Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 40
Date: May 12, 2025
File No.: HR-DP-2928-23

Between:

Chris Irlam

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Telus Communications Inc.

Respondent

Ruling

Member: John Hutchings

Contents

I. OVERVIEW AND DECISION

[1] Chris Irlam, the Complainant, says that TELUS Communications Inc. (TELUS), the Respondent, discriminated against her on the job as a technician. TELUS asks me to dismiss the complaint without a hearing. It says that holding a hearing would be unfair because a settlement with Chris Irlam already resolved any human rights issues with the company and because the delay between the alleged events that occurred in 2017 and the hearing scheduled in July 2025 makes it harder for TELUS to defend itself. TELUS also says that, in any event, I should not consider allegations that predate the explicit inclusion of gender identity as a prohibited ground of discrimination in human rights legislation. Chris Irlam and the Canadian Human Rights Commission (the "Commission") oppose dismissing the complaint. They say that I should consider allegations from both before and after the legislative change. While the Commission opposes a full dismissal, it says that I should strike any issue relating to termination from the complaint because it already dealt with this issue and did not refer it to the Tribunal. The Commission also says that I should only consider on-the-job discrimination. Chris Irlam says that striking issues is unnecessary.

[2] I dismiss TELUS's motion. The settlement did not appropriately deal with the substance of the complaint. There is insufficient evidence to conclude that delay—the passage of time between the alleged events and the hearing—makes holding a hearing unfair, and there is no legal reason to exclude gender discrimination allegations because of changing human rights legislation.

II. ISSUES

[3] I must decide the following issues:

i. Should I strike any issue relating to termination from the complaint because the settlement already dealt with it?
ii. Should I dismiss the on-the-job discrimination allegations because the settlement already dealt with them?

iii. Should I dismiss the complaint because delays in the complaint process make hearing it unfair?

iv. Can I hear gender discrimination allegations that predate the explicit inclusion of gender identity in human rights legislation as a prohibited ground?

III. ANALYSIS

A. I need not strike any termination issue from the complaint because there is no termination dispute between the parties.

[4] There is no dispute between the parties that TELUS terminated Chris Irlam's employment, that they later settled a termination grievance with Chris Irlam's union in their settlement agreement of November 17, 2017, and that the Commission declined to refer the termination to the Tribunal because the settlement already dealt with it. The principles of judicial economy and proportionality discourage unnecessary findings or orders, such as those on issues that are not in dispute: *Hryniak v. Mauldin*, 2014 SCC 7 at para 30. I note that Chris Irlam is not seeking lost wages in relation to the termination. While the parties dispute allegations about on-the-job discrimination, it is unclear why the termination process would be relevant in addressing those earlier allegations.

[5] The parties agree and I find that any termination issue was not referred to the Tribunal for inquiry. While references to the termination appear in the parties' particulars, I find that they may be useful factual context and therefore stop short of ordering them struck: *Murray v. Immigration and Refugee Board,* 2018 CHRT 32 at para 64; *Kirlew v. Correctional Service Canada*, 2025 CHRT 16 at para 17. That said, and consistent with the principles of judicial economy and proportionality, allegations or remedies relating only to termination are out of scope and should not be raised in testimony or legal argument: *Annie Oleson v. Wagmatcook First Nation*, 2019 CHRT 35 [*Oleson*] at para 48. Because I have found that termination is not at issue, it is unnecessary for me to decide whether the settlement precludes the parties from dealing with it, and I make no further finding in this respect.

B. The settlement did not deal with on-the-job discrimination allegations and is no basis to dismiss the complaint without a hearing.

[6] There is no dispute that the complaint is about alleged workplace discrimination that occurred while Chris Irlam worked at TELUS. The Commission decided to deal with these allegations and referred them to the Tribunal.

[7] While the parties agree that the settlement dealt with Chris Irlam's termination, they disagree about whether it also dealt with the workplace discrimination allegations. Chris Irlam and the Commission say that the settlement dealt with termination alone. TELUS says it dealt with the company's entire dispute with Chris Irlam, including both termination and alleged workplace discrimination. TELUS therefore submits that because the settlement already dealt with workplace discrimination, I should dismiss the complaint.

[8] As framed in its motion to dismiss, TELUS's submission is a collateral attack on the Commission's decision to refer the workplace discrimination allegations to the Tribunal. Parties may only challenge a decision using a process that is specifically intended to reverse, change or erase that decision, such as an appeal or an application for judicial review. That is to say, parties must challenge decisions directly, not indirectly. The law forbids collateral attacks (indirect challenges): *Wilson v. The Queen*, [1983] 2 SCR 594 at 599; *Jamison Todd v. City of Ottawa*, 2017 CHRT 23 at paras 43–48. Attempts to preclude the implementation of an order or decision are collateral attacks: Donald J. Lange, *The Doctrine of Res Judicata in Canada*, 4th ed. (Toronto: LexisNexis), 2015 at 469. If a party disagrees with a Commission decision, the proper recourse is judicial review: C*anada (Human Rights Commission) v. Warman*, 2012 FC 1162 at para 56, affirmed by *Canada (Human Rights Commission) v. Warman*, 2014 FCA 18; *Oleson* at paras 39–41. Here, the Commission Report said that it was "not plain and obvious that the settlement dealt with all of the human rights allegations", and the Commission decided to refer the workplace discrimination allegations to the Tribunal. TELUS's motion suggests that the Commission should have reached a different outcome based on a more expansive reading of the settlement—in other words, that a different analysis of this document would have changed its referral decision. Declining to hear these allegations would preclude the implementation of the Commission's decision to have them heard. The law therefore

requires me to reject TELUS's submission as an impermissible collateral attack on the Commission's referral decision.

[9] In any event, I agree with Chris Irlam and the Commission that it is far from clear that the settlement dealt with workplace discrimination.

[10] Before dismissing a case because it has already been resolved another way, I must ask whether the previous resolution related to essentially the same issue: *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52 [*Figliola*] at para 37; *Canada (Human Rights Commission) v. Canadian Transportation Agency*, 2011 FCA 332 [*CTA*] at paras 24 and 26. In other words, I must assess 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 [*FNCFCS*] at para 140. In sum, to succeed on its motion to dismiss the complaint because the settlement already resolved Chris Irlam's case, TELUS must establish that the settlement dealt appropriately with the complaint and that this is among the "clearest of cases" for dismissal: *Figliola* at para 37; *CTA* at paras 24 and 26; *FNCFCS* at para 140.

[11] I am unable to find that the settlement deals appropriately with the substance of the complaint. Contract law tells me to give the settlement its ordinary and grammatical meaning, consistent with the circumstances known to the parties when they settled the grievance: *Corner Brook (City) v. Bailey*, 2021 SCC 29 at paras 21 and 35; *CD v. CAF,* 2025 CHRT 31 [*CD*] at para 18. The settlement makes no reference to pre-termination workplace discrimination. It resolves a Notice of Grievance that cites Article 4 of the collective agreement on "Discrimination" among the articles allegedly violated. The nature of the grievance is that "Chris was terminated from the company". The remedy sought is for "re-instatement, [Chris] made whole". Chris Irlam says that the union recommended pursuing workplace discrimination allegations in a human rights complaint, not in the grievance process. The Commission, for its part, cites its finding that it was not plain and obvious that the settlement addressed the human rights allegations. TELUS in effect invites me to read in implicit settlement terms about workplace discrimination and infer that it settled its entire dispute with Chris Irlam. I find this inference unreasonable. I find instead that the reference

to Article 4 is more likely than not a template reference to human rights and that, without more, it does not operate to make any resulting settlement a complete resolution of human rights issues: *CD* at paras 22–24. Put another way, the settlement lacks a full and final release in respect of on-the-job discrimination claims.

[12] Citing the anti-discrimination article of a collective agreement in a termination grievance, without more, is not enough to support an inference that the parties intended to settle pre-termination claims in resolving the grievance. While I note that the union and management discussed pre-termination concerns at a grievance meeting, the settlement is silent on these matters. I am therefore unable to find that this is among the "clearest of cases" for dismissal or that the complaint's substance has been appropriately dealt with.

C. There is insufficient evidence that delay makes a hearing unfair.

[13] I am unable to conclude that the length of the complaint process has caused prejudice of sufficient magnitude to impact the fairness of a hearing.

[14] For delay to amount to an abuse of process, it must have caused significant prejudice: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at para 72. Because prejudice is a question of fact, TELUS must establish on a balance of probabilities that procedural fairness has been impacted: *Koke v. Corus Entertainment Inc. and Chris Gailus*, 2024 CHRT 15 at para 19. In other words, TELUS must prove that, because of delay, a hearing is more likely than not to be unfair. If the "entire pre-hearing delay, from the earliest discriminatory acts until the hearing is so long that the respondent's right to a fair hearing is compromised", the Tribunal can dismiss the complaint to "remedy the situation": *Grover v. National Research Council of Canada*, 2009 CHRT 1 [*Grover*] at para 42.

[15] There is insufficient evidence that delay would significantly prejudice a hearing. TELUS says that this case is like *Grover*, where the Tribunal dismissed the complaint after considering significant evidence that many witnesses lacked "any independent recollection of the events" alleged as long as 17 years before the hearing: *Grover* at paras 39 and 108. I find that this case is not like *Grover*. In its particulars, TELUS identifies four management witnesses to testify about Chris Irlam's 2017 employment. While I accept that remembering

details about events that occurred approximately eight years ago can be hard, I am unable to find on a balance of probabilities that their memory has "necessarily" faded such that they, like the *Grover* witnesses, would be "unable to independently recollect the incidents alleged in the complaints": *Grover* at para 100. TELUS says instead that their "general recollection of alleged events **may** be hazy or non-existent" (emphasis added). Asserting a possibility of hazy or non-existent recollection falls short of proof on a balance of probabilities of "an inability to prove facts necessary to respond to the complaints": *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 103; *Grover* at para 100. I am therefore unable to find that delay has caused "sufficient prejudice" to make this a clear case for dismissal.

D. I can hear gender discrimination allegations that predate the explicit inclusion of gender identity in human rights legislation.

[16] There is no basis to strike gender discrimination allegations that predate the inclusion of gender identity and expression as a protected ground of discrimination in the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "Act"). Complainants need only connect their allegations to one ground of discrimination to pursue a complaint. The Tribunal considered gender discrimination allegations under grounds such as "sex" before the Act was amended to explicitly include gender identity: *Montreuil v. Canadian Forces*, 2009 CHRT 28. Chris Irlam's complaint identifies sex, sexual orientation, gender identity or expression and disability as prohibited grounds. As the complaint features multiple grounds, and because gender diversity complaints resonated in the jurisprudence before legislative changes gave them an explicit anchor in the Act, I find that there is no basis to distinguish between allegations that predated the changes and those that followed.

IV. ORDER

[17] I dismiss the motion. I will convene a case management conference to prepare for the hearing.

Signed by

John Hutchings
Tribunal Member

Ottawa, Ontario
May 12, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2928-23

Style of Cause: Chris Irlam v. Telus Communications Inc.

Ruling of the Tribunal Dated: May 12, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Chris Irlam, Complainant

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