Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2024 CHRT 87
Date: June 25, 2024
File No.: HR-DP-2990-24

Between:

Leah Adams

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian Nuclear Laboratories

Respondent

Ruling

Member: Sarah Churchill-Joly

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I. OVERVIEW

[1] This is a ruling on a motion that the Respondent, the Canadian Nuclear Laboratories Ltd. (CNL), made requesting that the Tribunal stay these proceedings until the Federal Court determines its application for judicial review. The Respondent has asked the Federal Court to judicially review the decision of the Canadian Human Rights Commission (the "Commission") referring this case to the Tribunal. The Respondent argues that a stay of the Tribunal's proceedings is in the interest of justice. The Complainant, Cynthia "Leah" Adams, opposes the motion and argues that further delays would be prejudicial.

[2] A stay would not favour the conduct of just and expeditious proceedings, and there are no exceptional circumstances which support that a stay is in the interest of justice in this case. Whether the Complainant experienced discrimination when the CNL terminated her employment while she was on medical leave is not an employment law issue, as the Respondent alleges, but a human rights question that falls squarely within this Tribunal's expertise. There is no exceptional or obvious error underlying the Commission's decision to refer the matter to the Tribunal for adjudication which increases the chances of judicial intervention.

[3] While it is true that parties are unable to recover their legal costs at the Tribunal and that multiple proceedings expends judicial resources, these circumstances do not make this case unusual. The risk of contradictory outcomes between the Federal Court and Tribunal decisions is also remote, given the anticipated timelines that the Respondent provided. When weighed against both the prejudice the Complainant would face were the Tribunal to stay the adjudication of her complaint, and the Tribunal's ability to now proceed without delay given the assignment of a Tribunal member to the file, these considerations fail to warrant a stay of proceedings. The interest of justice favours that the Tribunal's process continues as intended. The Respondent's motion to stay the proceedings is dismissed.

II. BACKGROUND

[4] On May 25, 2020, the Complainant filed a complaint with the Commission pursuant to section 7 of the *Canadian Human Rights Act*, RSC (1985), c. H-6 (the Act), alleging that

she suffered adverse differential treatment when her employer, the Respondent, proceeded with the termination of her employment while she was on disability leave.

[5] On February 6, 2024, following the Commission's investigation into the complaint, the Commission requested that the Tribunal institute an inquiry into the matter pursuant to paragraph 44(3)(a) of the Act because, given all the circumstances of the complaint, further inquiry was warranted. The Respondent filed an application for judicial review of this decision with the Federal Court on March 5, 2024.

[6] On April 12, 2024, the Respondent filed a motion for a stay of proceedings with this Tribunal, pending the Federal Court's decision on the Respondent's application for judicial review. This motion is the subject of the present ruling.

III. ISSUE

[7] The motion raises the following issue:

Do the interests of justice require that the proceedings in this complaint be stayed pending the decision of the Federal Court on the Respondent's application for judicial review of the Commission's decision to refer the complaint to this Tribunal?

IV. LAW

[8] The law applicable to motions seeking the suspension of an adjudicative body's *own* proceedings, as is the case here, has evolved in the last years. Rather than apply the demanding three-branch *RJR-MacDonald*, 1994 CanLII 117 (SCC) test that the Supreme Court of Canada established (which requires 1. a serious issue of fact and/or law to be tried, 2. irreparable harm, and 3. a balance of convenience), which is used when a court is staying *other* bodies' proceedings pending an appeal or other matter, or for an injunction, the Federal Court now considers whether, given all the circumstances, the "interest of justice" supports delaying the matter: *Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.*, 2011 FCA 312, 426 N.R. 167 (*Mylan*) at para 14. See also in *Clayton v. Canada (Attorney General)*, 2018 FCA 1 (*Clayton*).

[9] The Tribunal adopted this approach in *Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2018 CHRT 5 (*Duverger*), which the parties have appropriately pointed me to. In that case, the Tribunal incorporated the principles of *Mylan* under the Act's framework. The language of the Act does not explicitly refer to the "interest of justice". This is unlike paragraph 50(1)(b) of the *Federal Court Act*, RSC 1985, c F-7, which authorizes the Federal Courts to stay proceedings "where for any other reason it is in the *interest of justice* that the proceedings be stayed" and on which the *Mylan* and *Clayton* decisions are grounded. Nevertheless, I share the Tribunal's view in *Duverger* that the concept of interest of justice underlies the principles of natural justice, procedural fairness and expeditiousness that are provided at subsection 48.9(1) of the Act and that it is the core tenet underlying any court's power to impose a stay of proceedings: *Duverger* at para 54. See also *Korea Data Systems (USA), Inc. v. Aamazing Technologies Inc.*, 2012 ONCA 756, paras 16-18.

[10] In other words, in determining a motion to stay its proceedings, the Tribunal must consider whether there exists interest of justice considerations which support granting the motion.

[11] Interests of justice considerations are broad and discretionary and can vary according to circumstances. They can include the risk of duplication of judicial and legal resources, the length of the requested stay, the reason for the request, the potential loss of judicial resources, the procedural status of the proceedings and any prejudice to the parties: *Mylan* at para 5; *Power To Change Ministries v. Canada (Employment, Workforce and Labour)*, 2019 CanLII 13579 at para 20; *Clayton v Canada (Attorney General)*, 2018 FCA 1 at para 28. This aligns with the Tribunal's full power over the proceedings before it by virtue of section 50(2) and paragraph 50(3)(e) of the Act, and Rules 1(1) and 1(6) of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137, which includes the ability to determine questions of procedure, such as whether the Tribunal should suspend proceedings before it. Administrative tribunals are masters of their own procedure. However, their decisions must be supported by the evidence and responsive to the circumstances. Motions to stay proceedings should only be allowed in exceptional circumstances: *Bailie et al. v. Air Canada and Air Canada Pilots Association*, 2012 CHRT 6 at para 22. The Respondent argues that there are exceptional circumstances here that warrant a stay.

V. PARTIES' SUBMISSIONS AND ANALYSIS

[12] When a request or motion is made before the Tribunal, the burden of proof rests on the moving party. I conclude that the Respondent has not discharged itself of this burden in this case.

A. Issue: Is it in the interest of justice to stay these proceedings?

[13] No. While I appreciate the Respondent's concerns, the circumstances do not show that it is in the interest of justice to stay these proceedings.

(i) Are there exceptional circumstances warranting a stay of the Tribunal's proceedings?

[14] The Respondent argues that, given the obvious nature of the Commission's error which forms the basis for the judicial review, the facts at hand meet the test for "exceptional circumstances" warranting a stay described in *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10 (*Halifax Regional Municipality*). In *Halifax Regional Municipality*, the Supreme Court held that courts should only interfere with a decision that a human rights commission made to refer a complaint to an inquiry where there is "no reasonable basis in law or on the evidence to support that decision" (paras 45, 53).

[15] The Respondent's position is that the Commission's referral is based on outdated law regarding an employer's obligation to suspend a notice period when a disabled employee cannot search for alternate employment. This error is allegedly "plain on the face of the [Commission's] Report". Given that this question is the only part of the complaint that the Commission referred to the Tribunal, it is inferred that the basis for the judicial review to the Federal Court will have better odds of succeeding than was the case in *Duverger* and *Halifax Regional Municipality*. The Respondent also challenges the Commission's finding that the Complainant, unlike other employees who were required to work out their working notice period, suffered any adverse treatment at all.

[16] Finally, the Respondent argues that the question at issue in the Notice of Application relates to common law principles of dismissal and reasonable notice, not the interpretation of the Act. Where a judicial review concerns the interpretation of the Act, the high threshold in *Halifax Regional Municipality* will weigh heavily in favour of the Tribunal continuing its inquiry despite parallel judicial review proceedings. Given that the question at issue is not one which falls under the Tribunal's expertise, this high threshold does not apply. This, the Respondent argues, also distinguishes this case from *Duverger* where the Commission's referral to the Tribunal was related to the Tribunal's own enabling legislation. In the case at hand, the Federal Court has concurrent jurisdiction in determining this question and would show no deference to the Tribunal. In other words, when combined with the correctness standard that the Federal Court would apply, the facts at hand meet the "exceptional circumstances" test.

[17] Contrary to the Respondent's position, whether the Complainant was discriminated against on the ground of disability when her employer failed to suspend her notice period and terminated her employment is a question which falls within this Tribunal's particular expertise. A creature of statute, for the Tribunal to have jurisdiction to hear a complaint, it must be rooted in the Act: *Tranchemontagne v. Ontario (Director, Disability Support Program*), 2006 SCC 14 (CanLII) at para 16. The Respondent relies on *White v FW Woolworth Co*, 1996 CanLII 11076 (NL CA) at para 69, *Datardina v Royal Trust Corp. Of Canada*, 1995 CanLII 1538 (BC CA) (*Datardina*), *White v Viceroy Fluid Power International Inc*, 1997 CanLII 3448 at para 6, and *Bohun v Similco Mines Ltd*, 1995 CanLII 285 (BC CA) at para 11, in support of its position that the common law reasonable notice period should not be suspended to accommodate an employee's disability. While instructive, this case law emanates from various provincial employment contexts. None of these cases undertake a human rights analysis of the question, and none are binding on this Tribunal.

[18] In the *Datardina* case cited by the Respondent, the Court found that the plaintiff suffered two distinct losses: the loss of the ability to work at an existing job because of injury, and the loss of the opportunity to search for and find new employment. While she was unable to receive double indemnity for her disabling injury caused by accident under tort principles, the underlying principles for the award of damages for breach of contract are, as Justice

Lambert explains, “entirely different”: *Datardina*, at paras 7-10. The same is true for human rights law. The fact that something might be allowed under employment law does not mean that it cannot constitute discrimination under the Act: *Canada (Attorney General) v. Morgan* (C.A.), 1991 CanLII 13184 (FCA), per Marceau J.A. (concurring) at p 416. The Tribunal is not tasked here with interpreting the common law of dismissal and reasonable notice, though the relevant case law may be helpful in its work. Rather, the Tribunal will be examining, based on the evidence that the parties provided, whether the Complainant proves the *prima facie* elements of discrimination on a balance of probabilities within the meaning of section 7 of the Act and, if so, whether the Respondent justified the discrimination pursuant to section 15 of the Act. In human rights employment cases, this justification is commonly framed as a *bona fide* occupational requirement considering health, safety and cost which, if not established, results in the complaint being substantiated: *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, 1999 CanLII 652 (SCC) at paras 54-68. None of the cases on which the Respondent relies undertake such an analysis. Moreover, even if they had, the factual nature of this assessment supports the need for the Tribunal to determine if the same conclusions ought to be applied to the case of this Complainant.

[19] As to the argument that it was plain and obvious that the Complainant did not suffer any adverse treatment, I note that the Complainant’s position on this point is that she suffered adverse treatment because, unlike her able-bodied colleagues, she was unable to use her working notice to look for other employment due to her disability. It is not plain and obvious that this argument is without merit, and it is one which would normally fall under the Tribunal’s expertise to interpret its own legislation: *Halifax Regional Municipality v. Nova Scotia*, 2012 SCC 10 at paras 42-53.

(ii) Would a stay favour just and expeditious proceedings?

[20] The Respondent argues that, in balancing all the relevant competing interests, the “fair and just use of the finite [judicial] resources” supports its motion for a stay (citing *Bailie v Air Canada*, 2012 CHRT 6). The Respondent estimates that, based on the current timelines of the proceedings before the Federal Court, it can reasonably anticipate a hearing

as early as the fall of 2024. This is contrasted with the Tribunal's reported backlog and warning to parties that case management in preparation of a hearing would not start for several months, along with the notice that there was no available Member to assign this file to and to decide the outcome of this stay motion. In this context, the application will be decided more quickly than the Tribunal's proceedings, and a stay would result in "minimal delay, if any, to the Tribunal's process".

[21] While the Respondent is correct that the Tribunal was unable to proceed promptly with the complaint when it sent parties the letters advising them to anticipate delays, these circumstances have changed. I have been assigned to the complaint and can proceed with the matter without delay. For the Tribunal to stay its proceedings until parties receive a Federal Court decision would now considerably delay the Tribunal's process, which can otherwise proceed within its normal timelines.

[22] It is possible that parties may still proceed to a Federal Court hearing ahead of the hearing in this matter. This would not be unusual given the expeditious nature of the judicial review process, as compared to the time required to hear the evidence at the trial level. However, the Respondent has not convinced me that any of these circumstances outweigh the public interest that demands that complaints related to discrimination be dealt with expeditiously: section 48.9(1) of the Act.

(iii) Is any prejudice caused outweighed by costs or other considerations?

[23] I am sensitive to the time it has taken for this complaint to make its way to the Tribunal and the prejudice that these timelines, whatever their origin, cause to parties who must wait years before being able to obtain resolution to their matter. I find that, contrary to the Respondent's assertion, a stay would cause Ms. Adams prejudice precisely *because* her termination became effective almost five years ago.

[24] This prejudice must be considered alongside other interests. I appreciate that preparing for both matters comes with legal fees, other costs and general inconvenience. The Respondent is correct that it is typically unable to recover legal costs before the Tribunal: *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*,

2011 SCC 53 (*Mowat*). This is true for both parties and is usual for tribunal cases. They are, in the words of the Federal Court in *Bell Canada v. Communication, Energy and Paperworkers Union of Canada* (1997), 127 FTR 44, 1997 CanLII 4851 (FC), at para 40, "costs incurred in the ordinary course of litigation", and neither party has alluded to circumstances that suggest to me that this would cause irreparable harm in this case.

[25] Finally, I must also consider the Respondent's argument that there is a significant risk of contradictory outcomes given the Federal Court's simultaneous consideration of the application for judicial review. The Ontario Superior Court of Justice case on which the Respondent relies in support of this position addresses a stay motion in the context of a separate and parallel court action which the Court finds "is likely to resolve at least some of the issues raised in the current action, resulting in a significant saving of judicial resources and legal expenses that would have otherwise been expended to address the same issues in this action": *Apotex Inc. v. Schering Corporation*, 2013 ONSC 1411 at para 17.

[26] These are different circumstances than the judicial review of the Commission's referral to the Tribunal, where the Federal Court and Tribunal proceedings are not simply running in parallel with each other, but rather are connected by the same Commission decision. In this case, the risk of creating a contradictory outcome is remote. First, as highlighted by the Complainant, the threshold for judicial intervention of a Commission's decision to refer a complaint to adjudication is high and this would need to be overcome, contrary to the circumstances of true parallel proceedings as was the case in *Apotex*. Second, and more importantly, given the Respondent's own anticipated timeline for the Federal Court proceedings, it is more likely that parties and the Tribunal will receive the Federal Court's decision on review before the Tribunal adjudicates this matter. The Tribunal would then be able to proceed based on the Federal Court's guidance, thereby removing the risk of a contradictory outcome. Lastly, it is not rare for the Federal Court to be called upon to consider an application for judicial review of the Commission's decision to refer a complaint to the Tribunal. Barring the existence of other exceptional circumstances, allowing a stay of proceedings in this type of situation would frustrate our legislative scheme and our Tribunal's quasi-judicial process: *Duverger* at para 71.

VI. ORDER

[27] In sum and having weighed the various interests of justice at play in this case, I see no circumstances warranting the exceptional suspension of the Tribunal's proceedings. Much like the *Duverger* decision, the Respondent's arguments regarding the outcome of the judicial review application are speculative, as are the time estimates provided for both the Federal Court and the Tribunal proceedings. Timelines for the latter have also recently changed, which weakens the Respondent's position here. Finally, neither the circumstances regarding the costs, inconvenience or risk of contradictory outcomes convince me that they should outweigh the prejudice caused by suspending the proceedings or that the balance of interest of justice favours granting this motion.

[28] For these reasons, the Tribunal is not satisfied that the Respondent has demonstrated on a balance of probabilities that a stay of Tribunal's proceedings until the Federal Court adjudicates on the judicial review application is in the interest of justice.

[29] The motion is dismissed.

Signed by

Sarah Churchill-Joly
Tribunal Member

Ottawa, Ontario
June 25, 2024

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2990-24

Style of Cause: Leah Adams v. Canadian Nuclear Laboratories

Ruling of the Tribunal Dated: June 25, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

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Kevin MacNeill & Jean-Simon Schoenholz, for the Respondent