

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2020 CHRT 14

Date: April 22, 2020

File No.: T2286/4118

Between:

Jamieson Hopps

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Shadow Lines Transportation Group

Respondent

Decision

Member: Alex G. Pannu

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I. Complaint

[1] Jamieson Hopps is the Complainant in this case. He alleges termination of employment by the Respondent, Shadow Lines Transportation Group (“Shadow”), contrary to section 7 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (CHRA).

[2] Mr. Hopps, who claims to suffer from stress, anxiety and depression, alleges that at the time the Respondent terminated his employment, he was suffering from a mental disability and this was a factor in his termination. Disability is a prohibited ground of discrimination.

[3] The Respondent submits that the Complainant has failed to establish that a protected characteristic was a factor in his termination. In particular, the Respondent submits that the Complainant did not establish a connection between his disability and the termination of his employment, which they maintain was based solely on his job performance.

[4] Mr. Hopps represented himself at the hearing while the Respondent was represented by counsel. The three-day hearing was held in Vancouver, British Columbia. The Canadian Human Rights Commission (“Commission”) which investigated and referred the matter to the Tribunal for adjudication did not participate at the hearing. Both parties provided evidence and called several witnesses to testify.

II. Issues

[5] The issue for the Tribunal to decide is whether the Respondent engaged in a discriminatory practice contrary to section 7 of the CHRA when it terminated the Complainant’s employment at least in part because of his disability. In particular, the parties contest whether the Complainant had a disability and whether the Complainant’s disability was a factor in his termination. Mr. Hopps also raised the issue of whether Shadow had a duty to inquire about Mr. Hopps’ disability at the time of termination.

III. Law

[6] Section 7 of the CHRA says it is a discriminatory practice to refuse to employ or continue to employ, or differentiate adversely in relation to an employee, on a prohibited ground of discrimination. The prohibited grounds of discrimination are set out in section 3(1) of the Act.

[7] The Supreme Court of Canada first addressed the issue of discrimination in *Andrews v. Law Society British Columbia*, [1989] 1 SCR 143 where the court said "...discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society."

[8] The Supreme Court added further guidance in *McGill University Health Centre (Montreal General Hospital v. Syndicat des employés de l'Hôpital général de Montréal*, 2007 SCC 4, para. 48 saying "At the heart of these definitions is the understanding that a workplace practice, standard or requirement cannot disadvantage an individual by attributing stereotypical or arbitrary characteristics." The court went on to say, at para. 49 "...there is a difference between discrimination and a distinction. Not every distinction is discriminatory. ... Such membership alone does not, without more, guarantee access to a human rights remedy. It is the link between that group membership and the arbitrariness of the disadvantaging criterion or conduct, either on its face or in its impact, that triggers the possibility of remedy. And it is the claimant who bears the threshold burden."

[9] The Tribunal has started to move away from describing the burden of proof required of a complainant as a "*prima facie*" one. Rather, a complainant must establish a case which covers the allegations made and which, if believed, is complete and sufficient to justify a decision for the complainant.¹

[10] To establish a complainant's case, a complainant must show that he had a characteristic protected from discrimination under the CHRA; that he experienced an adverse impact with

¹ *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 SCR 536 at 558; see also *Emmett v. Canada Revenue Agency*, 2018 CHRT 23 at paras. 53-54.

respect to his employment; and that the protected characteristic was a factor in the adverse impact.²

[11] The Supreme Court of Canada elaborated on this definition in *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para. 56.

[56] ... the proof required of the plaintiff is of a simple “connection” or “factor” rather than that of a “causal connection”, he or she must nonetheless prove the three elements of discrimination on a balance of probabilities. This means that the “connection” or “factor” must be proven on a balance of probabilities

[12] The Supreme Court went on to say that in practical terms, this means that the respondent can either present evidence to refute the allegations of discrimination, put forward a defence justifying the discrimination or both. If no justification is established by the respondent, proof of these three elements on a balance of probabilities will be sufficient for the Tribunal to find that the CHRA has been violated. If, on the other hand, the respondent succeeds in justifying his decision, there will have been no violation, not even if the complainant meets their case.³

[13] Mr. Hopps is required to establish, on a balance of probabilities, that he had a characteristic protected by the CHRA, he suffered adverse impacts because of actions by the Respondent, and that his disability was a factor in the adverse impacts.

[14] The Tribunal will consider whether Mr. Hopps has established that he had a disability, which is a protected characteristic under the CHRA, at the time of his termination. In *Desormeaux v. Ottawa (City)*, 2005 FCA 311, para. 15, the Federal Court of Appeal indicated that “disability in a legal sense consists of a physical or mental impairment, which results in a functional limitation or is associated with a perception of impairment.” There is no dispute about whether Shadow’s termination of Mr. Hopps adversely impacted him. The Tribunal must consider whether the alleged disability was a factor in the termination.

² *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33.

³ *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para. 64.

IV. Evidence

Complainant Witnesses

Jamieson Hopps

[15] Jamieson Hopps testified as the Complainant. He said that he originally applied to Shadow to be a yard supervisor but was offered a position in February 2015 as a freight broker in the logistics division because he had prior experience in an office.

[16] According to Mr. Hopps' testimony, he did well as a freight broker and received a \$10,000 raise in March. He was promoted to a dispatch position in April, though without an increase in pay.

[17] Mr. Hopps said that in June 2015, business in his division (known as the I-5) started to "dry up". He says that he felt his decisions on dispatching trucks were being questioned by his supervisor Boyd Rupp because Mr. Rupp had a vested monetary interest in Shadow business being diverted to another division.

[18] Mr. Hopps also said that a number of operational issues in his division were caused by mistakes made by his co-worker Natalie Shaw, but he was receiving the blame.

[19] Mr. Hopps said all these factors caused him to have a "panic attack" on the morning of October 13, just before he was to meet Mr. Rupp and Sandi Fox, the operations and human resources manager. Instead of attending the meeting, he said he went to a local medical clinic to be examined and treated. He said he needed to take time off work under the medical advice of the doctor who treated him.

[20] Mr. Hopps said he intended to return to work on October 27. He said upon meeting with Mr. Rupp and Ms. Fox on October 27, he was terminated by Shadow.

[21] Mr. Hopps said that since then, he has changed his career and focused on jobs without stress where he could use his hands.

Dr. Alaa Gayed

[22] Dr. Gayed is a general practitioner who worked at Willoughby Medical Centre in Langley. He saw Mr. Hopps on October 13, 2015 when he appeared as a walk-in patient. He was not Mr. Hopps' regular doctor and had not seen him before.

[23] Relying on his medical notes, Dr. Gayed testified that Mr. Hopps told him he had an anxiety attack the week before due to stress at work. Dr. Gayed recorded that "Mr. Hopps said he can't function or focus, his mood was down, sleep irritable, his energy and appetite were low, no suicidal ideation". Dr. Gayed observed tearing and distress in Mr. Hopps. "He had poor eye contact and a low voice". In his notes under Assessment Note, Dr. Gayed wrote "anxiety depression + sick note". Under Plan Note, he prescribed "Cipralext and Ativan and 2 weeks off work."

[24] Dr. Gayed provided Mr. Hopps with a medical note dated October 13 that said he should take two weeks off work "due to medical condition".

[25] Dr. Gayed saw Mr. Hopps again on October 23. In his medical notes he wrote that Mr. Hopps was there for a follow-up about his anxiety. He noted "a slight improvement, still shaky. Willing to return half-day shift October 27." Under Assessment Note, Dr. Gayed wrote "anxiety". Under Plan Note, he wrote "note to return oct 27 1/2 d/shift for 2 w.f/up nov 2nd".

[26] Dr. Gayed wrote a medical note for Mr. Hopps that said, "Jamieson will return to work Oct 27th, 2015 for Half-Day shift for 2 weeks".

Sandra Tolson

[27] Sandra Tolson has been the spouse of Mr. Hopps for seven years. She testified about the effects of his termination on their home life. She said they had to live on one income for 6-7 weeks until his Record of Employment was corrected by Shadow and Mr. Hopps could receive Employment Insurance.

[28] Ms. Tolson said that, after his termination, it was difficult to get Mr. Hopps to do anything. She thought he was depressed.

[29] During his employment with Shadow, Ms. Tolson said there were constant interruptions from the company cellphone which Mr. Hopps was required to carry at all times. She said that she noticed he was stressed and seemed overwhelmed around May-June 2015.

Respondent Witnesses

Boyd Rupp

[30] Boyd Rupp was operations manager at Shadow at the time of Mr. Hopps' employment and thus his direct supervisor. He has been an employee at Shadow since 2004 working in sales, dispatch for 7-8 years and then operations. He also had 35 years experience in dispatch positions at other trucking companies. He is currently on long-term disability from Shadow.

[31] Mr. Rupp described the operations of Shadow as four divisions: I-5 (containers from Vancouver-Seattle), line haul (freight from off the docks in Vancouver, Seattle, Tacoma), brokerage, and bulk freight.

[32] Mr. Rupp described the dispatch office at Shadow as an open-plan office where 3-4 dispatchers and salespersons worked in close quarters. It was an intentional set-up designed to allow employees to hear what others were doing and to facilitate fast reactions. He said it was a loud, high-stress environment where dispatchers would be on the phones talking back and forth as they matched trucks and loads like players moving pieces on a checkers board.

[33] Mr. Rupp said he hired Mr. Hopps to be a dispatcher for the I-5 division because he had an outgoing personality and seemed willing to do the job despite his lack of experience. He believed there were experienced people at Shadow including himself who could help Mr. Hopps.

[34] According to Mr. Rupp, Mr. Hopps did well as a dispatcher in the first month but then his performance went downhill. He does not know why. He described instances where paperwork was not completed on time resulting in trucks stuck at the border. He said there were problems with the way trucks were dispatched. There were a number of instances in which mistakes were made which upset customers. Mr. Rupp said that he had numerous talks with Mr. Hopps, but his performance did not improve.

[35] Mr. Rupp testified he gave Mr. Hopps a written reprimand on September 9 believing that verbal warnings were not having an impact. On September 10, after another incident in which he questioned Mr. Hopps' dispatch decision, he wrote a memo to himself and Sandi Fox asking her to ask two other employees whether they would be willing to take on the I-5 dispatch job. Mr. Rupp explained that at this time he was thinking of terminating Mr. Hopps.

[36] Mr. Rupp said that on October 9 another incident occurred in which Mr. Hopps disregarded his explicit instructions. He sent an email that day to Ms. Fox that said "we MUST let Jamie go" by Tuesday.

[37] Mr. Rupp said that on October 13, Mr. Hopps was asked upon his arrival at work to meet with him and Ms. Fox in the boardroom. They were meeting with a driver around 9 am when Mr. Hopps interrupted them to say he was "popping out for ½ hour". When he had not returned within the time indicated, Mr. Rupp sent an email at 11:05 am inquiring as to his location. Mr. Hopps responded by email at 11:11 am saying he was advised to take two weeks off work for medical leave and saying, "I've been under a lot of stress and feeling overwhelmed the last few weeks". He attached Dr. Gayed's medical note of October 13.

[38] Mr. Rupp said they put the termination on hold until Mr. Hopps' return. The termination letter, co-written by Mr. Rupp and Ms. Fox was updated to October 27. When Mr. Hopps returned to work on October 27, he met with them. Mr. Rupp said he asked Mr. Hopps "What's happening with you?" but Ms. Fox cut off Mr. Hopps' answer and gave him the termination letter. The meeting was brief and concluded with no discussion of the contents of the letter or any explanation by Mr. Hopps about his performance.

Sandi Fox

[39] Sandi Fox is the Terminal Manager at Shadow's Langley office. She previously worked for Shadow in operations and human resources for its Calgary, Edmonton and Regina offices.

[40] Ms. Fox testified that in April 2015, she was instructed by Mr. Hopps' supervisor at the time to put him up at a local hotel for three nights because he had some issues at home. Ms. Fox stated that Mr. Hopps' home issues did not impact on his work.

[41] Ms. Fox said that she became aware of performance issues with Mr. Hopps in mid-summer of 2015. She mentioned the meeting with an unsatisfied customer called Hillenbrand in August 2015 in which it seemed to her that Mr. Hopps had delayed providing the name of his superior to the customer despite several requests. Ultimately Shadow lost the Hillenbrand account.

[42] Ms. Fox said she attended a number of meetings with Mr. Rupp and Mr. Hopps to discuss Mr. Hopps' performance issues. She testified her impression was that Mr. Hopps did not want to listen to Mr. Rupp despite his lack of experience. He blamed others and did not take responsibility for work issues. She thought he had a hard time fitting into the Shadow team. Although Mr. Hopps started well, she said his performance deteriorated and did not improve after discussions with her and Mr. Rupp.

[43] Ms. Fox recounted that at Shadow's weekly operations meeting on October 9, Mr. Hopps took offence at some of the discussion leading him to have an outburst in which he said he had "had enough and maybe they should find someone else". Mr. Hopps then left the meeting and returned to his desk and continued working. Ms. Fox said that the other members simply thought Mr. Hopps was frustrated and having a "bad day".

[44] Ms. Fox said that she supported Mr. Rupp's decision to terminate Mr. Hopps, sent to her by email on October 9. She prepared the termination letter on the morning of October 13, the first normal workday after the long weekend. Since their meeting with Mr. Hopps did not take place on October 13, she revised the letter for their next scheduled meeting on October 27.

[45] Ms. Fox said that although she and Shadow believed they had cause to terminate Mr. Hopps, because he had not been with them long, they thought it unfair not to give him some compensation in the form of severance.

[46] At the meeting on October 27 with her, Mr. Rupp and Mr. Hopps, she said she did not recall Mr. Hopps saying anything about his health issues. She admitted she jumped in to interrupt Mr. Hopps and gave him his termination letter because she said her practice was not to engage in small talk with an employee who was about to be terminated.

V. Analysis

Did the Complainant have a characteristic protected by section 3?

[47] Mr. Hopps testified that over the past several years, he has been treated for and taken medication for various ailments including anxiety/stress and depression. A mental impairment can be considered as a disability and therefore a protected characteristic under section 3 of the CHRA.⁴ What the Tribunal considers relevant is whether Mr. Hopps, at the time of his termination, was suffering from a disability.

[48] Mr. Hopps' claim of a mental disorder relies primarily on the diagnosis and treatment from Dr. Gayed. On cross-examination, Dr. Gayed admitted that he was not a psychiatrist and had not treated Mr. Hopps previously. While it is not necessary to have a diagnosis from an expert, I find it noteworthy that Dr. Gayed had very little opportunity to examine Mr. Hopps. On that crucial first meeting on October 13, Dr. Gayed testified that he examined Mr. Hopps for about 10 minutes. He saw Mr. Hopps only two more times, on October 27 and November 2.

[49] After the first examination of Mr. Hopps, Dr. Gayed wrote in his medical notes that he had anxiety and depression. After the second examination on October 22, Mr. Hopps' condition had clearly improved and Dr. Gayed felt he could return to work on a half-day basis for two weeks. There was no mention of depression in any subsequent notes. By his third examination of Mr. Hopps on November 2, Dr. Gayed felt he could return to work with no accommodation required. This indicates that Dr. Gayed did not identify long-term functional limitations necessary to meet the legal test of disability identified in *Desormeaux*.

[50] The evidence does not show that Dr. Gayed ever made a diagnosis that Mr. Hopps had a recognized mental disorder at the time of his termination. I do not see medical evidence that Mr. Hopps had depression prior to or after his termination for a period of six months. That is supported by Ms. Tolson's evidence that Mr. Hopps seemed depressed after his termination, but she did not say he was suffering from depression prior to his termination.

⁴ *Desormeaux v. Ottawa (City)*, 2005 FCA 311 at para. 15

[51] In addition, at the hearing, Mr. Hopps never claimed that at the time of his termination, his work performance was affected by a disability. Unlike in *Desormeaux*, in this case it does not appear that the Complainant had a disability that caused a functional or perceived limitation.

[52] In *Halfacree v. Canada (Attorney General)*, 2014 FC 360 the Federal Court said at para. 40, that “while stress may be disabling, it is not in and of itself a disability requiring accommodation. In order to obtain the protection of human rights legislation, an employee needs to provide a diagnosis with specificity and substance”.

[53] Further support for the decision in *Halfacree* can be found in *Canada (Attorney General) v. Gatien*, 2016 FCA 3 at para. 48 where the Federal Court of Appeal said that “...the case law recognizes that one cannot equate stress with a disability.”

[54] Similarly, situational anxiety can constitute the sort of condition or state of an individual that is excluded from the concept of a disability. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, 2000 SCC 27, para. 82.

[55] Based on the evidence presented, I find that Mr. Hopps was more likely to have been suffering from short-term situational anxiety in October 2015 just prior to his termination, which is not a disability that is a protected characteristic under the CHRA. Therefore, I do not find that Mr. Hopps has demonstrated he suffered discrimination on a prohibited ground.

Was there a connection between the alleged disability and the termination?

[56] Although my earlier findings are enough to dispose of this case, I will consider whether Mr. Hopps could establish that his disability was a factor in his termination. For this analysis, I will proceed under the hypothetical scenario that Mr. Hopps demonstrated that his anxiety was a disability. Even if Mr. Hopps could establish that he has a disability, he must still provide evidence to establish that his disability was a factor in his termination.⁵

[57] The Complainant argued that his disability was a factor in his termination because the Respondent terminated him when it learned he had a disability. Given the timing of his termination immediately after returning from medical leave for his disability, the Complainant

⁵ *Moore v. British Columbia (Education)* [2012] SCC 61

asks the Tribunal to infer that Shadow's decision to terminate him was made because it found out he had a disability.

[58] The Respondent says that it was not aware that Mr. Hopps claimed he had a disability. Ms. Fox said that the first time they heard that Mr. Hopps claimed he had a disability was when they received his human rights complaint, originally filed with the BC Human Rights Tribunal, long after his termination.

[59] The Respondent argued that Mr. Hopps was terminated because of his job performance and that the decision to terminate was made on October 9, 2015, four days before he saw Dr. Gayed and presented them with a medical note. The Respondent said that had the meeting with Mr. Hopps taken place on October 13 as scheduled, he would have been terminated then. The only reason the termination took place on October 27 they said was because they believed employment regulations prohibited them from terminating an employee while on medical leave.

[60] Both Mr. Rupp and Ms. Fox testified and provided documentary evidence of Shadow's concerns with Mr. Hopps' job performance from summer to October 2015. Mr. Rupp's evidence was that he considered terminating Mr. Hopps on September 10.

[61] The evidence presented by the Respondent witnesses was that Mr. Hopps did not admit to any errors, did not accept responsibility for any work issues and blamed others for any mistakes. Mr. Hopps gave similar testimony that any mistakes made were other people's and did not admit to any errors. Given that this was Mr. Hopps' first dispatch job and his decision to find subsequent jobs with less stress using his hands, I find it to be more probable that Mr. Hopps made errors and had work issues.

[62] Despite testimony from Mr. Rupp that he received commission from revenues from all of Shadow's divisions, Mr. Hopps continued to believe that Mr. Rupp's questioning of his dispatch decisions was based on self-interest. Mr. Hopps said he felt pressured to divert freight from his I-5 division to the line division because Mr. Rupp would benefit personally although he did not challenge Mr. Rupp's testimony.

[63] The Complainant did not provide evidence, other than his email to Mr. Rupp on October 13 and Dr. Gayed's medical note of that same day, that might have led Shadow to question his mental condition. Through several meetings with Mr. Rupp and Ms. Fox, Mr. Hopps did not

claim nor exhibit signs that his job performance was affected by a mental disability. Indeed, Mr. Hopps' consistently denied that his job performance was substandard. Aside from one short outburst at the October 9 operations meeting, which he left to return to work at his desk, there were no other incidents which Mr. Hopps could point to as evidence of a mental disorder.

[64] As this matter concerns human rights and not employment issues, I make no comment on the merits of the Respondent's decision to terminate Mr. Hopps. However, I conclude from the evidence that the Respondent has provided a reasonable explanation for their decision to terminate based on job performance. At the hearing, Mr. Hopps did not claim that any problems with his job performance was caused by his disability. I do not find that Shadow's decision was merely a pretext to cover a decision made on discriminatory grounds.

[65] The Complainant argued that his email and attached medical note to Boyd Rupp on October 13 after his visit with Dr. Gayed should have alerted Shadow to his medical condition. But his email to Mr. Rupp said he had been advised to take two weeks off work for "medical leave". He goes on to apologize for the "inconvenience". He concluded by saying that he "has been under allot (sic) of stress and feeling overwhelmed the last few weeks".

[66] I do not find that Mr. Hopps' email and Dr. Gayed's medical note of October 22 discussed earlier, provide enough information to alert the Respondent to the possibility that Mr. Hopps had a mental condition constituting a disability under the CHRA. There were no specifics provided about his condition by the Complainant except for mentioning stress and anxiety. A reasonable person would not conclude based on the email and medical note that Mr. Hopps was suffering from a disability.

[67] Mr. Hopps says that he attempted to explain his condition in response to Mr. Rupp's question on October 27 but was prevented from doing so by Ms. Fox's intervention. Even if he had done so, I do not believe it would have had any bearing on Shadow's decision to terminate him since they had already made it.

[68] Based on the evidence presented, I conclude that the Respondent's decision to terminate Mr. Hopps was based on job performance, not because of his alleged disability or medical leave. The decision to terminate was taken before they received Mr. Hopps' October 13 email and Dr. Gayed's medical note advising he needed to take time off work for stress.

Disability was not a factor in the termination because the Complainant did not make the Respondent sufficiently aware of his claim of disability and the decision to terminate had already been taken.

Did the Respondent have a duty to inquire about the Complainant's alleged disability and, by not doing so, fail to accommodate his disability?

[69] The Complainant argued that, given that he had a medical condition that might constitute a disability, the Respondent had a procedural duty to inquire into his potential disability and to accommodate him. In essence, the Complainant argued that he had a freestanding right to certain procedural accommodations. The Complainant alleged that the Respondent had a duty to inquire about his disability given he took two weeks medical leave and provided a medical note.

[70] In *Canada (Human Rights Commission v. Canada Attorney General)*, 2014 FCA 131 the Federal Court of Appeal confirmed that there is no freestanding procedural duty to accommodate. In particular, at paragraph 16, the Court said: "There is no separate procedural duty to accommodate under the CHRA that could give rise to remedies if the employer establishes that it has satisfied all parts of the test for determining whether a prima facie discriminatory standard is a bona fide occupational requirement...". Alternatively, the Complainant's argument can be understood to be that the Respondent had sufficient evidence of his disability that Shadow should effectively be assumed to have knowledge of his disability or to have willfully refrained from confirming knowledge of his disability.

[71] There are a few problems with this argument. First, I have found that Mr. Hopps did not have a disability within the meaning of the CHRA. Second, Mr. Hopps denied that his disability negatively affected his job performance. Therefore, even if Shadow had considered whether Mr. Hopps had a disability that was affecting his job performance, Shadow would have concluded that there was no relation between Mr. Hopps' alleged disability and his job performance.

[72] While there are cases where an employer might have an obligation to consider whether an employee's job performance is related to a disability, more evidence of the employee's potential disability is required. For example, in *Lafrenière v. Via Rail Canada Inc.*, 2019 CHRT

16, the employee had taken three months medical leave a few months prior to his termination and his supervisor documented concerns about the employee's wellbeing. Instead, the facts of this case are more comparable to cases where the employer was not considered to be notified of a potential disability. Another example is in *XS v. YP*, 2015 BCHRT 97, where the Tribunal did not consider that the employee had notified the employer of mental health issues even though he has spoken about his mental health in ways which the employer thought was 'venting'.

[73] In *Matheson v. Okanagan Similkameen School District No. 53*, 2009 BCHRT 112, the Tribunal said in paragraph 11 "In fact, an employee seeking accommodation for a disability is under a duty to disclose sufficient information to her employer to enable it to fulfill its duty to accommodate...". Although the employee in this case informed her employer that she was suffering from stress, the Tribunal held in paragraph 14 that "Stress in itself, is not a disability for the purposes of the Code. In particular, workplace stress resulting from an employer investigating alleged performance problems, or from a problematic relationship with a supervisor, is not alone sufficient to constitute a disability for Code purposes...".

[74] In *Young v. Vancouver Coastal Health Authority*, 2018 BCHRT 27, the employer terminated the employee while she was on medical leave. The Tribunal found that the decision to terminate was made before any of the triggering events alleged by the employee occurred. It dismissed the complaint on the basis that the employee did not advise the employer of any disability and the evidence did not support a conclusion that the employer should have been alerted to a possible need for accommodation.

[75] Even if the Respondent breached its duty to inquire, there is no remedy if the Complainant has not established a case of discrimination.

VI. Decision

[76] I do not find based on the evidence that the Respondent discriminated against the Complainant under section 7 of the CHRA and therefore dismiss the Complaint.

[77] The Complainant was not able to establish that he had a characteristic protected by section 3 of the CHRA. Although there was some evidence that at the time of his termination,

he was suffering from workplace stress, it did not amount to a mental condition or disorder that would constitute a disability. Stress in itself is not a disability.

[78] The Complainant was also not able to establish that there was a connection between his alleged disability and his termination. The evidence showed that the decision to terminate the Complainant was made by the Respondent before he communicated to them that he was suffering from stress.

[79] The information provided to the Respondent from the Complainant about his medical condition was not sufficient to trigger a duty to accommodate. Finally, even if the Respondent did not fulfil its duty to accommodate, there is no remedy available to the Complainant if he has not established a case of discrimination by the Respondent.

Signed by

Alex G. Pannu
Tribunal Member

Ottawa, Ontario
April 22, 2020

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2286/4118

Style of Cause: Jamieson Hopps v. Shadow Lines Transportation Group

Decision of the Tribunal Dated: April 22, 2020

Date and Place of Hearing: April 8-10, 2019

Vancouver, British Columbia

Appearances:

Jamieson Hopps, for himself the Complainant

No one appearing for the Canadian Human Rights Commission

Stephanie Vellins and Jaime H. Hoopes, for the Respondent