Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Between:

Barbara Barrie

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Post Corporation and Association of Postal Officials of Canada

Respondents

Ruling

File Nos.: T2003/0414 & T 2004/0514
Member: Sophie Marchildon
Date: June 18, 2014
Citation: 2014 CHRT 17

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I. Background

[1] On March 26, 2014, the Commission referred Barbara Barrie's two complaints dated April 29, 2013, to the Tribunal to conduct an inquiry and render a decision on the matters. The first complaint is against Canada Post Corporation (Canada Post) (20130538) on the ground of age and sections 7, 10 of the *Canadian Human Rights Act* (CHRA). The second is against the Association of Postal Officials of Canada (Association) (20130539) on the ground of age and sections 9 and 10 of the CHRA. The Commission requested a single inquiry in the two complaints.

II. Position of the Parties

[2] On April 24, 2014, the Tribunal offered the parties an opportunity to participate in a mediation session in an effort to settle the complaints prior to a hearing in the matters.

[3] On May 14, 2014, the last response from the parties was received and confirmed that all parties had accepted to participate in the mediation process.

[4] On the same day the Tribunal set the June 11, 2014 deadline for the parties to file their mediation briefs.

[5] On May 22, 2014, the Respondent, the Association, wrote a letter to the Tribunal asking that the parties be afforded the opportunity to complete their negotiation discussions, scheduled to reconvene the week of June 9, 2014, prior to filing mediation briefs and attending mediation. The Association mentions that the issues before the Tribunal are a topic of discussion in the collective bargaining.

[6] On May 23, 2014, the Respondent, Canada Post, requested an extension to Friday, July 11, 2014 for filing of their mediation brief due to the conflicting vacation and litigation schedules between their instructing clients and their counsel. The same day, the Respondent, the

Association clarified it wasn't seeking an extension of the June 11, 2014 deadline to a specific date, rather; it is requesting that the Tribunal hold this matter in abeyance pending the conclusion of collective bargaining. The Association indicated that the parties are scheduled to reconvene bargaining in June 2014. However, the Association submits it is unlikely that a renewal agreement will be reached until the fall.

[7] On May 27, 2014, Canada Post agreed with the Association's request. On the same day, the Complainant responded that it objects to the Association's request to put the file in abeyance. The Complainant contends that her complaint is based on the wording of the collective agreement that was signed in September 2009 and expired March 31, 2014. The Complainant further advances that regardless of what the results are of the current negotiations, the results will have no relevance or impact to her situation since the new agreement will run from April 1, 2014 forward. The Complainant contends that the collective agreement bargaining cannot go back and address past situations. Moreover, the Complainant is retiring effective September 12, 2014. Finally, the Complainant has no concerns with the June 11, 2014 deadline and supports Canada Post's request for an extension to file their mediation brief.

[8] On June 2, 2014, in response to the Tribunal's letter of May 23, 2014, and the Complainant's response of May 27, 2014, the Commission indicated that it does not consent to the Association's request. It is the Commission's position that the mediation should go ahead as planned, presuming all parties remain willing to go forward.

[9] In their June 2, 2014 reply, the Association submits that from a public policy perspective, it is in the best interest of all involved that the parties (Canada Post Corporation and the Association of Postal Official of Canada) reach an amicable resolution via collective bargaining. Notwithstanding the potential interpretation which the Complainant and the Commission may ascribe to the collective agreement and specifically the clause in dispute, the Association submits that the parties to the collective bargaining be given the first opportunity to repair any alleged discrimination.

[10] Secondly, the Association respectfully disagrees to the Complainant's allegation that any resolution of the collective bargaining table will have no effect on her issue. The Association contends that the parties may craft a resolution which will impact the Complainant and may have retroactive effect.

[11] Finally, the Association advances that no party will suffer any prejudice by the proposed delay, and that in these circumstances, holding this file in abeyance is a reasonable and sensible means of addressing this issue.

III. Analysis

[12] First, it is well established that this Tribunal is the master of its own procedures and that deciding on an adjournment of proceedings is very much within its discretion. I find the principles reasoned in *Baltruweit*, 2004 CHRT 14 (CanLII), to be applicable in this case:

> [15] It is well established that administrative tribunals are the masters of their own proceedings. As such, they possess significant discretion in deciding requests for adjournments. This principle was discussed in some detail by the Supreme Court of Canada in *Prassad v. Minister of Employment and Immigration*, [1989] 1. S.C.R. 560. In this case, the appellant sought an adjournment of her immigration inquiry pending a decision on her application to the Minister to permit her to remain in Canada. The adjudicator refused the adjournment.
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> [16] In dealing with her appeal, the Supreme Court stated that administrative tribunals, in the absence of specific statutory rules or regulations, are masters of and control their own proceedings. But when tribunals exercise judicial or quasi-judicial functions, they must comply with the rules of natural justice. [See also *Re Cedarvale Tree Services Ltd. and Labourers' International Union of North America*, (1971), 22 D.L.R. (3d) 40, 50 (Ont. C.A.), *Pierre v. Manpower and Immigration*, [1978] 2 F.C. 849, 851 (FC.T.D.)].

[13] That being said, the Tribunal, in pondering the request for a stay, must also give consideration to s. 48.9(1) of the *CHRA*, which states that "[p]roceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow." 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 and 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 discriminatory practices. Pursuant to section 2 of the *Act*, allegations of discrimination are to be dealt with expeditiously and in a timely fashion. *See Blain v. Royal Canadian Mounted Police* 2012 CHRT 13 paras. 12 and 14.

[14] Moreover, I also adopt the Tribunal`s reasons enunciated in *Marshall v. Cerescorp Co*, at paras. 11-12:

> According to section 48.9(1) of the *Canadian Human Rights Act,* proceedings before the Tribunal are to be conducted as informally and, of particular relevance to this motion, as expeditiously as the requirements of natural justice and the rules of procedure allow. However, as master of its own procedure, the Tribunal may, nonetheless, adjourn its proceedings where appropriate in its discretion (See *Léger v. Canadian Railways (1999)* C.H.R.D. No. 6 (CHRT), at para. 4; *Baltruweit v. Canadian Security Intelligence Service*, 2004 CHRT 14 at para. 15). The Tribunal must exercise this discretion having regard to principles of natural justice *(Baltruweit,* at para. 17*).* Some examples of natural justice concerns to which the Tribunal could respond would include the unavailability of evidence, the need to adjourn to obtain counsel, or late disclosure by an opposite party.
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> (…) In order for the Respondent to obtain an adjournment, it must establish that allowing the proceedings before the Tribunal to follow their normal course will result in a denial to the Respondent of natural justice. The Respondent has not persuaded me that any such prejudice would necessarily result if an adjournment were not granted.

[15] Finally, when considering an adjournment to the Tribunal proceedings, given the quasi-constitutional nature of the *CHRA* and its purpose and the importance that access to justice and human rights have in our society, adjournments should be given only in exceptional cases and in accordance with the principles discussed in the above.

IV. Ruling

[16] In light of the above and after consideration, the Association, who made the request for an adjournment, 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 of the proceedings. Without having the benefit of all the information before me it is a possibility that some issues could be narrowed and or addressed in the collective bargaining agreement that would address the complaints or part of the complaints. However, it is also likely that the collective bargaining agreement will not address all the issues before the Tribunal and more importantly, there is no guarantee that parties will arrive to a settlement solely on the fact that the bargaining is completed. Placing the file on abeyance will create unnecessary delays in this file.

[17] Accordingly, the Association's request for an adjournment of the hearing process is denied.

[18] Parties will be receiving a letter shortly where dates for exchange of disclosure and filing of their statement of particulars will be set.

Signed by

Sophie Marchildon
Administrative Judge

Ottawa, Ontario
June 18, 2014