

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2023 CHRT 20

Date: June 8, 2023

File No.: T2666/4221

Between:

Safia Mohamed

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Bank of Canada

Respondent

Ruling

Member: Marie Langlois

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I. OVERVIEW

[1] On March 2, 2023, Royal Bank of Canada (RBC), the Respondent, filed a motion with the Canadian Human Rights Tribunal (the Tribunal) requesting that it:

- a) strike the following paragraphs from the Complainant's Statement of Particulars: 1, 5, 7, 10, 11, 12, 13, 17, 18 and 23;
- b) require the Complainant to submit an updated Statement of Particulars that no longer includes allegations of retaliation and/or allegations in relation to events that post-date the filing of her complaint; and
- c) Permit the Respondent to submit an amended Statement of Particulars based on the Complainant's updated Statement of Particulars.

[2] On March 29, 2023, the Canadian Human Rights Commission (the Commission) informed the Tribunal and the parties that it does not take a position with respect to the Respondent's motion.

[3] On April 11, 2023, Ms. Safia Mohamed, the Complainant, filed her arguments in response to RBC's motion requesting that the Tribunal dismiss RBC's motion, that it allow her to amend her initial complaint to add an act of reprisal or that it revive the reprisal complaint that she had filed and consolidate it with the initial complaint.

II. DECISION

[4] The Tribunal dismisses RBC's motion and declares that the allegations of retaliation, described in Ms. Mohamed's Statement of Particulars filed on November 26, 2021, are included in the scope of the initial discrimination complaint.

III. ISSUES

[5] This ruling determines whether the Tribunal should consider the allegations of retaliation as part of the complaint. To make this determination, the Tribunal must answer the following questions:

- a) What are the legal principles guiding the Tribunal's approach to this determination?
- b) Is the Tribunal bound by the Commission's investigator's Procedural Instructions to the Complainant?
 - i. Did the Commission receive a new complaint alleging retaliation?
 - ii. If the Commission did not process a retaliation complaint, is the Tribunal bound by the procedural process imposed by the investigator?
- c) Does the Complainant need to file a new complaint alleging retaliation?
- d) If the answer to question c) is no, do some paragraphs from Ms. Mohamed's Statement of Particulars need to be struck out?

IV. ANALYSIS

A) What are the legal principles guiding the Tribunal's approach to this determination?

[6] In *Prasad v. Canada (Ministry of Employment and Immigration)*, 1989 CanLII 131 (CSC), [1989] 1 SCR 560, the Supreme Court of Canada (SCC) stated that, as a general rule, administrative tribunals are considered "masters in their own house". The SCC added that, "In the absence of specific rules laid down by statute or regulation, [as is presently the case] they [the administrative tribunals] control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice."

[7] It is well established that the Tribunal has jurisdiction to amend, clarify and determine the scope of a complaint provided that no prejudice is caused to the other parties (*Casler v. Canadian National Railway*, 2017 CHRT 6, paras. 7-11 [*Casler*]; *Canada (Human Rights Commission) v. Canadian Telephone Employees Assn.*, 2002 FCT 776, at paras. 30 and 31).

[8] As part of its authority to determine the scope of a complaint, the Tribunal has the power to strike portions of a Statement of Particulars that exceed the scope of the complaint. However, the Tribunal must exercise its authority "cautiously" and only in the "clearest of cases" (*Richards v. Correctional Service Canada*, 2020 CHRT 27 at para. 86).

[9] Under section 44(3) and section 49 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the Act or CHRA), a request to the Tribunal to institute an inquiry into a complaint may be made only when the Commission has considered the complaint. Indeed, the SCC in *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, at para. 48 states that the Act sets out a complete mechanism for dealing with complaints and that the Commission is central to that mechanism.

[10] The well-established case law (see for example *Casler* and *Canadian Museum of Civilization Corporation v. Public Service Alliance of Canada (Local 70396)*, 2006 FC 704) states that the scope of the dispute before the Tribunal may not introduce a new complaint that has not already been considered by the Commission and that does not respect the Commission's request to institute an inquiry. The Tribunal therefore does not have the power to deal with a complaint that has not been dealt with first by the Commission and that has not been referred to the Tribunal for inquiry (see *Cook v. Onion Lake First Nation*, 2002 CanLII 61849 (CHRT), [2002] C.H.R.D. No. 12) [*Cook*]). It is therefore necessary that the Tribunal confine itself to the complaint, the Commission's decisions with respect to the complaint and, in particular, the request for inquiry that the Commission has made to the Tribunal.

[11] The concept of a complaint is nevertheless broad enough to be interpreted in a way that encompasses the full extent of a complainant's allegations (*Cook*, para. 11). A complaint is the first step in the process, and it is inevitable that new facts and circumstances will come to light in the course of the Commission's investigation (*Casler*). The complaint is refined and clarified as the process moves forward (*Gaucher v. Canadian Armed Forces*, 2005 CHRT 1, para. 11) [*Gaucher*]).

[12] However, a limit is necessary when the amendment to a complaint can no longer be considered a simple amendment but is instead more like a new complaint (*Gaucher*). Likewise, upon reading a complainant's Statement of Particulars, the allegations of facts to be analyzed by the Tribunal for the purposes of determining the dispute must somehow emanate from or arise out of the complaint itself and must not depart from it in such a way as to constitute a new complaint.

B) Is the Tribunal bound by the Commission’s investigator’s Procedural Instructions to the Complainant?

[13] The Tribunal is of the opinion that it is not bound by the Procedural Instructions that the Canadian Human Rights Officer, Ms. Kellie Leclerc, imposed on Ms. Mohamed concerning the incorporation of allegations of retaliation into her initial complaint.

[14] On March 28, 2019, during Ms. Leclerc’s investigation of the complaint that was filed on November 26, 2018, Ms. Mohamed was terminated from her employment.

[15] Following her termination, Ms. Mohamed expressed to Ms. Leclerc on multiple occasions that she intended to make allegations of retaliation. Ms. Leclerc consistently indicated to Ms. Mohamed that she needed to file a new complaint alleging retaliation for the Commission to consider the termination of her employment a retaliatory measure. She told Ms. Mohamed that she could not address it through an amendment of her initial complaint.

[16] For example, on February 13, 2020, Ms. Leclerc wrote a Memorandum to File following a call to Ms. Mohamed, which states the following:

In response to her email, I called the complainant and left her a voicemail to let her know I would contact her counsel as requested and to also let her know that she has to file a reprisal complaint for the termination of her employment in the same way that she filed the first, that it is not a matter of me amending her Complaint Form.

I let her know that she has a year to do so and that the termination letter indicated that her employment was terminated in March 2019 so I emphasized that she needs to file this complaint soon if that is what she wants to do. (...)

[Emphasis added]

[17] On February 18, 2020, Ms. Leclerc wrote a second Memorandum to File providing the same Procedural Instructions after talking to Ms. Mohamed’s counsel.

[18] On March 24, 2020, a letter addressed to the Commission and signed by Ms. Mohamed’s counsel was sent. It says: “Delivered by Email: Complaint@chrc-ccdp.gc.ca”. The letter also states: “I am the lawyer acting on behalf of Safia Mohamed. Please find

enclosed the executed Complaint Registration form and Schedule “A”, which we respectfully request be filled”.

[19] The Schedule “A” reads as follows:

1. I am filing an additional complaint against Royal Bank of Canada (RBC) for terminating my employment as an act of reprisal, harassment and discrimination for filing my initial complaint. The events below took place after the Canadian Human Rights Commission (“CHRC”) accepted my complaint, file number #20181286, dated November 25, 2018. At the time I filed my complaint I was employed with RBC until my unlawful termination on March 28, 2019.

(...)

[Emphasis added]

[20] On the November 24, 2020, Ms. Leclerc recommended that the Commission refer the complaint to be heard by the Tribunal. In her report annexed to the recommendation, she wrote the following:

(...)

122. She [Ms. Mohamed] alleges that the respondent’s termination of her employment was retaliatory in further violation of the Act, because she complained about her managers’ treatment of her and filed a complaint with the Commission. She did not file a retaliation complaint with the Commission, however. Should the Commission adopt this report’s recommendation, the circumstances surrounding the termination of the complainant’s employment may be included in the inquiry at Tribunal.

(...)

[Emphasis added]

[21] On February 19, 2021, Ms. Leclerc wrote a third Memorandum to File that states the following:

I contacted Ms Mohamed and left her a voicemail to confirm to her that both parties have an extension for their cross-disclosure submissions and to let them know that she cannot file a retaliation complaint because, as we had discussed, when she had the opportunity to do so she did not complete her complaint form in time at this point it is out of time.

[Emphasis added]

[22] On May 19, 2021, the Commission (the Deputy Chief Commissioner and the Commissioner) decided to refer the complaint to the Tribunal for inquiry. The Commission’s decision indicates the following:

(...)

The Officer investigated only the allegations related to adverse differential treatment under section 7 of the Act, which was sufficient to form a recommendation for referral to Tribunal.

(...)

[Emphasis Added]

[23] On May 20, 2021, the Commission requested that the Tribunal institute an inquiry into the complaint. In its letter, the Commission did not restrict in any way the referral of the complaint. The Commission found that the allegations investigated by Ms. Leclerc were sufficient to require an inquiry by the Tribunal.

[24] It is settled law that the Commission need not investigate every allegation to determine whether an inquiry by the Tribunal is appropriate (see *Casler*). Indeed, in the present case, this is what emanates from the Commission's May 19, 2021, decision or in its May 20, 2021, letter to the Chairperson of the Tribunal. Moreover, this is also what emanates from Ms. Leclerc's November 24, 2020, recommendation to the Commission: "Should the Commission adopt this report's recommendation, the circumstances surrounding the termination of the complainant's employment may be included in the inquiry at Tribunal". The Tribunal understands that by referring to Ms. Mohamed's "termination", Ms. Leclerc is referring, by necessary implication, to the allegations of retaliation that Ms. Mohamed wanted to include in her complaint.

[25] To determine whether the Tribunal is bound by the Procedural Instructions imposed by the Commission's investigator, it is necessary in the present case to determine first whether a new complaint alleging retaliation was in fact filed.

(i) Did the Commission receive a new complaint alleging retaliation?

[26] The Tribunal is of the opinion that there is no probative evidence that the retaliation complaint that was possibly sent by Ms. Mohamed's counsel was in fact received by the Commission.

[27] On the one hand, the evidence shows that a letter from Ms. Mohamed's counsel addressed to the Commission was sent via email to the Commission's complaint email address. On the other hand, Ms. Leclerc, who was still investigating the initial complaint in

March 2020, does not mention in her subsequent communications that a second complaint was received by the Commission.

[28] Moreover, on November 24, 2021, counsel for the Commission filed her Statement of Particulars. There is no mention that the Complainant made allegations of retaliation.

[29] On November 26, 2021, counsel for the Commission filed her disclosure of documents list which does not include a second complaint that would have been filed by Ms. Mohamed's counsel on March 24, 2020.

[30] Counsel for RBC mentions that RBC never received any information concerning this March 24, 2020, complaint.

[31] What happened to that March 24, 2020, complaint?

[32] Knowing that, in March 2020, the COVID-19 Pandemic had started and that many businesses and government offices were not functioning at their optimum level, it is possible that some administrative mishap happened.

[33] Therefore, the Tribunal is unable to conclude whether the Commission received the March 24, 2020, complaint but can conclude that the Commission did not process a new complaint alleging retaliation.

(ii) If the Commission did not process a retaliation complaint, is the Tribunal bound by the Procedural Instructions imposed by the investigator?

[34] As previously mentioned, on the one hand, Ms. Leclerc indicates in her November 24, 2020, report that the circumstances surrounding the termination of the Complainant's employment (which includes allegations of retaliation) may be included in the inquiry before the Tribunal if the recommendations made in her report are adopted by the Commission.

[35] On the other hand, she told Ms. Mohamed on numerous occasions that to make allegations of retaliation, she had to file a new complaint within the 12 months following her termination. Ms. Leclerc informed Ms. Mohamed that she could not amend her initial

discrimination complaint to add these allegations, and, on February 19, 2021, she told her it was too late to do so.

[36] In its motion, RBC argues that, as Ms. Mohamed did not file a specific retaliation complaint as instructed specifically by the Commission's investigator, she cannot add allegations of retaliation to her present complaint before the Tribunal.

[37] The Tribunal rejects RBC's argument. The well-established case law specifies that the Commission is not bound by the investigator's recommendation. The Commission has discretion to request an inquiry by the Tribunal even if the investigator's report recommends dismissing the complaint. (*Jorge v. Canada Post Corporation*, 2021 CHRT 25 at para. 192 (*Jorge*); *Prior v. Canadian National Railway Co.*, 1983 CanLII 4692 (CHRT)). Moreover, in *Jorge*, the Tribunal differentiates between the "Commission" making a decision (members appointed to the Commission in accordance with section 26 of the Act) and the staff/employees of the Commission, including the investigator. Thus, the Commission is not bound by the investigator's report.

[38] As the Commission is not bound by the investigator's report, the Tribunal considers even more so that the Tribunal is not bound by the Procedural Instructions that Ms. Leclerc imposed on Ms. Mohamed.

C) Does the Complainant need to file a new complaint alleging retaliation?

[39] The Tribunal is of the opinion that there is no need to file a new complaint in order for Ms. Mohamed to make allegations of retaliation.

[40] Not only is the Tribunal not bound by Ms. Leclerc's Procedural Instructions (the obligation to file a new complaint) as previously mentioned, but these instructions are also not supported by the established case law.

[41] In the context of allegations of reprisal, the Tribunal has recognized that it would be "impractical, inefficient and unfair" to require a complainant to file a separate complaint proceeding as this would necessitate their going to the end of the queue to obtain an investigation, conciliation and adjudication on matters which are fundamentally related to

the proceedings already underway (*Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 2, para 6 [*Bressette*]; *Tabor v. Millbrook First Nation*, 2013 CHRT 9; *Brickner v. Royal Canadian Mounted Police*, 2018 CHRT 2).

[42] As stated in *Virk v. Bell Canada*, 2004 CHRT 10 at para. 7, generally speaking, an amendment to add allegations of retaliation should be granted unless it is plain and obvious that the amendment sought could not possibly succeed.

[43] As stated in *Bressette* (at para. 6), when the Tribunal is required to analyze the scope of the complaint to decide whether allegations of retaliation should be considered, the Tribunal should not embark on a substantive review of the merits of these allegations.

[44] Further, the case law (see as an example *Letnes v. Royal Canadian Mounted Police*, 2019 CHRT 41) has specified that the particular test applicable when considering the addition of allegations of retaliation requires the examination of three criteria:

1. whether the allegations of retaliation are by their nature linked, at least by the complainant, to the allegations giving rise to the original complaint;
2. whether the allegations disclose a tenable claim of retaliation; and
3. whether sufficient notice has been given to the respondent, so that it is not prejudiced and can properly defend itself.

[45] The first criterion of the test elaborated in *Letnes* is met.

[46] Indeed, the paragraphs in dispute in Ms. Mohamed's Statement of Particulars are paragraphs 1, 5, 7, 10, 11, 12, 13, 17, 18 and 23. These paragraphs relate to retaliatory acts that RBC allegedly carried out following the filing of her initial complaint with the Commission. These paragraphs demonstrate that her dismissal was linked to the filing of the complaint.

[47] Ms. Mohamed filed her complaint on November 26, 2018. She was fired four months later on March 28, 2019.

[48] The allegations of discrimination that gave rise to the initial complaint are the fact that Ms. Mohamed was denied internal job promotions and job training opportunities. She also alleges that multiple managers made discriminatory comments towards her and that

she suffered harassment during her employment. She also alleges that RBC did not accommodate her when it denied her the ergonomic work setup recommended by her doctor. She also added that some managers were making false accusations of wrongdoing against her, which can be considered discriminatory, and inappropriate sexual gestures.

[49] The allegations of retaliation in her Statement of Particulars mention intimidation from directors and RBC's representatives and false disciplinary actions.

[50] The Tribunal is of the opinion that the first criterion of the test established in *Letnes* is met as the allegations of retaliation are of the same nature as the ones that gave rise to the original complaint. At face value, these allegations seem to be part of a continuum that emanates from the facts alleged in the original complaint. There is a nexus between the two sets of allegations.

[51] The second criterion of the test is also met as, if proven, these allegations of retaliation could be considered in contravention of section 14.1 of the Act that reads as follows:

14.1 It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

[52] Ms. Mohamed's allegations could possibly succeed if proven at the hearing. They are not bound to fail as was the case in *Temate v. Public Health Agency of Canada, 2022 CHRT 31*. In *Temate*, the allegations of retaliation referred to events that happened prior to the filing of the original complaint and therefore could not emanate from the filing of the complaint. It is clearly not the case in the present case as Ms. Mohamed alleges that acts of retaliation, including the termination of her employment, happened after she had filed her original complaint. The allegations of retaliatory acts are therefore defensible and tenable.

[53] As for the third criterion, there is no evidence that RBC could suffer a prejudice considering the stage of the process the complaint has reached. The Tribunal has given RBC sufficient notice so that it would not be prejudiced and could properly defend itself in

the circumstances. The hearing dates have not been decided yet, and the Tribunal is willing to allow RBC to amend its Statement of Particulars in order to consider the allegations of retaliation from Ms. Mohamed. RBC has therefore full and ample opportunity to present its arguments and to defend its position as required by the principles of natural justice and procedural fairness.

D) If the answer to question C. is no, do some paragraphs from Ms. Mohamed's Statement of Particulars need to be struck out?

[54] Considering that paragraphs 1, 5, 7, 10, 11, 12, 13, 17, 18 and 23 of Ms. Mohamed's Statement of Particulars are allegations of retaliation and considering that allegations of retaliation are included in the scope of the initial discrimination complaint, the Tribunal concludes that these paragraphs need not to be struck out.

V. CONCLUSION

For those reasons, the Tribunal rejects RBC's motion.

VI. ORDER

The Tribunal orders that:

- Ms. Mohamed's Statement of Particulars stays intact;
- RBC can amend its Statement of Particulars to include elements related to the retaliation alleged by Ms. Mohamed;
- RBC has one month from the reception of the present ruling to file its amended Statement of Particulars;
- Ms. Mohamed has 15 days from the reception of RBC's Amended Statement of Particular to file a Reply;
- The Commission has 15 days from the reception of RBC's Amended Statement of Particular to file a Reply.

Signed by

Marie Langlois
Tribunal Member

Ottawa, Ontario
June 8, 2023

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2666/4221

Style of Cause: Safia Mohamed v. Royal Bank of Canada

Ruling of the Tribunal Dated: June 8, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

Safia Mohamed, Self-Represented Complainant

Sunil Kapur and Marco Fimiani, for the Respondent