

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2015 CHRT 23

Date: December 29, 2015

File Nos.: T1625/17110, T1626/17210 & T1627/17310

Between:

Leslie Palm

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

**International Longshore and Warehouse Union, Local 500,
Richard Wilkinson and Cliff Wellicome**

Respondents

Ruling

Member: George E. Ulyatt

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I. Introduction

[1] The Complainant has brought a motion to amend her Complaint to add the Complaint of Retaliation by the Respondent, the International Longshore and Warehouse Union Local 500 (hereinafter referred to as “International”). The Complainant alleges continued bullying and harassment by International and outlines the particulars of same.

[2] This Tribunal per Member Wallace on September 9, 2011, issued a strict confidentiality order in relations to Ms. Palm’s settlement with her employer and the British Columbia Maritime Employers Association (“BCMEA”). The ruling stated the following:

[20] I order disclosure of the settlement to the Remaining Respondents. Such disclosure to be made in the following manner:

(a) Within fourteen days after the release of this ruling, Harris & Company, lawyers for the Employer Respondents, shall provide a copy of the settlement to Caroline & Gislason, lawyers for the Remaining Respondents;

(b) Neither Caroline & Gislason nor the Remaining Respondents shall use the copy of the settlement for any purpose other than the hearing or settlement of Ms. Palm’s complaints against the Remaining Respondents;

(c) Caroline & Gislason shall be permitted to communicate the terms of the Settlement orally to the Remaining Respondents. Caroline & Gislason shall not make copies of the copy of the Settlement, and neither Caroline & Gislason nor the Remaining Respondents shall communicate the terms of the Settlement to anyone, other than in the course of the hearing or settlement of Ms. Palm’s complaints against the Remaining Respondents; and

(d) Caroline & Gislason shall return the copy of the Settlement to Harris & Company within seven days of the determination of Ms. Palm’s complaints against the Remaining Respondents.

[3] Ms. Palm, in her Motion, submitted that the information pertaining to her Complaints, presently before this Tribunal, was provided to a third party and the disclosure of that information led the Waterfront Employee Association Health and Benefit Plan Trustees (“the Trustee”) to commence a civil action against her for benefits received in 2008, prior to her human rights Complaints in 2009 and her settlement with the BCMEA in 2011. The thrust of Ms. Palm’s argument is that the disclosure made reference to her

settlement and health information when counsel for the Trustee wrote on October 15, 2015, a letter which included the following:

the plan recently became aware that in addition to receiving benefits from the plan you also received a settlement from your employer and its representative and received full compensation from them. (Ms. Palm's Motion)

[4] International, by their counsel, argued that "Ms. Palm's Motion does not disclose a tenable claim of retaliation" and asks that the motion be dismissed. In summary of this position, International relies on *Virk v. Bell Canada*, 2004 CHRT 10 at paragraph 7, as follows:

[7] It is now undisputed that this Tribunal has the authority to amend a complaint to add an allegation of retaliation. As a rule, an amendment should be granted unless it is plain and obvious that the allegations in the amendment sought could not possibly succeed. In any case, the Tribunal should not embark on a substantive review of the merits of an amendment. That should be done only in the fullness of the evidence after a full hearing. Thus the test to be applied is whether the allegations of retaliation are by their nature linked, at least by the complainant, to the allegations giving rise to the original complaint and disclose a tenable claim for retaliation. (Emphasis added)

[5] The Respondent submits that Ms. Palm's claim must meet the allegations of satisfying section 14.1 of the *Canadian Human Rights Act*, RSC 1985, c. H-6 (the "Act"), which provides:

[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.

[6] Therefore, the Respondent argues there are two criteria to be met:

(a) The act must be punitive, with the effect of harming the complainant.

(b) The act must be done by a respondent or a person acting on a respondent's behalf.

[7] The Respondent argues that Ms. Palm's motion does not meet these criteria and furthermore, it is submitted that the Trustee's lawsuit is not one that is controlled by the Union.

[8] The Commission has submitted a brief supporting the position of the Complainant.

[9] The Commission submits that the Tribunal has ample discretion regarding conduct proceedings and the discretion and authority to amend the Complaint to deal with additional allegations and that this approach has been upheld by the Federal Court. The Commission has relied upon *Canderel Ltd. v. Canada (C.A.)*, [1994] 1 FCR 3. Also the Commission referred to a decision of the Tribunal in *Cook v. Onion Lake First Nation*, 2002 CanLII 61849 (CHRT) at para 19.

II. Analysis

[10] It appears all of the parties are in agreement based on their submissions that acknowledge that the Tribunal has the authority to amend the Complaint to add the allegations of retaliation (*Virk, supra*, and *Tabor v. Millbrook First Nation*, 2013 CHRT 9 (CanLII)).

[11] The Respondent is of the opinion that the Complainant has not met the onus of establishing a tenable case.

[12] The ability to amend a complaint under the *Act* is clear and the issues and the cases do not set a high standard to be met in order to amend. The Complainant has established a tenable case and in light of the retaliation. The Complainant is able to amend. Whether the amended Complaint will succeed is still to be proven.

[13] The Respondent has at its option the ability to bring a motion to seek Summary Judgment or at the end of the Complainant's case, to move for non-suit or lead evidence to dispute the Complaint.

[14] The Tribunal adopts the decision of the Federal Court of Appeal in *Canderel*, which states:

[...] the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice. (Emphasis added)

Canderel Ltd. v Canada (C.A.), [1994] 1 FCR 3 (CanLII) at 2.

[15] The Complainant, at present, ought to put forth her Complaints and they will be dealt with as previously stated.

[16] The Tribunal is aware that there are three Complaints dating back to 2009 and that, at present, this Tribunal Member is at least the third Member to hear this matter.

[17] It is time to bring matters to a head and for closure for the benefit of all of the parties.

III. Decision

[18] Oder:

- a) Ms. Palm will be able to file an Amended Statement of Particulars by the 14th day of January, 2016;
- b) Ms. Palm will disclose all documents relevant to her amended claim;
- c) The practical issues will be discussed at the Case Management Case Conference on January 8, 2016.

Signed by

George E. Ulyatt
Tribunal Member

Ottawa, Ontario
December 29, 2015