

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2019 CHRT 25

Date: June 6, 2019

File No.: T2028/2914

Between:

Jason Mangat

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian Air Transport Security Authority

Respondent

Ruling

Member: David L. Thomas

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I. Motion to Dismiss

[1] This is a ruling concerning a Motion of the Respondent (dated December 14, 2018 and filed with the Tribunal on February 5, 2019) seeking an order dismissing this complaint. The Respondent's grounds for the motion are that the Complainant failed to comply with his disclosure obligations, that he repeatedly failed to comply with the Tribunal's *Rules of Procedure* and that both the Tribunal and the Respondent have been unable to move this case forward due to the conduct of the Complainant. The Respondent alleges it would be an abuse of process to allow this complaint to proceed. In the alternative, the Respondent submits that the Complainant's behaviour indicates an intention to abandon this complaint and as such, it should be dismissed.

[2] In addition, the Respondent argues that the terms of a settlement agreement between it and Mr. Mangat in 2009 should have precluded this complaint from proceeding at all. I do not need to rely on this argument given my other findings, but I will address it below nevertheless.

[3] The Canadian Human Rights Commission did not take a position on this motion. The Complainant did not respond.

[4] For the reasons given below, I grant the Respondent's motion and dismiss the complaint.

II. Background

[5] The complainant, Jason Mangat, was employed to be a screening officer in 2004 by a company which was contracted by the Canadian Air Transport Security Authority (CATSA) to provide screening officer services at the Vancouver International Airport. Prospective screening officers at the time were required to pass CATSA's training and examination program in order to become qualified screening officers. Mr. Mangat's claim arises from various allegations that CATSA was unwilling to facilitate his access to the program and he says that ultimately, his lack of certification led to his being unable to secure employment as a screening officer.

[6] The complaint in this matter was filed with the Canadian Human Rights Commission by the Complainant on December 19, 2011. On June 26, 2014, the Commission requested the Canadian Human Rights Tribunal (the “Tribunal”) to institute an inquiry into the complaint pursuant to s. 44(3)(a) of the *Canadian Human Rights Act* (the “CHRA”). The Complainant alleges that the Respondent discriminated against him on the grounds of disability contrary to s. 7(b) of the CHRA, as he suffers from a severe learning disability and attention deficit hyperactive disorder (ADHD). Mr. Mangat alleges that he was not accommodated with respect to his training and certification examination which ultimately led to the end of his employment when a new contractor was engaged for airport security.

[7] Mr. Mangat originally filed a complaint with the Commission against CATSA in 2006. That complaint led to the aforementioned settlement agreement in 2009, which CATSA claims included a release from all claims or causes of action arising from the incidents which led to the original complaint. CATSA argues that the current complaint is based on the allegation that CATSA did not fulfill its obligations under the 2009 settlement agreement. Whether or not CATSA breached any obligations under the 2009 settlement agreement, Mr. Mangat’s complaint in this matter does appear to be based on allegations that it was breached. Under the circumstances, it does raise the question why the Commission accepted Mr. Mangat’s new complaint when there were no new issues raised and why Mr. Mangat was not advised to pursue remedies for a breach of contract he negotiated in 2009. In any event, my decision herein does not rely on this argument as there are other grounds upon which I find it appropriate to dismiss this complaint.

[8] Having been requested to institute an inquiry into the current matter, the Tribunal wrote to all parties on July 11, 2014, inquiring whether they wished to participate in a voluntary mediation process as an alternative to the hearing. The parties agreed, and a mediation session was held by Tribunal Member Lustig on February 25, 2015. At that time, an interim settlement agreement was reached, and the minutes of such agreement (the “Interim Agreement”) were signed by Mr. Mangat on May 15, 2015. The Interim Agreement called for, *inter alia*, Mr. Mangat to apply for a Screening Officer position with the new contractor and CATSA agreed to take certain steps after that was done. CATSA

made repeated requests in May and September 2016 for confirmation that Mr. Mangat had made that application. In November 2016, Mr. Mangat claimed, via his then-representative, that he had applied for the position on October 5, 2015. However, the new contractor informed CATSA in September 2016 that they had no record of Mr. Mangat ever applying for a position with them, and Mr. Mangat provided no evidence to the contrary.

[9] In light of Mr. Mangat's apparent inaction, in early 2017, CATSA requested that he withdraw his complaint. However, Mr. Mangat reaffirmed his intention to pursue his complaint and another mediation session was arranged by the Tribunal. This second mediation took place by telephone on April 21, 2017. The mediation did not result in a settlement, although the Complainant indicated he wanted to continue settlement discussions, which continued until February 4, 2018.

[10] The parties participated in another mediation session on March 14, 2018, but this did not conclude with a settlement.

[11] On April 12, 2018, the Tribunal sent a pre-hearing disclosure schedule to the parties, with a May 3, 2018, deadline for the Commission to provide its disclosure package, and Mr. Mangat was given a deadline of May 22, 2018 to provide his statement of Particulars and disclosure materials. The deadline for the Respondent's reply was June 12, 2018.

[12] Mr. Mangat did not provide a Statement of Particulars or any disclosure materials by the deadline of May 22, 2018 or at any time since.

[13] On June 12, 2018, the Tribunal left Mr. Mangat a voicemail regarding the missed deadline and the need to submit his Statement of Particulars. The Tribunal followed up with an email to Mr. Mangat, requesting that he respond as soon as possible, and indicating a new deadline for the Respondent to file its materials would be set upon receipt of Mr. Mangat's disclosure. Mr. Mangat did not respond.

[14] On August 16, 2018, the Tribunal attempted to call Mr. Mangat again, but there was no answer and the Tribunal was unable to leave a voicemail because Mr. Mangat's

voicemail inbox was full. The Tribunal followed up with another email asking Mr. Mangat when he would file his Statement of Particulars.

[15] Mr. Mangat left a voicemail message with the Tribunal on September 11, 2018 at 2:04 am (EST). A return call was attempted September 11, 2018 at 6:24 pm (EST), however, the voicemail inbox was full.

[16] On October 1, 2018, the Tribunal successfully contacted Mr. Mangat and provided him with a new deadline of November 23, 2018, to file his Statement of Particulars and disclosure list. Mr. Mangat did not provide these documents by that deadline, gave no explanation why, and has never provided his Statement of Particulars or disclosure materials to the parties or the Tribunal.

[17] On February 5, 2019, the Respondent filed a Motion to Dismiss with the Tribunal. The Motion was dated December 14, 2018 and the Respondent provided evidence that a process server had made three unsuccessful attempts to personally serve the Motion on Mr. Mangat at his address on December 20, 2018, January 5, 2019, and January 25, 2019. The Respondent did provide proof that the Motion and supporting materials were successfully delivered to Mr. Mangat by courier on January 25, 2019.

[18] Upon receipt of the Motion to Dismiss, the Tribunal gave Mr. Mangat a deadline of March 22, 2019 to respond. Mr. Mangat missed the deadline of March 22, 2019 without explanation.

[19] On Monday, March 25, 2019, at approximately 7:57 am EST, the Tribunal received a voicemail from Mr. Mangat requesting an extension of time to respond to the Respondent's Motion to Dismiss. The Tribunal tried to return Mr. Mangat's call about five minutes later, but he did not pick up at the telephone number he left in his message. The Tribunal left Mr. Mangat a voicemail message asking him how much time he required to prepare his reply to the Motion.

[20] Hearing no reply from Mr. Mangat, the Tribunal wrote to him again on April 4, 2019, imposing a deadline of April 8, 2019 for Mr. Mangat to respond about how much of a time extension he required in order to complete a reply to the Respondent's Motion to Dismiss.

[21] On April 8, 2019, Mr. Mangat contacted the receptionist at the Tribunal and said he needed an extension of 35-40 days to reply to the Motion. On April 10, 2019, the Chairperson of the Tribunal wrote to the parties as follows:

The Tribunal has an obligation to provide access to justice for all Canadians, which includes respondents as well as complainants. Mr. Mangat should be aware that the Tribunal has dismissed cases in the past where the complainant has not actively pursued their complaint. Therefore, this new deadline to respond should be taken very seriously by Mr. Mangat.

While the Tribunal wishes to be accommodating to complainants in special circumstances, respondents are also entitled to seek resolution and finality of the complaints against them.

Mr. Mangat is hereby given an additional 40 days to respond to the motion. He should take whatever action is required, or obtain whatever assistance he needs in order to ensure he meets this deadline. In light of the history of this case before us, if this deadline is missed, the Tribunal will not be inclined to allow any further accommodation.

[22] This letter was sent to Mr. Mangat by email and the original letter was sent by Purolator courier, but returned to the Tribunal, because it was not accepted at Mr. Mangat's address on file.

[23] Mr. Mangat missed the May 24, 2019 deadline to respond and no explanation was given. The Tribunal has had no contact from Mr. Mangat since his telephone call to the receptionist on April 8, 2019.

III. Analysis

[24] The Respondent argues that Mr. Mangat has repeatedly failed to comply with his disclosure obligations and failed to comply with the Tribunal's *Rules of Procedure*. In the Respondent's view, it would be an abuse of process to allow his complaint to proceed.

[25] Rule 1(5) of the Tribunal's *Rules of Procedure* provides that dates and time limits set by the Tribunal are mandatory:

1(5) Unless the Panel grants an extension or an adjournment, all time limits for complying with these Rules and all dates set for a hearing, a motion or a case conference are peremptory.

[26] The Tribunal is entitled to protect its process from abuse (*Canada (Human Rights Commission) v. Canada Post Corp.*, 2004 FC 81 at para. 15, aff'd *Canadian Human Rights Commission v. Canada Post Corp.*, 2004 FCA 363). In *Labelle v. Rogers Communications Inc.*, 2012 CHRT 4, the Tribunal canvassed the principles applicable to a motion to dismiss for a failure to actively pursue the complaint (at paras. 77-80).

77 In *Johnston v. Canadian Armed Forces*, 2007 CHRT 42 (CanLII), the Tribunal recognized the two approaches which have developed with respect to dismissal for delay previously pointed out in *Seitz v. Canada*, 2002 FCT 456.

78 The first approach, which is sometimes referred to as the "classic" test, was set out in *Nichols v. Canada*, [1990] F.C.J. No. 567 (F.C.T.D)(Q.L.). It is a threefold test consisting, first, of determining whether there has been an inordinate delay; second, whether the delay is inexcusable; and third, whether the defendants are likely to be seriously prejudiced by the delay (*Seitz* at para. 10).

79 The second approach is appropriate in circumstances where litigants engage in a "wholesale disregard" for time limits provided in the rules of court (*Seitz* at paras. 16-18). This is how the Complainant has, in my view, conducted herself in the present case.

80 As summarized in *Johnston*:

“according to *Seitz*, such breaches are not to be looked at only from the viewpoint of the litigants, but also in light of the abuse of and prejudice to the due administration of justice. Where an action has remained static for an unreasonable length of time, there is an abuse of the administration of justice, which is separate and apart from any prejudice caused by inordinate and inexcusable delay, elements that must be established under the “classic” test. *Seitz* notes that these sorts of breaches will give rise to an abuse of process and will constitute grounds for dismissal”. See also *Grovit and Others v. Doctor and Others*, [1997]1 W.L.R. 640 and *Trusthouse Forte California Inc. v. Gateway Soap and Chemical Co.*, 1998 CanLII 8897 (FC), 1998 CanLII 8897

[27] The Tribunal may dismiss a complaint where the case has remained static for an unreasonable length of time, due to a “wholesale disregard” for the time limits set by the Tribunal, such that the delay constitutes an abuse of the Tribunal’s process (see

Tourangeau v. Greyhound Canada Transportation Corporation, 2008 CHRT 2 at para. 8; and, *Johnston v. Canadian Armed Forces*, 2007 CHRT 42 at paras. 29-34).

[28] In the Tribunal decision of *Mattice v. Westower Communications Ltd.* (2014 CHRT 32) ("*Mattice*"), the Tribunal dismissed a complaint before the hearing because the complainant repeatedly failed to heed the deadlines set for him by the Tribunal. Similar to the case at hand, in *Mattice*, the Complainant had still not produced a Statement of Particulars six months after the deadline. The complaint in *Mattice* was dismissed after three years since referral to the Tribunal. In the present case, it has been almost five years. The Tribunal stated at paras. 51-52 of the *Mattice* decision:

[51] In addition, the Tribunal is mandated to conduct its proceedings informally and expeditiously, to allow for an efficient, fast and economical way for Canadians to access recourse under the *CHRA* (see s. 48.9(1)). The Canadian human rights system is designed to ensure not only respect for the human rights of individual complainants, some of whom are the most vulnerable amongst us in society, but also to uphold some of the fundamental values of our society as a whole. In this regard, while the Tribunal gives due consideration to accommodating the needs of self-represented parties to allow them the full and ample opportunity to present their case, it will not do so to the detriment of the other parties or the Tribunal. While conducting its proceedings informally and expeditiously, at the same time, the Tribunal is obliged to respect the principles of natural justice. That is, the Tribunal owes a duty of fairness to all parties.

[52] It would not be impossible to imagine a party to a complaint deliberately drawing out proceedings simply for the purpose of inflicting financial damage to the other party, with the knowledge that every delay or missed deadline simply adds to the cost of being named in the matter. Long, drawn out legal proceedings can be a costly affair for the parties. In particular, if a party to a complaint has retained outside legal counsel, for every delay, every missed deadline, every adjourned case management call, every time a matter must be addressed a second, third and fourth time, there is a real financial cost to the party. Along with delay and ensuring compliance with its procedure, the Tribunal must guard against this possible abuse of process as well.

[29] Mr. Mangat has repeatedly missed all deadlines to file his Statement of Particulars and disclosure materials without notice or explanation to the Tribunal. He has also missed all deadlines to reply to the Motion to Dismiss his complaint, again, without explanation and despite a very serious warning from the Tribunal to take its deadlines seriously.

[30] As of this month, Mr. Mangat's complaint has been before this Tribunal for five years. It is no closer to resolution than when it arrived here from the Commission.

[31] Mr. Mangat's claim is based on his diagnosis of ADHD, which the Tribunal has taken into account by being very flexible and using a variety of means of attempting to contact him. Nevertheless, a complainant must take reasonable steps to participate in the Tribunal's process, and if unable to represent themselves, they may engage counsel or enlist the assistance of a friend or colleague. The Tribunal has considerable experience dealing with self-represented parties and it makes every effort to accommodate parties when appropriate. However, in this case, it was inordinately difficult to make contact with Mr. Mangat: the majority of calls and e-mails went unanswered; deadlines were missed without any contact; and couriered packages were not accepted at his address.

IV. Ruling

[32] As a result, the complaint is dismissed because Mr. Mangat has disregarded the time limits set by the Tribunal and failed to actively pursue his complaint.

Signed by

David L. Thomas
Tribunal Chairperson

Ottawa, Ontario
June 6, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2028/2914

Style of Cause: Jason Mangat v. Canadian Air Transport Security Authority

Ruling of the Tribunal Dated: June 6, 2019

Motion dealt with in writing without appearance of parties

Written representations by:

Jason Mangat, for the Complainant (No submissions filed)

Daphne Fedoruk, for the Canadian Human Rights Commission (No position taken)

Steven Williams, for the Respondent