File No.: T527/2299
Ruling No.: 1

THE CANADIAN HUMAN RIGHTS ACT
R.S.C., 1985, c. H-6 (as amended)

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

RODERICK LEGER

Complainant

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

CANADIAN NATIONAL RAILWAYS COMPANY

Respondent

RULING ON REQUEST FOR ADJOURNMENT

Roderick Leger filed a complaint on August 9, 1986, with the Canadian Human Rights Commission alleging that Canadian National Railways Company discriminated against him contrary to the Canadian Human Rights Act.

On July 30, 1999, the Commission requested that the Canadian Human Rights Tribunal inquire into the complaint. The Tribunal has scheduled a hearing to commence on March 6, 2000.

CN has filed a judicial review application with the Federal Court of Canada, Trial Division, challenging the validity of the Commission's decision to refer the complaint to the Tribunal and for an order prohibiting the Tribunal from inquiring into the complaint.

CN did not request a stay of the Tribunal proceedings from the Federal Court of Canada. Instead, CN has requested that the Tribunal adjourn its hearing into the complaint until the Federal Court of Canada has ruled on its judicial review application.

It is well established that this Tribunal is the master of its own procedure and adjournment of proceedings is very much within its discretion. I have not found anything in the authorities cited to me by the parties that require or even suggest that the tests enunciated by the Supreme Court of Canada in R.J.R. MacDonald v. Canada (Attorney General) (1) should be used by the Tribunal in deciding whether to grant or refuse an adjournment.

The R.J.R. MacDonald tests apply to a different situation, namely, where a supervisory court is asked, pursuant to its statutory authority or its inherent jurisdiction, for interim injunctive relief. In my opinion, the exercise of the Tribunal's discretion is subject to the rules of procedural fairness and natural justice, and the regime of the Act.

The Act requires the Tribunal to institute an inquiry into the complaint when requested by the Commission. The Act also requires that the Tribunal give the parties a full and ample opportunity to present their case and make representations. Section 2 of the Act expresses an overriding public interest in the elimination of discrimination. As a response to section 2, numerous court decisions have established that allegations of discrimination are to be dealt with expeditiously and in a timely fashion. It is against this backdrop that CN's adjournment request must be measured.

CN argues that the judgment of the Federal Court of Canada on its judicial review application will be rendered meaningless and ineffective if it is required to go through a tribunal hearing. CN also argues that because of the complexity of the issues, CN will incur considerable costs in preparing for the hearing, which costs will prove unnecessary. Both of the arguments assume that CN would be successful on its judicial review application and on a stay application should it file one.

CN's third argument is that it will be impaired in its ability to make a full answer in defence to the complaint. This is due to the consequences of the lapse of time between the processing and the hearing of the complaint. There is nothing that would preclude CN from making the same arguments in the course of the hearing before the Tribunal. At that point, the Tribunal is in a better position to assess these arguments in the fullness of the evidence and as it unfolds.

Indeed, this is the conclusion of the Nova Scotia Supreme Court, Trial Division, in Volvo Canada Ltd. v. Ritchie (2). In this case, Volvo filed a judicial review application to quash the appointment of a human rights' Board of Inquiry. Volvo's grounds for the application included unfairness, denial of natural justice and inability to respond because of delay, grounds very similar to those of CN in its judicial review application.

The Nova Scotia Supreme Court dismissed Volvo's application. In doing so, the Court considered that these arguments should be made to the Board of Inquiry. The Board has

the power to deal with these allegations if, in fact, the applicant's concerns are borne out by the evidence.

It is my conclusion that CN has not demonstrated that it will be denied procedural fairness or natural justice, or a full and ample opportunity to present evidence and make representations if it is not granted an adjournment. Accordingly, CN's request for an adjournment is denied.

1. [1984] 1 S.C.R. 311, 347-349.

2. [1989] N.S.J., No. 213. CN relied on this case, but cited only the Board of Inquiry's decision.

DATED at Ottawa, Ontario, this 26th day of November, 1999.

J. GRANT SINCLAIR