at the company level, not just

publicly accessible court documents and rulings. She says this information is necessary to assist the Tribunal to determine the remedies required to ensure the company is upholding the basic tenets of human rights on a consistent basis.

[105] K.L. takes the position that the confidentiality ruling in place in this matter should satisfy any concerns about privacy related to the information sought and, in any event, she does not require personal employee information. She says that dates, the allegations and remedy would be sufficient, as all records requested pertain to only D.M. and T.T. She also argues that, as such information exists, it can be accessed easily and extrapolated into a table with personal information redacted if necessary.

**(b) Decision**

[106] I decline to order the production of the documents requested by K.L. in this category.

[107] This request could be determined on the basis that, as Canada Post says, it would be required to create a document that is not already in its possession. As noted above, the Tribunal cannot order a party to generate or create new documents for disclosure.

[108] However, I would also decline to order Canada Post to disclose documents containing the underlying information sought by K.L. in this category on the basis that it lacks arguable relevance to a fact, issue or remedy sought in this matter. If there were grievances filed against D.M. and/or T.T., it is unknown what they may have been about, and it is unclear how this information, if it exists, would ultimately assist the Tribunal. The arguable relevance “standard is meant to ‘prevent production for purposes which are speculative, fanciful, disruptive, unmeritorious, obstructive and time-consuming’” (*Brickner* at para 5, quoting *Day v. Canada (Dept. of National Defence) (No.3)*, 2002 CanLII 78244 (CHRT) at para 7).

[109] The request for all grievances filed against D.M. and T.T. is, like the previous category of documents, overbroad and speculative. I do not find that there is a sufficient basis to order Canada Post to conduct an extensive search through more than 20 years worth of records based on what K.L. has provided as the foundation for her request.

## **VI. DIRECTION**

[110] Within 15 days of the date of this Ruling, Canada Post is to advise the parties and Tribunal whether any reports were generated as a result of the 2019 Employee Engagement Survey and, if so, to provide a description of the type of information included in the report(s).

## **VII. ORDER**

[111] Within 30 days of the date of this Ruling, Canada Post shall:

- 1) Disclose to the other parties timesheets and other documents showing which APOC supervisors (temporary and otherwise) and, if applicable as explained in paragraph 41 of this Ruling, operations managers, on shifts 1,2 and 3 were scheduled to work at the MPP, and on what shifts, for the following time period: February – October, 2019 inclusive.
  - (a) Prior to redacting any information from these documents, Canada Post should advise the other parties as to what information it proposes to redact and why.
- 2) Disclose to the other parties all documents in its possession related to the turnover rate or to job vacancies for APOC supervisors on Shifts 1,2 and 3 at the MPP for the period of January to October of 2019 inclusive. This should include any internal and external job postings or invitations to apply in relation to such jobs during this time period.
  - (a) Prior to redacting any information from such documents, Canada Post should advise the other parties as to what information it proposes to redact and why.

*Signed by*

Colleen Harrington  
Tribunal Member

Ottawa, Ontario  
November 19, 2024

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File No.:** T2664/4021

**Style of Cause:** K.L. v. Canada Post Corporation

**Ruling of the Tribunal Dated:** November 19, 2024

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

**Written representations by:**

K.L., Self-represented Complainant

Brian Smith, for the Canadian Human Rights Commission

Jennifer Hodgins, for the Respondent