Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2018 CHRT 16
Date: June 8, 2018
File No.: T2154/2816

Between:

Mohamed Nur

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian National Railway Company

Respondent

Ruling

Member: Gabriel Gaudreault

I. Context of the application for disclosure

[1] On July 28, 2015, Mohamed Nur (the Complainant) filed a complaint with the Canadian Human Rights Commission (the Commission) against the Canadian National Railway Company (the Company or the Respondent), alleging discrimination in the context of his employment, in violation of section 7 of the *Canadian Human Rights Act* (the CHRA). More specifically, the Complainant claims that the Company refused to continue to employ him or, in the course of employment, differentiated adversely in relation to him because of his race, national or ethnic origin, colour and disability (alcohol dependence or perceived alcohol dependence). On June 20, 2016, the Commission referred the complaint to the Canadian Human Rights Tribunal (the Tribunal) for inquiry. Considering the nature of this ruling, the Tribunal feels that it is not necessary to provide the full details of the complaint and that this summary is enough to provide a clear understanding of the reasons for the decision.

[2] On September 27, 2017, the Tribunal was asked to consider an application for disclosure from the Commission, requesting that the Tribunal order the Respondent to disclose certain information on its employees. The Complainant, who is not represented by counsel, did not file any written submissions, but sent an email indicating his support for the application presented by the Commission.

[3] Further to a review of the submissions filed by the parties, the Tribunal found that these did not provide enough information for it to render a decision on the application for disclosure. Consequently, the Tribunal scheduled a conference call on January 17, 2018, where the parties had an opportunity to provide additional information to the Tribunal and to make oral submissions. Once again, the information provided by the parties was insufficient. The Tribunal therefore asked the Respondent to file additional written submissions, and the parties were given an opportunity to file a reply.

[4] In the clarifications provided, the Respondent failed to send some of the information requested by the Tribunal, including the number of employees who work in Alberta and in Edmonton and a rough indication of the percentage of management employees in each

case. This information was essential and justified sending another request to the Respondent, asking it to provide this information to the Tribunal.

[5] Lastly, following the receipt of this information in late February 2018, the Tribunal asked the Respondent to simulate a data collection from a limited number of employee records and to estimate the time it would take to perform this exercise. On March 27, 2018, the Respondent sent a detailed response to the Tribunal's requests. On March 28, 2018, the Commission filed a reply and the following day, Mr. Nur also submitted a very brief response via email.

[6] Further to the clarifications provided by the parties, the Tribunal is now satisfied and possesses sufficient information to render its decision on the Commission's application for disclosure. The issue in dispute is whether the Tribunal should order the Respondent to disclose the information requested by the Commission.

II. Position of the parties

[7] At this point, without going into all the details of the submissions made by the parties and in the interest of brevity, the Tribunal shall summarize the key points of the position of each party.

[8] In its submissions, the Commission specifically requests the disclosure of the following information:

a. information concerning Company employees in Canada whose employment **was not terminated** despite the occurrence of an incident involving the use of alcohol or drugs in the workplace since the implementation of Company policies on that subject, information on the characteristics of these employees compared to the characteristics of the Complainant (who is Somalian and black), and summaries of these incidents involving the use of alcohol or drugs and the disciplinary measures that were taken by the Respondent;
b. Information concerning Company employees in Canada whose employment was **terminated** on the basis of the occurrence of an incident involving the use of

alcohol or drugs in the workplace since the implementation of Company policies on that subject, information on the characteristics of these employees compared to the characteristics of the Complainant (who is Somalian and black), and summaries of these incidents involving the use of alcohol or drugs and the disciplinary measures that were taken by the Respondent;

c. All documents related to training provided by the Company on its policies and the criteria to follow when enforcing these policies;
d. All emails in the Respondent's possession and referring to Mr. Nur since June 30, 2015;
e. All video footage of the altercation between the Complainant and another Company employee to which the Commission refers in paragraph 25 of its statement of facts.

[9] With respect to the requests in paragraphs a. and b., the Commission initially asked for full disclosure of the information on employees across Canada. Based on this information, the Commission wishes to perform a comparative analysis between the Respondent's treatment of the Complainant in relation to incidents involving the use of alcohol and drugs in the workplace and the treatment of other employees who do not share the same personal characteristics as the Complainant.

[10] The Commission then informed the Tribunal that if the request was found to be overly broad, it could be limited to cover only the disclosure of information concerning employees who had been involved in incidents involving the use of drugs or alcohol in the workplace. The information on personal characteristics could be omitted. Lastly, the Commission indicated that if the Tribunal still found the request to be overly broad, the geographic scope of the disclosure could be narrowed to focus only on the Prairie regions (specifically, Manitoba, Saskatchewan and Alberta).

[11] As indicated earlier, Mr. Nur supports the Commission's request and did not provide additional submissions.

[12] For its part, the Respondent acknowledges that the material concerning Company training and employees vis-à-vis its policies on preventing problems caused by alcohol and drugs in the workplace was potentially relevant and immediately agreed to disclose

this information. However, the Respondent indicates that it does not have any specific material concerning the criteria for enforcing those policies. With respect to the emails concerning Mr. Nur since June 30, 2015, the Respondent submits that it has already distributed all the materiel that was in its possession.

[13] Since the Respondent indicated that it had disclosed all the documents relevant to the Commission's request in paragraphs c and d, and the Commission did not request additional documents in its reply, there is no need for the Tribunal to expand on these items of the disclosure request.

[14] The Respondent opposes the request for disclosure of the video footage. It alleges that the information in the Commission's application for disclosure was not precise enough and that the Commission did not provide the necessary grounds to establish the existence of such a video. The Respondent also alleges that the request is purely speculative, especially since it has no knowledge of the incident in question.

[15] With respect to the information requested by the Commission in paragraphs a. and b., the Respondent contends that the Commission's request is overly broad, speculative and akin to a fishing expedition. According to the Respondent, the requested information is not relevant to the issues raised in Mr. Nur's complaint. The Respondent also submits that in order to disclose this information, it would be required to conduct lengthy, cumbersome and costly research. Lastly, the Respondent argues that the information being sought by the Commission, as formulated in its request, cannot be compiled and disclosed. More specifically, the Respondent alleges that it does not collect data relating to the personal characteristics of the employees in question.

[16] In its reply, the Commission indicated that it believed that the information being sought is in fact relevant to the issues raised in Mr. Nur's complaint. Once again, the Commission finds that it would not be unreasonable to order the Respondent to provide the information it is seeking for Canada as a whole. However, it proposes narrowing the scope of its request if the Tribunal still deems it to be overly broad. For example, it would be satisfied if it could obtain the information concerning the Company's unionized employees and management-level employees for 2014 and 2015, and the information

concerning the enforcement of policies to Prevent workplace alcohol and drugs problems. Lastly, following the conference call with the parties and the Tribunal's additional requests for information, the Respondent was able to provide further details that were of vital importance, most notably concerning the management and storage of employee electronic records, the information in these records, the various types of searches that could be carried out and the burden of collecting and disclosing the requested information. The Respondent also provided the Tribunal with information on the number of employees who worked for the Company in Alberta in 2014 and the approximate percentage of management employees during that same year. Lastly, it was also able to simulate a data collection for a limited number of employees and estimate the amount of time that would be required to conduct such an exercise. However, the Respondent reported that this information excluded information collected prior to 1999 and any information that could be found in employee medical records since the Human Resources Department does not have access to these files. Consequently, a second review of these files would also be necessary in order to collect the information that is being sought.

[17] In response to the clarifications provided by the Respondent, the Commission filed a reply which further amended and limited its request for disclosure. Indeed, the Commission appears to be conscious of the amount of time that the Respondent would require to collect the information and in that respect, it wants to avoid unduly prolonging the proceedings under way. It has therefore offered an alternative to its initial request for disclosure. More specifically, the Commission is asking the Respondent to only disclose information on management employees in Edmonton, for 2014. It also suggests narrowing the scope of the research even further and focusing on information related to employees whose last names start with any letter between A and M. In so doing, the Commission feels that the Respondent would only have to process half of the records related to management employees. Mr. Nur replied that the Respondent should provide the information being sought, without offering any alternative.

III. The Law

[18] The Tribunal has had numerous opportunities to consider and render decisions on applications for disclosure. For the sake of brevity, the Tribunal shall refer to the recent decision rendered in *Malenfant v. Videotron S.E.N.C.*, 2017 CHRT 11 (CanLII), specifically paragraphs 25 to 29 and 36, which succinctly summarize the applicable law:

> [25] Each party has a right to a full hearing. In this regard, the *CHRA* provides as follows at subsection 50(1):
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> > 50(1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations. [Emphasis added.]
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> [26] This right includes the right to the disclosure of relevant evidence in the possession or care of the opposing party (*Guay v. Royal Canadian Mounted Police*, 2004 CHRT 34, para. 40). The Rules of Procedure of the Canadian Human Right Tribunal (the Rules) provide as follows in Rule 6(1), and more specifically at paragraphs (*d*) and (*e*):
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> > 6(1) Within the time fixed by the Panel, each party shall serve and file a Statement of Particulars setting out,
> >
> > . . .
> >
> > *(d)* a list of all documents in the party's possession, for which no privilege is claimed, that relate to a fact, issue, or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;
> >
> > *(e)* a list of all documents in the party's possession, for which privilege is claimed, that relate to a fact, issue or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;
> >
> > . . .
> > [Emphasis added.]
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> [27] Regarding disclosure, the Tribunal has already ruled several times that the guiding principle is probable or possible relevance (*Bushey v. Sharma*, 2003 CHRT 5 and *Hughes v. Transport Canada*, 2012 CHRT 26.

> See in the alternative *Guay*, *supra*; *Day v. Department of National Defence and Hortie*, 2002 CanLII 61833; *Warman v. Bahr*, 2006 CHRT 18; *Seeley v. Canadian National Railway Company*, 2013 CHRT 18). The Tribunal notes that the parties have an obligation to disclose potentially relevant documents in their possession (*Gaucher v. Canadian Armed Forces*, 2005 CHRT 42, para. 17).
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> [28] To show that the documents or information is relevant, the moving party must demonstrate that there is a rational connection between those documents or information and the issues in the case (*Warman*, *supra*, para. 6. See for example *Guay*, *supra*, para. 42; *Hughes*, *supra*, para. 28; *Seeley*, *supra*, para. 6). Relevance is determined on a case-by-case basis, having regard to the issues raised in each case (*Warman*, *supra*, para. 9. See also *Seeley*, *supra*, para. 6). The Tribunal notes that the threshold for arguable relevance is low and the tendency is now towards more, rather than less disclosure (*Warman*, *supra*, para. 6. See also *Rai v. Royal Canadian Mounted Police*, 2013 CHRT 36, para. 18). Of course, the disclosure must not be speculative or amount to a fishing expedition (*Guay*, *supra*, para. 43).
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> [29] The Tribunal notes that the production of documents stage is different from the stage of their admissibility in evidence at the hearing. Accordingly, relevance is a distinct concept. As Member Michel Doucet stated in *Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28 (hereafter *TEAM*), at para. 4:
>
> > [4] . . . The production of documents is subject to the test of arguable relevance, not a particularly high bar to meet. There must be some relevance between the information or document sought and the issue in dispute. There can be no doubt that it is in the public interest to ensure that all relevant evidence is available in a proceeding such as this one. A party is entitled to get information or documents that are or could be arguably relevant to the proceedings. This does not mean that these documents or this information will be admitted in evidence or that significant weight will be afforded to them.
> >
> > …
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> [36] Finally, I would remind the parties that the duty to disclose the documents concerns documents in their possession. Accordingly, the duty does not extend to creating documents for disclosure (*Gaucher*, *supra*, para. 17). . . .

[19] As the Supreme Court reiterated in the decision rendered in *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560 (*Prassad*), it is a well-

recognized principle that administrative tribunals are masters in their own house. Therefore, administrative tribunals are not necessarily guided by the same principles as courts of justice in terms of the administration of evidence, which falls more properly within the discretion of the Tribunal member. It is up to the Tribunal member to determine whether evidence should be admitted or excluded. Nevertheless, these powers are not unlimited and the member is required to act in accordance with the enabling legislation and the regulations governing administrative tribunals (see *Vancouver Airport Authority v. Commissioner of Competition,* 2018 FCA 24 (*Vancouver Airport Authority*, para 30). The Tribunal member will also be guided by the principles arising from common law, the principles of natural justice and the principles of procedural fairness. In the decision rendered recently in *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28 (CanLII) [*Brickner*], the Tribunal stated as follows:

> [8] This Tribunal has already recognized in its past decisions that it may deny ordering the disclosure of evidence where the probative value of such evidence would not outweigh its prejudicial effect on the proceedings. Notably, the Tribunal should be cautious about ordering searches where a party or a stranger to the litigation would be subjected to an onerous and far-reaching search for documents, especially where ordering disclosure would risk adding substantial delay to the efficiency of the inquiry or where the documents are merely related to a side issue rather than the main issues in dispute (see *Yaffa v. Air Canada*, 2014 CHRT 22 at para. 4; *Seeley* at para. 7; see also *R. v. Seaboyer* [1991] 2 S.C.R. 577 at 609-611).
>
> [9] It should also be noted that the disclosure of arguably relevant information does not mean that this information will be admitted in evidence at the hearing of the matter or that significant weight will be afforded it in the decision making process (see *Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28 at para. 4).

(See also the decision rendered by the Federal Court of Appeal in *Vancouver Airport Authority*, at paras. 29 and 30)

[20] As explained in *Brickner*, other considerations may be taken into account in order to limit disclosure, most notably, substantial delays caused by the application for disclosure, the cost and scope of the related research or when the evidence requested has to do with a side issue rather than the main issues in dispute.

IV. Analysis

A. The information on employees

[21] First, it is clear to the Tribunal, based on the submissions provided by the Respondent, that the latter has a great deal of information on its employees. The Respondent maintains and records various information concerning employees in a consolidated, centralized system for employees in North America. This information includes the employee's name, address, age, number, job title, salary and job location. This centralized system can be used to conduct a targeted search based on various criteria. For example, employees may be sorted by place of work and province.

[22] However, the Respondent does not keep any specific data on the national or ethnic origin, colour or race of employees. If an employee voluntarily discloses being a member of a visible minority, this information is not included in the centralized system or in the employee record. This information is compiled specifically for the federal government for diversity statistics.

[23] The Respondent also explained that apart from the centralized system, the types of records retained by the Company will differ depending on whether the employee is unionized or a management employee. In the case of unionized employees, disciplinary records are kept in a centralized system for disciplinary records. Once again, it is possible to use the system to conduct a targeted search based on various criteria, such as the employee's name, the nature of the offence, the disciplinary measures imposed or whether the employee was terminated. The Respondent clarified that the disciplinary records system does not include all disciplinary measures taken against employees. For example, it does not include employees on probation or employees whose (disciplinary) grievances were upheld. The Respondent also indicated that data collected prior to 2017 is not necessarily reliable or consistent: the centralized disciplinary records system has evolved over time, and the information contained therein has been recorded by many supervisors across Canada and therefore, practices were not standardized. The new centralized system makes it possible to address these shortcomings.

[24] For management employees, this centralized system for disciplinary records simply does not exist: disciplinary records are kept in a separate electronic file for each employee. Electronic employee records are organized by employee and contain copies of all formal communications between employees and the Company. These communications can concern disciplinary matters. Once again, the contents of these records depend on the practices of the Company's various supervisors, practices which are not standardized. Moreover, the contents of these records can only be consulted manually.

[25] In short, in order to determine whether any disciplinary measures were taken against a management employee, including measures taken under any policy to Prevent workplace alcohol and drugs problems, the Respondent would first have to use the centralized system to identify the management employees in a given year and would then have to manually consult all of the files for each employee identified in order to determine whether or not any disciplinary measures were taken. Lastly, the Respondent would have to determine whether these disciplinary measures were taken under any policy to Prevent workplace alcohol and drugs problems.

[26] Finally, the Respondent also clarified that it did not have access to files generated by the Employee and Family Assistance Program, since this program is run confidentially by a third party. Consequently, the Respondent does not have access to the data collected by this program.

[27] That said, it is important to remember that in matters related to disclosure, the applicable threshold is that of arguable relevance. The applicant must first demonstrate the existence of a rational connection between the documents or the data being requested and the issues in dispute. I agree with the Commission's position that information concerning any disciplinary measures that may have been taken against Company employees under any policy to Prevent workplace alcohol and drugs problems are potentially relevant to the dispute.

[28] It is quite clear that the information being requested by the Commission has a rational connection to the complaint. Mr. Nur claims to have been subjected to differential treatment in the context of the enforcement of Company policies, based on prohibited

grounds of discrimination (national and ethnic origin, colour, race and disability). Obtaining information on other employees and how they were treated following the enforcement of these policies could potentially help the Tribunal make certain circumstantial inferences and draw certain conclusions that it could not draw otherwise. It is also clear that the Respondent has a great deal of the information being requested by the Commission.

[29] The Respondent has, on many occasions, raised concerns about the probative value of the information that could be collected, disclosed and submitted as evidence to the Tribunal, partly because of issues related to the reliability of the data recorded by the Company during its many years of operations. I believe that the Tribunal must be cautious when a party raises doubt about the probative value of any evidence at the disclosure stage. Arguable relevance is a key factor in the disclosure process. If the parties wish to raise questions about the probative value of this information, they will be free to do so, but at the hearing stage.

[30] Nevertheless, as I mentioned earlier, I agree with the fact that disclosure is not unlimited and can be restricted by the Tribunal if justified by other reasons. For example, before ordering the disclosure of information, the Tribunal could dismiss an application for disclosure when a party (or a third party to the dispute) would be required to conduct an overly broad, costly and cumbersome search for documents. The Tribunal may refuse to order the disclosure of evidence if the probative value of such evidence would not outweigh its prejudicial effect on the proceedings (*Brickner*, at para. 8). That is why, before making a decision, the Tribunal requested further clarification from the parties, and especially from the Respondent, in order to better understand the extent of the research required to respond to the Commission’s request for disclosure and the amount of time needed to collect the information.

[31] In this regard, it is important to remember that the Respondent is a Company whose activities extend across North America. It employs thousands of workers each year. For example, the Respondent informed the Tribunal that in 2014, it employed 2,898 people in Alberta, including 31% (898) who were management employees. Out of these 2,898 employees, 1,976 worked in the Edmonton area, including 36% (711) who were management employees.

[32] The Tribunal was surprised to learn that the time needed to process and collect information for unionized employees was longer than required for management employees, despite the existence of a centralized system to record disciplinary measures: it is important to remember that this system only exists for unionized employees. Indeed, the Respondent provided an estimate of the amount of time required to process the files of 10 management employees and 10 unionized employees. The respondent would need roughly 60 minutes per file to process the files of unionized employees versus roughly 30 minutes per file to process the files of management employees. The Respondent also stated that the data would exclude information contained in the medical records of employees, since the Human Resources Department did not have access to those files. Consequently, a second review would be necessary in order to obtain the information in the medical records.

[33] I agree with the Respondent's position that the scope of the Commission's initial request was overly broad and I was not inclined to ask the Respondent to disclose this information for the whole of Canada or over too long a period of time. I asked the Respondent to provide me with additional information, including the number of employees in Alberta, the percentage of management employees and the estimated amount of time needed to collect the information that is being sought in order to obtain a better idea of the impact that this could have on the conduct of the proceedings. The Tribunal cannot blindly order information to be disclosed, as this could potentially have a disproportionate impact on the proceedings. However, I am simply not prepared to prevent the disclosure of these factors in their entirety. If I do not order the disclosure of this evidence, both the complainant and the Commission will be prevented from accessing potentially relevant information that is solely in the Respondent's possession, which could seriously prejudice the proceedings.

[34] In its letter dated March 29, 2018, the Commission suggested the possibility of further narrowing the scope of the disclosure by limiting it to management employees in Edmonton for 2014 whose last names start with the letters between A and M. The Tribunal understands that the Commission is suggesting an alternative, but that its initial request was overly broad. That being said, the Commission has always maintained the basic

position that the information being sought is relevant to the dispute. The Tribunal also understands that the Commission is trying to establish a general picture of how the Company enforces its policies to Prevent workplace alcohol and drugs problems against its employees. I believe that ordering the disclosure of information only for management employees whose last names start with any letter between A and M is somewhat random. While the Commission is trying to preserve the accuracy and precision of the data to be submitted, proceeding in this manner does not guarantee this outcome. Indeed, it is impossible to confirm that selecting employees whose last names start with the letters between A and M would create a sample of roughly 50% of management employees, as claimed by the Commission.

[35] I believe that it would be more accurate to obtain information for the 898 employees in Alberta. That way, employees would not be selected at random (based on their last name for example), which, in turn, would avoid unduly diluting the information to be submitted. I also believe that since the data will potentially have greater value if processed in its entirety, it is more reasonable to give the Respondent a little more time to process the employee records. In my opinion, the potential value of the information will outweigh the prejudicial effect of adding one month to the proceedings. This way, the parties and the Tribunal will truly have a general picture of how the Company enforces its policies to Prevent workplace alcohol and drugs problems against management employees.

[36] As I indicated in paragraph 31, there are roughly 898 management employees in Alberta and approximately 711 management employees in Edmonton. If it takes an average of 30 minutes to process the file of a management employee and a single employee is responsible for processing all the files, the Respondent will need approximately 449 hours to process all the files in Alberta and approximately 356 hours to process the files in Edmonton alone. This is only a difference of approximately 93 hours. As explained by the Respondent, the medical records of management employees will also need to be reviewed. I therefore want to make sure that the Respondent has enough time to process all the files.

[37] For these reasons, I will not allow the Commission’s application for disclosure as originally formulated. This request is overly broad and risks prolonging the proceedings

unnecessarily. However, I also do not believe that the information to be disclosed should be limited too drastically. For these reasons, I am ordering that the application for disclosure shall cover management employees who worked for the Respondent in Alberta in 2014 only.

[38] I will reiterate here that the Respondent is a company which employs thousands of workers. It would therefore be surprising if the task of processing the files of management employees in Alberta for 2014 was assigned to just one individual. Consequently, if the Respondent needs approximately 449 hours to process 898 files of management employees, and assuming that this task could be undertaken collectively by a number of employees, I estimate that the Respondent will need 2 months at the most to submit the requested information to the other parties.

[39] It is important to remember that the disclosure of evidence does not include a duty to create new documents for disclosure purposes. Consequently, I will not force the Respondent to create separate documents, but it will be required to submit any information in its possession concerning the enforcement of its policies to Prevent workplace alcohol and drugs problems against management employees (which includes emails, summaries, forms, correspondence) (see *Gaucher*, at paragraph 17).

[40] I will take this opportunity to add that the Respondent cannot hide behind the fact that its practices related to the management, processing and storage of employee information were not standardized or consistent in previous years to avoid producing this information in response to an application for disclosure. If this were possible, companies would benefit from neglecting the management, processing and storage of their information in order to protect themselves from possible applications for disclosure. I do not believe that this makes any sense.

B. Video footage

[41] With respect to the video footage of the alleged altercation between Mr. Nur and another employee of the Company, it is unfortunate that neither the Commission nor the Complainant was able to provide further details on this subject. The Tribunal only has

limited information on the video. The Commission claims that an employee named Chris was intoxicated at work and involved in a fight with the Complainant in December 2014, in violation of the policies to Prevent workplace alcohol and drugs problems. This employee was apparently not terminated. It appears that the alleged video was forwarded to David Radford, Director of Operations, Training and Development, an employee of the Respondent.

[42] If such a video exists, it would obviously be considered to be arguably relevant to the issues raised in Mr. Nur's complaint. I do not agree with the Respondent's position that the Commission was not able to establish the basis for the existence of such a video and that the request is purely speculative. It is not enough for the Respondent to invoke the fact that it has no knowledge of the incident and video to claim that the Commission's request is speculative. It appears that the Complainant provided details about the incident and about the transmission of the alleged video to a director working for the Respondent.

[43] On the contrary, I do not believe that the Commission provided sufficiently precise information about the video. The Commission and the Complainant were given an opportunity to file a reply following the Respondent's submissions and it was evident that the Respondent was clearly challenging this request. The Commission and the Complainant did not deem it necessary to provide more information on their request in this regard or to provide additional submissions on this subject. The Respondent was not provided with a specific date or location to limit its research related to the incident. The Tribunal has no knowledge of whether the Company has one or several cameras on its premises or of the hours of operation of the cameras. The Tribunal does not know whether the incident occurred at the same establishment where the Complainant generally works. I do not believe that I can blindly allow an application for disclosure.

That being said, if the Commission or the Complainant would like to submit evidence related to the incident at the hearing, with the help of testimony for example, they are free to do so. I am dismissing the Commission's application for disclosure related to the video footage.

V. Order

[43] I partially grant the disclosure request by the Commission with regard to employee data (see points a. and b. of the CHRC's Motion for disclosure, dated September 27, 2017). More specifically, I order the respondent to disclose:

- all potentially relevant documents it has in its possession regarding management employees;
    - in the province of Alberta;
    - for 2014 only;
    - with regard to disciplinary measures that have been taken against these management employees in accordance with its policies to Prevent Workplace Alcohol and Drug Problems;
        - including, but not limited to, information on the events in question, summaries of the events, details on disciplinary measures taken, etc.;
            - that may have been noted in various documents including, but not limited to, emails, forms, letters, summaries, etc.

[44] The respondent must conform to the order within a maximum of 60 days from the day the order is communicated to the parties.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
June 8, 2018

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2154/2816

Style of Cause: Mohamed Nur v. Canadian National Railway Company

Ruling of the Tribunal Dated: June 8, 2018

Motion dealt with in writing without appearance of parties

Written representations by:

Mohamed Nur, for himself

John Unrau, for the Canadian Human Rights Commission

Adrian Elmslie, for the Respondent