Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2023 CHRT 18
Date: May 12, 2023
File No.: T2735/11121

Between:

Briana Campos-Ruiz

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Attorney General of Canada (representing the Royal Canadian Mounted Police)

Respondent

Ruling

Member: Athanasios Hadjis

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I. OVERVIEW

[1] The Respondent, the Attorney General of Canada (representing the Royal Canadian Mounted Police) (RCMP), requests that the Canadian Human Rights Tribunal (Tribunal) exercise its discretion to strike out several paragraphs from the Statement of Particulars (SOP) of the Complainant, Briana Campos-Ruiz (Ms. Campos-Ruiz). The RCMP claims that those paragraphs seek to unnecessarily expand the scope of the inquiry as set out in the complaint that the Canadian Human Rights Commission (Commission) referred to the Tribunal.

[2] Ms. Campos-Ruiz objects to the motion, arguing that the claims in those paragraphs (the Contested Claims) explain the full story of her treatment by the RCMP and complete the complaint. She requests that the complaint be amended to include the Contested Claims.

[3] The Contested Claims are identified in a list attached to this ruling as Appendix A.

II. DECISION

[4] For the following reasons, I deny the RCMP's motion and grant Ms. Campos-Ruiz's request to amend her complaint.

III. ISSUE

[5] The Contested Claims refer to incidents that occurred after the complaint was filed and that were obviously not included in the original complaint.

[6] I must therefore decide the following issue:

- Should the Contested Claims be struck, or alternatively should Ms. Campos-Ruiz be allowed to amend the complaint to include them?

IV. THE CONTENT OF THE CONTESTED CLAIMS

[7] Ms. Campos-Ruiz filed her complaint in February 2018. At the time, she was a 16-year member of the RCMP serving in Langley, British Columbia, but had been on medical leave since April 2016, having been diagnosed with an illness. She claims that she was discriminated against and harassed throughout her medical leave on the grounds of disability. The Commission's "Summary of Complaint" sheet at the front of the complaint states that the provision of the *Canadian Human Rights Act* RSC 1985, c. H-6 (*Act*) at issue is s. 7, which addresses discriminatory practices in the course of employment. The "Complainant's Story" portion of the complaint refers to s. 10 (discriminatory policy or practice) and s. 14 (harassment) of the *Act* as well.

[8] The complaint details several instances of discrimination and harassment that Ms. Campos-Ruiz claims to have experienced. The first relates to what she describes as the RCMP's unjustified refusal to approve her secondary employment. Her medical treatment provider advised her to open a small home-based business to give her some structure and "a reason to get out of bed in the morning," which would help in her recovery. She completed a course and became certified in a field unrelated to policing. She applied to the RCMP for approval of her secondary employment, having been previously told that the process was simple and not likely to be denied. She opened her new business and saw improvement in her health. However, several months later, in October 2016, she learned that her approval request had been denied because management had concerns about her working elsewhere while being "off-duty sick," the term for sick leave in the RCMP.

[9] In her complaint, Ms. Campos-Ruiz claims that she was also discriminated against and harassed when, in June 2017, the RCMP opened an investigation against her, alleging that she breached the RCMP's Code of Conduct by engaging in secondary employment and leaving her duty area without authorization. These actions affected her health, which she claims was worsened by several RCMP representatives' repeated calls to her in the following months, which she interpreted as veiled threats and harassment.

[10] The original complaint does not contain any other examples of discrimination and harassment.

[11] However, Ms. Campos-Ruiz contends that the discrimination and harassment continued after she filed the human rights complaint with the Commission. These subsequent events are described in the Contested Claims.

[12] In April 2018, she was medically cleared to return to service with the RCMP, provided certain accommodation measures were taken. She claims that the RCMP neglected or refused to adopt these measures and, as a result, she had to remain on sick leave, which further negatively affected her health.

[13] In July 2018, she applied to the RCMP again for approval of her secondary employment but was denied the following month. She states that her medical treatment providers recommended she relocate to Saskatchewan where she would have family support.

[14] Her spouse, Osvaldo Campos-Ruiz (Mr. Campos-Ruiz) is also an RCMP member working in British Columbia. He asked for a transfer to Saskatchewan to accompany her but was told it would not be approved as long as Ms. Campos-Ruiz's situation remained "unresolved." She maintains that the only way for her to "resolve" the situation, given the RCMP's unwillingness to accommodate her, was to resign from the RCMP, which she effectively did by accepting a medical retirement in April 2019. After she retired, the RCMP approved her spouse's transfer to Saskatchewan.

[15] The Contested Claims include a request to be compensated for the loss of employment and pension income that she would have earned had she not retired from the RCMP in April 2019.

[16] In addition to disability, the Contested Claims allege discrimination based on family status. Ms. Campos-Ruiz contends that the RCMP discriminated against her in breach of s. 7 of the *Act* by forcing her to resign as a prerequisite to approving or even considering her spouse's request to be transferred to Saskatchewan. She also alleges that the RCMP failed to reasonably accommodate her return to work.

V. ANALYSIS

The Contested Claims should not be struck, and Ms. Campos-Ruiz may amend her complaint

[17] The RCMP contends that the Tribunal cannot inquire into the Contested Claims. It points out that the Tribunal's jurisdiction to conduct inquiries into complaints is derived from s. 49 of the *Act*, according to which the Tribunal Chairperson must institute an inquiry into a complaint upon receipt of a request from the Commission (s. 49(2)). The scope of Tribunal inquiries is thus limited to the matters arising from the complaints accompanying such requests (see *Kowalski v. Ryder Integrated Logistics*, 2009 CHRT 22 (CanLII) at para. 7). The RCMP argues that since Ms. Campos-Ruiz's complaint did not mention any of the Contested Claims, the Tribunal has no authority to deal with them and they should be struck from her SOP.

[18] Ms. Campos-Ruiz counters that she should be allowed to amend her complaint to include the Contested Claims.

[19] As noted in *Blodgett v. GE-Hitachi Nuclear Energy Canada Inc*, 2013 CHRT 24, at paras 16-17, s. 48.9(2) of the *Act* gives the Tribunal considerable discretion in the conduct of its proceedings. This includes granting or dismissing motions to amend a complaint. The Tribunal has discretion to grant amendments to determine "…the real questions in controversy between the parties," if granting them would be in the interests of justice (*Canada (Attorney General) v. Parent*, 2006 FC 1313 (CanLII) at para. 30). The Tribunal must consider the prejudice that granting the amendment would cause to other parties. Amendments will be allowed where the balance of convenience favours the complainant. The other party is not prejudiced as long as it is able to prepare itself and argue its position on the new issues being raised (*Parent* at para. 40). An amendment must also not result in a new complaint and must be linked to allegations giving rise to the original complaint (*Cam-Linh (Holly) Tran v. Canada Revenue Agency*, 2010 CHRT 31 (CanLII) at paras 17-18). In other words, there must be a nexus, in fact and in law, between the complaint and the amendment sought.

[20] As explained below, I find there is a nexus between the Contested Claims and Ms. Campos-Ruiz's original complaint and that the RCMP would not be prejudiced if the complaint is amended.

(i) There is a sufficient nexus in fact and in law to the allegations in the complaint

[21] The Contested Claims are linked in fact and in law with the complaint's allegations, particularly in relation to the claim of discrimination based on disability. While she did not formally use the term "accommodation" in her complaint, it is clearly centred on how the RCMP dealt with her and her disability. As she states in her response to the RCMP's motion, its treatment of her with respect to her disability is a clear "common thread" across the original and Contested Claims.

[22] She claims that, after she filed the complaint, the RCMP continued to interfere with her efforts to get better and return to work, either by not accommodating her at her job in British Columbia or by effectively preventing her from moving to Saskatchewan.

[23] Framed in legal terms, she contends that she was prevented from working due to her disability, which could amount to a discriminatory practice under s. 7 of the *Act*, and that her employer did not accommodate her to the point of undue hardship.

[24] Thus, both the original complaint's allegations and the Contested Claims centre on how Ms. Campos-Ruiz's disability was addressed and whether her needs were accommodated. There is a nexus between them.

[25] Admittedly, Ms. Campos-Ruiz is also alleging in the Contested Claims that her family status was a factor in the discriminatory practices she experienced. This ground was not mentioned in the original complaint. However, I am satisfied that there is a sufficient linkage between facts surrounding this claim and her other failure-to-accommodate allegations to justify their inclusion in the complaint.

[26] I therefore conclude that there is a nexus between all the Contested Claims and the original complaint.

(ii) The RCMP would not be prejudiced if the complaint is amended

[27] The RCMP would not be prejudiced if the complaint is amended. It has been aware of the Contested Claims since at least June 25, 2021, when the Commission's investigator completed the investigation report into the complaint. The report referred to the Contested Claims, but they were not assessed because the investigator believed that they were beyond the scope of the complaint. The investigator added, however, that if the complaint were referred to the Tribunal for further inquiry, Ms. Campos-Ruiz could "ask that the allegations be added at that time."

[28] The RCMP argues that the investigator's comments have no bearing on the scope of the complaint. However, I find that they still show that the RCMP is well aware of the Contested Claims and cannot argue that Ms. Campos-Ruiz's amendment request comes as a surprise.

[29] The RCMP submits that Ms. Campos-Ruiz was "obliged" to amend her original complaint while the Commission was still dealing with it, and before it referred it to the Tribunal, pursuant to Rules 9.1 to 9.3 of the *Canadian Human Rights Commission's Complaint Rules*. It is not the Tribunal's role to address how complaints are processed at the Commission stage before they are referred to the Tribunal. Ms. Campos-Ruiz may have had the option to amend under those rules. But, as I previously mentioned, the Tribunal also has the authority to allow a complaint to be amended where circumstances warrant it.

[30] The RCMP contends that allowing the amendment will cause it significant prejudice by increasing the proceeding's cost, length, and complexity and by requiring it to produce further documents and witnesses, potentially including experts.

[31] The hearing may indeed become more complex, but it is a necessary consequence of the fact that the issues Ms. Campos-Ruiz initially raised in her complaint ended up extending beyond the events that had occurred to that point. I am not persuaded that the RCMP as an organization will be significantly prejudiced in dealing with the additional related issues. Even though the complaint could have been amended at an earlier stage, nothing indicates that the RCMP will be unable to prepare itself to address the issues raised (*Parent* at para. 40).

[32] In making these findings, I note that in a ruling that I am issuing simultaneously with this one, involving a complaint filed by her spouse, Mr. Campos-Ruiz, *Osvaldo Campos-Ruiz* v. *Royal Canadian Mounted Police*, 2023 CHRT 17, I hold that the Tribunal does not have jurisdiction to deal with his allegations that the RCMP discriminated against him based on the grounds of family and marital status by denying him a transfer from British Columbia to Saskatchewan. I caution the parties that the hearing into Ms. Campos-Ruiz's complaint, including the Contested Claims, cannot be used to collaterally argue her spouse's allegations, which were not referred to the Tribunal for inquiry.

[33] My remarks are particularly significant given the possibility, as discussed at the first case management conference call (CMCC), that the two complaints may be joined administratively for the purposes of the hearing. This is a separate issue that may be dealt with at a future CMCC.

[34] For these reasons, I find that although the Contested Claims were not originally mentioned in her complaint, Ms. Campos-Ruiz may amend it to include the Contested Claims.

VI. ORDER

[35] Ms. Campos-Ruiz's complaint is deemed to be amended to encompass the Contested Claims.

[36] The RCMP's motion to strike the Contested Claims in Ms. Campos-Ruiz's SOP is denied.

[37] The Tribunal suspended the timelines for the RCMP to file its SOP pursuant to Rule 20 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137, pending the outcome of the motion. With the issuance of this ruling, the timelines are revived. The RCMP must now file its SOP by June 2, 2023. Ms. Campos-Ruiz may file her reply to the RCMP's SOP by June 9, 2023.

Signed by

Athanasios Hadjis
Tribunal Member

Ottawa, ON
May 12, 2023

APPENDIX A

The Contested Claims in Ms. Campos-Ruiz's Statement of Particulars, which the RCMP requests be struck, are the following:

- Paragraphs 29 to 31
- Paragraph 33 (from "- notwithstanding – accommodate.") to 41 of the "Part A. Facts in support" section
- Paragraphs 1b), 2d) and e) of the "Part B. Issues for this complaint" section
- Paragraphs 2 and 3 of the "Part C. Orders Sought" section as well as Schedule "A" as they relate to the issue of the RCMP's alleged failure to accommodate Ms. Campos-Ruiz's return to work, the allegation that she was forced to resign under duress as well as an alleged new ground of discrimination, family status, and the corresponding remedies.

Canadian Human Rights Tribunal

Parties of Record

File No.: T2735/11121

Style of Cause: Briana Campos-Ruiz v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: May 12, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

Sean Tevlin, for the Complainant

Cindy Ko and Malcolm Palmer, for the Respondent