Canadian Human Rights Tribunal **Tribunal canadien des droits de la personne**

BETWEEN:

RICHARD W. ROGERS

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

DECKX LTD.

Respondent

RULING ON JURISDICTION

Ruling No. 1

2002/04/12

PANEL: Athanasios D. Hadjis, Member

[1] The Respondent has raised a preliminary issue in the present case. It alleges that the Tribunal has no jurisdiction to inquire into the complaint because the parties settled the entire matter in the course of the conciliation process, conducted in 2001. The Canadian Human Rights Commission ("Commission"), the Complainant and the Respondent have each provided the Tribunal with their respective written submissions regarding this issue. Evidence was adduced in the form of affidavits to which were attached numerous documents. The affiants were not examined on their affidavits. In presenting the facts giving rise to this motion, I have deliberately omitted mention of any details regarding the confidential discussions between the parties during the conciliation process.

I. THE FACTS

[2] The Complainant filed his complaint with the Commission on July 31, 1999. He alleges that the Respondent discriminated against him by failing to accommodate his disability (double vision) and by terminating his employment, contrary to Section 7 of the *Canadian Human Rights Act* ("*Act*").[(1)] On the recommendation of the Commission investigator assigned to this case, the Commission appointed a conciliator for the purpose of attempting to bring about a settlement to the Complaint, in accordance with Section 47 of the *Act*. On March 29, 2001, a conciliation meeting was conducted in Winnipeg. In attendance, aside from the conciliator (Ms. Buelah Adams-Farrell), was a representative of the Respondent (Mr. Andrew Bieber), its legal counsel (Mr. Mark Newman), the Complainant and his adviser (Mr. Jeff Goszaluk).

[3] There is no doubt that by the end of that meeting, which apparently lasted the entire business day, some understanding had been arrived at by the parties. In fact, the Complainant mentions at paragraph 5 of his affidavit dated February 18, 2002 that:

At the conclusion of the conciliation, a settlement was reached on the following terms and conditions:

The Complainant then proceeds to list those "terms and conditions".

[4] It is also not in dispute that at the close of the conciliation meeting, the parties did not sign any minutes of settlement or other similar document. Mr. Bieber affirms in his affidavit that at the end of the day, both the conciliator and Mr. Newman confirmed verbally with all parties present the terms and conditions that had been agreed to, following which Mr. Bieber shook hands with the Complainant. He further declares that although the conciliator invited the parties to stay and sign minutes of settlement, due to the length of the conciliation meeting, it was agreed that the minutes would be distributed to the parties and signed at a later date.

[5] The minutes of settlement were subsequently prepared by the conciliator and provided to the Respondent on April 11, 2001. The Respondent made what it describes as a "minor revision" to the text and that revised text was then sent on by the conciliator to the Complainant, on April 23, 2001. According to the Complainant, in the days following the conciliation meeting, he learned that some of the details relating to the terms and conditions were not as he understood them to be, during the discussions. In fact, he claims that he contacted the conciliator on April 6, 2001 to inform her of certain details that had not been "disclosed" to him by the Respondent during the conciliation. The Complainant alleges that on April 26, 2001, after he had received the minutes of settlement, he informed the conciliator of his reasons why the agreement was "not acceptable". He therefore did not sign the minutes.

[6] On July 9, 2001, the conciliator prepared her report to the Commission, in which she stated that "the complaint was not resolved" and that the matter was being returned to the Commission "for decision". She recommended that either a Human Rights Tribunal be appointed to inquire into the complaint or that the Commission dismiss the complaint if it was deemed that an inquiry was unwarranted. After receiving a copy of the conciliator's report, Mr. Newman wrote a letter to her on July 19, 2001, articulating his client's position that a binding settlement agreement was in fact reached during the conciliation meeting.

[7] On October 16, 2001, the Commission informed the Complainant and the Respondent of its decision, pursuant to Section 49 of the *Act*, to request that the Chairperson of the Canadian Human Rights Tribunal institute an inquiry into the complaint. The Commission noted in its letter to the parties that its decision came after having reviewed the "report" (presumably the investigator's and/or the conciliator's) as well as any submissions filed thereafter.

II. ANALYSIS OF THE PARTIES' SUBMISSIONS

[8] According to Sub-section 48 (1) of the *Act*, when, at any stage prior to the commencement of a hearing before a Tribunal, a settlement is agreed on by the parties, the terms of settlement shall be referred to the Commission for approval or rejection. Sub-section 48(2) further provides that if the Commission approves or rejects the terms of settlement, it shall so notify and serve the parties. The Respondent acknowledges that in light of these provisions, it is within the Commission's jurisdiction to approve or reject a settlement agreement that may arise in the course of the conciliation process. But the Respondent adds that until such time as the Commission has exercised this authority, it does not have the jurisdiction to refer the complaint to the Tribunal.

[9] The Commission's reply is two-fold. First, in light of the fact that the Complainant did not sign the minutes of settlement and that the conciliator specified in her report that a settlement had not been reached, it is not necessary to invoke Section 48. Second, if one is to accept that the parties did indeed come to an agreement, the Commission effectively exercised its authority under Section 48 when it decided to refer the complaint to the Tribunal. In other words, it is implicit from the referral to the Tribunal that the Commission decided to reject the purported settlement agreement. In its submissions to the Tribunal, the Commission points out that the decision to send the case to the Tribunal was made after it had assessed all of the information before it, including the parties' respective submissions on the purported settlement.

[10] The Commission adds that either of those decisions, be it the one rejecting the purported agreement or the one referring the case to the Tribunal, may be reviewed judicially before the Federal Court. These are not matters for review by the Tribunal. Indeed, the Respondent recently applied to the Federal Court seeking an extension of time in order to file a notice of motion for judicial review of the Commission's decision, pursuant to Section 18 of the *Federal Court Act*.[(2)] However, the Court denied the Respondent's request for an extension of time.[(3)]

[11] I am in agreement that the Tribunal does not have jurisdiction to review the Commission's decisions made pursuant to Sections 48 and 49 of the *Act*. The respondent in the case of *Wall v. Kitigan Zibi Education Council*[(4)] raised similar issues regarding the Commission's conduct leading up to the referral of the complaint to the Tribunal. It was argued that the Commission had relied on inaccurate information and had improperly based itself on information relating to the conciliation process and the conciliation report, in reaching its decision to send the matter to the Tribunal. The Tribunal summarised its interim ruling on this preliminary issue at paragraph 9 of its decision on the merits of the case:

Following the receipt of [the parties']submissions, the Tribunal ruled that it did not have the power to examine the conduct of the Commission or to review decisions that the

Commission had taken, or indeed the fact that decisions may not have been taken. As was noted in cases such as *Spurrell* v. *Canadian Armed Forces* (1991), 14 C.H.R.R. D/130 and *Dhanjal* v. *Air Canada* (unreported, January 30, 1995) the Tribunal's jurisdiction is a limited one, based upon the authority conferred upon it by the *CHRA*, and in particular, by ss. 50 (1), which states:

A Tribunal shall....inquire into the complaint in respect of which it was appointed...

Questions as to the conduct of the Commission during the investigatory and conciliatory phases of the complaint process must be determined by the Trial Division of the Federal Court.[(5)]

[12] The Respondent alleges that the Commission erred in referring the complaint to the Tribunal before approving or rejecting the settlement agreement. Sub-section 48(1) of the *Act* states explicitly that the authority of the Commission to approve or reject a settlement agreement is limited to the period preceding the commencement of the hearing before the Tribunal. Moreover, in the facts of this case, the purported settlement agreement was reached during the course of the conciliation process and well before the referral of the complaint to the Tribunal. The issue is therefore clearly related to the conduct of the Commission during the investigatory and conciliatory phases of the complaint process. As such, the matter falls outside the Tribunal's jurisdiction to inquire into a complaint in respect of which it was appointed. Any questions arising from this matter can therefore only be dealt with on review to the Federal Court.

[13] In the absence of any order from the Federal Court reversing or modifying the decision by the Commission to refer the complaint to the Tribunal, the Commission's decision remains valid. As a result, I consider the complaint to have been properly sent on to the Tribunal for inquiry. The Tribunal, therefore, possesses the jurisdiction to proceed with the hearing on the merits of the complaint.

[14] The Respondent's motion on the preliminary issue regarding the Tribunal's jurisdiction is therefore dismissed.

[15] In the course of ruling on this preliminary issue, I have viewed several documents arising from the confidential conciliation process. Reference has also been made in the parties' submissions and supporting affidavits to the positions adopted by them during the course of this confidential process. I have therefore asked the Chairperson of the Tribunal to not appoint me to hear this case on the merits. In addition, I have instructed the Tribunal registry to remove all submissions, affidavits and other documents referring to the conciliation process, from the file to be presented to the member or members who will be assigned to hear this case on the merits.

"Original signed by"

Athanasios D. Hadjis

OTTAWA, Ontario

April 12, 2002

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T678/6601

STYLE OF CAUSE: Richard W. Rogers v. Deckx Ltd.

RULING OF THE TRIBUNAL DATED: April 12, 2002

APPEARANCES:

Richard W. Rogers On his own behalf

Mark McDonald For the Canadian Human Rights Commission

Mark Newman For the Respondent (Deckx Ltd.)

1. [1] R.S.C. 1985, c. H-6.

2. [2] R.S.C., c. F-7.

3. [3] *Deckx Ltd.* v. *Rogers* (March 26, 2002), 02-T-13, (F.C.T.D.).

4. [4] [1997] C.H.R.D. No. 6 (C.H.R.T.) (Q.L.).

5. [5] *Ibid.*