

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2022 CHRT 16

Date: May 9, 2022

File No.: T2387/4619

Between:

Lucyna Loboda

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian National Railway Company

Respondent

Ruling

Member(s): Gabriel Gaudreault

Table of Contents

I.	Background of the request.....	1
II.	Decision	1
III.	Legal bases.....	2
IV.	Analysis.....	3
V.	Orders	10

I. Background of the motion

[1] This is a decision involving the motion of the complainant, Lucyna Loboda, to stay a proceeding of the Canadian Human Rights Tribunal (“Tribunal”) until November 1, 2022, because of her medical condition.

[2] On March 24, 2017, Ms. Loboda filed a complaint with the Canadian Human Rights Commission (“Commission”) against her former employer, the Canadian National Railway Company (“respondent”), under section 7 of the *Canadian Human Rights Act* (“Act” or “CHRA”). The complaint was referred to the Tribunal for inquiry on June 17, 2019.

[3] The Tribunal and the parties are still at the stage of pre-hearing disclosure of documents potentially relevant to the case. The Tribunal rendered a recent decision on November 4, 2021, ordering the complainant to disclose various documents sought by the respondent (see *Lucyna Loboda v. Canadian National Railway Company*, 2021 CHRT 40).

[4] On December 23, 2021, the Commission informed the Tribunal and the respondent that Ms. Loboda was grappling with health issues affecting her ability to continue with the proceeding. Ms. Hudson, counsel for the Commission, advised of the complainant’s motion for a stay of proceedings for the foreseeable future, which was confirmed by Ms. Loboda in a short e-mail on December 24, 2021.

[5] There were several exchanges between the Tribunal and the parties. The Tribunal documented the development of the proceeding in two directives, which form part of the official Tribunal record, one dated January 21, 2022, and the other, March 10, 2022.

[6] On April 15, 2022, the Tribunal had finally received all of the parties’ submissions on the complainant’s motion for a stay of proceedings. It is now in a position to rule on the motion.

II. Decision

[7] For the reasons that follow, the Tribunal allows Ms. Loboda’s motion in part and orders a stay of proceedings until August 1, 2022.

[8] The Tribunal is also issuing other orders, which are set out in Part V of this decision.

III. Legal bases

[9] First, it is undisputed that the Tribunal has jurisdiction to stay the inquiry into Ms. Loboda's complaint (*Laurent Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2018 CHRT 5 (CanLII) [*Duverger*]; *Williams v. Bank of Nova Scotia*, 2021 CHRT 24 (CanLII), at para. 30 [*Williams*])

[10] It is also recognized that a stay of proceedings should only be granted in exceptional circumstances (*Duverger*, at para. 71; *Bailie et al. v. Air Canada and Air Canada Pilots Association*, 2012 CHRT 6 (CanLII), at para. 22; *Williams*, at para. 34).

[11] In *Duverger*, the Tribunal adopted the "interest of justice" test for analyzing motions to stay. This test allows for a broader assessment of factors relevant to motions to stay proceedings.

[12] Included in these factors are not only the principles of natural justice, procedural fairness and expeditiousness mentioned in subsection 48.9(1) of the CHRA, but also all the other relevant considerations that are appropriate in the circumstances, including those described in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC) (that is, a serious question of fact and/or law to be tried, irreparable harm and the balance of convenience).

[13] The "interest of justice" approach thus allows the Tribunal to reasonably and flexibly assess all the factors that are applicable and relevant in the circumstances of a motion to stay and to balance the interests of each party, including the public's interest in dealing with human rights complaints expeditiously (*Duverger*, at para. 51; *Hughes v. Transport Canada*, 2020 CHRT 21 (CanLII), at para. 21).

[14] It is with these principles in mind that the Tribunal will analyze the complainant's motion to stay.

IV. Analysis

[15] The complainant filed submissions in support of her motion for a stay of proceedings on March 17, 2022. She explained that she had been experiencing health problems in recent months that had worsened to the point where she was having difficulty taking care of herself. She also added that she had lost some close and extended family members, which had affected her health.

[16] In support of her motion, the complainant also provided a letter from her family physician, Dr. Oksana Boychuk, in which she explained that Ms. Loboda was under her care and that because of her medical condition, it was advisable that she be excused from participating in the proceeding from March 11, 2022, to November 1, 2022.

[17] The respondent opposed the complainant's motion, and its arguments can be summarized as follows:

- Proceedings before the Tribunal should be conducted in an expeditious manner, and motions for a stay of proceedings should only be granted in exceptional circumstances.
- Since August 2019, there have been many delays in the proceeding owing to issues related to the disclosure of documents and the consequent cancellation of the hearing on two occasions.
- Seven years have passed since the complaint was filed, and the disclosure of documents potentially relevant to the dispute has not yet been completed—the incurred delays affect procedural fairness and the respondent's ability to defend itself.
- The longer the hearing is delayed, the greater the potential impact and harm to the respondent. Evidence and witnesses may also become unavailable as a result of the passage of time.
- Further to the Tribunal's order dated November 4, 2021, there is no indication that the complainant has taken any steps to retrieve the documents in question, which could result in further delays.
- The medical evidence submitted does not make it possible to establish the complainant's limitations, how they affect her ability to participate in the Tribunal's proceeding or how the proceeding affects her medical condition.

- The Tribunal must weigh the medical evidence provided against the principle of procedural expeditiousness while taking into account the efficient use of the time required by all parties.
- The medical evidence provided is vague and nebulous and does not justify staying the proceeding until November 2022.
- The complainant's loss of family members is also not an exceptional circumstance, and stress, anxiety, costs, time and energy are inherent disadvantages of participating in legal proceedings and do not necessarily cause irreparable harm justifying a stay.

[18] The Tribunal notes that the respondent does offer a compromise: it would agree to an adjournment of the proceedings until June 30, 2022. During this time, the complainant could take steps to retrieve the documents the Tribunal ordered to be disclosed in its decision of November 4, 2021, if she has not already done so. At the end of this period, a teleconference would be held to establish time limits for the disclosure of the missing documents and to set the hearing dates.

[19] The Tribunal summarizes the Commission's main arguments as follows:

- It does not object to the complainant's request.
- Ms. Loboda confirmed that her health has deteriorated in the last few months and provided the necessary details in support of her motion, as required by the Tribunal.
- Her health and the effects of stress and anxiety in particular are not merely an inconvenience. The complainant detailed her health in her Statement of Particulars.
- The complainant suffers from Graves' disease, which causes her to have involuntary weight loss, heart palpitations, tremors, muscle weakness, hair loss, goiter and eye disease.
- Her anxiety causes panic attacks, nervousness, difficulty thinking clearly, hyperventilation and heavy sweating.
- Her depression is causing her to experience hopelessness, loss of concentration, insomnia or excessive sleep, irritability, fatigue and suicidal ideation.
- Although the treating physician does not specifically detail Ms. Loboda's medical condition in her letter, the fact that she recommends a stay of proceedings as a result of Ms. Loboda's health coupled with her description of her health are indicative of the difficulties the complainant is experiencing.

- The respondent has not shown that any evidence would be lost or that witnesses would be adversely affected by the passage of time, and the length of the stay sought by the complainant will allow her to focus on her health.

[20] The Tribunal allowed the respondent to provide additional submissions. In these submissions, the respondent reiterated the substance of the arguments made in its main reply and added the following arguments:

- The details of Ms. Loboda's medical condition as described by the Commission were not provided by the complainant herself, nor are they supported by Dr. Boychuk's letter;
- The complainant's medical condition, to date, has not been proven (*Syncrude Canada Ltd. v. Saunders*, 2015 ABQB 237, of the Court of Queen's Bench of Alberta);
- The details of the complainant's medical condition are taken from a Statement of Particulars describing health problems dating back several years and the only objective medical evidence available to date is that offered by the complainant's physician.

[21] In her reply, the complainant added the following arguments:

- She does not have the energy to provide lengthy submissions comparable to those of the respondent and since she already has difficulty taking care of herself, she cannot file higher quality submissions.
- The letter from her doctor does not contain details because the doctor told her that this type of letter does not usually contain any. However, if the Tribunal requires more details, the complainant agrees to it contacting her doctor.
- She has several symptoms related to Graves' disease, as described in her Statement of Particulars, she has anxiety and depression, and the severity of her symptoms varies.
- She has other undescribed health problems that could support her motion to stay, but does not wish to disclose them to the respondent, as she is concerned about her private life and her privacy, which are issues in the case.
- She consents to disclosing these new health issues only to the Tribunal.
- The respondent's compromise is not a true stay since she will have to continue to take steps to retrieve the documents sought and the respondent is not taking seriously the recommendation of her doctor.

- She wants more than anything to resolve this matter, which has affected her health, her relationships and her finances, and does not intend to cause harm to the respondent.

[22] Now that the Tribunal has summarized the position of each party, it can determine whether it is in the interest of justice to stay the proceeding until November 1, 2022, as requested by Ms. Loboda.

[23] The Tribunal is aware that the CHRA requires that proceedings be conducted as expeditiously as possible (subsection 48.9(1) of the CHRA). The public interest also demands that complaints related to discrimination be dealt with expeditiously (*Bell Canada v. Communication, Energy and Paperworkers Union of Canada*, 1997 CanLII 4851 (FC)).

[24] The Tribunal must also be guided by the principles of natural justice. It must take into account the right of the complainant to be heard and to participate fully in the inquiry into her complaint and to be given the opportunity to present evidence and make representations in a timely fashion, as provided for in subsection 50(1) of the CHRA. At the same time, the Tribunal recognizes that the respondent also has the right to an expeditious proceeding.

[25] At this stage of the proceedings, the Tribunal considers that it has sufficient evidence to conclude, on a balance of probabilities, that Ms. Loboda's participation in the proceeding has been compromised by her health problems and that she needs to be given time to recover.

[26] It should be noted that the Tribunal agrees with a portion of the respondent's position: it is true that Ms. Loboda could have provided more details about her medical condition. Indeed, it would have been entirely appropriate for Dr. Boychuk to provide information about Ms. Loboda's health and to specify the limitations that affect her. Dr. Boychuk could have done so without providing more information than necessary to the Tribunal and the other parties, while allowing us to fully understand Ms. Loboda's health issues. It is sufficient to receive the necessary and relevant information; a boundless invasion of the complainant's private life is not required.

[27] The Tribunal also understands that the respondent does not dispute that the complainant is experiencing health problems. To this end, and although Dr. Boychuk's letter

is deficient in this regard, Ms. Loboda has nevertheless offered further information about her health in her reply. The information she has provided does not appear to be frivolous and cannot be disregarded by the Tribunal, although it is also not highly detailed.

[28] Ms. Loboda confirmed that she does not have the energy to provide detailed submissions in support of her claims and that she lives with symptoms related to Graves' disease as described in her Statement of Particulars (and reiterated by the Commission—they need not be repeated here), in addition to experiencing anxiety and depression.

[29] In addition, the Tribunal notes that Ms. Loboda's participation has become difficult in recent months, with the Tribunal having had great trouble reaching her between November 2021 and February 2022, even though she had always participated in the Tribunal's proceeding since it began in June 2019. No one can deny that her sudden absence in November 2021 was unusual.

[30] The Tribunal finds that it is unnecessary at this time to have more substantial medical evidence to conclude that Ms. Loboda's full participation in the proceeding is compromised by her health. The Tribunal has sufficient information to make such a finding.

[31] Further, while the Tribunal is sensitive to the respondent's arguments, it is of the view that the effect of the delays on the proceeding itself is uncertain. Nor is it clear from the evidence to what extent the respondent's ability to defend itself, as it contends, would be affected.

[32] While it is true that excessive delays can become abusive, the Tribunal did not hear any arguments to that effect, and there is no basis for finding abuse because of the delays at this stage. Moreover, while Ms. Loboda's complaint was filed with the Commission in March 2017, the proceeding before the Tribunal is an entirely new one. The matter came before the Tribunal in June 2019 and there is nothing in what was submitted by the respondent in this motion that could lead the Tribunal to conclude at this time that any evidence, be it testimonial or documentary, could be lost or destroyed, or that any witnesses would be adversely affected by the prolongation of the proceeding. Nor is the Tribunal in a position to find irreparable harm on the basis of the arguments provided by the respondent.

[33] Nevertheless, the Tribunal agrees that time is of the essence. It wants to ensure that the proceeding can eventually proceed efficiently so that it can decide the merits of the case (section 52 of the CHRA) as quickly as possible (section 48.9(1) of the CHRA).

[34] It is therefore not prepared to grant a stay of proceedings until November 1, 2022, without receiving further medical information from Ms. Loboda in support of such a long stay. The Tribunal has heard the respondent's case for a compromise and must ensure that the respondent's interests are also preserved.

[35] In light of the foregoing, the Tribunal concludes that a stay of proceedings until August 5, 2022, is warranted, reasonable and in the interest of justice. This means a four-month stay of the proceeding from the filing of Ms. Loboda's reply dated April 15, 2022.

[36] The Court may allow an extension of the stay of proceedings to November 1, 2022, if the circumstances so warrant.

[37] A request for an extension of the stay of proceedings to November 1, 2022, if made, would need to be supported by additional medical evidence from Ms. Loboda and her physician, Dr. Boychuk, or another treating physician. At that time, it will be imperative that Ms. Loboda, through her treating physician, provide detailed information that answers the following questions:

- What specific medical conditions does Ms. Loboda have that result in functional limitations preventing her from participating in the Tribunal's proceeding? Please detail these limitations.
- Will these limitations continue in the short, medium or long term? Please explain.
- Is a stay of proceedings until November 1, 2022, necessary and why? Is this long enough for Ms. Loboda to recover and participate in the Tribunal hearing when it ends?
- If not, when is Ms. Loboda's expected to recover? Will she be able to participate in the Tribunal's proceedings in the near future? If so, how soon?
- Is there any other way to ensure Ms. Loboda's participation in the proceedings? Could any accommodations be made to help her situation? If so, please elaborate.

[38] It is important, not only for Ms. Loboda, but also for the treating physician who will have to provide the information requested by the Tribunal, to understand that when the proceeding resumes, the Tribunal expects the complainant to fully participate in the inquiry. Our process is a quasi-judicial one, very much like that of a court of law. Ms. Loboda will be required to participate in case management conference calls, extensively search for documents, prepare submissions on motions and prepare for the hearing, which will last several days and include the filing of documentary and testimonial evidence, examinations and cross-examinations, the handling of objections and the preparation of oral and written submissions.

[39] That said, the Tribunal invites Ms. Loboda and her treating physician to provide it with any necessary, additional information that they deem relevant and necessary in order for it to make an informed decision on a request for an extension of the stay of proceedings.

[40] Finally, Ms. Loboda mentioned that she is suffering from new health problems that might justify her motion for a stay of proceedings, but she refused to allow the respondent to be informed of them. However, she would agree to provide the information only to the Tribunal.

[41] Unfortunately, while the Tribunal is sensitive to such a request, it cannot grant it for obvious reasons of natural justice and procedural fairness. If Ms. Loboda believes that she suffers from health problems that may support her motion and claims, it is her responsibility to allege and prove them. Consequently, the other parties are entitled to know of Ms. Loboda's arguments and the evidence supporting them, and of course to have an opportunity to respond to them.

[42] If the complainant wishes to keep certain information in support of her claim confidential, she is entitled to apply for confidentiality pursuant to section 52 of the CHRA. If the Tribunal receives such an application, it will hear the parties, assess the evidence presented and determine the matter in light of the circumstances and the applicable law.

[43] Finally, the respondent mentioned that despite a stay of proceedings, the complainant could still take steps to retrieve the documents the Tribunal ordered to be

disclosed in its order of November 4, 2021. The objective remains that of efficiency and expeditiousness.

[44] The Tribunal does not agree with this request. A stay of proceedings is a stay of proceedings, that is to say, it leads to the temporary suspension of the inquiry (*Duverger*, at para. 26). When the Tribunal stays its proceedings, the case stops for both the Tribunal and the parties to the case until the stay is lifted.

[45] In this case, the purpose of the stay of proceedings is to allow Ms. Loboda to recover. To order her to continue to work on her case while the proceeding is stayed would defeat the very purpose of the stay. Hopefully, Ms. Loboda will recover soon, in which case she will be able to come back to the proceeding in full force. The Tribunal and the parties will then be able to finalize any disclosure issues, and hopefully resolve any other procedural issues and set the hearing dates.

V. Orders

[46] For all of the foregoing reasons, the Tribunal finds that it is in the interest of justice to stay the proceeding until August 5, 2022, to allow the complainant to recover.

[47] If the complainant requires an extension of the stay until November 1, 2022, she will have to provide additional information on her health, as requested and set out in paragraphs 37 to 39 of this decision, by August 5, 2022.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
May 9, 2022

English version of the Member's decision

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2387/4619

Style of Cause: Lucyna Loboda v. Canadian National Railway Company

Ruling of the Tribunal Dated: May 9, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

Lucyna Loboda, the Complainant

Julie Hudson, for the Canadian Human Rights Commission (do not include if no submissions filed)

Alison Walsh, for the Respondent