

**Canadian Human Rights  
Tribunal**



**Tribunal canadien des droits de  
la personne**

**Citation:** 2015 CHRT 12

**Date:** May 28, 2015

**File No.:** T1749/10411

**Between:**

**Donald James Federuik**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Jenn Trucking Ltd.**

**Respondent**

**Ruling**

**Member:** Ricki T. Johnston

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## **I. Motion**

[1] This is a ruling on a motion filed by the respondent, Jenn Trucking Ltd. (the Respondent) dated November 5, 2014, seeking an order dismissing the complaint on the grounds that the Complainant has failed to participate in the process of this Tribunal for approximately 2 ½ years and further that such failure to participate has resulted in an undue delay prejudicial to the Respondent and is an abuse of the process of this Tribunal.

## **II. Background**

[2] The Complainant brings this matter alleging discrimination based on disability as a result of events allegedly occurring between February and May of 2009. The Respondent employed the Complainant until May 2009 as a swamper/driver on a picker truck. The Complainant alleges that he was injured in the course of his employment while falling from a truck-bed to the ground and that a disability arising from those injuries was not accommodated by the Respondent.

[3] The complaint was filed with the Canadian Human Rights Commission ("CHRC") on May 25, 2010. The matter was referred to this Tribunal for an inquiry on October 28, 2011 and on November 29, 2011 the CHRC advised the Complainant and the Tribunal that it would not be participating in the hearing of this matter.

[4] On December 20, 2011 the Tribunal sent its initial letter to the Complainant and Respondent indicating the Tribunal would be conducting an inquiry into this matter. On January 31, 2012, the Tribunal again wrote to the parties setting out the disclosure process and requesting that the Complainant provide its Statement of Particulars including his lists of remedies and disclosure by February 24, 2012. In this same correspondence, the Tribunal directed the CHRC to make disclosure by February 10, 2012 and the Respondent by March 16, 2012.

[5] The CHRC made its disclosure on February 9, 2012 and the Respondent did so on March 16, 2012. The Complainant did not comply with the December 20, 2011 direction regarding disclosure. A Case Management Conference Call ("CMCC") was set for and

held on May 31, 2012 during which the Complainant's deadline for providing his particulars and disclosure was extended to June 21, 2012 and the Respondent was given the opportunity to provide an amended Statement of Particulars by July 12, 2012.

[6] The Complainant provided his particulars and disclosure on June 12, 2012 and the Respondent filed its Amended Statement of Particulars on July 12, 2012. Following this, the Tribunal contacted the Complainant on March 27, 2013 and May 3, 2013 requesting his availability for a CMCC; the purpose of the CMCC process being to ensure the parties are moving the matter towards readiness for a hearing. Given the Complainant's failure to respond with regard to his availability, a CMCC was set for January 21, 2014. The Tribunal advised the Complainant by e-mail and couriered letter that he was required to participate in that call. The Complainant failed to participate in that CMCC.

[7] On or around July 10, 2014, the Tribunal spoke to the Complainant and confirmed that the matter had moved into the hearing stage and that he would have to make himself available for a CMCC and for the hearing itself. The Complainant during that discussion indicated he would advise the Tribunal with regard to his intentions for the proceedings by August 5, 2014.

[8] The Complainant failed to contact the Tribunal by August 5, 2014 and a second CMCC was set for August 29, 2014 with notice to the Complainant of his requirement to participate. On August 28, 2014, the Complainant contacted the Tribunal by email and indicated:

I am hardly ever at home during the day as I am working to support me and my 3 boys...I suppose it would work best and so I'm not holding you up any further with timelines not working out for me, for you to hold your conference call as scheduled, even though I cannot attend...I cannot afford to pursue this matter as it is very time consuming and so I will have to go with the tribunals decision in this matter.

[9] As a result of the Complainant's email, the August 29, 2014 CMCC was postponed. The Commission wrote to the Complainant on September 2, 2014 and asked that he confirm "clearly and unequivocally" whether his August 28, 2014 email meant he wished to withdraw his complaint. The Tribunal then contacted the Complainant by letter on September 16, 2014 asking that he advise on or before September 25, 2014, whether he

intended to participate both in the CMCC process and the hearing of this matter. The Complainant again failed to respond and a CMCC was set for October 23, 2014 with notice to the Complainant given by email and courier letter.

[10] The Complainant failed to participate in the CMCC on October 23, 2014 despite the fact that efforts were made by the Tribunal to contact him by telephone three times during that CMCC. A schedule was then set for the Respondent to proceed with a motion to dismiss the Complaint and to allow for the Complainant to provide submissions. The Respondent's motion was to be filed on November 5, 2014, the Complainant and the Commission had until December 5, 2014 to provide any response. Notice of the directions regarding this motion was provided to the Complainant by e-mail and couriered letter.

[11] Numerous efforts were made by the Tribunal to contact the Complainant with regard to this motion. The Complainant was contacted by voicemail, by registered mail and by emails (some of which were confirmed as both delivered and read). When no response was received, the deadline for the Complainant to file a response was extended to January 5, 2015 and the Complainant was advised of this extension by email, which was opened and read.

[12] Following a review of the Respondent's submissions, all the parties were given an opportunity to make further submissions on the applicability of the doctrine of abuse of process to this motion. The Respondent provided its additional submissions on May 4, 2015.

[13] The Commission has taken no position in this motion and the Complainant has failed to make any response or provide any position in regard to this motion.

### **III. Analysis**

[14] The Respondent argues that as a result of the Complainant's failure to take any meaningful steps in this matter and in particular the Complainant's failure to participate in this matter in any way since July of 2012, the Respondent has been prejudiced. In addition, the Respondent contends that the Complainant's failure to participate in the

process of this Tribunal constitutes an abuse of that process. The Complainant has no stated position.

[15] This Tribunal, as master of its own procedure, is entitled to take measures preventing abuse of its process, including dismissing a matter. In *Labelle v. Rogers Communications Inc.*, 2012 CHRT 4 (CanLii) the Tribunal confirmed that it may dismiss a complaint where the matter has remained static for an unreasonable length of time “due to a wholesale disregard” for the time limits set by the Tribunal. In such circumstances, that delay can constitute an abuse of the Tribunal’s process. (See also, *Mattice v. Westover Communications Ltd.*, 2014 CHRT 32)

[16] The Complainant in this matter has failed to engage in any meaningful way in the process before this Tribunal since June of 2012. Despite extensive efforts on the part of the Tribunal, the Complainant has failed to make himself available for a CMCC in more than 2 ½ years. Additionally, the Complainant has expressed some equivocation regarding proceeding but has refused to provide the Tribunal or the Respondent with a clear and unequivocal intention of whether he intends to proceed or not. While the Complainant made note in his August 28, 2014 email of his concerns regarding proceeding in the face of employment and parental obligations, he requested no accommodation from the Tribunal and has communicated nothing further to the Tribunal with regard to those issues. Finally, the Complainant has provided no response to this motion to dismiss.

[17] At this point, more than 3 ½ years since this matter was referred to the Tribunal for an inquiry, very little has been done to move this matter toward a hearing and there is little to indicate it will move toward a hearing at any point in the near future. This delay has occurred despite express directions from the Tribunal regarding the Complainant’s required participation.

[18] It is not necessary to consider the Respondent’s arguments for a dismissal of this complaint based on prejudice incurred, as the motion has been decided on the basis of abuse of process.

**IV. Ruling**

[19] The Tribunal finds that the Complainant's failure to actively pursue the complaint and his failure to adhere to directions of this Tribunal constitute an abuse of process. As a result, the within complaint is dismissed.

*Signed by*

Ricki T. Johnston  
Tribunal Member

Ottawa, Ontario  
May 28, 2015