

**Canadian Human Rights Tribunal**

**Tribunal canadien des droits de la  
personne**

**BETWEEN:**

**GINO DUMONT**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**TRANSPORT JEANNOT GAGNON**

**Respondent**

**DECISION ON REMEDY**

2003 CHRT 29

2003/07/30

**MEMBER:** Athanasios D. Hadjis

[1] This decision relates to a matter that the Trial Division of the Federal Court referred back to the Canadian Human Rights Tribunal for rehearing.

## **I. History of the Case**

[2] On March 20, 1998, the Complainant filed a complaint with the Canadian Human Rights Commission ("Commission") alleging that the Respondent had discriminated against him by refusing to continue to employ him because of a disability, namely, a pneumothorax of the left lung.

[3] The Commission referred the complaint to the Canadian Human Rights Tribunal for inquiry and a hearing was conducted in October 2001.

[4] On February 1, 2002, the Tribunal released its decision ("the Tribunal Decision") allowing the complaint (*Dumont v. Transport Jeannot Gagnon Inc.*, [2002] C.H.R.D. No. 2 (C.H.R.T.) (QL)). The Tribunal ordered the Respondent to compensate the Complainant for his lost wages. The Tribunal did not, however, make an order for special compensation, pursuant to s. 53(3) of the *Canadian Human Rights Act* ("Act"), as it read prior to the Bill S-5 amendments of 1998. The Tribunal concluded that the Complainant's testimony did not show that he "suffered moral damages giving entitlement to compensation in this regard". Interestingly, a review of the case transcript reveals that the Commission did not make any significant argument before the Tribunal in favour of the proposition that special compensation should be awarded, other than a basic assertion that the evidence and the conduct of the Respondent "enable" (*permettent*) the Tribunal to make such an order.

[5] The Commission applied to the Federal Court for judicial review of the Tribunal Decision. The application dealt strictly with the refusal by the Tribunal to award any compensation under s. 53(3) of the *Act*.

[6] On December 9, 2002, Madame Justice Tremblay-Lamer's judgment on the application for judicial review was released (*Canadian Human Rights Commission v. Dumont*, 2002 FCT 1280). The Court recognized that the *Act* gives the Tribunal discretion in granting remedies. However, the Court also held that the Tribunal's refusal to consider compensation without providing a justification, despite "uncontradicted evidence" that the Complainant had suffered in respect of his feelings or self-respect, was an unreasonable exercise of that discretion. The Court, therefore, referred the matter back to the Tribunal for rehearing before a panel composed of different members. Accordingly, I was assigned by the Tribunal Chairperson to conduct the rehearing.

[7] The Commission did not lead new evidence. It did, however, make submissions in writing, based on the existing record of the case, and in particular, excerpts from the transcripts of the Complainant's testimony. The Respondent informed the Tribunal Registry by letter that it had no submissions or comments to make regarding the matter other than to simply state that the Complainant did not suffer in respect of his feelings or self-respect (*dommages moraux*).

## II. Legal Framework and Analysis

[8] The facts giving rise to the complaint all occurred prior to the amendments to the *Act* that took effect on June 30, 1998. Under the older version of the *Act*, s. 53(3) provided the following:

Special compensation	<p>(3) In addition to any order that the Tribunal may make pursuant to subsection (2), if the Tribunal finds that</p> <p>(a) a person is engaging or has engaged in a discriminatory practice wilfully or recklessly,</p> <p>or</p> <p>(b) the victim of the discriminatory practice has suffered in respect of feelings or self-respect as a result of the practice,</p> <p>the Tribunal may order the person to pay such compensation to the victim, not exceeding five thousand</p>	<p>(3) Outre les pouvoirs que lui confère le paragraphe (2), le tribunal peut ordonner à l'auteur d'un acte discriminatoire de payer à la victime une indemnité maximale de cinq mille dollars, s'il en vient à la conclusion, selon le cas:</p> <p>a) que l'acte a été délibéré ou inconsideré;</p> <p>b) que la victime en a souffert un préjudice moral.</p>	Indemnité spéciale
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dollars, as the Tribunal may determine.

It has been held that the \$5,000 maximum award must be reserved for the very worst cases that fall within the range of cases in which such awards are warranted. (*Premakumar v. Air Canada* (2002), 42 C.H.R.R. D/63 at para. 107 (C.H.R.T.); *Desormeaux v. Ottawa Carleton Regional Transit Commission*, 2003 CHRT 2 at para.128).

[9] The Commission argues that as a general rule, human rights tribunals will order such special compensation whenever a complaint has been substantiated. It is only in exceptional circumstances that such compensation is denied. While it certainly may be that orders for special compensation have been granted in most of the cases where there has been a finding of discrimination, I am not persuaded that as a rule, such orders should necessarily be made. One must always examine the circumstances of each case and determine whether the criteria set out in the *Act* have been satisfied.

[10] In the present case, the Complainant was hired by the Respondent to work for an indeterminate period as a semi-trailer truck operator assigned mainly to long-distance haulage. After suffering a perforation of his left lung (pneumothorax) while delivering a shipment in Ohio, he underwent treatment that prevented him from returning to work for about a month. The Respondent, however, informed the Complainant that he would not be permitted to return to his job at the end of this period. According to the Tribunal Decision, the Respondent refused to continue to employ the Complainant because it feared a recurrence of his illness. The Respondent was therefore found to have discriminated against the Complainant on the basis of his disability.

[11] As a result of the dismissal, the Complainant was forced to seek out and gain other employment. By May 1998, when he decided to give up his career as a long-distance truck operator, the Complainant had worked for at least three different employers, and he was occasionally unemployed between jobs. He testified that as a result of being dismissed, he began questioning his self-worth and wondering what other misfortune the future would hold for him.

[12] The Complainant suffered some loss of income as well, in the amount of \$1,700. Although the Respondent was later ordered by the Tribunal to compensate the Complainant for this loss, the shortfall, at the time it occurred, had affected his financial well-being, especially when taking into account his fairly modest income. The loss may have even contributed to his eventual bankruptcy, although I note that the evidence is insufficient to satisfactorily support a conclusion in this regard.

[13] Overall, the Complainant is upset that he had to endure this inconvenience and grief needlessly, or in his words, "for nothing".

[14] Taking into consideration all of the relevant circumstances of this case, I order the Respondent to pay to the Complainant the sum of \$2,500 in special compensation, pursuant to s.

53(3) of the older version of the *Act*. Interest shall be payable in accordance with the terms of the Tribunal Decision, however, in no case shall the interest be allowed to exceed the maximum allowable sum of \$5000 (*Canada (Attorney General) v. Hebert* (1995), C.H.R.R. D/375 at para. 23 (F.C.T.D.)).

« Original signed by »

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Athanasios D. Hadjis

OTTAWA, Ontario

July 30, 2003

## **CANADIAN HUMAN RIGHTS TRIBUNAL**

### **PARTIES OF RECORD**

TRIBUNAL FILE NO.: T639/2701

STYLE OF CAUSE: Gino Dumont v. Transport Jeannot Gagnon

RULING OF THE TRIBUNAL DATED: July 30, 2003

APPEARANCES:

Gino Dumont On his own behalf

Giacomo Vigna For the Canadian Human Rights Commission

Jeannot Gagnon For Transport Jeannot Gagnon