

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE**

ESPER POWELL

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

UNITED PARCEL SERVICE CANADA LTD.

Respondent

RULING

MEMBER: J. Grant Sinclair 2006 CHRT 27
2006/06/05

[1] Esper Powell, the complainant in this matter, filed a complaint dated January 16, 2002 alleging discrimination by the respondent, United Parcel Service Canada Ltd., contrary to ss. 7 and 10 of the *Canadian Human Rights Act*. The complainant alleged occurrences of discrimination in 1990, 1991, 1992, 1996 and 2001.

[2] The respondent, by motion dated January 3, 2005, (supporting affidavit dated March 31, 2006) requested in paragraph (a) of the motion, that the Tribunal order that the only allegation of discrimination referred to the Tribunal for inquiry in respect of the complaint relates to the alleged incident on July 20, 2001.

[3] The Commission has prepared two Investigation Reports, dated May 21, 2003 and February 18, 2004. The May 21, 2003 Investigation Report concluded that the alleged incidents of discrimination in 1990, 1991, 1992 and 1996 are out of time. The Report recommended that the Commission investigate only the July 20, 2001 allegation of discrimination.

[4] The Commission did so and the February 18, 2004 Investigation Report is the product. The Report focused on the July 20, 2001 occurrence and recommended that failing conciliation, the complaint be referred to the Tribunal for inquiry. It was referred by the Commission to the Tribunal on August 19, 2004.

[5] It is clear that the alleged incident of discrimination investigated by the Commission and referred to the Tribunal for an inquiry was that on July 20, 2001.

[6] The complainant agrees with this. In his June 15, 2005 fax, complainant counsel, wrote: "...I've met with Ms. Powell in connection with your motion materials. She instructed me to agree that the only complaint referred to the Tribunal for determination

is the one for July 20, 2001. However, she does not instruct me to agree that UPS not have to respond to the allegations prior to July 20, 2001."

[7] This question was also considered in the January 15, 2005 teleconference, between the Tribunal and counsel for both parties. At that time, both counsel agreed to "an Order confirming that the only complaint which has been referred to the Tribunal for inquiry and determination in respect of the Applicant, Esper Powell's Complaint, relates to the alleged incident on July 20, 2001, and not otherwise."

[8] Turning to another matter, in complainant counsel's May 10, 2006 fax responding to the motion, counsel advised that the complainant has launched a new complaint against the respondent alleging further discrimination. Counsel requested that this complaint be dealt with together with the complainant's January 16, 2002 complaint.

[9] The Tribunal can only inquire into complaints that have been referred to it by the Commission. The Commission has referred only the January 16, 2002 complaint to the Tribunal. The Tribunal has no jurisdiction to join or hear any other complaint that may have been filed with the Commission.

ORDER

- (1) The Tribunal orders that the only allegation of discrimination in the January 16, 2002 complaint that has been referred to the Tribunal for inquiry is that relating to the alleged July 20, 2001 incident;
- (2) The Tribunal further orders that each party provide, no later than June 30, 2006, dates in either November or December 2006 or January 2007 for the hearing of the complaint. It is expected the hearing will take a maximum of five days.

"Signed by"

J. Grant Sinclair

OTTAWA, Ontario
June 5, 2006

PARTIES OF RECORD

TRIBUNAL FILE:	T981/10104
STYLE OF CAUSE:	Esper Powell v. United Parcel Service Canada Ltd.
RULING OF THE TRIBUNAL DATED:	June 5, 2006
APPEARANCES:	

Esper Powell	For herself
(No representations made)	For the Canadian Human Rights Commission
Douglas F. Best	For the Respondent