Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Between:

Shelley Annette MacEachern

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service of Canada

Respondent

Ruling

File No.: T1823/5312
Member: Ricki Johnston
Date: February 11, 2014
Citation: 2014 CHRT 4

I. Background

[1] The Complainant, Ms. Shelley MacEachern, filed a Complaint with the Canadian Human Rights Commission ("CHRC") on July 6, 2010 (the "Complaint"). In that Complaint, the Complainant alleges her employer, Correctional Services of Canada ("CSC"), on or around early January of 2010 refused her employment as a Corrections Officer in the Grande Cache Institution ("GCI") as a result of her medical status, Type 1 Diabetes. The Complainant alleges the decision constituted discrimination due to disability. On May 7, 2012, the CHRC referred the Complaint to this Tribunal for inquiry.

[2] On August 26, 2013, the Tribunal received the Complainant's Statement of Particulars ("SOP") in which she included her original allegation of discrimination on the basis of disability, but in addition raised a number of new allegations regarding ongoing matters arising during her employment in an administrative capacity with CSC at the GCI between January of 2010 and August of 2013.

[3] In December of 2013, the Complainant filed her application to amend her Complaint to add the additional claims set out in the SOP ("Amendment Application"). The Amendment Application is the subject of this ruling. In particular, the Complainant seeks to amend the Complaint to add claims under sections 14(1)(c) and 14.1 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "*Act*").

II. Complainant's Position

[4] The Complainant's submissions in the Amendment Application were, at times, difficult to interpret. Extensive detail is provided about the daily activities of the Complainant between May of 2010 and August of 2013. It is difficult to determine which of these daily activities are intended to form the substance of the allegations of harassment under s. 14(1)(c) and retaliation under s. 14.1. However, it should be noted that given that the Complainant is unrepresented by counsel every effort has been made to interpret the material provided in support of the application broadly.

[5] After being refused a position as a Corrections Officer in early 2010, the Complainant gained employment in an administrative position at the GCI. The Complainant states she experienced no harassment, retaliation or discrimination in her position with CSC at CGI from the filing of her complaint in 2010 until the winter of 2011 when an additional member, Ms. T. Opperman was added to the Complainant's working group as a Supervisor. Following the addition of Ms. Opperman, the Complainant alleges she experienced a number of occasions of harassing and/or retaliatory behaviour. Although the Complainant does not identify which of the facts alleged in the Amendment Application form the basis of each of her claims of harassment and/or retaliation, the essential salient allegations appear to include:

(a) Supervisors within the Complainant's Security Intelligence Office ("SIO") working unit would, on occasion, lock the door of the SIO office and place a sign on the door indicating the SIO office was closed. The Complainant alleges this was done on occasions when the Supervisors were in that office;

(b) The door of a meeting room was locked on more than one occasion while the Complainant was inside attending a meeting with her union rep;

(c) A summer student was brought into the SIO working unit to work on a project regarding inmate security that the Complainant had worked on the previous summer. The Complainant alleges the transfer of this project to the summer student was a punishment of her by one of her Supervisors as she had not completed the project on time previously;

(d) The Complainant was asked to file 40-50 files in a fifteen minute time period;

(e) The Complainant's attire was criticized by her Supervisor;

(f) The Complainant had a verbal altercation with her Supervisor in which she was asked to leave the SIO office although she was working on a matter in the SIO office at that time.;

(g) The Complainant received an Unprofessional Conduct report from her Supervisor related to her interaction with another employee at the Institution. The Complainant seems to argue that the report was unjustified;

(h) The Complainant was directed to attend an Attendance Awareness meeting despite the fact that her union representative did not agree with the direction and following that meeting was placed on three months probation;

(i) The Complainant was required to move her desk into another working unit for approximately six weeks as a result of an ongoing conflict resolution issue with another Supervisor; and

(j) The Complainant has had a series of ongoing disputes with her Supervisor involving use of lieu time payouts, sick pay and cash payouts. She alleges she was forced to take leave without pay rather than use lieu time for sick days.

[6] The Complainant argues that all of these actions are harassment and/or retaliation for her Complaint.

III. Respondent's Position

[7] The Respondent argues there is no factual connection between the matters raised in the Complaint and the matters raised in the Amendment Application. In particular, the Respondent alleges the matters relating to harassment are simply an ongoing issue of workplace conflict and compensation entitlement unrelated to the Complainant's disability. They allege in regard to retaliation claims that no evidence has been put forward to suggest those parties involved in the matters in the Amendment Application were aware of the Complaint or reacting to it. The

Respondent adds, the Complainant's allegations state there were no "retaliation" issues for more than 18 months following the filing of the Complaint. Therefore, there is no factual nexus between the original Complaint and the matters in the Amendment Application.

[8] The Respondent's position is further that the Amendment Application should not be granted as it will suffer prejudice should the additional allegations be added. The alleged prejudice to the Respondent includes:

(a) The claims as set out in the Amendment Application are not stated with sufficient particularity to allow the Respondent to know the case to be met;

(b) The matters set out in the Amendment Application are the subject of a grievance initiated by the Complainant before the Treasury Board of Canada and could therefore result in multiplicity of proceedings and conflicting resolutions; and

(c) The allegations in the Amendment Application would result in a significantly longer hearing involving multiple witnesses with no knowledge of matters raised in the Complaint.

IV. Amending Complaints

[9] It is well established that the Tribunal has the authority to amend complaints "...for the purpose of determining the real questions in controversy between the parties" (*Canderel Ltd. v. Canada*, [1994] 1 FC 3 (FCA); cited in *Canada (Attorney General) v. Parent*, 2006 FC 1313 at para. 30 [*Parent*]).

[10] Despite the broad discretion in granting amendments, an amendment cannot introduce a substantially new complaint, as this would bypass the referral process mandated by the *Act* (see *Gaucher v. Canadian Armed Forces*, 2005 CHRT 1 at paras. 7-9; and, *Cook v. Onion Lake First Nation*, 2002 CanLII 45929 (CHRT) at para. 11).

[11] Given this restriction, a proposed amendment must be linked, at least by the complainant, to the allegations giving rise to the original complaint. There must be a factual nexus between the original complaint and the amendment sought (see *Virk v. Bell Canada*, 2004 CHRT 10 at para. 7; and, Cam-*Linh (Holly) Tran v. Canada Revenue Agency*, 2010 CHRT 31 at paras. 17-18; and, *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2012 CHRT 24 at para. 16).

[12] When the proposed amendment arises out of a different set of facts such that it constitutes a new complaint, it is outside of the scope of the complaint referred from the CHRC and therefore the Tribunal lacks jurisdiction to include it in its inquiry (*Canadian Museum of Civilization Corp. v. Public Service Alliance of Canada*, 2006 FC 704 at paras. 40 and 50).

[13] In addition to establishing a link between the subject of the original complaint and the proposed amendment, the Tribunal must also examine the prejudice that the Respondent could suffer in allowing the Complainant to amend its complaint. As stated in *Parent*, *supra*, at paragraph 40:

> The issue of prejudice is the predominant factor to be considered in such circumstances: the amendment must not be granted if it results in a prejudice to the other party.

[14] The substance of the Complainant's allegations as set out in her Amendment Application are that she has experienced ongoing harassment and retaliation between the winter of 2011 and the fall of 2013. The Complainant's position is that these claims should be added as harassment under section 14(1)(c) or as retaliation for the filing of her Complaint under s. 14.1.

[15] Sections 14 and 14.1 of the *Act* provide:

> 14. (1) It is a discriminatory practice,
>
> > (a) in the provision of goods, services, facilities or accommodation customarily available to the general public,

> (b) in the provision of commercial premises or residential accommodation, or
>
> (c) in matters related to employment,
>
> to harass an individual on a prohibited ground of discrimination.
>
> (2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.
>
> 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.

[16] While the Complainant's original Complaint as referred by the CHRC dealt with her denial of employment as a Corrections Officer as a result of her medical condition, being diabetes, the matters set out in the Amendment Application deal broadly with an ongoing issue of workplace dispute in her administrative role with the GCI. In order for the Complainant to amend her Complaint on the basis of s. 14(1)(c) to add harassment, that harassment would by necessity have to be connected in some way to the facts and/or disability that form the substance of her original Complaint. There is no indication that any of the matters alleged as harassment are connected with or relate to the original Complainant or the Complainant's diabetes.

[17] In order for the matters raised in the Amendment Application to fall within s. 14.1 and constitute retaliation for the Complaint, there would have to be some indication put forward by the Complainant that the matters occurred with some knowledge of or in response to the Complaint. The Complainant does not allege that her Supervisors in the administrative position were aware of or responding to the Complaint, and there is no connection between the refusal of employment giving rise to the original Complaint and any of the matters arising in the Amendment Application. Rather, the Complainant's allegations of retaliation appear to focus primarily on allocation of work, formal leave policies and interpersonal matters between the

Complainant and one of her supervisors – none of which are connected in fact by the Complainant to her diabetes or her Complaint.

[18] There is no factual nexus between the matters in the Amendment Application and the Complaint. Rather, the Amendment Application constitutes a substantially new claim and this Tribunal does not have jurisdiction to hear that new claim without referral from the CHRC.

[19] The Respondent also claims it will be prejudiced by the Complainant's proposed amendments because the claims are not stated with sufficient particularity to know the case to be met. Claims for particularization can usually be remedied by filing amended Statements of Particulars and/or providing ample time and opportunity to respond to the allegations (see for example, *Itty v. Canada Border Services Agency*, 2013 CHRT 33 at para. 61; *Tabor v. Millbrook First Nation*, 2013 CHRT 9 at para. 14; Egan *v. Canada Revenue Agency*, 2012 CHRT 31 at para. 31; and, *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2012 CHRT 24 at para. 17). In any event, it is not necessary to address the Respondent's prejudice argument as I am satisfied that the amendments are not appropriate for the reasons stated above.

[20] Given the above, the finding that there is no factual nexus between the original Complaint and the matters raised in the Amendment Application, the Tribunal does not have jurisdiction to permit the Complaint to be amended to allow the additional matters to be heard.

[21] Therefore, the Complainant's Amendment Application is hereby dismissed.

Signed by

Ricki Johnston
Tribunal Member

Ottawa, Ontario
February 11, 2014

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1823/5312

Style of Cause: Shelley Annette MacEachern v. Correctional Service of Canada

Ruling of the Tribunal Dated: February 11, 2014

Appearances:

Shelley Annette MacEachern, for herself

Brian Smith, for the Canadian Human Rights Commission

Barry Benkendorf, for the Respondent