

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Ronald Wayne Mattice

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Westower Communications Ltd.

Respondent

Ruling

File No.: T1816/4612
Member: David Thomas
Date: December 2, 2014
Citation: 2014 CHRT 32

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I. Motion to dismiss

[1] This is a ruling concerning a Motion filed by the Respondent dated September 15, 2014, seeking an order dismissing the complaint. The Respondent's grounds for the motion are that the Complainant failed to comply with his disclosure obligations, that he repeatedly failed to comply with the Tribunal's *Rules of Procedure* and that both the Tribunal and the Respondent have been frustrated in their efforts to move this case forward due to the conduct of the Complainant. The Respondent alleges it is an abuse of process to allow this complaint to proceed.

[2] For the reasons given below, I grant the Respondent's motion and dismiss the complaint.

II. Background

[3] The complaint in this matter was filed with the Commission by the Complainant on September 29, 2010. On April 24, 2012, pursuant to s. 44(3)(a) of the *Canadian Human Rights Act* (the "CHRA"), the Commission requested the Canadian Human Rights Tribunal (the "Tribunal") to institute an inquiry into the complaint. The Complainant alleges Westower Communications Ltd. discriminated against him on the grounds of race, national or ethnic origin and colour, by treating him in a different manner as compared to other employees and, ultimately, terminating his employment, contrary to sections 7 and 14 of the *CHRA*. Specifically, the complaint alleges that in the course of his employment with the Respondent, during the period of September 2007 to April 2010, he was subject to derogatory racial comments by co-workers. His complaint suggests he believes he was ultimately terminated because he complained to management about these comments.

[4] Having been requested to institute an inquiry into the matter, on May 8, 2012, the Tribunal wrote to all parties inquiring whether they wished to participate in the alternative mediation process. A deadline to respond by May 30, 2012 was given. All parties confirmed in a timely manner that they wished to participate.

[5] On June 20, 2012, the Tribunal emailed the parties, confirming that all parties agreed to proceed to mediation settlement conference. The Tribunal provided two deadlines to the parties:

- (a) By June 28, 2012, parties were required to confirm their availability; and
- (b) By July 29, 2012, parties were required to provide their mediation brief.

[6] On June 26, 2012, the Commission provided its mediation brief and on June 27, 2012, the Commission advised the Tribunal of its available dates.

[7] On June 27, 2012, Westower advised its available dates and submitted its mediation brief.

[8] On June 28, 2012 Mr. Mattice advised the Tribunal of his available dates and advised that his mediation brief and applicable documents would be submitted shortly. Mr. Mattice did not submit his mediation brief by the deadline of July 29, 2012.

[9] On September 10, 2012, the Tribunal sent an email to all parties confirming that mediation briefs had been received from the Respondent and the Commission, but not from the Complainant.

[10] On November 27, 2012, the Tribunal sent an email to Mr. Mattice inquiring about his mediation brief, which had still not been submitted.

[11] On December 5, 2012, Mr. Mattice advised the Tribunal that he would produce his mediation brief by December 28, 2012. He also informed the Tribunal that he had not received its earlier correspondence. Accordingly, the Tribunal then sent copies of documents and correspondence to Mr. Mattice by courier to ensure his records were complete.

[12] December 28, 2012, arrived and Mr. Mattice had still not produced his mediation brief.

[13] On January 23, 2013, Mr. Mattice contacted the Tribunal and advised that by February 5, 2013, he would produce his mediation brief.

[14] February 5, 2013, arrived and Mr. Mattice had still not produced his mediation brief.

[15] On April 25, 2013, the Tribunal informed the Commission and the Respondent that it had again spoken with Mr. Mattice, who agreed to produce his mediation brief the following day.

[16] April 26, 2013, arrived and Mr. Mattice had still not produced his mediation brief.

[17] On July 26, 2013, the Tribunal set a new deadline of August 12, 2013 for Mr. Mattice to produce his mediation brief, failing which, a Case Management Conference Call ("CMCC") would be scheduled.

[18] August 12, 2013, arrived and Mr. Mattice had still not produced his mediation brief.

[19] On November 15, 2013, the Tribunal advised the parties that Mr. Mattice had still not provided his mediation brief. The Tribunal sent a letter to the parties on November 26, 2013. Although a CMCC was set up for January 21, 2014, it did not proceed.

[20] On January 17, 2014, the Tribunal informed the parties it had again spoken with Mr. Mattice, who had promised to provide his mediation brief that same day.

[21] Mr. Mattice did provide a written statement about his situation as a visible minority on January 17, 2014. However, the Tribunal advised him this statement was inadequate to be used as a mediation brief and encouraged him to provide something more substantial.

[22] On March 6, 2014, Mr. Mattice provided a very short brief for the mediation, about one paragraph in length.

[23] The mediation settlement conference occurred on May 14, 2014 but was unsuccessful. Consequently, the complaint proceeded to the disclosure and Statement of Particulars stage of the Tribunal's process.

[24] On May 15, 2014, the Tribunal wrote the parties, setting deadlines for the production of the Statements of Particulars and disclosure of documents. The Tribunal instructed Mr. Mattice to produce that documentation by June 23, 2014, and the Respondent was instructed to provide its Statement of Particulars in response by July 14, 2004.

[25] June 23, 2014, arrived and Mr. Mattice had not produced a list of disclosure documents nor his Statement of Particulars. Prior to the deadline, he had not contacted the Tribunal or any other party to seek an extension of the deadline.

[26] In a letter dated June 24, 2014, the Tribunal reminded Mr. Mattice of his disclosure obligations. Mr. Mattice did not respond to this letter.

[27] On July 10, 2014, Westower wrote to the parties and requested that the Tribunal set a deadline for Mr. Mattice to produce his Statement of Particulars and to provide disclosure of documents. Westower also put the parties on notice that if Mr. Mattice continued to fail to meet the time lines set by the Tribunal, Westower would bring an application to dismiss the complaint for want of prosecution.

[28] On July 17, 2014, the Tribunal set a new deadline of September 2, 2014, for Mr. Mattice to produce his Statement of Particulars and to provide disclosure of documents. The Tribunal also requested that all parties provide their availability for a CMCC by July 18, 2014.

[29] On July 28, 2014, the Tribunal confirmed to all the parties that the CMCC would take place on August 26, 2014.

[30] On August 21, 2014, the Tribunal Registry Officer spoke to Mr. Mattice and reminded him of the CMCC coming up the following week and of his obligation to complete his Statement of Particulars and document disclosure by September 2, 2014. Mr. Mattice indicated he would be in attendance for the CMCC and did not indicate any difficulty in meeting the September 2, 2014 deadline.

[31] On August 26, 2014, the CMCC occurred as scheduled. However, Mr. Mattice failed to attend the CMCC without explanation. The Registry Officer attempted to contact him by telephone that morning. On one occasion, Mr. Mattice's phone rang for a long time without answer. A few minutes later, when the call was re-attempted, Mr. Mattice's phone rang twice and then was forwarded to its voicemail. Mr. Mattice had not provided prior notice that he would not be in attendance for the CMCC.

[32] Mr. Mattice did not provide his Statement of Particulars or the disclosure of documents by the deadline of September 2, 2014.

[33] On September 4, 2014, the Tribunal wrote the parties to inform them that it had spoken with Mr. Mattice, who agreed to produce his Statement of Particulars and to provide his disclosure of documents on that same day.

[34] By the end of the day on September 4, 2014, Mr. Mattice had still not provided his Statement of Particulars or disclosure of his documents.

[35] On September 5, 2014, the Tribunal confirmed to the other parties that Mr. Mattice had still not provided his Statement of Particulars and that he had not provided disclosure of documents.

[36] On September 15, 2014, the Tribunal received a copy of the Motion of the Respondent for dismissal of the complaint for want of prosecution.

[37] A copy of the Respondent's Motion for dismissal was sent to Mr. Mattice by email on September 15, 2014 at 4:45pm. The Registry Officer subsequently spoke to Mr. Mattice by telephone and advised him of the Motion and that it was imperative for him to respond to it.

[38] In order to ensure that Mr. Mattice received a copy of the Motion for dismissal, a professional process service company was engaged by the Tribunal. On October 20, 2014, Mr. Mattice was served with a printed copy of the Motion for dismissal and a letter from the Tribunal dated October 6, 2014, advising him that he had 7 days from the date of service to reply to the enclosed Motion.

[39] Mr. Mattice did not reply to the Motion for dismissal by October 27, 2014 or at any time thereafter.

III. Analysis

[40] The Respondent argues that Mr. Mattice has repeatedly failed to comply with his disclosure obligations and failed to comply with the Tribunal's *Rules of Procedure*. Westower alleges this is wilful and deliberate conduct on the part of Mr. Mattice and, therefore, it would be an abuse of process to allow his complaint to proceed.

[41] The Tribunal is entitled to protect its process from abuse (*Canada (Human Rights Commission) v. Canada Post Corp.*, 2004 FC 81 at para. 15, aff'd *Canadian Human Rights Commission v. Canada Post Corp.*, 2004 FCA 363). In *Labelle v. Rogers Communications Inc.*, 2012 CHRT 4, the Tribunal canvassed the principles applicable to a motion to dismiss for a failure to actively pursue the complaint (at paras. 73-88). The Tribunal may dismiss a complaint where the case has remained static for an unreasonable length of time, due to a "wholesale disregard" for the time limits set by the Tribunal, such that the delay constitutes an abuse of the Tribunal's process (see *Tourangeau v. Greyhound Canada Transportation Corporation*, 2008 CHRT 2 at para. 8; and, *Johnston v. Canadian Armed Forces*, 2007 CHRT 42 at paras. 29-34).

[42] In my view, Mr. Mattice has shown a wholesale disregard for the time limits set by the Tribunal and has abused its process.

[43] He failed to meet his deadline for filing a mediation brief five times. He did not request an extension of any of these deadlines and each passed without notice from him that they would not be met.

[44] Mr. Mattice failed to submit his Statement of Particulars twice. Again, without a request for an extension or notice from him.

[45] He also failed to participate in a CMCC organized primarily to address his noncompliance. Mr. Mattice had four weeks' notice of the CMCC and a telephone call reminder a few days prior.

[46] Finally, despite being made aware of the Respondent's Motion to dismiss, Mr. Mattice did not avail himself of the opportunity to respond to the Motion.

[47] Rule 1(5) of the Tribunal's *Rules of Procedure* provides that dates and time limits set by the Tribunal are mandatory:

1(5) Unless the Panel grants an extension or an adjournment, all time limits for complying with these Rules and all dates set for a hearing, a motion or a case conference are peremptory.

[48] Mr. Mattice did not request adjournments or extensions of time for filing his mediation brief, attending the CMCC on August 26, 2014, or meeting the deadlines for his Statement of Particulars and disclosure of documents requirements. He did not even provide a response to this motion to dismiss his complaint.

[49] In the normal course, a Tribunal file will proceed to mediation within 3-6 months of referral, based on the agreement and availability of all involved. Generally, barring preliminary

issues, Statements of Particulars are exchanged and dates for a hearing are determined within a year of referral. This complaint goes far beyond the Tribunal's usual timeframe and there have not been any preliminary issues or other circumstances that have arisen. Nor has the Complainant provided any sort of explanation for his repeated failure to abide by timelines.

[50] The complaint was referred to the Tribunal on April 24, 2012. From there, after failing to meet his deadline for filing a mediation brief five times, it took Mr. Mattice two years to get to mediation. Following an unsuccessful mediation, and despite the Tribunal's efforts, it has now been another six months since Mr. Mattice was asked to produce a Statement of Particulars and disclose his case for hearing. Approaching three years since the complaint was referred to the Tribunal, there is still no indication that it will proceed to a hearing anytime soon. In my view, this complaint has remained static for an unreasonable length of time due to the Complainant's disregard for the time limits set by the Tribunal and should be dismissed on this basis.

[51] In addition, the Tribunal is mandated to conduct its proceedings informally and expeditiously, to allow for an efficient, fast and economical way for Canadians to access recourse under the *CHRA* (see s. 48.9(1)). The Canadian human rights system is designed to ensure not only respect for the human rights of individual complainants, some of whom are the most vulnerable amongst us in society, but also to uphold some of the fundamental values of our society as a whole. In this regard, while the Tribunal gives due consideration to accommodating the needs of self-represented parties to allow them the full and ample opportunity to present their case, it will not do so to the detriment of the other parties or the Tribunal. While conducting its proceedings informally and expeditiously, at the same time, the Tribunal is obliged to respect the principles of natural justice. That is, the Tribunal owes a duty of fairness to all parties.

[52] It would not be impossible to imagine a party to a complaint deliberately drawing out proceedings simply for the purpose of inflicting financial damage to the other party, with the knowledge that every delay or missed deadline simply adds to the cost of being named in the matter. Long, drawn out legal proceedings can be a costly affair for the parties. In particular, if a party to a complaint has retained outside legal counsel, for every delay, every missed deadline,

every adjourned case management call, every time a matter must be addressed a second, third and fourth time, there is a real financial cost to the party. Along with delay and ensuring compliance with its procedure, the Tribunal must guard against this possible abuse of process as well.

IV. Ruling

[53] As a result, the complaint is dismissed because Mr. Mattice has refused to actively pursue his complaint.

Signed by

David Thomas
Tribunal Chairperson

Ottawa, Ontario

December 2, 2014