File Nos.: T1774/0412 & T1945/2513

Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Between:

Premakumar Kanagasabapathy

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Air Canada

Respondent

Ruling

Member: Sophie Marchildon
Date: November 12, 2013
Citation: 2013 CHRT 29

[1] On July 18, 2009, Mr. Premakumar Kanagasabapathy (the "Complainant") filed a complaint T1774/0412 (Complaint 1) against Air Canada (the "Respondent") under the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "*Act*"). Pursuant to sections 7 and 14.1 of the *Act*, the Complainant alleged that, in the context of his employment, the Respondent had denied him promotional opportunities as a form of "reprisal" for having filed a grievance in 2000 and a previous human rights complaint that was substantiated in 2002, and that it had treated him differently on the grounds of race, colour and national or ethnic origin. Complaint 1 outlines events occurring from December 2006 to May 19, 2008. On January 11, 2012, pursuant to paragraph 44(3)(*a*) of the *Act*, the Canadian Human Rights Commission (the "Commission") requested that the Chairperson of the Canadian Human Rights Tribunal (the "Tribunal") institute an inquiry in respect of the complaint. The exact scope of Complaint 1 was the subject of a ruling by the Tribunal (see 2013 CHRT 7).

[2] On May 9, 2012, the Complainant filed with the Commission another complaint T1945/2513 (Complaint 2) against the Respondent, pursuant to sections 7 and 14.1 of the *Act*. In Complaint 2, the Complainant alleges further discrimination by the Respondent, in the same vein as in Complaint 1, this time outlining events alleged to have occurred between 2010 and April 2012. In addition to the grounds alleged in Complaint 1, in his second complaint the Complainant also alleges discrimination on the basis of age.

[3] On May 2, 2013, a Case Management Conference Call ("CMCC") was held in which the Respondent made a request to put Complaint 1 in abeyance pending the referral to the Tribunal by the Commission of Complaint 2. Since Complaint 2 was not before the Tribunal and the Complainant was not on the call, only his counsel was on the call and was unaware of a second complaint; and, since the Commission could not advise on the second complaint; the Tribunal found it had no jurisdiction at the time to consider the second complaint. Furthermore, there was no way of knowing when, or even if, the second complaint would be referred to the Tribunal. Therefore, the Respondent's request to put Complaint 1 in abeyance was denied. On the call, the Tribunal directed the parties to file their Statements of Particulars and established a schedule for doing so, ending on June 20, 2013.

[4] On June 17, 2013, the Commission referred Complaint 2 to the Tribunal.

[5] Following that referral, the Tribunal canvassed dates for a CMCC with the parties. The parties confirmed their availability for October 3, 2013.

[6] The October 3, 2013 CMCC was cancelled at the Commission's request and for unforeseen circumstances.

[7] In letters dated October 17, 2013 and November 4, 2013, the Tribunal asked the parties to indicate whether they would be in favour of joining Complaints 1 and 2 for the purpose of having a single hearing. In response to the Tribunal's October 17, 2013 and November 4 letters, all parties agreed that the complaints be joined.

Law & Analysis

[8] Pursuant to section 40(4) of the *Act*, it is the Commission who has the power to determine whether complaints should be dealt with together through a single inquiry by the Tribunal. However, the issue of whether to hold a single hearing or multiple hearings is a procedural matter (see *Lattey v. Canadian Pacific Railway*, 2002 CanLII 45928 (CHRT) at para. 12 [*Lattey*]). With regard to procedure, section 48.9(2) of the *Act* provides that the Chairperson of the Tribunal may make rules of procedure governing the practice and procedure before the Tribunal. Furthermore, section 48.9(1) indicates that proceedings before the Tribunal are to be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. Together, these two sections indicate that, as long as its procedure is fair, the Tribunal is master of its own procedure. Therefore, the Tribunal can determine whether a single hearing or multiple hearings should be held with regard to the two complaints in issue here.

[9] In *Lattey*, in determining whether the complaints in issue in that case should be heard together, the Tribunal identified that it must balance a number of factors, including:

> 1. The public interest in avoiding a multiplicity of proceedings, including considerations of expense, delay, the convenience of the witnesses, reducing the need for the repetition of evidence, and the risk of inconsistent results;
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> 2. The potential prejudice to the respondent that could result from a single hearing, including the lengthening of the hearing for each respondent as issues unique to the other respondent are dealt with, and the potential for confusion that may result from the introduction of evidence that may not relate to the allegations specifically involving one respondent or the other; and
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> 3. Whether there are common issues of fact or law.
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> (see *Lattey* at para. 13)

[10] Considering the circumstances of these two complaints, I find that hearing both complaints together would expedite the proceedings and would be in the public interest. Both complaints contain similar allegations of discrimination, and Complaint 2 is essentially a continuation of Complaint 1 with the addition of other events that are alleged to have occurred. Hearing both complaints together would give the Tribunal a clear historical and factual context to the complaints, which will form the basis of the Tribunal's decision on each legal and factual question. Considering that the parties to both complaints are the same, unlike in *Lattey*, there will be no confusion in the introduction of evidence related to only one of the complaints as per the second factor outlined in *Lattey*. In addition, both complaints are at similar stages of the inquiry, all parties consent to consolidate the files, and any delay with consolidating the hearings can be reduced through active case management.

[11] I also find instructive the decision in *Entrop v. Imperial Oil Limited* (1994) 23 C.H.R.R. D/186, stating that it "would be impractical, inefficient and unfair to require individuals to make allegations of reprisals only through the format of separate proceedings." While Complaint 2 is not a complaint of reprisal for having made Complaint 1, it alleges a continuation of the discrimination alleged in Complaint 1. Therefore, it would be practical and efficient to hear these two complaints together.

[12] The exercise of the Tribunal's discretion is subject to the rules of natural justice, and the regime of the *Act*. I am of the view that consolidating the two complaints better accords with natural justice and advances the legislative objectives of the *Act*, in particular, expeditiousness, and the granting to all parties of a full and ample opportunity to participate in the inquiry process (see ss. 48.9(1) and 50(1) of the *Act*).

[13] For all the above reasons, I direct that Complaints 1 and 2 be consolidated for the purposes of a single hearing.

Signed by

Sophie Marchildon
Administrative Judge

Ottawa, Ontario
November 12, 2013