

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 41
Date: May 13, 2025
File No.: HR-DP-2951-23

Between:

Sebastiano Loconte

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Air Canada

Respondent

Ruling

Member: John Hutchings

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I. OVERVIEW AND DECISION

[1] Sebastiano Loconte, the Complainant, says that Air Canada (AC), the Respondent, dismissed him after failing to reasonably accommodate his disabilities. AC asks me to dismiss his complaint without a hearing. It says that holding a hearing would be unfair and costly because WorkSafeBC (WSBC), the Canada Industrial Relations Board (CIRB) and an arbitrator already made decisions about his case. Mr. Loconte and the Canadian Human Rights Commission disagree that the previous decisions dealt with the substance of his complaint. They want the Tribunal to hear it.

[2] I dismiss AC's motion to dismiss Mr. Loconte's complaint because I am unable to conclude that the other decision-makers have already dealt with the substance of the complaint, particularly his alleged mental disability.

II. ISSUE

[3] I must decide the following issue:

- i. Should I dismiss Mr. Loconte's complaint because WSBC, the CIRB or the arbitrator already dealt with its substance?

III. ANALYSIS

- 1. Other decision-makers heard Mr. Loconte's cases but did not deal with the substance of his human rights complaint. Their decisions are no basis to dismiss the complaint without a hearing.**

- A. WorkSafeBC lacks jurisdiction to order human rights remedies and did not deal with Mr. Loconte's alleged mental disability.**

[4] Because WSBC's decision could not order the human rights remedies Mr. Loconte seeks and did not deal with his alleged mental disability, the Tribunal cannot rely on it as a basis to dismiss the complaint without a hearing.

[5] In considering whether I should dismiss the complaint because others have already decided Mr. Loconte's case, I should be "guided less by precise doctrinal catechisms" like the legal doctrines of issue estoppel, abuse of process and collateral attack (*British Columbia (Workers' Compensation Board) v. Figliola [Figliola]*, 2011 SCC 52 at para 36). Instead, I should take a principles-based approach that "embraces their underlying principles" (*Figliola* at para 36). To strike the right balance between fairness and finality, with neither principle eclipsing the other, I should avoid hearing cases "already decided by a decision-maker with the authority to resolve them" (*Jamison Todd v. City of Ottawa*, 2017 CHRT 23 at para 27; *Figliola* at para 36). I must ask whether previous decision-makers 1) had jurisdiction (the legal ability) to decide human rights issues; 2) decided essentially the same issue; and 3) gave the complainant the chance to know the case to be met and the chance to meet it (*Figliola* at para 37; *Canada (Human Rights Commission) v. Canadian Transportation Agency*, 2011 FCA 332 at paras 24, 26 [CTA]). In other words, I am assessing whether the substance of a complaint has already been "appropriately dealt with" (*Figliola* at para 37). I must use the power to dismiss a complaint without a hearing cautiously and only in the clearest of cases (*First Nations Child and Family Caring Society of Canada*, 2012 FC 445 at para 140 [FNCFCS]).

[6] There is no dispute that WSBC lacks jurisdiction to order general damages for breaching the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "Act") (see AC Reply at para 14). Mr. Loconte seeks general damages under the Act. As such, WSBC lacked the jurisdiction to deal with the remedies in his complaint.

[7] I find that WSBC did not deal with the issue of mental disability. It found that AC offered Mr. Loconte modified duties that were safe and suitable and that he unreasonably refused them. AC says, and I agree, that the issue WSBC determined was "whether or not [AC's] offer of light duties is suitable, safe and appropriate given [Mr. Loconte's] accepted bilateral knee injuries. Flowing from that, was the refusal of light duties reasonable?" (Amended Notice of Motion at para 6). As such, there is no dispute that the WSBC decision is about physical, not mental disability. Because WSBC addressed physical but not mental disability, it did not decide the same issue Mr. Loconte raises in his complaint.

[8] Mr. Loconte was unable to advance the full substance of his human rights case before WSBC because it lacked the jurisdiction to grant the remedies he now seeks and dealt only with his physical disability. He had no chance to seek to prove his case about mental disability before WSBC. The WSBC proceedings are therefore no basis to dismiss the complaint without a hearing.

B. The Canada Industrial Relations Board ruled on the quality of Mr. Loconte's union representation, not his human rights complaint.

[9] It is undisputed that the CIRB did not make a final determination about Mr. Loconte's human rights case. Mr. Loconte alleged that his union breached its duty of fair representation during the grievance and arbitration process. The CIRB dismissed his allegations. While AC does not characterize Mr. Loconte as seeking to relitigate the CIRB's decision before me, AC does cite dissatisfaction with the CIRB proceedings as a motivation for pursuing the complaint in connection with the legal doctrines of issue estoppel, abuse of process and collateral attack (Amended Notice of Motion at paras 33, 40). As such, for completeness, I will apply the principles-based approach to determine whether the CIRB "appropriately dealt with" the substance of the complaint (*Figliola* at para 37). I find that 1) the CIRB did not decide Mr. Loconte's human rights case while seized with his duty of fair representation complaint; 2) the quality of his union representation and his disability are not the same issue; and 3) he had no chance to seek to prove his disability accommodation case in a CIRB proceeding with a different purpose. The CIRB proceedings are therefore no basis to dismiss the complaint without a hearing.

C. The arbitrator mentioned but did not clearly deal with Mr. Loconte's alleged mental disability.

[10] I am unable to conclude that the arbitration award clearly dealt with the substance of Mr. Loconte's complaint, particularly his mental disability allegations.

[11] To succeed on its motion to dismiss the complaint because the arbitrator has already decided Mr. Loconte's case, AC must establish that the arbitrator appropriately dealt with the complaint and that this is among the "clearest of cases" for dismissal (*Figliola* at para 37;

CTA at paras 24, 26; *FNCFCS* at para 140). No one disputes that the arbitrator had jurisdiction to deal with human rights issues, but the parties disagree about whether the issues addressed in the arbitral award and Mr. Loconte's complaint are the same.

[12] The arbitrator decided that AC did not discriminate against Mr. Loconte when it terminated him and that AC satisfied its duty to accommodate. AC submits that the arbitrator explicitly considered Mr. Loconte's alleged mental disability in determining whether AC had met its duty to accommodate. In other words, AC says that the arbitrator already decided the issue in Mr. Loconte's human rights complaint.

[13] With respect, I am unable to accept this submission.

[14] The award's "Background" section recites facts about Mr. Loconte's grievance. For example, it mentions that Mr. Loconte declined a permanent accommodation offer because of his claims that he is not a "people person" and "gets anxiety dealing with the public". The "Background" section also states that the union raised further medical restrictions and limitations at the December 2017 hearing; that an AC manager "concluded that there was no objective documentation to support any additional restrictions or limitations"; that Mr. Loconte claimed additional restrictions at a January 2019 meeting; and that he declined a further accommodation based on additional limitations about working with people.

[15] The award's "Decision" section provides procedural background about the accommodation, termination, grievance and arbitration process, including an initial arbitration award and the subsequent offer of a position that Mr. Loconte declined. It then discusses the legal framework for the duty to accommodate. The last full page of the award provides the arbitrator's reasoning and conclusion that AC discharged its duty to accommodate.

[16] The arbitrator's brief reasoning makes no reference to mental disability. AC submits, and I agree, that the concept of disability includes both physical and mental disability and that the two should not be artificially separated (AC Reply at para 17). As such, without more, references to the concept of disability can reasonably be taken to include both physical and mental disability. However, in the circumstances, I am unable to conclude that the references to disability in the arbitrator's reasoning reflect an analysis of both physical

and mental disability. The arbitrator notes that AC seeks a return to work “within the parameters of [Mr. Loconte’s] permanent partial disability, as established by WorkSafeBC”, and that “those limitations have not changed significantly” during his employment dispute. Recalling my earlier finding that WSBC addressed physical but not mental disability, I am unable to accept AC’s submission that the arbitrator’s reasoning explicitly deals with mental disability because it is included in references to disability more generally. While the arbitrator made a specific finding about how AC accommodated Mr. Loconte’s WSBC-established physical disability, the reasoning contains no clear finding about mental disability. On the contrary, the specific reference to WSBC-established disability weighs against a finding that mental disability was at issue in the arbitrator’s reasoning.

[17] In effect, AC also argues that the arbitrator implicitly determined the issue of whether it accommodated Mr. Loconte’s alleged mental disability because the award mentions facts relevant to this determination. AC submits that the arbitrator “set out the factual record **that formed the basis**” (AC Reply at para 24, emphasis added) of the decision. AC further submits that “after setting out the factual/evidentiary record, the Arbitrator then dismissed all of the claims that had been advanced by [Mr. Loconte] (including his claims that Air Canada had failed to offer a position suitable for his anxiety-related restrictions)” (AC Reply at para 25). In other words, because the arbitrator mentioned mental disability in the award’s factual recital, I should conclude that it was part of the basis of the decision. Noting the absence of a clear finding with respect to mental disability in the arbitrator’s reasoning, I find it unreasonable to infer that the arbitrator implicitly determined the mental disability issue. Mentioning allegations in a factual recital does not amount to giving reasons for a decision about those allegations. I find instead that the reasoning deals only with the WSBC-established physical disability, and I recall my earlier finding, in agreement with AC, that WSBC dealt only with AC’s offer of modified duties to accommodate physical injuries.

[18] In sum, the award lacks a clear finding about mental disability, and I can draw no reasonable inference that the arbitrator’s reasoning includes an implicit finding about it. In other words, I am unable to accept AC’s submission that, when the reasoning refers to disability, it includes both mental and physical aspects of disability. I also note the reasoning’s reference to limitations that “have not changed significantly” during the dispute,

despite the award's earlier background references to several instances where Mr. Loconte brought forward additional limitations. I am unable to reconcile these contrasting parts of the award. This inconsistency, and the lack of an apparent reasonable explanation for it, lends further weight to my finding that the arbitrator's reasoning did not consider mental disability either explicitly or implicitly.

[19] The parties also disagree about whether Mr. Loconte had a fair opportunity to advance his case at the arbitration through his union representation. AC says, and I have already found, that the arbitrator mentioned facts relating to mental disability in the award. I note the parties' disagreement about what information was ultimately before the arbitrator. As I have found that the arbitrator did not clearly determine the mental disability issue, it follows that Mr. Loconte did not have an opportunity to fully advance his case to receive a determination.

[20] I am therefore unable to find that the arbitrator clearly dealt with the issue of mental disability. It follows that the arbitration is no basis to dismiss the complaint without a hearing.

IV. ORDER

[21] I dismiss the motion. I will convene a case management conference to set dates for the hearing.

Signed by

John Hutchings
Tribunal Member

Ottawa, Ontario
May 13, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2951-23

Style of Cause: Sebastiano Loconte v. Air Canada

Ruling of the Tribunal Dated: May 13, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Daniel Sorensen, for the Complainant

Sameha Omer, for the Canadian Human Rights Commission

Anthony Panacci, for the Respondent