

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 108

Date: October 4, 2024

File No.: HR-DP-2890-22

Between:

Ayoub Rafiqui

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Air Transat

Respondent

Decision

Member: Jennifer Khurana

I. OVERVIEW

[1] Ayoub Rafiqui, the Complainant, has not communicated with the Tribunal since March 3, 2023. Since that time, the Tribunal has attempted to contact Mr. Rafiqui several times. He has not responded or otherwise communicated with the Tribunal in 18 months.

[2] The Tribunal asked Air Transat and the Canadian Human Rights Commission (the "Commission") for submissions on how to proceed in light of Mr. Rafiqui's failure to participate in his complaint. Air Transat argues that the Tribunal should dismiss the complaint as abandoned because the Complainant has taken no steps to advance his case despite receiving notice of the consequences for failing to do so. The Commission takes no position but provided a non-exhaustive list of factors the Tribunal could consider in deciding whether to dismiss the complaint.

II. DECISION

[3] The complaint is dismissed as abandoned. Mr. Rafiqui has not participated in the complaint process since March 2023 and has been given several opportunities to communicate his intention to proceed with his complaint. I am persuaded that he has received notice of the steps required to advance his case, and the consequences for failing to do so.

III. ANALYSIS

[4] The Tribunal sent its initial letter by email to Mr. Rafiqui on November 25, 2022, to the email address provided by the Commission. Mr. Rafiqui responded to the Tribunal's letter by email on December 15, 2022, from the same email address.

[5] On March 3, 2023, Mr. Rafiqui filed his Statement of Particulars (SOP). On March 24, 2023, Air Transat filed its SOP. Mr. Rafiqui did not file a Reply. Together with his SOP, Mr. Rafiqui filed a request for anonymity, which the Tribunal dismissed on May 22, 2024.

[6] On February 5, 2024, the Tribunal wrote to the parties to schedule a Case Management Conference Call in this matter. Mr. Rafiqui did not respond. The Tribunal's Registry sent him follow-up emails on February 8 and 13, 2024, but again the Complainant did not respond. It also left a voicemail at the phone number it had on file for the Complainant on February 15, 2024. Mr. Rafiqui did not return the call.

[7] On March 4, 2024, the Tribunal sent a letter to Mr. Rafiqui by courier and by email to the email address he had previously used to contact the Tribunal. The letter requested that Mr. Rafiqui respond to the Tribunal no later than March 25, 2024, and warned that failure to do so could result in the complaint being dismissed as abandoned. The courier was returned as undeliverable. The email was not returned as undeliverable.

[8] The Tribunal again contacted Mr. Rafiqui on September 11, 2024, and advised him of the steps taken to reach him. It also asked the other parties for submissions on the possible dismissal of the complaint as abandoned in light of Mr. Rafiqui's failure to answer any of the Tribunal's communications. It set a deadline of September 16, 2024, for Mr. Rafiqui to confirm his intention to proceed with his complaint and to include reasons for his non-communication to date. Mr. Rafiqui did not answer or otherwise communicate with the Tribunal.

[9] Complainants have the responsibility to advance their cases and to provide their most recent contact information (*Towedo v. Correctional Service of Canada*, 2024 CHRT 6 at paras. 4-5). While all parties have a full and ample opportunity to be heard, this is not to be to the detriment of the other parties or the Tribunal. The Respondent also has the right to have the complaint addressed in a timely way (*Rivard v Nak'azdli Whut'en First Nation*, 2021 CHRT 21 at para 23 and 39).

[10] The Commission takes no position on whether the complaint should be dismissed as abandoned. It did, however, forward copies of communications it had with Mr. Rafiqui. On August 30, 2024, Mr. Rafiqui told the Commission that he had been locked out of his email, and no longer had access to his old phone. He also advised that he was in Ireland and asked to have a call, acknowledging that his file could be dismissed as abandoned. Counsel for the Commission responded the same day and advised that if he wished to pursue his

complaint, he should advise the Registry as soon as possible and provided the Tribunal's email address. Counsel for the Commission also offered to connect by videoconference and asked for Mr. Rafiqui's availability for a call. Mr. Rafiqui answered two weeks later, on September 12, 2024, asking what the Commission's decision was, and whether his case would be thrown out or he should get a lawyer. A few minutes later, counsel for the Commission reminded Mr. Rafiqui that he must let the Tribunal know if he intends to proceed, again providing the Tribunal email address. Counsel for the Commission offered to speak with Mr. Rafiqui the following day or later that week.

[11] On September 18, 2024, the Tribunal wrote to the parties, acknowledging receipt of the exchange between the Commission and the Complainant. The Tribunal advised that Mr. Rafiqui had until September 20, 2024, to contact the Tribunal, following which the Tribunal would issue a ruling determining the possible dismissal of his complaint.

[12] Air Transat argues that the Tribunal should dismiss the complaint as abandoned as Mr. Rafiqui has not communicated with the Tribunal in 18 months. It further argues that the August 30, 2024, exchange with the Commission is evidence that the Complainant received the Tribunal's communication and understood that his complaint could be dismissed, and yet has repeatedly failed to communicate with the Tribunal in any way.

[13] I agree. Mr. Rafiqui has been given multiple opportunities to communicate an intention to proceed with his complaint. While he indicates to Commission counsel that he was locked out of his email, he has written from the same email address to which the Tribunal has sent its communications. He has clearly received notice of at least some of the Tribunal's communications, as well as the warning that failure to respond could result in his complaint being dismissed as abandoned. The Commission has also attempted to support Mr. Rafiqui's participation in the process, advising him to contact the Tribunal or risk having his complaint dismissed.

[14] Air Transat is entitled to have the complaint addressed in a timely way, and each communication it has had to send for Mr. Rafiqui's failure to participate has also imposed costs on the Respondent. Mr. Rafiqui has not provided any reason for why he has not been able to participate in his proceeding or even to communicate an intention to proceed. While

the Tribunal can be flexible and acknowledges the difficulties that self-represented litigants may face, its role is not to pursue a Complainant who chooses not to participate in their own complaint process.

[15] In the circumstances, Mr. Rafiqui is deemed to have abandoned his complaint.

IV. ORDER

[16] The complaint is dismissed as abandoned. The Tribunal's file will be closed, and the Registrar will advise the parties accordingly.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
October 4, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: HR-DP-2890-22

Style of Cause: Ayoub Rafiqi v. Air Transat

Decision of the Tribunal Dated: October 4, 2024

Sarah Chênevert-Beaudoin, for the Canadian Human Rights Commission

Audrey Juneau, for the Respondent