

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 2
Date: January 16, 2024
File No.: T2700/7621

Between:

Christian Miller

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Toronto-Dominion Bank

Respondent

Ruling

Member: Edward P. Lustig

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I. OVERVIEW

[1] In an email dated November 27, 2023, Mr. Miller requested an amendment to his Statement of Particulars (“SOP”) to add additional personal and public remedies. Under the subject “Personal Remedies”, Mr. Miller requests the acceptance by the Respondent’s medical insurance carrier Manulife of all of his doctors’ recommendations for a potential back to work accommodations plan for a disability that he alleges was caused by the Respondent. The requested Personal Remedies amendment ends with the sentence “Failure to accommodate.”

[2] Mr. Miller went on a medical leave from the Respondent on or about June 18, 2018 following a reorganization plan implemented by the Respondent that resulted in him being demoted from his full-time employment position with the Respondent as a Manager of Customer Service and Sales (“MCSS”) at its Owen Sound branch to a lower paying position of Financial Advisor at its Port Elgin branch on or about April 11, 2018. He is still on medical leave approved by the Respondent. He receives long- term disability benefits from Manulife and has been unable to return to work.

[3] Mr. Miller’s Complaint which was submitted on February 22, 2019, and his SOP dated October 27, 2021, contain allegations of discrimination by the Respondent against Mr. Miller in his employment on the prohibited grounds of race, colour and disability. However, neither his Complaint as referred to the Tribunal by the Canadian Human Rights Commission (the “Commission”) on August 6, 2021, nor his SOP contain any allegations or particulars of a failure by the Respondent to accommodate a disability. Rather, the narrative of his Complaint and SOP is principally devoted to his demotion caused by the reorganization plan which Mr. Miller alleges was racially motivated because he is a Black man of African-Caribbean descent and to his feelings of anxiety, stress and depression that led to him taking a medical leave.

[4] The Respondent objects to the Complainant’s requested Personal Remedies amendment on the basis that it involves a new and outdated allegation of a failure to accommodate his disability not previously raised or particularized and that the remedy being

sought by the Complainant in connection with that allegation does not relate to the matter referred by the Commission to the Tribunal.

[5] The Respondent requests that the Tribunal decline to accept the requested amendment as a result of the prejudicial impacts such amendment would have on it and the significant disruption which would ensue in respect to this matter proceeding to a hearing now set to begin on March 26, 2024.

[6] For the reasons that follow, the Tribunal will not accept the Personal Remedies amendment requested by the Complainant as a) it can be construed to involve a new out of time allegation of a failure by the Respondent to have accommodated a disability which was never before raised or particularized by the Complainant in this case and was not referred to the Tribunal by the Commission for this inquiry and will not be considered by the Tribunal in determining liability in this case and b) the remedy being sought in connection with that allegation is too vague to be enforceable and is directed towards a health insurance company that is not a party to the proceedings.

[7] As the Complainant has already requested in his SOP the remedy of being reinstated, it is inferred and accepted by the Tribunal that if his Complaint is determined by the Tribunal at the hearing to have been substantiated on its merits the Complainant may, as part of a his request for reinstatement, also request that such reinstatement, if ordered by the Tribunal, be undertaken by the Respondent in a manner that best accommodates his disability as determined by the Tribunal based on medical evidence and in accordance with the *Canadian Human Rights Act*, R.S.C, 1985, c. H-6 (CHRA).

II. BACKGROUND

[8] The Complainant started to work for the Respondent in Mississauga in February of 2010 as a part-time Customer Service Representative and thereafter worked in other branches before he was promoted to the full-time position of MCSS at a level 7 salary rate at the Respondent's branch in Owen Sound in March of 2017.

[9] In about March/April of 2018 the Complainant was demoted to the position of Financial Advisor at a Level 6 salary rate at the Respondent's Port Elgin branch as a result

of a corporate wide reorganization that eliminated the position of MCSS at the Owen Sound branch and many others. In total, the reorganization impacted 961 staff members across Canada, including 119 individuals in the role of MCSS. The salary rate reduction from Level 7 to 6 salary rate was to take place after 2 years.

[10] The process of trying to find jobs for the employees whose jobs had been eliminated by the reorganization, in order to avoid termination, consisted of mapping them into vacant positions based upon a protocol that included the consideration of various factors such as availability of comparable positions, the employee's comparative performance rating and tenure and geographic location.

[11] Mr. Miller was unsuccessful in being mapped into an equivalent paying job to the one he had in Owen Sound as a MCSS at any other branch which resulted in his demotion to the lower paid job of Financial Advisor at the Port Elgin branch where he had worked previously in the same capacity.

[12] Mr. Miller's most recent performance evaluation was in October of 2017 in his role as MCSS in Owen Sound was "developing" (Quality Rating "D") based upon the fact that at that time he held the position for just 6 months. In his previous role as a Financial Advisor in 2016 he had received a performance rating of "S" "solid".

[13] Mr. Miller's Complaint briefly mentions two situations involving his health. The first situation is an accident that he said he had driving into a ditch in the drifting snow on his way to Port Elgin on April 16, 2018, that he claims caused him neck, jaw and foot pains. He says he returned to work the next day and had some discomfort but nothing in his Complaint indicates any accommodation for a disability was sought by him for this alleged injury and there was no medical information provided. His Complaint does not allege failure to accommodate a disability.

[14] The second situation involving his health mentioned in his Complaint allegedly occurred in May or June of 2018 when Mr. Miller says that when he was going through some credit files in an unsecured cabinet that was open to other employees, he found a folder containing complaints against him by one of his Managers that he felt violated his privacy and embarrassed him. He complained to his HR department who investigated his complaint

but did not rule in his favour. Thereafter he alleges in his Complaint that his health deteriorated because he felt “stressed beyond belief” and had stomach cramps and he could not perform his job so he “contacted HR and went on leave due to injuries I sustain in the workplace by TD employees.” He alleges that he was “diagnosed with depression, panic attacks, anxiety and disability.” Mr. Miller went on medical leave on June 18, 2018, and remains on long-term disability under the Respondent’s health care policy with Manulife.

[15] Nothing in his Complaint or SOP indicates that Mr. Miller sought accommodation for any health issues while working prior to going on medical leave or makes the allegation that the Respondent failed to accommodate any disability. The Respondent has continued to maintain his status as an employee on medical leave and supports the long-term disability payments to Mr. Miller under its insurance contract with Manulife. The narrative in the Complaint principally deals with his view that employees at the bank discriminated against him in assessing his work performance, failing to promote him and by demoting him because he was Black.

[16] Mr. Miller’s SOP provides no particulars of any disability, other than to mention that it concerns depression, panic attacks and anxiety but without any reference to either of the situations that were mentioned in his Complaint as referred to above. The SOP like the Complaint makes no allegations that the Respondent failed to accommodate any disability while working for the Respondent.

[17] Rather, Mr. Miller’s SOP and his Reply to the Respondent’s SOP deal with the following issues namely: whether race or colour was a factor in his demotion; whether his “developing” rating (as opposed to a “satisfactory” rating) was tainted by racism; whether his performance rating under a former manager, was tainted by racism and had an adverse impact on his placement during the reorganization; whether a disproportionate number of Black persons were selected for redundancy and/or mapped to lower rated roles; and whether he should be placed in a comparable role and compensated for lost wages and other remedies. This is the case that the Commission referred to the Tribunal for an inquiry and the Respondent has acknowledged that these are the appropriate issues for Mr. Miller’s SOP.

[18] Prior to Mr. Miller filing this amendment request hearing dates were set for this case with the consent of the parties commencing on March 26, 2024.

III. LEGAL FRAMEWORK

[19] The Tribunal may allow a party to amend an SOP, including remedies, at any stage to ensure they properly and fairly reflect the issues in dispute between the parties to a complaint and to determine the real questions in controversy between the parties. An amendment must be linked to the original complaint and must not cause prejudice to the other parties that cannot be remedied. An amendment cannot introduce a substantially new complaint, as this would bypass the referral process mandated by the CHRA. (*CAEFS v. CSC*, 2022 CHRT 12 at paras.12 and 14).

[20] Pursuant to section 41(1)(e) of the CHRA, complaints are to be filed with the Commission within one year.

[21] The party requesting the amendment must show that the request does not result in an injustice; serves the interests of justice; and is not prejudicial to the other parties or the Tribunal process. Parties to a case have the right to know the position of the other parties and what they will present as evidence at the hearing. The whole purpose of filing sufficiently detailed SOPs is so that the parties know well enough and in advance the allegations, the questions of law, the remedies, and the defences that are at issue and that they have full and ample opportunity to respond to these elements as per section 50(1) of the CHRA and Rules 18-21 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137. (*Coyne and Way v. Salt River First Nation*, 2023 CHRT 57 at paras. 12 and 14).

IV. PARTIES' SUBMISSIONS

[22] Mr. Miller's submissions are not responsive to the objections of the Respondent to the requested amendment to his SOP to add additional Personal Remedies. The Respondent is particularly concerned with Mr. Miller's inclusion of the words "Failure to accommodate" that appear alone as the last sentence.

[23] It is somewhat unclear, but nonetheless assumed for the purpose of the efficacy of this ruling, that Mr. Miller intended these words to be an allegation of a past failure by the Respondent to accommodate a disability when he was at work, but there are no particulars given by Mr. Miller in requesting this amendment. If, instead Mr. Miller intended these words to refer to a future need to accommodate his disability in the event of his reinstatement to work as he has requested in his SOP, the words would not be necessary as part of his SOP. If Mr. Miller succeeded on the merits of his case at the hearing and was ordered to be reinstated by the Tribunal, the Respondent would have to reasonably accommodate his disability in accordance with the law in any case. It is therefore also assumed for the efficacy of this ruling that given the Respondent's main objections to the requested amendment it also assumes that Mr. Miller intended these words to be an allegation of past failure by the Respondent to accommodate a disability when he was at work rather than a future need to accommodate a disability if he is reinstated.

[24] The Respondent's submissions are, that an allegation at this stage of a past failure by the Respondent to accommodate a disability 1) would be a new out of date complaint as it has never before been raised and was not dealt with by the Commission when the case was referred by it to the Tribunal for an inquiry; and 2) that if allowed to be raised now in this inquiry it would be prejudicial to the Respondent in trying to defend itself against a new and non particularized allegation and it would also be disruptive and contrary to the interests of justice in proceeding to the hearing in a timely manner as scheduled; and 3) it should therefore not be allowed.

[25] Mr. Miller's initial submissions contain hundreds of pages of reports, studies and articles by others on various subjects including white collar psychopaths, falling labour productivity in Canada, managing employees with mental health issues and workplace equity laws in Canada. They also include personal criticisms of Respondent counsel and allegations of wrong doings against Mr. Miller by employees of the bank that are not part of this case. The initial submissions, however, do not provide responses to the Respondent's main objections to the requested amendment, in spite of being prompted by the Tribunal to do so.

[26] Mr. Miller's Reply submissions also do not respond to the main objections of the Respondent to the requested amendment. Rather the Reply is replete with unproven and unacceptable allegations of very inappropriate behaviour by named current and past employees of the bank who have worked with him. Among other things, in his Reply Mr. Miller alleges that a number of named employees engaged in inappropriate personal and romantic relationships and conduct. None of these allegations are part of this case as referred to the Tribunal by the Commission. The Reply will therefore be struck from the record as it is far off the proper course of this inquiry and unfair to the named employees.

V. ANALYSIS

[27] I agree with the Respondent's submissions referred to in paragraph 24 above.

[28] Mr. Miller's requested amendment to his SOP under the subject Personal Remedies, of an allegation that the Respondent failed to accommodate a disability prior to his going on medical leave, should not be accepted as it is a new unparticularized out of date complaint that was not part of his Complaint or his SOP or of what was referred to the Tribunal by the Commission for an inquiry in this case. As such, it is not linked to the original complaint and if allowed it would bypass the referral process mandated by the CHRA.

[29] Moreover, if allowed at this stage it would be prejudicial to the Respondent in that there are no particulars of this allegation and, as such, the Respondent would not have a full and ample opportunity to respond.

[30] In addition, to accept this amendment request would also not serve the interests of justice as it would jeopardize the hearing dates that were already established for a hearing to commence on March 26 for a total of 5 days. No doubt if the requested amendment was allowed those dates would have to be vacated and further production, including medical reports of the long-term disability would likely have to take place as well as possible further witnesses etc.—all of which would lead to a delay that is contrary to the Tribunal's mission to be both fair and expedient. There is no justification for such a delay.

[31] Further, the related request for a direction by the Tribunal to Manulife to accept doctors' recommendations for a return-to-work plan for Mr. Miller that accommodates his

disability is also not acceptable because it is beyond the authority of the Tribunal to do as Manulife is not a party to these proceedings. As well this request is vague and unnecessary as the Respondent is required by law, in any event, to reasonably accommodate disabilities of employees who are reinstated to work from a long-term disability and Mr. Miller has already requested reinstatement as part of the remedies in his SOP. Mr. Miller would first have to succeed in substantiating his Complaint on the merits for such a remedy to be considered by the Tribunal.

[32] The “Public Remedies” included in Mr. Miller’s requested amendments to his SOP do not appear to have been objected to by the Respondent with any particularity in the Respondent’s submissions. Moreover, the Respondent has acknowledged that the issue of “whether a disproportionate number of Black persons were selected for redundancy an/or mapped to lower rated roles” as part of the reorganization complained of, has been aptly included in Mr. Miller’s SOP and is a main focus of these requested Public Remedies. Accordingly, they can remain as part of the remedies in Mr. Miller’s SOP and need not be refused at this stage of the proceeding, except as they relate to any allegation or reference to the prohibited ground of harassment as that is not before the Tribunal in this inquiry.

VI. ORDER

[33] The Personal Remedies requested by the Complainant as an amendment to his SOP are not accepted. The Public Remedies requested by the Complainant as an amendment to his SOP are accepted at this stage but any reference therein to harassment is not accepted.

Signed by

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
January 16, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T2700/7621

Style of Cause: Christian Miller v. Toronto-Dominion Bank

Ruling of the Tribunal Dated: January 16, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

Christian Miller, for the Complainant

Lisa M. Meyer, for the Respondent