Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2013 CHRT 24
Date: October 3, 2013
File Nos.: T1866/9612 & T1947/2713

Between:

Brian Blodgett

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

GE-Hitachi Nuclear Energy Canada Inc.

Respondent

Ruling

Member: Olga Luftig

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I. Background

[1] On August 16, 2010, Mr. Brian Blodgett ("Complainant") filed a Complaint ("the Original Complaint") with the Canadian Human Rights Commission ("Commission") against his employer, GE – Hitachi Nuclear Energy Canada Inc. ("Respondent"). The Original Complaint is based on age discrimination, contrary to section 7 of the *Canadian Human Rights Act,* R.S.C., 1985, c H-6, as amended ("the *Act*").

[2] On June 28, 2012, the Complainant filed another complaint with the Commission ("the Second Complaint"), alleging ongoing discrimination, and harassment and retaliation by the Respondent against the Complainant for filing the Original Complaint, contrary to sections 14(1) and 14.1 of the *Act*.

[3] On September 24, 2012, by letter ("the referral letter"), pursuant to section 44(3)(a) of the *Act*, the Commission asked the Tribunal to institute an inquiry into the Original Complaint, attaching a copy of it to the referral letter.

[4] The Complainant belongs to a union ("the Union"). His employment is governed by a collective agreement between the Union and the Respondent ("Collective Agreement").

[5] On December 14, 2012, the Complainant filed his Statement of Particulars ("SOP"), plus a Motion to Amend his Complaint ("Motion" or "Motion to Amend"). This Ruling is on the Motion to Amend.

[6] On January 11, 2013, the Respondent filed its SOP. Because the Complainant's Motion to Amend had not been scheduled or decided at that time, the Respondent's SOP does not address the Disputed Amendments (see below) or the Second Complaint.

II. The Original Complaint

[7] The Original Complaint alleges that there was a "…trend of age discrimination [by the Respondent] towards [the Complainant] that began in 2008". The Complainant believes he is being denied opportunities and discriminated against because of age.

[8] The Original Complaint sets out the following allegations of age discrimination against the Complainant on account of age:

1. denial of a West Shift job assignment, October 2009;
2. denial of laser engraving training, May 14, 2010;
3. denial of a West Shift opportunity, October 2008.

III. The Second Complaint

[9] The Second Complaint, filed June 28, 2012, alleges the following incidents:

1. denial of a West Shift job assignment on or about July, 2011, and threatening and intimidating behaviour by the Respondent's manufacturing supervisor which also constituted retaliation contrary to sections 7 and 14.1 of the Act;
2. harassment and intimidation by the Respondent's management in January, 2012;
3. denial of an Orange Badge training opportunity in June, 2012, which the Complainant alleges was another example of the Respondent's "ongoing" age discrimination against him, contrary to section 7 of the Act.

IV. Complainant's Motion to Amend

[10] The Motion to Amend the Original Complaint seeks to add two (2) groups of complaints to the Original Complaint:

1. those in the Second Complaint; and
2. two allegations of discrimination based on age, which are alleged to also constitute retaliation for filing the Original Complaint, specifically:
    a. Respondent's termination of Complainant as Team Leader of his group ("Team Leader Role") in August, 2010 (the precise month is disputed); and
    b. denial of a temporary Quality Assurance Engineering Assistant position and cross/training ("QAEA position") in January, 2011.

[11] The amendments sought are in paragraphs 9 through 32 of the Motion, as detailed at paragraphs 33 to 61 of the Complainant's SOP.

[12] I will refer collectively to the second group of amendments as the "Disputed Amendments", and separately as the "Team Leader Role Removal" and the "QAEA position" respectively.

V. Written Submissions after the Oral Hearing of Motion

[13] On May 1, 2013, I heard the oral portion of the Motion to Amend. After completion of the parties' oral submissions, I requested written submissions on these cases: *Kanagasabapathy v. Air Canada*, 2013 CHRT 7 *("Air Canada")*; *Attorney General of Canada v. Alain Parent and The Canadian Human Rights Commission*, 2006 FC 1313 *("Parent");* and *Canada (Human Rights Commission) v. Canadian Telephone Employees Assn.* (2002 FCT 776) *("CTEA")*. The Complainant's and Respondent's position on these cases, and my analysis and conclusion regarding them are further below in this Ruling.

VI. Canadian Human Rights Commission's Position at Motion

[14] Counsel for the Commission was present for the Motion. The Commission did not take any position with respect to the Disputed Amendments. Commission counsel did however provide information regarding the law and process, which was very helpful to the Motion.

VII. Law on Amending Complaints

[15] Subsection 48.9(2) of the *Act* gives the Tribunal "considerable discretion" regarding the "conduct of proceedings" (*Parent, supra*). This includes the granting or dismissing of motions to amend a complaint.

[16] The Tribunal has a wide discretion to grant amendments in order to determine "…the real questions in controversy between the parties", if granting the amendments would be in the interests of justice, (*Parent*, para 30). However, granting the amendment must not prejudice the other parties (*Parent*, para 40).

[17] An amendment also cannot result in a new complaint, and must be linked, at least by the complainant, to allegations giving rise to the original complaint (*Cam-Linh (Holly) Tran v. Canada Revenue Agency,* 2010 CHRT 31 ("*Tran*"), at paras 17-18. There must be a nexus, in fact and in law, between the complaint and the amendment sought.

[18] Whether or not to grant a motion to amend a complaint depends, therefore, not only on "…the Act but on an assessment of the facts. It is therefore a question of mixed law and fact." (*Parent*, para 19)

VIII. Respondent's Position re the Second Complaint; Post-Motion Events

[19] In paragraph 2 of the Respondent's Response to Motion, the Respondent "does not oppose" the inclusion of the Second Complaint into the Original Complaint.

[20] However, the Respondent submits that notwithstanding the Complainant's and Respondent's consent to add the Second Complaint to the Original Complaint, the Tribunal lacks the jurisdiction to so order because the Commission has not referred the Second Complaint to the Tribunal, pursuant to s. 49(1) of the *Act*.

[21] At the May 1, 2013 oral hearing of this Motion, the parties advised that they had both filed written consents with the Commission to have the Commission refer the Second Complaint to the Tribunal, without Commission investigation.

[22] On August 13, 2013, the Tribunal Registry Office advised me that it had received the Commission's letter referring the Second Complaint to the Tribunal for an inquiry, with the Second Complaint attached to the referral letter.

[23] It is therefore not necessary to discuss or rule on the jurisdiction issue the Respondent raised. This Order will grant that part of the Complainant's Motion to Amend which asks to include the Second Complaint in the Original.

IX. Complainant's Self Representation

[24] When the Complainant filed both the Original and Second Complaints, he did not name anyone as his representative or counsel. The Complainant's Reply to Respondent's Response to Motion states at para 14 that "Mr. Blodgett was self-represented". At para 43, it states that:

> As a lay person navigating the process, Mr. Blodgett at points did not comprehend the ideal manner in which to incorporate all of his allegations"…and "assumed that because he had formally complained about the denial of the QUAE opportunity to Ms. Falconi [of the Commission], that this allegation was included as part of the substance of his Original Complaint.

[25] Whether or not the Complainant consulted a lawyer or otherwise sought legal advice before November 2012 is not disclosed, but for the purposes of this Motion, I accept that he was self-represented until November 2012, when his counsel came on record.

[26] However, in my view, in this particular case, this fact alone does not assist him. The Complainant has chosen English as the language for his Complaints and correspondence; he seems quite competent in that language; there is no submission that he cannot understand the written or spoken word; he is responsive to written questions from the Commission; his letters to the Commission are not disorganized. These facts mitigate against the Complainant being so disadvantaged at the Commission stage simply because he did not have counsel that this alone should serve to permit the amendments he seeks.

[27] I will however take the fact that the Complainant did not have counsel when he filed both Complaints into account as one of the factors to weight in deciding whether or not to grant the Motion regarding the Disputed Amendments, although I do not give it much weight.

X. Respondent's Position re Disputed Amendments

[28] The Respondent opposes the granting of that part of the Motion seeking to include the Disputed Amendments on the following grounds:

1. they are out of time as they are beyond the one year time limit in Subsection 41(1)(e) of the Act provides a one year time limit between an alleged breach of the Act and the filing of a complaint about it and the Disputed Amendments are therefore out of time;

2. granting the Team Leader Role Removal amendment would constitute an abuse of process, because the Complainant and the Respondent settled the Complainant's January, 2010 grievance about the Team Leader Role Removal;

3. the Team Leader Role Removal occurred before the actual filing of the Original Complaint, and therefore cannot constitute retaliation under section 14.1 of the Act;

4. a sought-after amendment must be part of the "essential situation" of the Original Complaint, and the Disputed Amendments do not meet that test;

5. the inclusion of the Disputed Amendments would cause fundamental and irreparable prejudice to the Respondent.

XI. The Time Limit in s. 41(1) of the *Act*

[29] Section 41(1) of the *Act* states that the Commission has a mandatory obligation to deal with any complaints filed with it, subject to the exclusions set out in subsections 41(1)(a) through (e). Subsection 41(1)(e) contains a one year time limit between an alleged breach of the *Act* and the filing of a complaint about it.

A. Respondent's Position

[30] The Respondent submits that 41(1)(e) precludes the inclusion of the Disputed Amendments into the Original Complaint, because they are out of time.

B. Analysis

[31] I note that 41(1)(e) further states that the Commission has the authority and discretion to extend the one year time limit to "…such longer period of time as the Commission considers appropriate in the circumstances…".

[32] I therefore conclude that the one year time limit is not a hard and fast, automatic bar. Rather, the wording permits the Commission, and therefore the Tribunal, to look at the

circumstances in deciding whether or not to exercise its discretion and extend the time limit to what it considers appropriate.

[33] I have taken into account the following circumstances:

1. the two year delay re the QAEA position and the two and one-half year delay re the Team Leader Role Removal in specifying that the Disputed Amendments were at issue, in accordance with Commission and Tribunal procedure;

2. when the Complainant filed the Original Complaint on August 16, 2010, his grievance about Leader Pay was still in process;

3. he alleges that the Respondent's Human Resources ("HR") told him he had to go through the grievance process first, before going to the Commission.

4. I also note that in the Second Complaint, at number 2, the Complainant mentioned the Team Leader Role Removal as retaliation, although he did not specify it in a numbered, more detailed paragraph. He was still beyond the one year time period in subsection 41(1)(e) of the Act, but it was mentioned.

5. The fact that he was unrepresented meant that he did not have the same finesse as counsel in drafting his Complaints.

6. Although the letters the Complainant wrote to the Commission in 2011 which referred to the Team Leader Role Removal and the denied QAEA opportunity were not proper notice to the Respondent of these issues, he nevertheless referred to the Team Leader Role Removal as being retaliation, and could have thought the events were then part of the whole Complaint procedure.

7. The Respondent still employs the same management personnel as were involved in the alleged discriminatory acts and retaliation in the Disputed Amendments, and are available to provide evidence.

8. The Collective Agreement, although relevant to the contents of the Complainant's Grievance, is not relevant to the subsection 41(1)(e) time limitation in the Act.

[34] For the above reasons, I find that it is reasonable in the circumstances to extend the time limit in subsection 41(1)(e) to the date of the Complainant's filing of this Motion to Amend. The Tribunal is not barred by subsection 41(1)(e) from considering this Motion.

XII. Issue of Whether Team Leader Role Removal Constitutes Retaliation

[35] Section 14.1 of the *Act* states:

> 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.

A. Complainant's Position

[36] The Complainant submits that because on May 18, 2010, he notified the Respondent's HR contact that he intended to file a human rights complaint with the Commission, the Respondent's subsequent removal of him as Team Leader was retaliation as defined in the *Act*.

[37] The Complainant states that the Commission incorrectly advised him that the Team Leader Role Removal could not have been retaliation because "it occurred before GE was notified of his complaint by the Commission" and submits, in essence, that the Commission should have viewed the Complainant's May OK 2010 communication to the Respondent's HR department of his intention to file with the Commission as actual notice of his filing. Therefore, the Respondent's removal of him as Team Leader constituted retaliation under section 14.1 of the *Act*.

B. Respondent's Position

[38] The Respondent submits that given the wording of section 14.1, the Team Leader Role Removal cannot be retaliation under s. 14.1, because it happened before the Complainant filed the Original Complaint on August 16, 2010.

C. Analysis

[39] The fact is that the Complainant was removed from the Team Leader Role. In the materials, there is conflicting evidence which raises unanswered questions about the circumstances and timing of this event. For example, the evidence raises questions such as who was told what and when; what was discussed at an October 29, 2010 meeting about the Grievance; what constitutes notice of a human rights complaint.

[40] In light of this, whether or not the Team Leader Role Removal constituted retaliation under the *Act* is not something which I think can or should be decided at this stage of the proceeding, but rather after a fuller account of the circumstances has been provided during the hearing.

XIII. Abuse of Process

A. Respondent's Position

[41] The Respondent submits that an amendment permitting the Original Complaint to include the Team Leader Role Removal would amount to an abuse of process of both the Commission's and the Tribunal's processes, because it is barred by a binding settlement of the Complainant's grievance. In January 2011 the Respondent and Complainant settled the Complainant's grievance about the Team Leader Role Removal by an agreement that the Respondent pay the Complainant Leader Pay from October 27, 2007 to July 1, 2010. The Respondent paid the Complainant accordingly. If the Tribunal grants this amendment and the Complainant establishes his case, it will therefore be the re-litigation of a decided issue and result in a double award of damages. During the Motion's oral hearing, Respondent's counsel posited that it was understood, and the Complainant should have understood, and the settlement deemed him to understand, that the "flip side" of the settlement was that the Complainant stopped being Team Leader on July 1, 2010, and that the entire matter was closed.

[42] The Respondent also states that it has dealt with the Original Complaint at the Commission level, expended resources, and made decisions based on the three specified incidents in the Original Complaint, only to find out that the Original Complaint has changed, with the Complainant trying to add two incidents that happened long ago. If the Tribunal grants the Disputed Amendments, the Complaint therefore has the potential to become, in effect, a "moving target", with a potentially never-ending list of incidents by the Complainant. This would constitute a denial of the Respondent's fundamental rights to fully deal with the Original Complaint at the Commission stage, and is an abuse of both the Commission's and the Tribunal's processes.

B. Complainant's Position

[43] The Complainant submits that including the Team Leader Role Removal is not an abuse of process, because the Complainant's grievance was only about Leader Pay, and not about any human rights issue arising from the Team Leader Role Removal, and therefore is not a re-litigation of a decided matter. The inclusion of the QAEA denial incident is also not an abuse of process nor does it render the Complaint a "moving target" because it was in the Complainant's August 2011 letter to the Commission and therefore is a part of "all of the circumstances" of the Complaint.

C. Analysis

[44] I have taken into account the following, which form part of the Complainant's and Respondent's Motion materials. The Grievance (see below) is attached as Appendix "A" to the Respondent's Response to Motion, as are emails and letters.

1. on January 12, 2010, the Complainant filed grievance 2010-3 ("the Grievance") stating that the Respondent failed to pay him the five percent (5%) premium for performing as Team Leader ("Leader Pay"), contrary to the Collective Agreement; his requested remedy was being "made whole";
2. in May 2010 he emailed HR of his intention to file a human rights complaint;
3. Complainant says HR told him he had to complete the Grievance process first;
4. June 2010 HR denied Grievance for Leader Pay;
5. Complainant appealed HR decision to "next level" in grievance procedure;
6. August 16, 2010, the Complainant filed Original Complaint with Commission and did not include Team Leader Role Removal;
7. December 20, 2010 HR Vice President wrote Union that Complainant acted as Team Leader from October 27, 2007 until July 1, 2010, when removed, and offered the Complainant Leader Pay for that period;
8. January 5, 2011 email from Union to HR accepted Offer on behalf of Complainant and Union;
9. Respondent paid the Complainant gross Leader Pay of $14,566.09, less deductions, as agreed.

[45] As well, although the date of the Respondent's notification to the Complainant that he was no longer Team Leader is disputed, in any event, the Complainant filed the Grievance in January 2010, 7 months before he himself claims he was "aware" of his removal as Team Leader in August 2010. In January, he alleges that he was performing all but one of the functions of the Team Leader Role. Therefore, in January 2010, when he filed the Grievance, the Complainant could not have addressed his mind to the Respondent's future termination of his Team Leader Role, and it was therefore not part of the Grievance.

[46] On a plain reading of the Grievance, its subject matter was solely the past failure to pay Leader Pay, and not age discrimination or retaliation. The language in the Respondent's December 20, 2010 offer buttresses the concept that it was Leader Pay at issue, and nothing else, because Leader Pay was offered, and nothing else.

[47] Leader Pay is not the same as most of the heads of damages and relief sought by the Complainant: reinstatement of the Team Leader Role; compensation for pain and suffering and for wilful and reckless discriminatory practice.

[48] It is not clear to what time period the Complainant refers in para 77.3.viii of his SOP, which asks for "5% lost pay premium for Leader Role in the amount of approximately $11,488.95". If at the end of the inquiry, the Complainant has established his case with respect to the Team Leader Role Removal, and the Leader Pay head of damages overlaps the period for which the Respondent paid the Complainant Leader Pay pursuant to the Grievance settlement, the Tribunal will not order any such overlapping or double payment.

[49] The QAEA denial has never been litigated. In my view, it purports to be one of a series of events of alleged age discrimination against the Complainant. I therefore do not see its inclusion in the Original Complaint as amounting to an abuse of process.

[50] For the reasons above, I conclude that there would be no abuse of process if the Tribunal grants the Motion to include the Disputed Amendments in the Original Complaint.

XIV. "Essential Situation" Or "Nexus and Connection"

A. Respondent's Position

[51] In addition to the grounds stated above regarding the Disputed Amendments, the Respondent submits that the QAEA position would have been a promotion for the Complainant, rather than a training opportunity, like the other incidents cited in the Original Complaint. Therefore, the QAEA situation dealt with different subject matter, and constituted a new complaint.

[52] The Respondent states that the QAEA position therefore does not fall within the "essential situation" of the Original Complaint, which essential situation the Respondent states is encompassed by the three incidents alleged in the Original Complaint, which all involved training or assignment opportunities within the Complainant's position. The Respondent cites *Cam-Linh (Holly) Tran v. Canada Revenue Agency,* 2010 CHRT 31 ("*Tran*"), where the Tribunal refused to grant amendments because the amendments did not fall within the "essential situation" of Ms. Tran's original complaint.

[53] The Team Leader Role Removal is also outside the "essential situation". In the Respondent's view, this alleged reprisal (which the Respondent characterizes as a "pre-existing reprisal" (para 37, Respondent's Response to Motion) "could and should" (*ibid*) have been added to the Original Complaint, but was not. Therefore, it is excluded from the "essential substance" of the Complaint.

B. Complainant's Position

[54] The Complainant submits that the test for the Disputed Amendments should be whether the "…facts are an outgrowth of the discriminatory practices that occurred [before] the filing of the complaint" and that this applies where a complainant alleges an ongoing series of events. This was the Tribunal's opinion as a result of the Tribunal hearing of *Parent,* 2005 CHRT 37. The Complainant submits that throughout the Original and Second Complaints, the Complainant alleges ongoing incidents of denial of opportunities on account of age discrimination. The Disputed Amendments are connected to and an outgrowth of the

events and situation the Complainant alleged in the Original Complaint. The Disputed Amendments exhibit a nexus or connection to the Original Complaint and the Second Complaint in that they are part of the pattern of the age discrimination which the Complainant alleges.

C. Analysis

[55] In *Tran*, the original complaint was about discrimination based on family status and retaliation for a previous human rights complaint. The amendments Ms. Tran requested were discrimination based on sex, national or ethnic origin (later withdrawn), race, colour and section 10(a) of the Act (*Tran*, *supra*, paras 10 and 11). The Tribunal held that there was no "…logical connexion or nexus…" from the facts in the Original Complaint to "…the allegations of additional prohibited grounds of discrimination" in the requested amendments (*Tran*, *supra*, para 17). Rather, the proposed amendments were so different from the original complaint, they constituted a "substantially new Complaint", and were denied.

[56] Unlike in *Tran*, the ground of Mr. Blodgett's allegations, whether in the Original Complaint, the Second Complaint or the Disputed Amendments does not change – it is always age discrimination and differential treatment on account of age, contrary to section 7, and then, in addition, he alleges that some of these acts of discrimination based on age constituted retaliation and harassment under the *Act*.

[57] Whether the test for granting the Disputed Amendments is that they be part of the "essential situation" of the Original Complaint, or whether the test is that they must be connected to or have a nexus with the facts in the Original Complaint if an ongoing series of discriminatory events is alleged, I find that the Disputed Amendments meet both tests. The type of discrimination alleged in the Disputed Amendments – age – does not change from the Original Complaint; the management personnel involved do not change; the group of employees in the Complainant's group do not change significantly; the incidents alleged consistently arise from the same type of situation in the workplace: the denial of assignment and training opportunities for the Complainant, allegedly on account of age discrimination. The alleged retaliation and harassment arise from the same ground of discrimination, except

that the circumstances of some of the incidents also constitute harassment and retaliation, in the Complainant's view. The Disputed Amendments appear to be intrinsic parts of the narrative of the whole, which if left out, would not permit the Tribunal to fully assess the parties' evidence or obtain a complete narrative of the Complaints.

XV. Post-Hearing Submissions on Three Cases

A. Complainant's Position

[58] The Complainant submits that *Air Canada (supra)* stands for the concept that it is the Commission's referral letter to the Tribunal and the complaint attached to it that determines whether the Commission has referred the entire complaint, and not the Commission's investigative report or other Commission documents. If the Commission wishes to limit a complaint's scope, it will use specific language to do so.

[59] Therefore, because the Original Complaint alleges a "trend" of age discrimination, any allegation related to it are within the scope of the Complaint, and the Disputed Amendments fall within that scope.

[60] The Complainant submits that the type of amendments this Complainant seeks are the same as those successfully sought by the complainant in *Parent (supra),* in that the original complaint and the requested amendments were and are linked by a "common thread" – in *Parent (supra)*, that complainant's health; in the within Complaint – age discrimination, some of which constituted retaliation and harassment under the *Act*.

[61] The Complainant submits that *CTEA (supra)* stands for the proposition that the Tribunal should grant amendments which correct the Commission's mistakes, if there is no prejudice.

[62] In the within Complaint, the Commission mistakenly advised the Complainant [that the Team Leader Role Removal could not be retaliation under the Act, and that he had to file a separate complaint and that is why he filed the Second Complaint], and because there is no prejudice to the Respondent if the Tribunal includes the Disputed Amendments in the Original Complaint, the Tribunal should apply *CTEA* and grant the Motion to Amend.

B. Respondent's Position

[63] The Respondent submits that *Parent (supra)* stands for the necessity for procedural fairness and natural justice for all the parties to a complaint. The Respondent submits that in relation to granting amendments, *Parent (supra)* stands for the requirement that there must be no prejudice to the respondent in order for an amendment to be granted.

[64] To add the Disputed Amendments to the Original Complaint at this stage of the process will cause additional costs to the Respondent, and skewer the process to prejudice and cause injustice to the Respondent. The Respondent submits that contrary to *Parent (supra),* to include the Disputed Amendments in the Original Complaint would result in fundamental and irreparable and unjust prejudice.

[65] The Respondent submits that *Parent (supra)* also confirms that the test for granting an amendment is that it must be part of the same "essential situation" as identified in the complaint.

[66] The Respondent sees *Air Canada* and *CTEA (both supra)* as examples of how requested amendments must have been expressly dealt with or identified by the Commission in order for the Tribunal to add them to a complaint. The Respondent submits that because the Disputed Amendments were not specifically dealt with in one way or another by the Commission, they cannot be part of the Commission's referral to the Tribunal.

C. Analysis

[67] I interpret *Air Canada (supra)* as standing for the concept that unless the Commission clearly restricts its scope, the Commission is taken to refer the **whole** [my emphasis] of a complaint to the Tribunal, notwithstanding any recommendations by a Commission investigator to exclude some of the allegations put forward by a complainant.

[68] In my view, *CTEA (supra)* is a case in which the Federal Court confirms the "clear" jurisprudence "…that the Tribunal has the jurisdiction to amend complaints of discrimination" (*CTEA,* at para 30). The case also confirms that although the decision to grant an

amendment is discretionary, generally, an amendment should be granted "…in the absence of prejudice to the opposite party." *(CTEA)*, at para 31

[69] The Federal Court in *Parent (supra)* stands for the proposition that amendments that are linked by commonality – the "common thread" – to the allegations in the original complaint should be granted, barring prejudice to the other parties. *Parent* also confirms the Tribunal's authority to amend complaints "…for the purpose of determining the real questions in controversy between the parties" (*Parent, supra,* at para 30*).* In *Parent,* although the Commission had not specifically dealt with the requested amendment, the Federal Court upheld the Tribunal's decision to amend the complaint.

[70] I conclude that as in *Parent*, there is a common thread between the Disputed Amendments and the Original Complaint. As in *Air Canada*, by including the Disputed Amendments in the Original Complaint, the whole of the Complaint will be before the Tribunal.

XVI. Issue of Prejudice

[71] In *Parent,* the Federal Court stated that "…an amendment should not be granted where it would unjustly prejudice the other party." *(Parent, supra,* para 16)

A. Respondent's Position

[72] The Respondent states that the Complainant delayed 2.5 years regarding the Team Leader Role Removal and 2 years from the QAEA incident before he sought these amendments. These delays inherently and fundamentally prejudice the Respondent, who has lost the opportunity to compile and preserve evidence, both documentary and through witnesses whose memories have faded. That loss can never be compensated. Further, the Respondent has lost the opportunity to address the allegations "in a timely manner".

[73] The Respondent also submits that this delay means that the Commission has not properly dealt with these allegations, which have not even been filed with the Commission. The Respondent says that to permit the Disputed Amendments would constitute an "end

run" around the required Commission process, and deny the Respondent the Commission's investigation and conciliation procedures.

B. Complainant's Position

[74] The Complainant submits that the party pleading prejudice must show "real and significant" prejudice which is of "sufficient magnitude to impact on the fairness of the hearing", as in *Cook v. Onion Lake First Nation,* 2002, CHRT CanLII 45929 ("*Cook v. Onion Lake*").

[75] The Complainant submits that delay in and of itself does not equate to prejudice. The Complainant denies delay occurred in any event, because as soon as possible after the Complainant retained counsel, the Complainant delivered the Motion – at the same time in December 2012 as Complainant's SOP. The Respondent has therefore known about the Disputed Amendments since at least that time.

C. Analysis

[76] I do not know at which stage in the Commission process the Second Complaint was when the Commission received the Complainant's and Respondent's consents to immediate referral to the Tribunal, but the Respondent's consent indicates a willingness to dispense with the Commission's processes in certain circumstances. It was reasonable for the Respondent to deal with the Second Complaint as it did, and the Respondent did not raise the issue of prejudice. I conclude that in these circumstances as well, as in *Parent*, *supra*, the fact that some of the Commission's processes may be by-passed will not be an "end run" around the Commission's processes, and will not prejudice the Respondent. Mediation and settlement discussions are available to the parties at the Tribunal, at any time they wish. They are not only available at the Commission.

[77] Further, in addition to the above, I have considered that the same management personnel who were involved in the decisions to remove the Complainant as Team Leader and not to offer him the QAEA position are still in the Respondent's employ and can give evidence, including at the hearing. I have also considered that the Second Complaint refers

to the Team Leader Role Removal as retaliation and the Respondent has known about the Second Complaint since about October 2012. Further, the Respondent has known since December 2012 that the Complainant was motioning to amend the Complaint. The Respondent's SOP can address the Disputed Amendments (as well as the Original and Second Complaints), and the Respondent can also provide documentary evidence regarding them. As well, in order to alleviate any inconvenience the granting of the Disputed Amendments might cause to the Respondent, the Tribunal can give the Respondent extra time to file its SOP and documents.

[78] I therefore find that the Respondent will not be prejudiced if the Disputed Amendments are granted and granting them will not impact the fairness of the hearing.

[79] I wish to note that the granting of the within Motion to Amend does not change the Complainant's burden of establishing his case, including these amendments, at the hearing. As the Federal Court stated in *Parent, supra* (para 14), the Complainant "…will have the burden of proving…" his case "…later on".

XVII. Order

1. On consent of the Parties, the Original Complaint is amended by adding to it the Second Complaint.

2. The Original Complaint is amended by adding to it the Disputed Amendments, as more particularly set out in the Complainant's Motion to Amend at paragraphs 9 through 25.

3. If, on completion of the inquiry, the Complainant has established that the Respondent removed him as Team Leader on the prohibited grounds of discrimination on account of age, or as retaliation, contrary to the Canadian Human Rights Act, the Complainant shall not be entitled to, and the Tribunal shall not make, an order that the Respondent pay the Complainant 5% Leader Pay for the period October 27, 2007 to July 1, 2010.

4. The Respondent is directed to serve and file an amended Statement of Particulars in response to the Original Complaint, as hereby amended, by a date that is six (6) weeks from the date of this Ruling.

5. The Complainant is directed to serve and file any Reply to the Respondent's amended Statement of Particulars, by a date that is ten (10) days from the date that

Complainant's counsel is served with the Respondent's amended Statement of Particulars.

Signed by

Olga Luftig
Tribunal Member

Ottawa, Ontario
October 3, 2013

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T1866/9612 & T1947/2713

Style of Cause: Brian Blodgett v. GE-Hitachi Nuclear Energy Canada Inc.

Ruling of the Tribunal Dated: October 3, 2013

Date and Place of Hearing: May 1, 2013

(The motion was heard via teleconference)

Appearances:

David Baker and Sarah Mohamed, for the Complainant

Ikram Warsame, for the Canadian Human Rights Commission

John J. Bruce, for the Respondent