

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Leslie Palm

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

**International Longshore and Warehouse Union, Local 500,
Richard Wilkinson and Cliff Willicome**

Respondents

Ruling

File Nos.: T1625/17110, T1626/17210, T1627/17310

Member: Robert Malo

Date: June 24, 2014

Citation: 2014 CHRT 18

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I. Background

[1] The Complainant, Leslie Palm, filed discrimination complaints against the Respondents, International Longshore and Warehouse Union, local 500 (I.L.W.U.); Richard Wilkinson; and Cliff Willicome (the Respondents), under sections 3, 3.1, 7, 9 and 10, and, in a very recent amendment, she made a retaliation complaint under sections 14.1 and 65 of the *Canadian Human Rights Act* (the *Act*).

[2] The Complainant primarily alleges that the Respondents discriminated against her and treated her differentially, namely, by establishing or pursuing a discriminatory policy, which deprived her of certain opportunities in her employment. She also alleges that she was harassed by the Respondents on the basis of her sex.

[3] As stated above, the Complainant filed an Amended Statement of Particulars in order to include in it a retaliation complaint against the Respondents.

[4] In a motion dated September 11, 2013, the Respondents asked the Tribunal to add Antonio Pantusa in his personal capacity as a respondent in this file with regard to the retaliation allegations brought against the I.L.W.U.

[5] Thus, Respondent I.L.W.U. alleges that the majority of the retaliation allegations in support of the Complainant's Amended Statement of Particulars concern the actions of Mr. Pantusa.

[6] Respondent I.L.W.U. referred to a decision of the Vice-Chairperson of the Tribunal, Susheel Gupta, which states that the Complainant's retaliation allegations are directly related to the actions of Mr. Pantusa (a former Union Executive Officer and Despatch Coordinator).

[7] Also, in its motion, I.L.W.U. stated that the Union's constitution does not govern the conduct of its members in their employment.

[8] In addition, Respondent I.L.W.U. stated that the Union is responsible for the conduct of its officers who are acting within their authority as union officers. However, the Union is not responsible for the personal actions of its members at their workplace or elsewhere.

[9] Incidentally, Respondent I.L.W.U. referred to the fact that Mr. Pantusa's actions, when he is working, is a matter for his employer, British Columbia Maritime Employers Association (BCMEA) (which is an association representing companies involved in stevedoring operations on Canada's west coast) and that, ultimately, the employers are responsible for supervising and disciplining their employees for inappropriate conduct.

[10] In addition, Respondent I.L.W.U. alleges that Mr. Pantusa must answer for his personal actions, which cannot be sanctioned by the Union.

[11] Respondent I.L.W.U. also alleges that, if Mr. Pantusa is not a party as a respondent to the proceedings instituted by the complainant, she would have no recourse to apply the sanctions she is seeking for Mr. Pantusa's conduct.

[12] Respondent I.L.W.U. further alleges that Mr. Pantusa acted outside the limits of his authority as a union officer when he treated Ms. Palm in a vexatious manner as alleged in the Complainant's amended submissions.

[13] Respondent I.L.W.U. alleges that, even though Mr. Pantusa acted as an Union officer, the Union would be exculpated from the actions of Mr. Pantusa under the provisions of subsection 65(2) of the *Act*, which reads as follows:

65. (1) Subject to subsection (2), any act or omission committed by an officer, a director, an employee or an agent of any person, association or organization in the course of the employment of the officer, director, employee or agent shall, for the purposes of this Act, be deemed to be an act or omission committed by that person, association or organization.

(2) An act or omission shall not, by virtue of subsection (1), be deemed to be an act or omission committed by a person, association or organization if it is

established that the person, association or organization did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof.

[14] Finally, I.L.W.U. categorically denies any responsibility with regard to retaliatory actions alleged to have been taken by Mr. Pantusa and alleges that if Mr. Pantusa is not added to these proceedings as a respondent, the Complainant will have no remedy regarding Mr. Pantusa's conduct.

[15] With regard to the motion filed by Respondent I.L.W.U. in order to add Mr. Pantusa as a respondent, the Canadian Human Rights Commission did not present a formal objection.

[16] However, the Complainant categorically objects to adding Mr. Pantusa as a respondent.

[17] Thus, in her Reply dated December 1, 2013, with regard to the motion of Respondent I.L.W.U. to add Mr. Pantusa, the Complainant stated that her Amended Statement of Particulars dated August 20, 2013, specifically refers to the Union's actions through its representative, Mr. Pantusa, for his actions while he was an officer of local 500 of I.L.W.U.

[18] In her Amended Statement of Particulars, the Complainant also indicated that Mr. Pantusa had abused his authority as a union officer in order to target the Complainant specifically and to deny her employment opportunities. Accordingly, taking into account that she had already filed complaints under this *Act* against I.L.W.U., the retaliation complaint under section 14.1 of the *Act* is aimed directly at Respondent I.L.W.U.

[19] In addition, the Complainant alleges the following in her Amended Statement of Particulars (Amended Statement of Particulars of the Complainant, August 20, 2013, page 13, paragraph 67):

The ongoing retaliation occurred with either the direct or implied consent of the Union (Local 500) or the Union Executive. Alternatively, the Union was aware or

ought to have been aware of the incidents, and it turned a blind eye or acquiesced in the retaliatory conduct of others acting on the Union's behalf.

[20] In addition, the complainant alleges the following in her Reply regarding the Respondent's motion (Reply of the Complainant, December 1, 2013, page 8, paragraph 40):

The Complainant reiterates that the Union has held multiple positions with regard to Mr. Pantusa's behavior; the issue that remains is the Unions lack of initiative to quash this type of abusive conduct from existing within its ranks. The Union continues to shirk the responsibility it owes its membership, by having allowed the misconduct to occur and reoccur time and time again.

[21] A little further in her Reply, she also alleges the following (Reply of the Complainant, December 1, 2013, page 9, paragraphs 44 and 45):

The events suffered by Ms. Palm at the hand of her Union occurred with either the direct or implied consent of the Union (Local 500) or the Union Executive. Alternatively, the Union was aware or ought to have been aware of the incidents, and it turned a blind eye or acquiesced in the retaliatory conduct of others acting on the Union's behalf.

In effect, the Union supported and condoned the behavior by failing to take any immediate action to prevent or correct the individual's conduct. The Union supported and condoned the retaliatory conduct by failing to take action and mitigate discipline.

II. The law

[22] After reviewing the parties' Statements of Particulars as well as the Amended Statements of Particulars provided, examining the parties' submissions regarding the motion of Respondent I.L.W.U. to add Mr. Pantusa as a respondent and consulting the case law in this case, the Tribunal concluded that it would dismiss the Respondent's motion to add Mr. Pantusa as a respondent for the reasons outlined below.

[23] The Tribunal would like to refer the parties to the provisions in section 14.1 of the *Act*, which reads as follows:

14.1 It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

[24] The motion filed by I.L.W.U. refers to a retaliation complaint filed by the Complainant against the Union as it appears on the first page of the Respondent's motion, which indicates that it would like to add Mr. Pantusa as a respondent in his personal capacity following the retaliation complaint against the Respondent.

[25] As stated in section 14.1 of the *Act* regarding retaliation, a complainant has two options for filing such a complaint. Thus, a complaint may be filed regarding a discriminatory practice against "a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint".

[26] Therefore, the textual argument of the *Act* leaves the Tribunal very little choice.

[27] Thus, the first part of section 14.1 of the *Act* refers to a person against whom a complaint has been filed under Part III. It is evident that this person is the Respondent in this case, namely, I.L.W.U., local 500.

[28] No complaint was filed against Mr. Pantusa in his personal capacity when the original pleadings were filed by the Complainant, and therefore Mr. Pantusa is not a person against whom a complaint has been filed under Part III.

[29] The textual argument appears to be fatal for the purposes of the Respondent's motion.

[30] In addition, it appears, until proven otherwise, that at the time of the facts alleged by the Complainant against the Respondent, Mr. Pantusa acted on behalf of the Respondent, namely, I.L.W.U., local 500.

[31] The Tribunal took note of the arguments in support of the Respondent's motion, namely, that the Respondent never authorized the actions alleged by the Complainant against Mr. Pantusa and also of the fact that the Respondent would be exculpated from Mr. Pantusa's actions under subsection 65(2) of the *Act* because the Respondent had apparently not consented to the actions alleged by the Complainant and because it had allegedly exercised all due diligence to prevent the actions and to mitigate their effect.

[32] Even if we assume that the exculpation clause of section 65(2) applies in this case as claimed by the Respondent regarding the acts committed or possibly committed by Mr. Pantusa against the Complainant, this would, for all intents and purposes, add Mr. Pantusa in his personal capacity under the first part of section 14.1 of the *Act*, which cannot be done in this case, considering that Mr. Pantusa is not a person against whom a complaint has been filed under Part III as shown in the Court record.

[33] It is useful to keep in mind that, in both the Complainant's Amended Statement of Particulars and her Reply to the Respondent's motion to add Mr. Pantusa as a respondent, the Complainant reiterates that the retaliation complaint is addressed directly at the Union, not at Mr. Pantusa personally.

[34] Accordingly, the textual argument in section 14.1 of the *Act* leaves the Tribunal no alternative: it is outside of the Tribunal's jurisdiction to interpret this provision differently from the way Parliament had done in drafting it. (See *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 (*Mowat*) at paragraphs 33 and 62:

[33] The question is one of statutory interpretation and the object is to seek the intent of Parliament by reading the words of the provision in their entire context and according to their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament (E. A. Driedger,

Construction of Statutes (2nd ed. 1983), at p. 87, quoted in *Rizzo & Rizzo Shoes Ltd. (Re)* [1998] 1 S.C.R. 27, at para. 21). In approaching this task in relation to human rights legislation, one must be mindful that it expresses fundamental values and pursues fundamental goals. It must therefore be interpreted liberally and purposively so that the rights enunciated are given their full recognition and effect: see, e.g., R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 497-500. **However, what is required is nonetheless an interpretation of the text of the statute which respects the words chosen by Parliament.** [*Emphasis added.*]

...

[62] As we noted earlier, the CHRA has been described as quasi-constitutional and deserves a broad, liberal, and purposive interpretation befitting of this special status. However, a liberal and purposive interpretation cannot supplant a textual and contextual analysis simply in order to give effect to a policy decision different from the one made by Parliament: *Bell Canada v. Bell Aliant Regional Communications*, 2009 SCC 40, [2009] 2 S.C.R. 764, at paras. 49-50, per Abella J.; *Gould*, at para. 50, per La Forest J., concurring.

(See also “*Commission des droits de la personne et des droits de la jeunesse c. Restaurant Marchand 2002 Ltée.*”, 2002 CanLII 61234 (Qc T.D.P.), where a broader interpretation seems possible taking into account section 82 of the Quebec *Charter of human rights and freedoms*, which uses the words "any person" unlike section 14.1 of the *Canadian Human Rights Act*.)

III. Conclusion

[35] Accordingly, Mr. Pantusa cannot be added as a respondent to these proceedings instituted by the Complainant in accordance with the Complainant's Amended Statement of Particulars and the Respondent's motion with respect to the Complainant's Amended Statement of Particulars regarding retaliation under section 14.1 of the *Act*.

[36] The motion of Respondent I.L.W.U., local 500 is therefore dismissed.

Signed by

Robert Malo
Tribunal Member

Ottawa, Ontario
June 24, 2014

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1625/17110, T1626/17210, T1627/17310

Style of Cause: Leslie Palm v. International Longshore and Warehouse Union, Local 500,
Richard Wilkinson and Cliff Willicome

Ruling of the Tribunal Dated: June 24, 2014

Appearances:

Leslie Palm, for herself

Ikram Warsame, for the Canadian Human Rights Commission

Joanna Gislason and Lyndsay Watson, for the Respondents