

**Canadian Human Rights Tribunal**

**Tribunal canadien des droits de la  
personne**

**BETWEEN:**

**CAROL J. LATTEY**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**CANADIAN PACIFIC RAILWAY**

**Respondent**

**AND BETWEEN:**

**CAROL J. LATTEY**

**Complainant**

- and -

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

- and -

**MURRAY DOUGLAS**

**Respondent**

**RULING REGARDING WHETHER THESE**  
**COMPLAINTS SHOULD BE HEARD TOGETHER**

**Ruling No. 1**

**2002/02/25**

**PANEL:** Anne Mactavish, Chairperson

[1] Carol Lattey filed a human rights complaint against her employer, Canadian Pacific Railway. Ms. Lattey alleges that CPR discriminated against her by failing to provide her

with a harassment free workplace, contrary to sections 7 and 14 of the *Canadian Human Rights Act*. Ms. Lattey filed a second complaint against a co-worker named Murray Douglas, alleging harassment in employment, contrary to section 14 of the *Act*. At issue is whether Ms. Lattey's two human rights complaints should be heard together.

[2] Ms. Lattey's complaints were filed with the Canadian Human Rights Commission on December 4, 1997. Following a Commission investigation, the complaints were referred to the Canadian Human Rights Tribunal on December 17, 2001. In its referral letter, the Commission asked that the two complaints be consolidated as, in the Commission's view, the complaints involve substantially the same issues of fact and law.

[3] Both CPR and Mr. Douglas object to the complaints being heard together.

## **I. SUBMISSIONS OF THE RESPONDENTS**

[4] According to CPR, the complaint against Mr. Douglas primarily involves communications occurring at union meetings, between members of the executive of Local 422 of the United Transportation Union. CPR states that any such conduct took place outside the workplace.<sup>(1)</sup> Not only was CPR not privy to what went on in the meetings, it could not, as a matter of law, interfere with the conduct of union meetings.<sup>(2)</sup> Hearing the two complaints together would not only lengthen the hearing, CPR says, but evidence involving Mr. Douglas that does not relate to his employment is irrelevant, and could only prejudice the employer. In addition, the receipt of such evidence could lead to erroneous findings, based on events unrelated to what took place in the scope of Ms. Lattey's employment with CPR.

[5] CPR also objects to the jurisdiction of the Tribunal to consider matters relating to the conduct of union business, which, it says, took place outside of the workplace. It asks that the Tribunal narrow the complaint against it to include only those allegations that arose in the course of Ms. Lattey's employment as a Trainperson, and concern CPR's obligation to provide a harassment free workplace.

[6] The submission of counsel on behalf of Mr. Douglas is that many of Ms. Lattey's complaints "... arise in circumstances where the Employer would not be in attendance." In counsel's view, it is therefore not appropriate that these matters be heard together.

## **II. SUBMISSIONS OF THE COMMISSION AND MS. LATTEY**

[7] Both the Commission and Ms. Lattey take the position that these complaints should be heard together. The Commission submits that CPR's rationale for hearing the cases

separately is really an argument that should be advanced in the employer's defense of the claim on its merits, and does not go to the issue of whether the complaints should be heard together. The question of whether CPR should be responsible for the conduct of an employee engaged in union business is ultimately an issue to be resolved by the Tribunal, after hearing all of the relevant evidence. It is open to CPR to raise any objections that it may have to the admissibility of evidence at the hearing.

[8] The Commission contends that Ms. Lattey's complaint involves conduct by Mr. Douglas that is alleged to have occurred outside the union context. The Commission notes that an internal investigation carried out by CPR considered Mr. Douglas' actions both during and outside of union meetings.

[9] In the Commission's submission, the evidence regarding the two complaints is interwoven such that much of the same evidence would be required in each of the hearings, were the matters to be heard separately.

[10] Ms. Lattey contends that her complaint regarding Mr. Douglas' conduct is not limited to conduct that she says occurred in the union context, but also involves his behavior in the workplace. Further, she submits that CPR's discrimination and harassment policy applies to conduct at work as well as in social settings and functions related to work, which, she submits, would include union meetings. Ms. Lattey says that much of the evidence regarding the complaints against CPR and Mr. Douglas is intertwined, and that requiring witnesses, some of whom come from outside the Vancouver area, to attend two hearings would constitute an undue hardship.

### III. ANALYSIS

[11] The starting point for my consideration of whether Ms. Lattey's complaints should be heard together must be the provisions of the *Canadian Human Rights Act* itself. Section 40 (4) of the *Act* specifically addresses the ability of the Commission to deal with complaints filed by different complainants against the same respondent together, where the Commission is satisfied that the complaints involve substantially the same issues of fact and law. In such cases, it is also open to the Commission to request that the Chairperson of the Canadian Human Rights Tribunal institute a single inquiry into the complaints.<sup>(3)</sup> There is no comparable provision relating to multiple complaints filed by the same complainant against different respondents.

[12] In contrast to the specific guidance provided by the *Act* with respect to the Commission's ability to deal with cases together, the *Act* is silent as to the power of the Canadian Human Rights Tribunal to join or sever complaints before it. In my view, the issue of whether to hold a single hearing or multiple hearings is a procedural matter.<sup>(4)</sup> In the absence of specific statutory direction, the Tribunal is master of its own procedure.<sup>(5)</sup>

[13] The question then is, given the particular circumstances in issue here, should Ms. Lattey's complaints against CPR and Mr. Douglas be heard together? In considering this question, I 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;
2. The potential prejudice to the respondents 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
3. Whether there are common issues of fact or law.

[14] After carefully considering all of these factors, I am of the view that these complaints should be heard together. From the material before me, it appears that Ms. Lattey's complaints involve conduct on the part of Mr. Douglas that is alleged to have occurred in union meetings, as well as actions that are alleged to have taken place in the course of what all parties would likely agree would constitute the workplace. Whether or not CPR may ultimately be considered responsible for any harassing conduct on the part of Mr. Douglas that is proven to have occurred in union meetings, it seems to me that the allegations involving Mr. Douglas' alleged conduct in each setting cannot be viewed in isolation. A comment made on the shop floor may have a particular significance or weight because of what may have occurred before, in a union meeting, regardless of whether or not CPR is responsible for the earlier actions in the union context.

[15] Given that the evidence as it relates to each complaint is intertwined, I am also not persuaded that a joint hearing will be appreciably longer than a single hearing into either of Ms. Lattey's complaints would be. Further, any potential prejudice to the respondents is, in my view, outweighed by the prejudice to the complainant and the public that would result from requiring the complainant to go through two separate hearings, having to testify twice about the same allegations, and presumably having to call many of the same witnesses to repeat their testimony. Finally, two separate hearings would also expose all of the parties to the potential risk of inconsistent findings with respect to the same underlying facts.

[16] I am similarly not persuaded by CPR's contention that it will be prejudiced by having the Tribunal hear evidence involving Mr. Douglas that does not relate to his employment, and the risk that the receipt of such evidence could lead to erroneous findings. I note that it is the role of the Tribunal to determine the admissibility and relevance of evidence as it may relate to each complaint. A similar argument was advanced by a respondent in the *Hodder* case, and I adopt the observations of the Board of Inquiry in that regard:

It is a normal function of any adjudicative body, where there is more than one complainant/plaintiff and/or more than one respondent/defendant to consider the evidence adduced, determine its admissibility as against each party and to weigh that evidence only as it relates to that party against whose interest it has been admitted. There is no evidence before me to suggest that the positions of the respective respondents cannot be adequately distinguished.—<sup>(6)</sup>

[17] In coming to the conclusion that both of Ms. Lattey's complaints should be dealt with at one hearing, I am not making any finding with respect to the issue of the jurisdiction of the Tribunal to consider conduct occurring at union meetings, or the potential responsibility of an employer for such conduct. In my view, that issue should be dealt with at the hearing, in the context of a full examination of all of the evidence surrounding Ms. Lattey's complaints.

"Original signed by"

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Anne L. Mactavish

OTTAWA, Ontario

February 25, 2002

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**COUNSEL OF RECORD**

TRIBUNAL FILE NOS.: T685/7301 and T686/7401

STYLE OF CAUSE: Carol J. Lattey v. Canadian Pacific Railway and Carol J. Lattey v. Murray Douglas

RULING OF THE TRIBUNAL DATED: February 25, 2002

APPEARANCES:

Walter R. Plomish For the Complainant (Carol J. Lattey)

Leslie Reaume For the Canadian Human Rights Commission

Marc Shannon For the Respondent (Canadian Pacific Railway)

Miriam Gropper, Q.C. For the Respondent (Murray Douglas)

1. In this regard, CPR relies on the decisions of the Tribunal and the Federal Court in *Cluff v. Department of Agriculture and Michael Sage*, (1992), 20 C.H.R.R. D/61, aff'd [1994] 2 F.C. 176, (sub nom. *Cluff v. Canada (Minister of Agriculture)*).

2. Section 94 of the *Canada Labour Code*. CPR also refers to the decision of the Canada Labour Relations Board in *National Association of Broadcast Employees and Technicians v. ATV New Brunswick Limited (CKCW-TV)*, [1979] 3 Can LRBR 342.

3. The Chairperson of the Tribunal will not, however, always accede to such a request. See *Coates v. Canada Post Corporation and Canadian Union of Postal Workers*, CHRT, June 23, 1999.

4. In this regard, I am in agreement with the conclusions of the Ontario Board of Inquiry in *Hyman v. Southam Murray Printing Division*, (1981), 3 C.H.R.R.D/132 and the Nova Scotia Board of Inquiry in *Hodder v. Nova Scotia (Department of Finance)*, [1996] N.S.H.R.B.I.D. No. 7.

5. See *Mohawk Council of Kahnawake v. Jacobs*, [1996] F.C.J. 757 (F.C.T.D.), and *Re Cedarvale Tree Services Ltd. and Labourer's International Union of North America, Local 183*, [1971] 3 O.R. 832 (Ont. C.A.).

6. *Supra.*, at para. 22.