Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2015 CHRT 18
Date: July 23, 2015
File No.: T1658/01311 & T1659/1411

Between:

Stacy Lee Tabor

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Millbrook First Nation

Respondent

Decision

Member: Sophie Marchildon

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I. Complaint & Background

[1] On May 21, 2008, Ms. Tabor filed a complaint alleging Millbrook First Nation (Millbrook) had a practice of depriving women, including herself, employment opportunities in its fishery pursuant to sections 7 and 10 of the *Canadian Human Rights Act* (the *CHRA*). She also alleged Millbrook denied her employment opportunities because of her marital status.

[2] On January 16, 2009, Ms. Tabor filed a subsequent complaint under section 14.1 of the *CHRA* alleging Millbrook retaliated against her for having filed her first complaint.

[3] Both complaints were referred to the Canadian Human Rights Tribunal (the Tribunal) on March 7, 2011. On April 10, 2013, the Tribunal rendered a ruling to amend the complaint to add further allegations of retaliation (see *Tabor v. Millbrook First Nation*, 2013 CHRT 9). The complaints were heard together in Truro, Nova Scotia from July 28 to August 7, 2014; and, on September 16, 2014. In *Tabor v. Millbrook First Nation*, 2015 CHRT 9 (*Tabor #1*), I found Ms. Tabor's section 7 and 10 complaint to be substantiated. The following decision deals with Ms. Tabor's retaliation complaint.

[4] After hearing from the parties and reviewing all the evidence before me, I find the retaliation complaint is also substantiated in part.

II. Analysis

A. Legal Framework

[5] Section 14.1 of the *CHRA* provides that it is a discriminatory practice for a person against whom a complaint has been filed, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

[6] The onus of establishing retaliation rests on the complainant, who must present a *prima facie* case. That is, the complainant must provide evidence which, if believed, is complete and sufficient to justify a verdict that the respondent retaliated against him or her (see *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 SCR 536 at para. 28

[*O'Malley*]). To establish a *prima facie* case of retaliation, complainants are required to show that they have made a complaint under the *CHRA*; that they experienced adverse treatment following the filing of their complaint from the person they filed a complaint against or any person acting on their behalf; and, that the human rights complaint was a factor in the adverse treatment (see *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33).

[7] To prove a previous human rights complaint was a factor in any adverse treatment a complainant suffered, the Tribunal has sometimes required the complainant to establish proof of an intention to retaliate (see *Virk v. Bell Canada*, 2005 CHRT 2; *Malec, Malec, Kaltush, Ishpatao, Tettaut, Malec, Mestépapéo, Kaltush v. Conseil des Montagnais de Natashquan*, 2010 CHRT 2; and, *Cassidy v. Canada Post Corporation & Raj Thambirajah*, 2012 CHRT 29). Others have examined a complainant's reasonable perception that the act is retaliatory instead of requiring proof of intent (see *Wong v. Royal Bank of Canada*, 2001 CanLII 8499 (CHRT); and *Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 40). In the second group of cases, the reasonableness of the complainant's perception is measured so as not to hold the respondent accountable for unreasonable anxiety or undue reaction by the complainant.

[8] In my view, to require proof of intent in order to establish retaliation places a higher burden to substantiate this discriminatory practice than for any of the others outlined in the *CHRA*. This is not consistent with a broad and liberal interpretation of the *CHRA* or human rights legislation in general (see *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2015 CHRT 14 at paras. 3-28).

[9] Retaliation is a discriminatory practice under the *CHRA* (see sections 4 and 39 of the *CHRA*). The *CHRA* is primarily aimed at eliminating discrimination, not punishing those who discriminate. Therefore, "the motives or intention of those who discriminate are not central to its concerns" (*Robichaud v. Canada (Treasury Board)*, 1987 CanLII 73 (SCC) at para. 10 [*Robichaud*]) Rather, the *CHRA* is "…directed to redressing socially undesirable conditions quite apart from the reasons for their existence" (*Robichaud* at para. 10). Furthermore, to require proof of intent to establish discrimination would "…place a virtually

insuperable barrier in the way of a complainant seeking a remedy" as "[i]t would be extremely difficult in most circumstances to prove motive…" (*O'Malley* at paragraph 14). As the Tribunal has stated many times: "Discrimination is not a practise which one would expect to see displayed overtly" (*Basi v. Canadian National Railway*, 1988 CanLII 108 (CHRT)).

[10] There are also important policy considerations underlying section 14.1 of the *CHRA* that militate against requiring proof of intent in order to substantiate a retaliation claim. A prohibition on retaliation safeguards the integrity of the *CHRA* complaint process by providing protection for complainants who may be hesitant to exercise their rights under the *CHRA* for fear of reprisal. It also provides an assurance that, if reprisal is taken against them as a result of the filing of a complaint, redress will be provided. This section may also serve to deter those who might retaliate. Requiring intent to establish retaliation may defeat these purposes behind section 14.1.

[11] In fact, prior to the inclusion of section 14.1, retaliation was treated as a summary conviction offence under sections 59 and 60 of *CHRA*. Under those sections, there were few retaliation prosecutions, and those launched had generally been unsucessful. That was because it was hard to meet the criminal requirements needed to secure a conviction in those cases: proof beyond a reasonable doubt that action was taken against a complainant with the intent to retaliate. As a result, Parliament decided the *CHRA* would be better suited than the criminal courts to deal with retaliation cases (see Parliament of Canada, *Legislative Summary-298E, Bill S-5: An Act to Amend the Canada Evidence Act, the Criminal Code, and the Canadian Human Rights Act* by Nancy Holmes (Law and Governance Division, 1998) at C3, online: Parliament of Canada <http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?lang=E&ls=S5&Parl=36&Ses=1>).

[12] For these reasons, I do not believe a complainant should be required to prove intent in order to substantiate a retaliation claim under the *CHRA*. In my view, a complainant must simply present sufficient evidence to justify that their human rights complaint was a factor in any alleged adverse treatment they received from a respondent following the filing of their complaint, whether based on a reasonable perception thereof or

otherwise. If sufficient evidence is presented to establish a *prima facie* case of retaliation, it is then the Tribunal's role to consider the complainant's evidence, alongside any evidence presented by the respondent, to determine whether it is more probable than not that retaliation has occurred.

B. Ms. Tabor's allegations of retaliation

[13] Ms. Tabor presented a series of allegations of retaliation. She claims Millbrook (1) interfered with her fisheries research position; (2) took improper action against her under its social welfare system; (3) delayed issuing a possession certificate, and subsequently took improper action against her and her family, with regard to her late father's residence on Millbrook First Nation; (4) charged her for the cost of a new stove when it usually pays for this cost; (5) held her accountable for cheques issued in her name, to be held in trust for a minor, but which were fraudulently cashed by another person; (6) refused to pay her power bill when it usually pays for this cost; (7) denied her travel funds to take a job exam in Halifax when it usually pays for this cost; (8) required her to pay rent; and, (9) denied her a work placement at Millbrook's Health Centre.

[14] I find the allegations regarding the fisheries research position and the denial of travel funds to be substantiated. The other allegations are dismissed.

(i) Substantiated allegations

(a) Interference with fisheries research position

[15] On June 23, 2008, Ms. Tabor applied for a research position in the project: "A Study of the Critical Success Factors in the First Nation Fishery in Atlantic Canada". The position was offered as a partnership between the Atlantic Policy Congress Council of First Nations Chiefs and Memorial University. Millbrook's Chief at the time, Chief Lawrence Paul, was a Co-Chair of the Atlantic Policy Congress' Executive Committee during this time.

[16] On June 26, 2008, Ms. Tabor was hired by Dr. Tom Cooper to work on the research project. Mr. Terrence Hickey was also working on the project with Dr. Cooper. The project required them, amongst other things, to travel to First Nation communities to meet with fishers to collect data and record their views on the research topic.

[17] Given that Millbrook was on the list of communities to be visited for the research project, Ms. Tabor informed Dr. Cooper, by email on July 27, 2008, of the discrimination complaint she had recently filed against the First Nation. Ms. Tabor's evidence is that Dr. Cooper did not anticipate any issues, but would discuss it with Mr. Hickey.

[18] No issues arose until Dr. Cooper and Mr. Hickey arrived in Nova Scotia to begin the interviews. When Ms. Tabor met with both Dr. Cooper and Mr. Hickey in Truro on September 4, 2008, they informed her that Millbrook Chief Lawrence Paul had communicated to them his reluctance to allow Millbrook's Fishery to participate in the research project should Ms. Tabor be on their team. Ms. Tabor described Dr. Cooper's statement to her as being that she should get out of Millbrook because they do not like her there. Ms. Tabor told Dr. Cooper that she did not want to jeopardize the project and would resign if need be. Dr. Cooper and Mr. Hickey told her she could stay on the research team and that their boss would not accept Dr. Cooper and Mr. Hickey`s behaviour should they accept her resignation for this reason.

[19] However, on September 17, 2008, Dr. Cooper called Ms. Tabor to inform her that he was now willing to accept her previous offer to resign given Millbrook would not participate in the research study if she remained on their team. Ms. Tabor did not work on the research project after this date.

[20] As a result, Ms. Tabor believes that the filing of her complaint was a factor that led to the termination of her contract with the fisheries research project.

[21] Mr. Alex Cope, a Band Councilor and the Band Administrator for Millbrook, testified on this issue. He claims to have never spoken to either Dr. Cooper or Mr. Hickey, nor was he aware of any negative communications made to them about Ms. Tabor. He also states Millbrook did not encourage fishers to resist participating in the study because of Ms. Tabor's involvement.

[22] Neither Mr. Hickey nor Dr. Cooper testified before the Tribunal. Rather, Mr. Hickey provided an affidavit, which was attached as an exhibit to Mr. Cope's affidavit; and, Dr. Cooper provided an affidavit that was presented as an exhibit at the hearing. Neither affidavit was tendered for the truth of its contents.

[23] In his affidavit, Mr. Hickey states that, while he and Dr. Cooper were initially supposed to meet with Millbrook Fisheries on September 4, 2008, the meeting was canceled.

[24] Mr. Hickey states that when he and Dr. Cooper met with Ms. Tabor later that day, there was no conversation about anything that was said by Chief Lawrence Paul. Rather, he states Ms. Tabor spontaneously said that if either he or Dr. Cooper wished to dismiss her she would walk away right there and then and nothing would ever be mentioned. According to Mr. Hickey, Ms. Tabor's comment was made without any prior context and as such he disregarded it. On September 17, 2008, Dr. Cooper told Mr. Hickey that he had informed Ms. Tabor that her services were no longer required.

[25] Dr. Cooper's affidavit has some additional information then that of Mr. Hickey's affidavit, however, certain paragraphs are identically worded. Around July 2, 2008, Dr. Cooper states that he spoke with Ms. Tabor on the phone at which time she informed him that she currently had a lawsuit ongoing against the Millbrook Chief and council. According to Dr. Cooper, he therefore advised Ms. Tabor that she would be responsible for the Pictou Landing and Indian Brook First Nations interviews and, because of her lawsuit, he informed her that he did not want her to contact or be involved with Millbrook Fisheries.

[26] Exactly like Mr. Hickey, Dr. Cooper states that, while he and Mr. Hickey met with Ms. Tabor on September 4, 2008, there was no conversation about anything that was said by Chief Lawrence Paul. Rather, Ms. Tabor spontaneously said that if either he or Mr. Hickey wished to dismiss her she would walk away right there and then and nothing would ever be mentioned. Again, like Mr. Hickey, Dr. Cooper states this comment was made without any prior context and as such he disregarded it.

[27] With regard to Ms. Tabor's termination, Dr. Cooper states:

> 12. THAT after returning from Nova Scotia I was informed […] that Stacey Tabor went to the Millbrook Chief Council and informed them that she worked for the Atlantic Policy Congress and that she needed to set up meetings to interview Millbrook Fishermen.
>
> 13. THAT upon hearing that Ms. Tabor contacted the Millbrook Fisheries after being told that she was dealing with Pictou Landing and Indian Brook Fisheries only, I called Ms. Tabor on or about September 17, 2008 and reminded her that she should not have contacted the Millbrook Fisheries and told her that her services were no longer required and thanked her for the work done.

[28] I find Mr. Hickey and Dr. Cooper's affidavits bear little weight given they were not called to elaborate or clarify their affidavits, nor were their statements tested under cross-examination. However, aside from the fact that Mr. Hickey and Dr. Cooper did not appear before the Tribunal, their statements are not consistent with the preponderance of evidence on this issue of retaliation.

[29] First, Ms. Tabor filed in evidence a chain of emails between her and Mr. Hickey, which contradict Dr. Cooper's statement about him not wanting Ms. Tabor to contact or be involved with Millbrook Fisheries. On August 28, 2008, Mr. Hickey wrote to Ms. Tabor and Dr. Cooper:

> Good afternoon Tom and Stacy, Adrian Gloade of Millbrook has asked that we gi [*words cut off*] Pictou Landing. Email does not work well when it comes to communicating. Nei [*words cut off*].

[30] Later that same day, Ms. Tabor wrote back to Mr. Hickey:

> hi terry,
>
> if you wish i could give adrian a briefing about the survey and inform him of your intentions for next week. give me a call in the morning or email me. stacy

[31] Again that same day, Mr. Hickey responded to Ms. Tabor:

> Hi Stacy,
>
> Please feel free-we would very much appreciate it!

> Thanks

[32] On September 4, 2008 Mr. Hickey wrote to Ms. Tabor:

> Hi Stacy,
>
> Just checking to see if Adrian had mentioned if there was a particular time which would be good for him to meet with us?
>
> Also what is your schedule like for the day?
>
> Thanks
>
> Terry

[33] If Mr. Hickey instructed Ms. Tabor to contact Millbrook, why would he then accept that as a reasonable basis for Dr. Cooper to no longer keep her on the research team. This email chain contradicts Dr. Cooper's affidavit and Mr. Hickey says nothing about it in his affidavit. Therefore, I find Mr. Hickey and Dr. Cooper's statements regarding the termination of Ms. Tabor's services to the research team to be unreliable.

[34] Second, both Mr. Hickey and Dr. Cooper state Ms. Tabor spontaneously said that if either of them wished to dismiss her she would walk away right there and then and nothing would ever be mentioned. They say this comment was made without any prior context and as such they disregarded it. I also find this statement to be unreliable. Why would Ms. Tabor, who just started as a Research Assistant, volunteer to be dismissed for no apparent reason. Similarly, why would Mr. Hickey and Dr. Cooper simply disregard a comment of this nature, especially given both were aware of Ms. Tabor's human rights complaint against Millbrook. This explanation is simply not reasonable, especially given that Ms. Tabor confirmed she offered to resign from her position on the research team if her involvement became a stumbling block.

[35] Overall, I believe Ms. Tabor's evidence about Millbrook interfering with her work on the fisheries research team and this interference ultimately being a factor in Dr. Cooper no longer requiring her services. Ms. Tabor's evidence on this issue was detailed and credible, and was not challenged under cross-examination.

[36] Millbrook's evidence in response to her allegations was of little value and, for the reasons outlined above, I found that evidence to be unreliable and unreasonable. I find it more probable than not that Millbrook refused to participate in the research project if Ms. Tabor remained involved. Ultimately, this was a factor in Ms. Tabor losing her role as a Research Assistant on the project. Therefore, on a balance of probabilities, I find Millbrook retaliated against Ms. Tabor pursuant to section 14.1 of the *CHRA*.

(b) Denial of travel funds

[37] Ms. Tabor alleges Millbrook made it difficult for her to access funding to upgrade her job qualifications and education.

[38] In 2009, she applied to Millbrook for funding for her and her husband, Mr. Craig Tabor, to travel to Halifax to take an exam for qualification as a Department of Fisheries and Oceans (DFO) Officer. Ms. Tabor explained that such an officer is responsible for patrolling shore lines for illegal fishing and performs research on such things as habitat and migration.

[39] Ms. Tabor contacted Mr. Bill Pictou, Millbrook's Employment Training Officer, to request these funds. According to Ms. Tabor, Mr. Pictou told her that she was not entitled to funds because she was already a student at Nova Scotia Community College.

[40] Ms. Tabor subsequently contacted Ms. Margaret Poulette, a welfare clerk for Millbrook Social Developement, and asked her if there was anything that her department could do to fund her travel to Halifax. Ms. Poulette indicated to Ms. Tabor that she contact the fisheries office and speak with Michelle Gloade.

[41] When Ms. Tabor contacted the fisheries office, she claims Mr. Thomas Gloade hung up on her after she identified herself. She called Ms. Poulette back and explained what had occurred. Ms. Poulette contacted the fisheries office and had them call Ms. Tabor back.

[42] Michelle Gloade, from the fisheries office, called Ms. Tabor back and apologized for Mr. Gloade's actions. Ms. Gloade indicated that she would present Ms. Tabor's request for funding to Mr. Adrian Gloade, Millbrook's Fisheries Manager.

[43] A few days later, Ms. Tabor contacted Ms. Gloade and asked whether a decision had been made regarding her request for funding. Ms. Gloade told Ms. Tabor that her request had been denied.

[44] Ms. Tabor then contacted Ms. Poulette again to see if there was anything else she could do. Ms. Poulette offered to put Ms. Tabor in contact with Mr. Barry Martin, Social Development Administrator for Millbrook Social Development.

[45] Mr. Martin contacted Ms. Tabor and allocated funds from her house maintenance budget to pay her travel to Halifax.

[46] Ms. Tabor argues she in effect paid for her travel to Halifax herself by sacrificing a portion of her entitlement to house maintenance. She claims Millbrook should therefore reimburse her house maintenance fund.

[47] According to Mr. Cope, it is accurate that Millbrook has made it difficult for Ms. Tabor to access funding for education and training. This is because Ms. Tabor has a history of commencing training but failing to complete all or various stages of it. As a result, any training Ms. Tabor applies for receives a higher degree of scrutiny. According to Mr. Cope, Ms. Tabor's treatment had nothing to do with her human rights complaint, but is based on her record of performance. In testimony, he added that Millbrook follows Service Canada's standards and guidelines for funding courses. Based on those standards and as funds are limited, a person cannot receive funding as a "professional student". They must chose one trade, and cannot study many trades. As Ms. Tabor was already studying as an medical assistant at the time, Millbrook would not fund her travel to take the DFO exam.

[48] Millbrook's response here is almost identical to its response in *Tabor #1* regarding Ms. Tabor's difficulty in getting funding for captain's training. That is, Mr. Cope's affidavit stated Millbrook was reluctant to pay for Ms. Tabor's captain's training course in 1998 because she had previously enrolled in the training in 1997, but did not finish it. However,

in his testimony, Mr. Cope came up with an entirely different reason for initially denying her funding in 1998. I found this new explanation was in response to Ms. Tabor's testimony as to why she did not complete the course in 1997: it was to take care of her father who was ill. This explanation was not challenged by Millbrook and I found it to be a legitimate reason for dropping out of the course in 1997. Overall, I found Millbrook's explanation for Ms. Tabor's difficulty in getting funding for her captain's training to be unreliable and unconvincing (see *Tabor #1* at paras. 72-82).

[49] Millbrook advances a similar argument in response to this retaliation allegation. In my view, this reponse is again pretextual.

[50] Aside from when she did not complete her captain's training in 1997 to take care of her ill father, the overall evidence does not support Mr. Cope's assertion that Ms. Tabor has a history of commencing training but failing to complete all or various stages of it. Rather, the evidence presented to the Tribunal on Ms. Tabor's training was that she successfully completed a Master Limited certificate in 1998, along with other marine training certificates in simulated electronic navigation, marine emergency duties, and proficiency in radio. The Tribunal also heard how Ms. Tabor completed a Medical Office Assistant program in 2010.

[51] Interestingly, in his affidavit, Mr. Cope states Mr. Tabor also has a history of applying for funding and not commencing or finishing the training. Again, the evidence does not support this statement. In response, Mr. Tabor testified that on one occasion he was denied funding for a crane course on the basis of not having completed a previous course. In reality, Mr. Tabor had completed the previous course. When he contacted Millbrook to address the issue, it was determined that the First Nation had mistaken Mr. Tabor for his brother. Ultimately, Mr. Tabor received funding for the crane course from another source and completed the training.

[52] In my view, Ms. Tabor's human rights complaint was a factor in Millbrook's denial of travel funds to her. This situation arose after the filing of her complaint and Millbrook had knowledge of the complaint. Furthermore, Ms. Tabor testified that she felt blocked by Millbrook at every turn by it continually denying her opportunities. In my view, Ms. Tabor's

perception is reasonable given she was also denied the opportunity to fish, which was found to be discriminatory in *Tabor #1*, and the opportunity to participate in fisheries research, which was found to be a retaliatory action earlier in this decision. Mr. Tabor's experience also reinforces Ms. Tabor's perception.

[53] Mr. Cope's explanation for why Millbrook denied travel funds to Ms. Tabor also reinforces her perception of retaliation. As mentioned above, the evidence does not support Mr. Cope's claim that Ms. Tabor has a history of commencing training but failing to complete all or various stages of it. In fact, the evidence presented to the Tribunal on Ms. Tabor's training indicates the opposite. Furthermore, no documentation was filed to support Millbrook's assertion that the denial of funds was based on the application of Service Canada guidelines or standards. Ultimately, I do not find Millbrook's explanation in response to Ms. Tabor's allegation to be reliable. Therefore, on this issue, when Millbrook's evidence is weighed against that of Ms. Tabor, I find it more probable than not that Millbrook retaliated against Ms. Tabor.

(ii) Unsubstantiated allegations

[54] Often, when someone has experienced discrimination over a long period of time, and it is exacerbated by retaliation for filing a complaint, that person may perceive all actions that impact them negatively as retaliation, especially when they involve the same people named in the discrimination complaint or people connected to them. However, it is not necessarily the case that every adverse situation following the filing of a complaint is in the nature of retaliation. I find this to be the case with regard to Ms. Tabor's remaining allegations of retaliation. As outlined in *Tabor #1*, there is a history of conflict between the parties. I believe some of Ms. Tabor's remaining allegations of retaliation may have arisen out of that history of conflict. Others appear to be a simple misunderstanding or a result of human error. This summarizes my reasons for finding Ms. Tabor's remaining allegations of retaliation to be unsubstantiated. I will now address each allegation in turn.

(a) Improper action under social welfare system

[55] Ms. Tabor claims Millbrook retaliated against her by miscalculating her social assistance payments and then claiming she repay some of those payments in the amount of $10,447.87.

[56] On her 2010 application for social assistance, Ms. Tabor claimed she had no income when in fact she had been working part-time. She explained that she had been informed that if an applicant works two days or less a week then, they did not have to disclose the income for it. Additionally, the income was from a work term that arose from an administrative assistant course she was taking. This also led her to believe that she was not required to claim it as income on her social assistance application.

[57] Millbrook claimed both Ms. Tabor and her husband were not entitled to collect social assistance in 2010 as they were working at the time and had a combined household income exceeding the entitlement to collect social assistance.

[58] Ms. Tabor appealed Millbrook's decision to the Aboriginal Affairs and Northern Development Canada Income Assistance Appeal Board (the Board). The Board found that Millbrook, in the absence of a detailed verification of Ms. Tabor's earnings by pay period, used estimates of earned income to determine her eligibility for social assistance. As Ms. Tabor had an onus to produce those records to Millbrook, the Board granted Ms. Tabor 30 days to produce the records to Millbrook. If she did not, the income estimates initially used by Millbrook would be the basis for calculating her eligibility.

[59] Ms. Tabor provided Millbrook with the records identified by the Board within 30 days. However, Millbrook initially wrote to the Board stating Ms. Tabor had not provided the records. In correspondence to the Tribunal dated August 28, 2012, Millbrook stated this was an "error" on its part and, in a letter of the same date, forwarded Ms. Tabor's records to the Board. Based on the records provided by Ms. Tabor, Millbrook maintained she was overpayed social assistance payments, but reduced the amount to $10,148.00.

[60] Ms. Tabor has again appealed Millbrook's decision to the Board claiming Millbrook did not take into account certain income deductions.

[61] Millbrook claims Ms. Tabor knowingly misrepresented her earnings in 2010 in order to apply and qualify for social assitance. Although there was an error in the original audit of Ms. Tabor's social assistance payments, based on a mistake in a T4 issued to Mr. Tabor from the Native Council of Nova Scotia, that error did not change the end result: Ms. Tabor was not eligible for social assistance in 2010. Millbrook argues Ms. Tabor has conceded she made misrepresentations on her social assistance application, but qualifies them as mistakes. According to Millbrook, Ms. Tabor was caught in a routine audit that was fair and transparent and compelled to repay money for valid reasons. Therefore, in its view, there is no merit to her allegations of retaliation on this issue.

[62] At the hearing, the parties presented much argument on the merits of this social welfare dispute. However, it is not for the Tribunal to determine whether Ms. Tabor was or was not entitled to social assistance payments or in what amount. There is a specialized board and appeal process for dealing with that issue and the parties are currently pursuing that option. The Tribunal's role is to assess Ms. Tabor's allegations that Millbrook subjected her to an audit and miscalculated her social assistance payments in retaliation for her human rights complaint.

[63] While Millbrook made an error in calculating Ms. Tabor's social assistance payments based on Mr. Tabor's T4, that error was based on a mistake by the Native Council of Nova Scotia. The fact that Ms. Tabor attributes that mistake to Millbrook leads me to believe that Ms. Tabor's perception of retaliation on this issue is unreasonable and, in my view, is an effect of the deteriorating relationship between the parties over the past years, including discrimination. I am also not convinced that Millbrook audited Ms. Tabor in retaliation for her human rights complaint. Insufficient evidence was led to establish any retaliatory purpose behind Millbrook's actions, and Ms. Tabor's misrepresentation of her income does not assist her case here. I believe Ms. Tabor when she says her misrepresentations were an honest mistake based on an erroneous understanding of her income reporting obligations. However, this does not convince me that Millbrook retaliated against Ms. Tabor.

(b) Refusal to pay power bill

[64] Related to the allegation of improper action by Millbrook against Ms. Tabor under the First Nation's social welfare system, Ms. Tabor explained that in 2008, when the Tabors needed assistance to pay their bills, she also forwarded her Nova Scotia power bill to Millbrook Social Development for payment. She stated that she and other members of the community had done this in the past and Millbrook had paid the bills. In her testimony, Ms. Tabor even suggested she knew of some members of the community who were not on social assistance, but were working, and still had their power bills paid for by Millbrook.

[65] On May 1, 2008, Ms. Tabor received the following letter from Millbrook Social Development:

> While Millbrook Social Development has generously provided assistance to you in the past for your Nova Scotia Power account, assistance in the future cannot be expected on a regular basis. Unfortunately, several of you have become too accustomed to simply forwarding your bills to our office, with no explanation as to why you require assistance paying your bills, or any appreciation for previous payment on your behalf.
>
> Please be advised that, effective immediately, you are required to provide your request for assistance in writing, or in person, to Barry Martin, Social Development Administrator. You are also required to make some efforts of your own, and proof of these efforts (with original receipts showing your payments), along with your request prior to requests for additional assistance from our department. Remember, it is a courtesy of this department to assist you, on occasion. We are not obligated to make any of your payments.

[66] I note the May 1, 2008 letter pre-dates Ms. Tabor's section 7 and 10 complaint, which was filed later on May 20, 2008. This is enough to dispose of this allegation given Millbrook's refusal to pay the power bill could not have been in response to the complaint. In any event, insufficient evidence was presented to support Ms. Tabor's claim that, while other members of the community had their power bills paid for, Millbrook refused to pay hers. Presumably, if she knew this was the case, further evidence in the form of witness testimony or documentation could have been provided. Ms. Tabor's generalized statement to this effect is not sufficient to convince me of any retaliation on behalf of Millbrook on this issue.

(c) Late father's residence

[67] Ms. Tabor claims that, when her father died, he asked Millbrook that his home be held in trust by Ms. Tabor for his eldest grandson, Ms. Tabor's son, until he came of age. Millbrook agreed to the request and made an arrangement with Ms. Tabor whereby it would give her a certificate of possession under which she would hold the property in trust for her son. Until her son came of age, Ms. Tabor was to rent out the house and place the money in a trust fund for him.

[68] Millbrook did not issue a certificate of possession for the property for approximately two years. However, Ms. Tabor allowed some members of Millbrook, who were on social assistance, to live in the house in the meantime. These occupants did not have a set rent and only paid what they could. Given that social assistance recipients receive a housing allowance, Millbrook required Ms. Tabor to pay back portions of those tenants' social assistance benefits. Also, prior to the certificate of possession being issued, Millbrook required Ms. Tabor to maintain the yard of the property.

[69] Ms. Tabor claims she was not responsible for rentals or maintenance at the property until the certificate of possession was issued. By requiring her to pay back social assistance benefits, maintain the yard and, in the meantime, delaying issuance of the certificate of possession, Ms. Tabor claims Millbrook retaliated against her.

[70] In relation to this allegation, Ms. Tabor also claims oil deliveries were made to her father's home and were billed to her even though there was a person residing in the home who was receiving social assistance. She believes Millbrook's social assistance program should have been billed for those deliveries. In this regard, Ms. Tabor notes oil deliveries were also made to her own home and were billed to Millbrook's social assistance program despite her not being on social assistance at the time.

[71] Mr. Cope testified that, it is the person who is applying for the certificate of possession that is responsible to request a Band Council resolution approving the allocation. According to him, Ms. Tabor did not apply for a certificate of possession until May 2011. From then, it took only two months for the certificate of possession to be

issued. Millbrook argues, even without the certificate of possession, Ms. Tabor had use and control of the property.

[72] On this issue, I find Millbrook's actions were not retaliatory. Ms. Tabor's father's wishes, to have Ms. Tabor in charge of his home and maintain it until her son comes of age, were honoured by Millbrook. In honouring his wishes, an agreement was entered into by the parties for possession of his home by Ms. Tabor in trust for her son. No written agreement was presented to me; however, Ms. Tabor and Mr. Cope testified about it. Implicit in the agreement was that Ms. Tabor would only rent out the home to rent-paying members of Millbrook First Nation. Otherwise, she would not receive any rent to put in trust for her son. While Ms. Tabor's understanding was that the agreement was not effective until a certificate of possession was issued, she nonetheless made use of the property, including renting it out and letting family members live there. She even filed documents wherein she is identified as the landlord of the property.

[73] In my view, these actions demonstrate Ms. Tabor knew she had use and possession of the home. She acted on the agreement with Millbrook, without the issuance of a certificate of possession, but disregarded the term about not renting it out to social welfare recipients. She also did not maintain the property. For these reasons, I believe Millbrook's actions were reasonable and not retaliatory. While there was some delay in issuing the certificate of possession, I fail to see how this had an adverse impact on Ms. Tabor given it did not affect her use of the home.

[74] With respect to the oil deliveries, Ms. Tabor presented an email chain between her and Chief Bob Gloade, the owner of the oil delivery company. In the email chain, Chief Gloade responds to Ms. Tabor's questions about the oil deliveries and clarifies the deliveries made to the properties. The oil delivery to Ms. Tabor's father's home was done at Ms. Tabor's request during the winter months to avoid pipes freezing. Ms. Tabor did not pay this bill. Chief Gloade offerred to erase the debt as a favour to her. The oil deliveries made to her own home seem to have been made in error. Otherwise, the email chain provides no insight into whether or not Millbrook's social assistance program should have paid for the oil deliveries at Ms. Tabor's father's home. Nor was there other sufficient evidence to substantiate this claim.

[75] Having reviewed Ms. Tabor's evidence and testimony on this issue, I am not convinced there was any adverse treatement here, let alone that Ms. Tabor's human rights complaint was a factor in that treatment.

(d) Cost to replace stove

[76] According to Ms. Tabor, every Band-owned home is supplied with a stove. In January 2011, the stove in Ms. Tabor's Band-owned home stopped working and she ordered a new one and sought reimbursment from Millbrook. Millbrook did not reimburse Ms. Tabor for the cost of the new stove.

[77] Mr. Cope testified that while the First Nation does pay to replace broken appliances, the purchase must be pre-approved and it will not pay when the Band Member has ordered a non-approved model. The stove Ms. Tabor ordered was a non-approved model and, therefore, Millbrook did not pay for it.

[78] Millbrook's explanation in response to Ms. Tabor's allegation is reasonable. Having purchases of this nature pre-approved makes sense. This allows the First Nation to either attempt to repair the appliance or replace it with an approved model. It is unclear if Ms. Tabor notifed Millbrook when her stove broke. Ms. Tabor went ahead before approval and ordered a new one and sought reimbursment. It is also unclear what happened to the old stove, whether it could have been repaired or where it went. While Ms. Tabor was not reimbursed the cost difference between her new stove and the pre-approved models, I find this is due to a disagreement between the parties on the application of Millbrook's practice. In any event, Ms. Tabor did not lead sufficient evidence to convince me that her human rights complaint was a factor in Millbrook's decision not to reimburse her the cost of the new stove.

(e) Fraudulently cashed cheques

[79] In August 2011, Ms. Tabor was caring for a minor who did not have a home. The minor was receving welfare payments, which were issued to Ms. Tabor in trust by Millbrook. The minor eventually left Ms. Tabor's care and she notified the First Nation

accordingly. However, cheques continued to be issued to Ms. Tabor in trust. Two of those cheques were cashed without Ms. Tabor's signature. The matter was reported to the Royal Canadian Mounted Police (RCMP), but according to Ms. Tabor, not resolved. Despite notifying Millbrook that the minor was no longer in her care, and despite not signing the two additional cheques, Ms. Tabor claims Millbrook is holding her responsible for paying the amount back.

[80] Millbrook argues a trustee is responsible for monies paid to them in trust for a third-party minor. Millbrook does not know who signed the two additional cheques issued in Ms. Tabor's name in trust, but it contends Ms. Tabor's claim is against that individual.

[81] It is unclear why cheques continued to be issued in Ms Tabor's name after she advised Millbrook she was no longer caring for the minor. However, there is insufficient evidence to suggest Millbrook issued the additional cheques in Ms. Tabor's name in retaliation for her human rights complaint. It also unclear why, despite the circumstances of the situation, Millbrook is holding Ms. Tabor responsible for paying the money back. However, again, there is insufficient evidence to suggest Millbrook's stance on this issue is influenced by Ms. Tabor's human rights complaint. Rather, it seems to be influenced by the involvement of an unknown fraudulent third party. While this is an unfortunate situation for Ms. Tabor, in my view, it does not amount to retaliation.

(f) Requirement to pay rent

[82] Ms. Tabor claims Millbrook required her to pay rent on the property she lived at on the First Nation. According to her, Band members do not pay rent.

[83] Mr. Cope explained that welfare recipients are given a housing allowance from Aboriginal Affairs and Northern Development Canada (AANDC). This amount is withheld by Millbrook Social Development, and paid to the First Nation's corporate housing entity, before social assistance payments are issued to members. At the time Ms. Tabor claims she was being charged rent, Millbrook argues it was simply withholding the housing allowance from her social assistance payments.

[84] At the hearing, Ms. Tabor stated she was unaware that social assistance recipients are provided a housing allowance from AANDC. In any event, she testified that the payment for her rent was not being taken out of her social assistance payments, but from her treaty grant cheque.

[85] Millbrook's witholding of housing allowances from Ms. Tabor's social assistance payments was clearly a misunderstanding between the parties. While Ms. Tabor goes further to allege Millbrook should not have been deducting her housing allowance from her treaty grant cheque, it is unclear how her human rights complaint was a factor in this treatment. In my view, this situation stems from a misunderstanding and lack of communication between the parties, and not from retaliation for Ms. Tabor's human rights complaint.

(g) Denial of work placement at Health Centre

[86] In 2010, Ms. Tabor was enrolled in a Medical Office Assistant program. One of the requirements of the program was to complete a work placement. She approached Dr. Murdo Ferguson, a physician at the Millbrook Health Centre, about the possibility of completing her placement at the Millbrook Health Centre. According to Ms. Tabor, Dr. Ferguson said she would explore the possibility and get back to her.

[87] Subsequently, Ms. Tabor stated that Dr. Ferguson indicated to her that Ms. Elizabeth Paul, the Director of the Health Centre, had informed Dr. Ferguson that the Health Centre does not accept students. Dr. Ferguson offered to have Ms. Tabor complete her placement at her Truro clinic, which Ms. Tabor accepted.

[88] Ms. Tabor claims the Millbrook Health Centre had accepted students from her program the previous academic year. While Ms. Tabor believes the final decision about the placement was made by Ms. Paul, she also believes Ms. Paul may have been influenced by Millbrook's negative views towards her.

[89] Ms. Paul testified before the Tribunal. Although she sometimes consults with Millbrook's Band Council, including Mr. Cope, on issues related to hiring, she stated final decisions on hiring for the Health Centre are hers to make. With specific regard to student

placements, Ms. Paul stated she would notify Band Council “after the fact if appropriate”, but emphasized that she does not seek Council’s approval beforehand.

[90] With respect to Ms. Tabor, Ms. Paul did not recall speaking to her directly about a placement, nor could she recall Dr. Ferguson specifically asking about her or student placements in general. Ms. Paul stated that, if Dr. Ferguson had asked her about student placements in 2010, she would have said that they did not have room for students because there were already two full time administrative employees working at the Health Centre.

[91] With regard to Ms. Tabor’s assertion that the Health Centre had accepted students from her program the previous academic year, Ms. Paul indicated that there was indeed a student the previous year. Ms. Paul explained that the student finished the last week of her placement at the Health Centre because she could not finish the placement where she originally started. Also, at that time, there was only one full time administrative employee. Apart from this one student, for one week, Ms. Paul did not recall any other administrative student placements at the Health Centre.

[92] Ms. Tabor’s testimony on this issue was unconvincing. On cross-examination, she indicated she could not know for sure whether Millbrook influenced Ms. Paul’s decision not to provide her with a placement at the Health Centre. In contrast, I found Ms. Paul’s evidence to be credible and reliable and her explanation in response to Ms. Tabor’s allegations to be reasonable. In weighing all this evidence on a balance of probabilities, I find that Ms. Tabor’s complaint was not a factor in the denial of a placement at the Health Centre.

III. Order

[93] As the complaint has been substantiated in part, I may make an order against Millbrook First Nation pursuant to section 53(2) of the *CHRA*. However, the parties agreed to bifurcate argument on remedy from the merits of the complaint. Following *Tabor #1*, I invited the parties to begin settlement discussions in response to the findings in that decision and would seek an update from them thereon following the release of this

decision (see *Tabor #1* at para. 148). The parties have subsequently indicated that settlement discussions have not been successful. As a result, the Tribunal will be in contact with the parties shortly to obtain submissions from them on the issue of remedy resulting from both decisions.

[94] Until such time as the issue of remedy is finally resolved in both Ms. Tabor's complaints, the Tribunal retains jurisdiction in both matters.

Signed by

Sophie Marchildon
Tribunal Member

Ottawa, Ontario
July 23, 2015

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1658/01311 & T1659/1411

Style of Cause: Stacy Lee Tabor v Millbrook First Nation

Decision of the Tribunal Dated: July 23, 2015

Date and Place of Hearing: July 28 to 30, 2014
August 1, 2014
August 5 to 7, 2014
September 16, 2014

Truro, Nova Scotia

Appearances:

Gary A. Richard, for the Complainant

No one appearing, for the Canadian Human Rights Commission

Thomas J. Kayter, for the Respondent