

**Canadian Human Rights Tribunal**

**personne**

**Tribunal canadien des droits de la**

**BETWEEN:**

**GINO DUMONT**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**TRANSPORT JEANNOT GAGNON INC.**

**Respondent**

**REASONS FOR DECISION**

**T.D. 2/02**

**2002/02/01**

**PANEL:** Roger Doyon, Chairperson

**TRANSLATION**

**TABLE OF CONTENTS**

**I. INTRODUCTION**

**II. THE EVIDENCE**

**A. Evidence of the Commission and of the Complainant**

**B. Evidence of the Respondent T.J.G.**

**III. ANALYSIS OF THE EVIDENCE**

**IV. REMEDIES**

**A. Lost Wages**

**B. Travel Expenses**

**V. MORAL DAMAGES**

## **VI. INTEREST**

## **VII. ORDER**

### **I. INTRODUCTION**

[1] On March 28, 1998, Gino Dumont filed with the Canadian Human Rights Commission (the Commission) a complaint against his former employer, Transport Jeannot Gagnon inc. (T.J.G.). He maintains that T.J.G. contravened the provisions of section 7 of the *Canadian Human Rights Act* (the Act) by refusing to continue to employ him because of a disability, namely, a pneumothorax of the left lung.

[2] At the hearing, the Tribunal allowed the Commission to amend the ground of the complaint to read as follows: "Because of a disability or a perceived disability."

### **II. THE EVIDENCE**

#### **A. Evidence of the Commission and of the Complainant**

[3] In March 1996, the complainant, who resides in L'Île-Verte, worked as a semi-trailer truck operator assigned mainly to long-distance haulage.

[4] While temporarily unemployed, Gino Dumont learned that the respondent, T.J.G., a trucking company having its head office in Rivière-du-Loup, was looking for semi-trailer truck operators.

[5] He contacted the president of the company, Jeannot Gagnon, who arranged to meet with him around March 27, 1996. At the meeting, Gino Dumont answered the president's questions and, accompanied by him, took a road test with a semi-trailer truck.

[6] Jeannot Gagnon was interested in hiring the complainant. However, as the latter would be required to travel often to the United States, Jeannot Gagnon required Gino Dumont to provide him with written proof attesting that he had no criminal record. When this attestation was submitted, Jeannot Gagnon hired the complainant commencing March 31, 2001, explaining to him that the hiring was for an indeterminate period. He told him, however, that if he wanted to work, he would have full-time work on a continual basis.

[7] The complainant was paid \$0.17 per mile plus an additional \$0.05 per mile to cover the cost of meals and accommodation.

[8] Gino Dumont was assigned to travel most of the time from Quebec to the southeastern United States and occasionally to New Brunswick or Nova Scotia.

[9] On June 2, 1996, the complainant left Rivière-du-Loup to deliver newsprint to the Wall Street Journal in Bowling Green, Ohio. On arriving in Bowling Green, on June 4, 1996, he momentarily felt discomfort below the left shoulder.

[10] On reaching the Wall Street Journal, the discomfort became much more acute and intense, accompanied with breathing difficulties. Fearing a heart problem, he contacted his employer and his wife to inform them of his state of health and his hospitalization. He was transported by ambulance to Wood County Hospital in Bowling Green.

[11] Medical tests revealed a perforation of the left lung or a pneumothorax. As the complainant speaks little English, he appreciated the presence of an interpreter working at the Wall Street Journal who remained at his bedside for several hours. He underwent surgery during which a thoracic drainage tube was inserted in the left lung.

[12] While in hospital, the complainant said he received a telephone call from his employer informing him that he was arranging to have his personal effects he had left in the truck sent to him and the truck returned to its terminus. He added that the incident had cost him dearly.

[13] The complainant's wife telephoned him and reported that Jeannot Gagnon had told her that he was looking after the truck and she should look after her husband.

[14] On June 7, 1996, the thoracic drainage tube was removed and he was discharged from the hospital on June 8. Meanwhile, the interpreter from the Wall Street Journal had obtained a plane ticket for him. When he left the hospital, an employee of the Wall Street Journal drove him to Detroit where he took the plane to Montreal and returned home the evening of June 8.

[15] The morning of June 9, 1996, Gino Dumont again felt discomfort in the left lung and had breathing difficulties. His wife drove him to the Grand-Portage hospital in Rivière-du-Loup. The medical diagnosis again showed a severe pneumothorax of the left lung and the complainant underwent surgery to have a thoracic drainage tube inserted.

[16] During the complainant's stay in the Grand-Portage hospital, Jeannot Gagnon contacted him to inquire after about his health.

[17] He remained in hospital until June 12, 1996, and was seen again in the outpatient clinic on June 14, 1996, to have the thoracic drainage tube removed. The attending physician felt there was no evidence of a recurrence of the pneumothorax but recommended the complainant take time off until July 1, though he did not give him a written certificate to this effect.

[18] That same day, Gino Dumont went to his employer's head office to obtain a termination of employment for illness. He met with Jeannot Gagnon who told him that work had dropped off. The complainant told him he could be back at work starting July 1, 1996. Jeannot Gagnon said that the complainant first had to provide him with a medical certificate declaring him fit to return to work and that he would then make a decision.

[19] Gino Dumont saw his attending physician on June 27 and obtained a medical certificate allowing him to return to work without limitations. He then tried to contact his employer several times, but was unable to reach him. On July 5, 1996, he went to see his employer and handed the medical certificate directly to Jeannot Gagnon. He explained his past illness to him, and assured him he had fully recovered and was ready to return to work immediately.

[20] Jeannot Gagnon reminded him that there was not much work at the time. He also informed him that he had assigned the truck the complainant had been driving to another driver whose truck was being repaired.

[21] Meanwhile, Gino Dumont had learned that he was not eligible for employment insurance benefits and, having no income, was very anxious to return to work.

[22] In the days that followed, Gino Dumont noticed that the truck he had driven continued to be assigned to another driver. He again contacted his employer about getting work. Jeannot Gagnon told him that because of the problem he had had, he could not risk offering him a job again.

[23] The complainant understood from Jeannot Gagnon's remarks that his refusal to rehire him was based solely on the fact that he was afraid the complainant's illness would recur and he should find himself another job.

[24] He contacted the Commission des normes du travail du Québec and was referred to the Canadian Human Rights Commission, to which he wrote on August 2, 1996. (Exhibit HR-36)

[25] Gino Dumont found temporary employment as a long-distance semi-trailer truck operator with Martillini inc. of Rivière-du-Loup from July 14, 1996, to August 2, 1996. (Exhibit HR-37)

[26] Then, he was hired from August 19, 1996, to November 1, 1996, by Gervais Dubé inc. of Trois-Pistoles as a heavy equipment operator. (Exhibit HR-38) Although this employer had another week of work to assign to him, he left this job to go and work for Alain Normand Transport inc. of Saint-Antonin. In light of the circumstances beyond his control, he was unable to begin work as a long-distance semi-trailer truck operator until January 5, 1997. (Exhibit HR-39)

[27] In the meantime, Gino Dumont got a job as a long-distance semi-trailer truck operator from November 6, 1996, to December 20, 1996, with Silva inc. of St-Clément.

[28] The complainant kept his job at Alain Normand Transport inc. until August 2, 1998, when he decided to resign because his work forced him to constantly be away from home. Since he had

become a father, he preferred work that allowed him to spend more time with his family and his subsequent jobs allowed him to do this.

[29] The complainant's wife testified. Basically, her testimony revealed that Jeannot Gagnon had told her over the telephone that he was looking after getting his truck back and she should look after her husband.

## **B. Evidence of the Respondent T.J.G.**

[30] The respondent T.J.G. was represented by its President and sole shareholder, Jeannot Gagnon. He wanted to provide his own version of the facts.

[31] He corroborated the complainant's version of the circumstances surrounding his hiring. He also maintained that he was satisfied with the work done by Gino Dumont.

[32] Concerning the incident that occurred June 4, 1996, in Bowling Green, Ohio, he acknowledged having received a telephone call from the complainant informing him of his state of health. He claimed that he told him to go to the hospital, to call him once he was back on his feet and he would send someone to bring him home. Jeannot Gagnon maintained that the complainant did not call him back.

[33] He testified that the information he received about the complainant's health was provided by someone at the Wall Street Journal who was in regular contact with his secretary.

[34] Jeannot Gagnon is convinced that he never spoke to the complainant either during his stay at Wood County Hospital in Bowling Green or at the Grand-Portage hospital in Rivière-du-Loup.

[35] The witness maintained that the complainant came to the company's head office on the 13th or 14th to obtain a termination of employment prepared and signed by the witness on June 13, 1996. (Exhibit HR-4) Gino Dumont informed him that he had had a lung disease. While he admitted that he required a medical certificate before allowing an employee to return to work, he stated (Transcript, page 271):

[Translation]

"He came in to get his termination of employment, his sick leave in other words. That was the day he was given his form. This completely contradicts what the man just said, because I never had his hospital discharge form.

Because before we take someone back, he has to be in good health. It's fairly normal. We require this form; we never had it. It may have gone astray, but me, I never saw it."

[36] He acknowledged, however, that the required medical certificate may have been given to his secretary. The witness also maintained that the complainant told him he would be convalescing for six (6) months. That is what he claimed to have understood.

[37] He maintained that he had work to give Gino Dumont and that, despite numerous attempts, he had been unable to reach him. He also concluded that the complainant had found other work.

[38] Asked why he did not rehire the complainant, Jeannot Gagnon said (Transcript, page 297):

[Translation]

"The reason I didn't rehire him, because he didn't come to see me. When you like your job, you come back in to see the jobber. He didn't come to see me, I'm the jobber."

[39] Furthermore, he said that at no time was the complainant's illness taken into consideration and that Gino Dumont would have been given work again had he expressed his interest by contacting him.

[40] In cross-examination, Jeannot Gagnon acknowledged having signed a letter sent to the Canadian Human Rights Commission on June 9, 1998 (Exhibit HR-42), whose content will be considered in the analysis of the evidence.

### **III. ANALYSIS OF THE EVIDENCE**

[41] The evidence shows that on March 31, 1996, the respondent T.J.G. hired the complainant Gino Dumont as a semi-trailer truck operator. On June 4, 1996, the complainant suffered a pneumothorax while performing his duties, with a recurrence on June 9, 1996, and did not go back to work for the respondent.

[42] Gino Dumont claims that the respondent discriminated against him by refusing to continue to employ him because of a disability or a perceived disability, namely, the risk of a recurrence of his lung disease, thereby contravening sections 2 and 7(a) of the *Canadian Human Rights Act*.

[43] It is appropriate to determine immediately, if not only the disability but also the perceived disability can constitute a ground of discrimination.

[44] In *City of Montreal and Communauté urbaine de Montréal v. Commission des droits de la personne du Québec and Réjeanne Mercier* [2000] 1 S.C.R. page 665, the Supreme Court was to rule on the scope of the word "handicap" as a ground of discrimination, at page 666, as follows:

"The ground "handicap" must not be confined within a narrow definition that leaves no room for flexibility. Instead, courts should adopt a multidimensional approach that considers the socio-political dimension of "handicap". The

emphasis is on human dignity, respect and the right to equality rather than merely on the biomedical condition. A handicap may be real or perceived, and a person may have no limitations in everyday activities other than those created by prejudice and stereotypes. Courts will, therefore, have to consider not only an individual's biomedical condition, but also the circumstances in which a distinction is made. A "handicap" may exist even without proof of physical limitations or other ailments. The emphasis is on the effects of the distinction, exclusion or preference rather than the precise cause or origin of the handicap."

[45] This broad and liberal definition also applies to the ground "disability" which must extend also to the ground of "perceived disability."

[46] The Commission had to give prima facie evidence of discrimination. This evidence shows that Gino Dumont suffered two (2) pneumothoraces between June 4 and 9, 1996. On June 14, 1996, he met with his employer T.J.G. to say that he would be convalescing until July 1, 1996, and to obtain a termination of employment for illness.

[47] Jeannot Gagnon required him to produce a medical certificate before giving him work and pointed out to him that business was slow. The complainant obtained a medical certificate on June 27, 1996, which states: "he will be able to resume work on July 1, 1996" [translation]. This medical certificate mentions no restrictions or limitations.

[48] The complainant attempted to contact his employer several times, but was unable to reach him. In the meantime, he learned he was not eligible for employment insurance benefits and wanted to get back to work. He decided to appear suddenly at the company office and was seen by Jeannot Gagnon.

[49] Gino Dumont swears he delivered the medical certificate to his boss, who told him that "business is slow and the truck he was driving had been assigned to another driver."

[50] In the days that followed, the complainant again contacted his boss about getting work, but the latter revealed to him that he could not keep him on because of the problem he had had.

[51] The Tribunal is satisfied with the prima facie evidence submitted by the Commission and the complainant. It seems that the complainant was not kept in his job because of a perceived disability and that he was the victim of a discriminatory practice.

[52] Once the Tribunal has accepted the prima facie evidence as well-founded, it was up to the respondent to establish that its refusal to keep the complainant in his job was not a discriminatory practice but rather was based on a *bona fide* occupational requirement pursuant to the provisions of section 15(1)(a) of the *Canadian Human Rights Act*.

[53] The respondent's representative, Jeannot Gagnon, has not at all based his defence on a *bona fide* occupational requirement. Rather, he claims that Gino Dumont, by his conduct, simply gave up his job.



[54] In support of his claims, he maintains he met with the complainant on June 14, 1996, when the latter came in to get his termination of employment. The complainant mentioned to him at the time that he was convalescing for a period of six (6) months. When cross-examined about this period of convalescence, he admitted he may have misunderstood the complainant's comments and that Gino Dumont may have told him he was convalescing for one (1) month. How could the complainant have told the respondent he was convalescing for one (1) month when the medical certificate (Exhibit HR-42) stated until July 1, 1996? This claim of Jeannot Gagnon does not hold up.

[55] Jeannot Gagnon maintains that he never saw the complainant again after his visit of June 14, 1996, and that the latter never gave him the medical certificate declaring him fit to return to work July 1, 1996. However, in cross-examination, he admits that this medical certificate may have been given to his secretary or gone astray and says he never saw it. In view of Jeannot Gagnon's conflicting versions, it cannot be concluded that the complainant's medical certificate was not brought to his attention.

[56] In a letter addressed to the Canadian Human Rights Commission on June 9, 1998 (Exhibit HR- 42), we read:

[Translation]

"At no time did we think Mr. Dumont might suffer a recurrence of lung disease as we did not even know what he was suffering from."

[57] Now, at the hearing, Jeannot Gagnon admitted that while he did not know the precise medical term, he knew that the complainant had had lung problems.

[58] The respondent has not succeeded in showing the Tribunal that the complainant gave up his job. Rather, the preponderance of evidence is to the effect that the respondent refused to continue to employ Gino Dumont because he had had a lung disease and it feared a recurrence.

[59] For all these reasons, the Tribunal allows the complaint of Gino Dumont.

#### **IV. REMEDIES**

[60] Having concluded that the complaint is well-founded, the Tribunal must now discuss the appropriate remedies.

##### **A. Lost Wages**

[61] The evidence has shown that the complainant's employment ended July 5, 1996, and that he in fact gave up his career as a long-distance semi-trailer truck operator on May 3, 1998.

[62] As a result, the analysis of lost wages applies from July 5, 1996, to May 2, 1998. During this time, the complainant had various jobs that paid the same or more than what the respondent paid him.

[63] The respondent paid him \$0.17 per mile and the complainant travelled an average of 2,500 miles a week, for a payment of \$425.

[64] The complainant was actually unemployed in the aforementioned period from July 5 to 14, 1996, from August 2 to 19, 1996, and from December 20, 1996, to January 5, 1997, or four (4) weeks. The Tribunal orders T.G.J. to pay Gino Dumont an amount of \$1,700 for lost wages.

## **B. Travel Expenses**

[65] On discharge from Wood County Hospital in Bowling Green, Ohio, the complainant had to pay the cost of the plane ticket to return to Montreal as well as his travel expenses to his home in L'Isle-Verte. He is claiming reimbursement of these expenses from the respondent. Section 53(2)(c) of the *Canadian Human Rights Act* empowers the Tribunal to compensate the complainant for any expenses incurred as a result of the discriminatory practice.

[66] The travel expenses claimed by the complainant predate the discriminatory practice in question and the Tribunal denies this claim.

## **V. MORAL DAMAGES**

[67] The *Canadian Human Rights Act* empowers the Tribunal to award a maximum of \$20,000 as compensation for moral damages. Gino Dumont's testimony in this regard did not show that he suffered moral damages giving entitlement to compensation.

## **VI. INTEREST**

[68] The complainant is entitled to payment of interest on the amount awarded for lost wages pursuant to Rule 9 (12) of the Canadian Human Rights Tribunal Interim Rules of Procedure. Interest is to accrue from January 5, 1997, until the date on which payment is made to Gino Dumont.

## **VII. ORDER**

[69] Having allowed the complaint of Gino Dumont, the Tribunal orders as follows:

- 1) That T.J.G. pay Gino Dumont an amount of \$1,700;

2) That T.J.G. pay on the amount of \$1,700 interest in accordance with Rule 9 (12) of the Canadian Human Rights Tribunal Interim Rules of Procedure. Interest is to accrue from January 5, 1997, until the date on which payment is made to Gino Dumont.

"Original signed by"

Roger Doyon, Chairperson

OTTAWA, Ontario

February 1, 2002

**CANADIAN HUMAN RIGHTS TRIBUNAL  
COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T639/2701

STYLE OF CAUSE: Gino Dumont v. Transport Jeannot Gagnon Inc.

PLACE OF HEARING: Rivière-du-Loup, Quebec

October 29 and 30, 2001.

DECISION OF THE TRIBUNAL DATED: February 1, 2002

APPEARANCES:

Gino Dumont On his own behalf

Giacomo Vigna For the Canadian Human Rights Commission

Jeannot Gagnon For Transport Jeannot Gagnon Inc.

