

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2017 CHRT 12

**Date:** May 12, 2017

**File No.:** T2162/3616

[ENGLISH TRANSLATION]

**Between:**

**Serge Lafrenière**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Via Rail Canada Inc.**

**Respondent**

**Ruling**

**Member:** Anie Perrault

## Table of Contents

I.	Complaint and motion.....	1
II.	Issues .....	1
III.	Analysis .....	2
	A. Do the facts raised by the Complainant in his motion justify an amendment of his Statement of Particulars?.....	2
	B. What are the rules surrounding the filing of documents in support of the Statement of Particulars?.....	4
IV.	Conclusion .....	5

## **I. Complaint and motion**

[1] On November 30, 2012, Serge Lafrenière (the Complainant) filed a complaint under the *Canadian Human Rights Act* (*CHRA*) against Via Rail Canada Inc. (the Respondent).

[2] On August 22, 2016, the Canadian Human Rights Commission (the Commission), after investigation, referred the complaint filed by the Complainant to the Canadian Human Rights Tribunal (the Tribunal) for inquiry under section 7 of the *CHRA*.

[3] In essence, the Complainant alleges that he was treated differently and that he had unfairly accumulated penalty points in his disciplinary file, all of which led to his dismissal on October 5, 2012. The ground of discrimination alleged in his file and accepted by the Tribunal is disability.

[4] On March 30, 2017, the Tribunal rendered ruling 2017 CHRT 9 on a motion to strike filed by the Respondent. The Tribunal requested that the Complainant, after receiving an email from him while the decision was under deliberation, file a motion to amend his Statement of Particulars if he deemed it appropriate.

[5] A motion to amend was filed on April 10, 2017, and written submissions from all parties were received by the Tribunal on April 27, 2017.

## **II. Issues**

[6] The Tribunal has identified the following issues arising from the filing of the Complainant's motion to amend his Statement of Particulars:

- a) Do the facts raised by the Complainant in his motion justify an amendment of his Statement of Particulars?
- b) What are the rules surrounding the filing of documents in support of the Statement of Particulars?

### III. Analysis

#### A. Do the facts raised by the Complainant in his motion justify an amendment of his Statement of Particulars?

[7] The Complainant has the responsibility of convincing the Tribunal that the new facts that he is bringing to the Tribunal's attention can be used for more than providing context. To do so, he must make allegations claiming that the unfair treatment to which he refers is based on a disability.

[8] The Tribunal reiterates the *CHRA* provision raised in this case:

7. It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

[Emphasis mine]

[9] The need to argue a nexus with a prohibited ground of discrimination is therefore provided for in the very terms of section 7 of the *CHRA*.

[10] It is apparent from the Complainant's written submissions that new facts have instead been raised to explain his disability or provide context. Once again, the Complainant stated that he is trying to establish that his disability was caused by repeated actions from the Respondent.

[11] The Complainant claims in his motion to amend that he has had a disability since 2010. Included with his motion, he filed documents to support his claim. The Tribunal does not object to his disability period being extended. However, merely arguing for an extended period does not give rise to an allegation that the unfair treatment allegedly experienced by the Complainant during his period of disability occurred because he had the disability.

[12] To argue an allegation of a discriminatory practice under the *CHRA* regarding an impugned action or decision, the Complainant must at least indicate in his Statement of Particulars that, in his opinion, his disability was a factor in that action or decision.

[13] At paragraphs 15 and 16 of his motion to amend, the Complainant does not make this connection. Instead, he claims that the results of the hiring competition were perhaps an explanation of his condition: [translation] “the Complainant did not attempt to explain the cause of his disability by discussing the injustice he suffered . . . after hearing all of the harm the Complainant suffered. . . this finding will be evident.”

[14] Stating that the impugned actions or decisions occurred [translation] “during his period of disability” does not satisfy the requirement of making a link between the prohibited ground of discrimination and the adverse impact. Therefore, these allegations (paras. 4 to 9 of the Complainant’s Statement of Particulars) can only serve as contextual elements.

[15] Like the Tribunal mentioned in its decision of March 30, 2017, what is relevant for the Tribunal is whether a prohibited ground of discrimination under the *CHRA*, in this case, disability, was a factor in the disciplinary action and dismissal decisions made by the Respondent during the alleged period of disability [Emphasis mine] (*Moore v. British Columbia (Education)*, 2012 SCC 61, para. 33).

[16] In other words, were the actions taken in regard to the Complainant during his alleged period of disability discriminatory because they did not take his disability into account or, alternatively, were they discriminatory because they conveyed prejudices in relation to his disability? Anything that concerns the cause of the disability, as described by the Complainant, is irrelevant.

[17] Consequently, the Complainant does not have to establish the cause of his disability before the Tribunal. He must, however, demonstrate that he had a disability when the impugned actions under the *CHRA* (disciplinary action and dismissal) were taken.

[18] Thus, the Complainant's motion to amend is not actually one—the Complainant is instead adding information that could be used for context with respect to the complaint and the claims of the Complainant.

[19] Furthermore, the Complainant discusses issues in his motion that can only be disposed of after all of the evidence has been filed and heard at the hearing. When faced with a motion to amend a Statement of Particulars, the Tribunal does not review the truthfulness, credibility or accuracy of the allegations made. That deliberation will take place only at the conclusion of the inquiry into the matter.

[20] The Tribunal therefore agrees with the Respondent's conclusion in its response to the Complainant's motion to amend. The fact that the Complainant alleges that he had a disability for a period of time is not sufficient to indicate that all actions taken by the Respondent during that period were discriminatory.

**B. What are the rules surrounding the filing of documents in support of the Statement of Particulars?**

[21] The Complainant included, with his motion to amend, medical documents that support his claim that he has had a disability since at least June 2010. The Respondent also filed documents in its response to the Complainant's motion, including his attendance report.

[22] It is true that Rule 6(1)(d) of the Tribunal's Rules of Procedure can be confusing to the extent that it requires parties to list the various documents in their possession that relate to the case.

[23] However, Rule 6(4) specifies that documents identified in accordance with Rule 6(1)(d) shall not be filed with the Registry [Emphasis mine]. Instead, the documents are to be provided to all other parties involved in the case (Complainant, Respondent and Commission). They are not to be filed with the Tribunal during the pre-hearing disclosure period.

[24] The filing of documents in evidence (as exhibits) is done only at the hearing in accordance with paragraph 50(3)(c) and subsections 50(4) and 50(5) of the *CHRA*.

#### **IV. Conclusion**

[25] For all of these reasons, the Tribunal reiterates its findings from its decision of March 31, 2017, on the motion to strike, and finds that the Complainant's motion to amend must be dismissed.

[26] The parties must comply with the Tribunal's findings. Any reference to the incidents described in paragraphs 4 to 9, 10 to 18 (excluding the part on the medical note) and 39 to 53 of the Complainant's Statements of Particulars may be used at the hearing to provide context if the Complainant so desires, but not to establish the Respondent's responsibility.

[27] Paragraphs 19 to 26 and 27 to 38, which were the subject of the motion to strike and concern disciplinary action taken during or around the alleged period of disability, and all other paragraphs in the Complainant's Statement of Particulars that were not the subject of the motion to strike, are relevant and will be heard by the Tribunal; the Complainant will have to establish them, and the Respondent will have to provide reply evidence.

[28] The medical documents attached to the Complainant's motion to amend, and the document included by the Respondent in its response to the motion, may be provided to the other parties, but they will not be part of the evidence on the record unless presented at the hearing and received by the Member in accordance with paragraph 50(3)(c) of the *CHRA*. The other parties will then have the opportunity to object to their admissibility, where applicable.

*Signed by*

Anie Perrault  
Tribunal Member

Ottawa, Ontario  
May 12, 2017

**Canadian Human Rights Tribunal**

**Parties of Record**

**Tribunal File:** T2162/3616

**Style of Cause:** Serge Lafrenière v. Via Rail Canada Inc.

**Decision of the Tribunal Dated:** May 12, 2017

**Motion dealt with in writing without appearance of the parties**

**Written submissions:**

Serge Lafrenière, for himself

Jacques Rousse, counsel for the Respondent