Canadian Human Rights Tribunal **Tribunal canadien des droits de la personne**

BETWEEN:

LISE GOYETTE

Complainant

- and -

SYNDICAT DES EMPLOYÉ(ES) DE TERMINUS

DE VOYAGEUR COLONIAL LIMITÉE (CSN)

Respondent

REASONS FOR DECISION

T.D. 14/01

2001/11/16

PANEL: Jacinthe Théberge, Chairperson

Athanasios Hadjis, Member

Marie-Claude Landry, Member

[TRANSLATION]

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I. SUMMARY OF THE FACTS

[1] On or about November 20, 1991, the Complainant, Ms. Lise Goyette, filed a complaint with the Canadian Human Rights Commission alleging that, starting in the month of January 1988, the Respondent, the Syndicat des employés de terminus de Voyageur Colonial Limitée (CSN), discriminated against her, notably, in applying policies and negotiating agreements that would limit the opportunities for employment and promotion on the basis of sex, contrary to the provisions of sections 9 and 10 of the *Canadian Human Rights Act* ("***CHRA***").[(1)]

[2] On or about March 25, 1992, Ms. Goyette amended her complaint of November 20, 1991, by changing the period during which the alleged acts of discrimination were committed by the defendant Syndicat des employés de terminus de Voyageur Colonial Limitée (CSN), this time alleging that the said acts had been committed starting in the month of December 1989.

[3] This Tribunal was formed and after a seven-day hearing, rendered a decision on October 14, 1997, allowing Ms. Goyette's complaint, in these words:

> **CONCLUSION**
>
> The Tribunal finds that by accepting and executing the collective agreement signed on December 7, 1989, the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN) committed an act of systemic discrimination towards a class of employees, namely, the telephone operators (the majority of whom are women), thereby depriving them of opportunities for employment or promotion within the company.
>
> Although the Union's way of operating meets the needs of workers in general, the present Tribunal cannot support the position that the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN) negotiated conditions of work applicable to all employees when it created a parallel system which adversely affected a class of employees who are members of said Union, namely, the telephone operators (the majority of whom are women), thereby depriving them of the same opportunities for promotion within the company as are available to other employees.

[4] In view of the foregoing, the present Tribunal ruled against the Respondent, the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN).[(2)] The Tribunal also reserved its jurisdiction regarding the terms for determining the amounts awarded by way of compensation, as required by the parties and according to the terms set out below:

> On the basis of the reasons stated above in our conclusion, the Tribunal is of the opinion that the following compensation is appropriate in this case and orders the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN) to pay to the Complainant the following amounts within 30 days of the date of the present decision:

1. **Hurt feelings:** Pursuant to section 53 (3) b) of the CHRA, the Tribunal finds that the Complainant is entitled to compensation in the amount of $5,000 for hurt feelings sustained as a result of the discriminatory practice.

2. **Loss of salary and benefits:** Pursuant to section 53 (2) c) the Tribunal orders the Respondent to reimburse the Complainant for the salary and benefits she lost from December 7, 1989 to June 6, 1996.

3. **Additional costs:** Pursuant to section 53 (2) d) of the C.H.R.A. and because the Complainant represented herself, the Respondent is ordered to pay the sum of $3,000 for expenses incurred in filing the complaint as a result of the discriminatory practice.

4. **Interests:** The Complainant is entitled to simple interest on the amounts awarded pursuant to paragraphs 2 and 3 above, at the prime rate of the Bank of Canada in effect on the date of filing of the complaint and up to the date of the present decision.

Should a problem arise in making the requisite calculations and should the parties fail to agree regarding the approach for determining these amounts, the Tribunal may meet at the request of either party to hear the evidence and resolve the conflict.[(3)]

[5] The Union brought this decision for review before the Federal Court, Trial Division, and the application was denied November 5, 1991, by Judge Pinard. The Union is currently appealing this decision before the Federal Court of Appeal.

[6] On March 20, 2000, the Complainant, Lise Goyette, sent the Tribunal a letter requesting that we determine the amount of the "loss of salary and benefits", as ordered in paragraph 2 of the above-cited excerpt from the Tribunal decision, as there was a disagreement between the parties.

[7] On April 3, 2000, Ms. Marie Pépin, Counsel for the Syndicat des employée(e)s de terminus de Voyageur Colonial Limitée (CSN), informed the Tribunal in writing that the Union did not agree with the amounts claimed by Ms. Goyette as they were too high. Moreover, Ms. Pépin informed us that:

[Translation]

Also, as the company Voyageur Colonial Ltée no longer exists, this union no longer has members.

As you know, the case is currently on appeal. Should the tribunal consider it appropriate to hear us at this stage, I will inform the representative *of the union*.

[8] Following Ms. Pépin's letter, on April 28, 2000, the Tribunal decided to arrange a meeting to hear the parties on the following points:

1) to obtain the necessary information for determining the quantum in accordance with paragraph 2, page 14, "loss of salary and benefits", Tribunal decision rendered October 14, 1997;

2) to obtain the prime rate of the Bank of Canada in effect on November 20, 1991, in order to calculate interests in accordance with paragraph 4, page 15, of decision T.D. 8/97;

3) to hear the Respondent's submissions following Ms. Pépin's letter of April 3, 2000.

[9] On May 17, 2000, Ms. Pépin and Ms. Goyette were sent a letter convening them to a meeting in Montreal on June 9, 2000, to discuss the points enumerated in the preceding paragraph.

[10] On May 26, 2000, the Tribunal was informed that the defendant Syndicat des employés de terminus de Voyageur Colonial Limitée (CSN) had assigned its assets pursuant to the *Bankruptcy and Insolvency Act*[(4)] and the firm Raymond Chabot Inc. was acting as trustee in bankruptcy of the defendant union.

[11] On June 8, 2000, the Tribunal, after receiving the notice of stay of proceedings, decided to cancel the meeting scheduled to determine the quantum and informed Ms. Pépin and Ms. Goyette that, pursuant to sections 121 and 135 of the *Bankruptcy and Insolvency Act*, her claim should be forwarded to the trustee in bankruptcy.

[12] On July 6, 2000, the Tribunal received a request from Mr. Marco Romani, Counsel for the Complainant, to reschedule the meeting, which stated as follows:

[Translation]

My client wishes the above-cited case to be relisted so that the exact amount owing her pursuant to the initial decision can be determined. Notwithstanding the bankruptcy of the union local, my client intends to execute the decision of the tribunal against the CSN in order to be compensated. (Emphasis added)

[13] Following this new request from the Complainant, the Tribunal convened Ms. Pépin and Mr. Romani for a meeting in Montreal in October 2000 to hear the parties regarding Mr. Romani's submissions as to Ms. Goyette's intention to execute the Tribunal's decision against the Confédération des Syndicats Nationaux ("CSN").

[14] On October 11, 2000, Ms. Pépin sent the Tribunal a letter of notification that she would be absent from the meeting of October 23, 2000, for the following reasons:

[Translation]

> In the above-captioned case, the respondent Union assigned its assets on May 26, 2000. The firm of Raymond, Chabot Inc. is acting as trustee in bankrupcty and Mr. Christian Bourque is the person responsible for the assets.
>
> A notice of stay of proceedings was issued June 6, 2000. No application for continuation of proceedings has been made pursuant to the Bankruptcy and Insolvency Act.
>
> The trustee in bankruptcy currently represents the bankrupt. The undersigned no longer has a mandate to do so and therefore cannot be present at the hearing of October 23.

[15] After receiving Ms. Pépin's letter on October 19, 2000, the Tribunal notified the trustee's representative, Mr. Christian Bourque, of the meeting being held October 23, 2000, in Montreal.

[16] Mr. Jean-François Cliche, Counsel for the CSN, appeared before the Tribunal at the meeting of October 23, 2000, alleging that the CSN is a legal entity totally separate from the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN), and filed its documents of incorporation to this effect. There was also a consensus that the Tribunal could not reopen the hearings respecting the quantum until Ms. Goyette had obtained permission from the Superior Court to continue the proceedings pursuant to the *Bankruptcy and Insolvency Act*.

[17] On May 7, 2001, Ms. Goyette had an application for continuation of proceedings served pursuant to the *Bankruptcy and Insolvency Act*. This application was made May 23, 2001, and that same day, Mr. Romani notified the Tribunal in writing that the Trustee in Bankruptcy had been discharged, in these words:

> [Translation]
>
> You know, however, that we learned this morning that the trustee in bankruptcy has been discharged and that notwithstanding the decision of the tribunal we can continue the proceedings before the Commission. The decision of the bankruptcy tribunal should reflect this fact and I will send you a copy of it once it has been received.

[18] Accordingly, the Tribunal sent a letter to the parties to the matter on June 15, 2001, stating as follows:

> [Translation]
>
> The Tribunal appointed to this case intends to reopen the hearings in order to determine the exact amounts owing pursuant to the Tribunal's initial decision. At that hearing, the Tribunal wishes to hear the parties on the following points:

1. to obtain the necessary information for determining the quantum in accordance with paragraph 2, page 14, "loss of salary and benefits", Tribunal decision T.D. 8/97 rendered October 14, 1997;

2. to obtain the prime rate of the Bank of Canada in effect on November 20, 1991, in order to calculate the interest in accordance with paragraph 4, page 15, of Tribunal decision T.D. 8/97;

3. in addition, in view of the representations made at the meeting of October 23, 2000, to hear the parties concerning the participation of the CSN in this case.

(Emphasis added)

(…)

[19] In response to this letter of June 15, 2001, Mr. Cliche, Counsel for the CSN, sent a letter to the Canadian Human Rights Tribunal stating, with regard, notably, to the participation of the CSN in this case, as follows:

[Translation]

[…] the Canadian Human Rights Tribunal has no jurisdiction in this matter. In fact, Ms. Goyette's complaint was not directed at the Confédération des Syndicats Nationaux and furthermore, in rendering its decision of October 14, 1997, in this case the Canadian Human Rights Tribunal became *functus officio* except with regard to the determination of the amounts for which the Tribunal expressly reserved its jurisdiction.

[20] The parties to the matter subsequently received a letter dated June 29, 2001, from the registry officer of the Canadian Human Rights Tribunal containing the following orders:

[Translation]

The Tribunal orders as follows:

1. Question of the quantum:

The Tribunal is of the opinion that it is premature to resume the hearings and to determine the quantum before the Complainant has obtained permission from the Superior Court to continue the proceedings against the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN). Once a decision has been rendered the Tribunal will, if necessary, set hearing dates to hear the representations of the parties on this point.

2. Participation of the CSN:

> Furthermore, the Tribunal has jurisdiction to hear the representations of the parties as to the participation of the CSN in this matter. Two (2) hearing days are scheduled for August 16 and 17, 2001, in Montreal. I will soon be sending you a notice of resumption of hearing stating the precise location of this hearing.

[21] On July 9, 2001, the Superior Court ruled on the application for continuation of proceedings, stating as follows:

> [Translation]
>
> ALLOWS this application;
>
> AUTHORIZES the continuation of proceedings with regard to case T.D. 8/97, Exhibit R-5, without the plaintiff being able to execute said decision against the obligor, which is discharged.

[22] Accordingly, on July 17, 2001, the Tribunal sent the Complainant a notice of resumption of hearing for August 16 and 17, 2001.

[23] Following the above-mentioned order of the Tribunal scheduling new hearing days, notably, *"to hear the representations of the parties as to the participation of the CSN in this matter"*, the CSN made an application for a stay of proceedings to the Federal Court of Canada, alleging that when this Tribunal rendered its decision on October 14, 1997, it became *functus officio*, except with regard to the determination of the quantum for which it reserved its jurisdiction.

[24] On August 3, 2001, Judge Lemieux of the Federal Court of Canada, Trial Division, handed down an order on the said application for the holding of hearings before the Canadian Human Rights Tribunal *"concerning the participation of the Confédération des syndicats nationaux in this matter"* [translation]. The decision is to the effect that this application for judicial review is premature and that courts of justice hesitate before intervening in the preliminary stage of a proceeding.

[25] Judge Lemieux reasserts the principle of law that the primary purpose of the Canadian Human Rights Tribunal, being an administrative tribunal, is to establish and analyze the facts in order to be able to apply them to the relevant principles of law. He concludes that:[(5)]

> The question that the tribunal must resolve is whether in fact or in law the CSN is liable to Ms. Goyette for the relief ordered against one of its affiliates, now bankrupt.
>
> The tribunal has not yet ruled on this question. The purpose of the scheduled hearing is precisely to argue before the tribunal the questions of fact and of law that will enable it to rule on this matter.
>
> It may be that the CSN is right in arguing that the tribunal is *functus officio* or that it is in no way liable for the Union's debts under the principle of procedural

fairness or, more fundamentally, because it is a separate legal entity. These submissions may be raised by the CSN before the tribunal.

II. THE MATTERS IN DISPUTE

[26] The following matters are in dispute:

a) Did the Tribunal become *functus officio* to decide the liability of the CSN in this case?

b) If the Tribunal did not become *functus officio* with regard to the above-mentioned issue, can the CSN be held liable for payment of the damages awarded to Ms. Goyette against its affiliate, the Syndicat des employé(e)s de terminus de Voyageur-Coloniale Limitée (CSN), which union went bankrupt following the decision of this Tribunal awarding these damages?

c) The Tribunal having reserved its jurisdiction with regard to the determination of the quantum, what amounts may be awarded to Ms. Goyette under the *CHRA* in this regard?

III. THE ARGUMENTS PRESENTED BY THE CSN

[27] The Tribunal must first analyze the arguments of the CSN to the effect that the Tribunal is *functus officio* before ruling on its claims that it is a separate legal entity from the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN) and that it is in no way liable for the debts of this affiliate.

[28] The arguments of the CSN as to the jurisdiction of the Tribunal are based mainly on the following elements: Ms. Goyette filed a complaint against the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN), alleging that it had discriminated against her. The Tribunal rendered a substantive decision, namely, that there was discrimination. It handed down a complete decision, subject to the determination of the quantum, and consequently became *functus officio* as to any other matter on which it had not reserved its jurisdiction.

[29] On the question of whether the Tribunal became *functus officio*, Mr. Cliche refers to the decision of the Supreme Court of Canada in *Chandler v. Alberta Association of Architects*,[(6)] which summarizes this notion in the following terms:

As a general rule, once such a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can

> only do so if authorized by statute or if there has been a slip or error within the exceptions enunciated in *Paper Machinery Ltd. v. J.O. Ross Engineering Corp.* […]

[30] It has also been argued that the rules of procedure are more flexible with regard to administrative tribunals and that if the enabling statute enables the Tribunal to reopen a decision because it omitted to rule on an issue raised in the proceedings, this should be allowed as set out in the *Chandler*[(7)] decision:

> Accordingly, the principle should not be strictly applied where there are indications in the enabling statute that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation. […]
>
> Furthermore, if the tribunal has failed to dispose of an issue which is fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose, it ought to be allowed to complete its statutory task.

[31] In this decision, the Supreme Court of Canada ruled that the decision handed down by the Practice Review Board of the Alberta Association of Architects was flawed, that it was without effect and that in law, it was equivalent to an absence of decision. This board had therefore failed to dispose of an issue of which it had been seized, and the rule of *functus officio* therefore did not apply.

[32] The Tribunal, in the present case, must consider the question of the involvement and liability of the CSN in this matter only because the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN) had declared bankruptcy at the time the Complainant wanted to have the quantum determined, in order to execute the decision rendered on October 14, 1997, in its favour.

[33] Mr. Cliche submitted to the Tribunal that the new facts that arise after a decision do not prevent the application of the rule of *functus officio*, and in support of his claims he referred to the decision in *Longia v. Canada*.[(8)] It had been determined, in that case, that the Immigration and Refugee Board was not competent to revisit an application for refugee status in order to hear evidence of new facts as its competence does not extend in time, and as no rule of natural justice had been violated Judge Lemieux denied the application, stating:

> It follows that the Board had no more jurisdiction to reopen the hearing to allow the applicant to introduce the particular information he wanted to introduce than to allow him to bring evidence of new facts.[(9)]

[34] The Tribunal brought to the parties' attention the decision in *Canada (Attorney General) v. Grover*,[(10)] in which the trial court ordered the reinstatement in a suitable position of a researcher who had been discriminated against on the basis of race. The court reserved its jurisdiction concerning the suitable position in order to ensure proper execution of its order, as the company was undergoing a restructurng. As a result of disputes, the complainant asked that the court

determine his position, but the respondent petitioned the Federal Court, Trial Division, for a declaratory judgment to the effect that this court was *functus officio* with regard to Mr. Grover's complaint, as a decision had been rendered.

[35] The preliminary question examined was whether the court had the power to reserve its jurisdiction at the conclusion of its inquiry to hear other witnesses about the execution of its order. The answer to this question was as follows:

> Therefore, the remedial powers in s. 53 (2) should be interpreted as including the power to reserve jurisdiction on certain matters in order to ensure that the remedies ordered by the tribunal are forthcoming to Complainants. The denial of such a power would be overly formalistic and would defeat the remedial purpose of the legislation. In the context of a rather complex remedial order, it makes sense for the tribunal to remained [*sic*] seized of jurisdiction with respect to remedial issues in order to facilitate the implementation of the remedy. This is consistent with the overall purpose of the legislation and with the flexible approach advocated by Sopinka J. in *Chandler, supra*. It would frustrate the mandate of the legislation to require the Complainant to seek the enforcement of an unambiguous order in the Federal Court or to file a new complaint in order to obtain the full remedy awarded by the Tribunal. (11)

[36] Considering that in the *Grover* decision, the Court had expressly reserved its jurisdiction and was empowered by its statute to do so, the Federal Court confirmed that the rule of *functus officio* did not apply and concluded: (12)

> […] the Tribunal validly reconvened to hear further evidence. Given the problems encountered in the implementation of Dr. Gover's appointment, the Tribunal validly exercised its power in again reserving jurisdiction in the event that further clarification was required after March 18, 1994.

IV. THE ARGUMENTS OF THE PLAINTIFF

[37] The claims of Mr. Romani, Counsel for the Complainant, are based, *inter alia*, on the definition of "union organization" found in section 9 (3) of the *CHRA*, which read as follows, before the 1998 amendments to the act: (13)

> 9(3) For the purposes of this section and sections 10 and 60, "employee organization" includes a trade union or other organization of employees or local thereof, the purposes of which include the negotiation, on behalf of employees, of the terms and conditions of employment with employers.

[38] As Ms. Goyette's complaint concerns events that occurred before 1998 and the decision was rendered in 1997, it is these provisions of the *CHRA* that govern the present hearing.

[39] According to Mr. Romani's claims, the determination of the CSN's identity is a collateral issue and follows directly from the application of section 9 (3) of the *Canadian Human Rights Act* in force at the time.

[40] During the hearing of the complaint, the question of whether the CSN was a union organization within the meaning of section 9 (3) and liable for the actions of its affiliate had not been raised. It should also be noted that the Human Rights Commission, when it made its inquiry and agreed to lodge the complaint, directed it against the employer initially, and then against the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN).

[41] Mr. Romani is asking the Tribunal to rule on the identity of the CSN because he anticipates a problem with execution of the decision and he claims that the enabling statute, specifically subsection 53 (2) of the *CHRA*, gives the Tribunal the power to render appropriate orders and ensure their execution.

[42] According to Mr. Romani, the matter in dispute before the Tribunal concerning the application of the rule of *functus officio* is not a question of law but one of procedure. He refers to the decision in *Prassad v. Canada (Minister of Employment and Immigration)*[(14)] to support his claims:

> In order to arrive at the correct interpretation of statutory provisions that are susceptible of different meanings, they must be examined in the setting in which they appear. We are dealing here with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice. Adjournment of their proceedings is very much in their discretion.

V. DECISION OF THE TRIBUNAL ON THE *FUNCTUS OFFICIO* RULE

[43] The Tribunal cannot subscribe to the claims that the determination of the application of the rule of *functus officio* is a procedural question. Rather, it is a question of determining whether the Tribunal has jurisdiction to revisit the case and hear new elements of evidence in order to facilitate the execution of its decision, once the quantum is determined.

[44] The Tribunal, when it rendered its decision on October 14, 1997, made no slip and did not fail to rule on an issue of which it was seized, since the determination of the legal status of the CSN had not been raised at that time.

[45] Even though this question has become of concern to the Complainant, owing to new facts that arose after the decision, namely, the bankruptcy of the affiliate, the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN), the Tribunal cannot prolong and

extend its jurisdiction indefinitely. In this case, the rules of natural justice have been respected and the Tribunal cannot hold hearings to determine the legal nature of the person indirectly bound to the Complainant since it has already exercised its jurisdiction.

[46] In the present case, the Tribunal did not reserve its jurisdiction on any issue other than the determination of the quantum. If one refers to the decision in *Grover*,[(15)] the Federal Court decreed that the rule of *functus officio* did not apply because the Tribunal had reserved its jurisdiction to ensure the execution of its decision, unlike the case here.

[47] In view of the arguments presented by the respective counsel and basing ourselves on the established jurisprudence regarding the rule of *functus officio*, the Tribunal concludes that the said rule of *functus officio* does not apply in this case and that the Tribunal has no jurisdiction to determine the liability of the CSN.

VI. DETERMINATION OF THE QUANTUM

[48] The parties have acknowledged that the Canadian Human Rights Tribunal had reserved its jurisdiction as to the determination of the quantum.

[49] Ms. Goyette claimed, initially, a loss of basic salary of $19,307.73 and simple interest at the rate of 8.50%, based on the chartered bank prime rate on November 20, 1991, the date of filing of the complaint. The amount of $19,307.73 has been acknowledged by the respondent Union; only the interest rate remains to be determined.

[50] Ms. Sylvie Vachon, an economist acting as an expert for the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN), showed that the bank rate of the Bank of Canada on November 20, 1991, was 7.78%. She explained that the bank rate of the Bank of Canada is also sometimes the prime rate of the Bank of Canada, but can in no instance be equivalent to the chartered bank prime rate, the rate to which the Complainant referred.

[51] The Tribunal's decision regarding the interests payable to Ms. Goyette concerned simple interest, at the prime rate of the Bank of Canada.

[52] The Tribunal concludes that Ms. Goyette is entitled to compensation for loss of salary in the amount of $19,307.73 at a simple interest rate of 7.78% for the period December 7, 1989, to June 6, 1996, totalling, on December 7, 2001, a sum of $35,831.28 ($4.11 a day).

[53] Secondly, the Complainant is claiming a sum of $7,976.00 for uniforms supplied to ticketing agents and baggage clerks, and an amount of $398.80 representing 5% of this sum for the pension plan of the company Voyageur Colonial Limitée. She is also seeking only simple interest calculated on these amounts.

[54] Ms. Goyette argues that uniforms were supplied to ticketing agents and baggage clerks and that telephone operators had to pay the cost of their clothing for work. She bases her calculations on the daily allowance of $8.00 that police officers with the Montreal Urban Community receive.

[55] Mr. Réal Daoust, representing the CSN, referred in his testimony to the collective agreement signed in 1989, and specifically to Exhibit P-1, clause 32 of the said agreement, which stipulated the supply of uniforms to employees working with the public only. The telephone operators worked on the second floor of the building with administrative service personnel and the employer did not supply uniforms to any employee working on that floor.

[56] Ms. Goyette confirmed in her testimony that when she held a position in ticketing or as a baggage clerk the uniforms were supplied to her in accordance with the collective agreement.

[57] The Tribunal concludes from this that the Complainant cannot seek compensation for fringe benefits that were not accorded her in the collective agreement that governed the telephone operators. The Tribunal does not award the amounts of $7,976.00 and $398.80 claimed in this regard.

[58] The Complainant is claiming interest on the amount of $5,000 awarded for hurt feelings under paragraph 53 (3) b) of the *CHRA*, in the decision of October 14, 1997. The parties agree that if it is appropriate to award interest, it will be calculated from the date of the decision handed down in October 1997.

[59] The arguments of the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN) are that the order did not provide for interest in respect of hurt feelings, unlike stipulation 4 of the decision to the effect that the Complainant is entitled to simple interest on the amounts awarded pursuant to paragraphs 2 and 3, i.e., "loss of salary and benefits" and "additional costs".

[60] Under paragraph 53 (3) b) of the former *CHRA* applicable in this case, the total amount of the special compensation awarded by way of hurt feelings can in no instance exceed $5,000; otherwise, the Tribunal would be exceeding its competence if it awarded compensation higher than the prescribed limit.

[61] In *Green v. Canada (Public Service Commission)*,[(16)] the Tribunal had ordered interest to be paid on the special compensation of $5,000 pursuant to paragraph 53 (3) b) of the *CHRA* and the Federal Court overturned this decision, referring to the decision in *Rosin v. Canada (Canadian Forces)*[(17)] in which the Federal Court of Appeal had decided that in the case of hurt feelings, the payment of interest is allowed provided the total compensation, including interest, does not exceed $5,000.

[62] Accordingly, the Tribunal has rendered a decision consistent with the *Act*, awarding the Complainant the maximum amount stipulated of $5,000.

[63] The Complainant is also claiming the legal expenses amounting to $6,354.79 that she incurred to represent herself in a claim against the CSST, as well as a sum of $851.76, an amount

repaid to the CSST on March 18, 1998, for loss of salary as well as the interests on the said amounts.

[64] According to the testimony of Ms. Lise Goyette, in 1995 she had a relapse of her work injury sustained in 1992, when she was working in messaging. She filed a salary insurance claim with ETNA which was denied. She asked her union to help her in her endeavours with the CSST and did not succeed with her case and lost money, having no credibility because the CSN refused to help her.

[65] According to the explanations provided by Mr. Réal Daoust, representing the CSN, a grievance has been filed and a decision rendered in this matter. According to his testimony, this is another proceeding with no connection to the present case.

[66] Paragraph 53 (2) d) of the *CHRA* permits the Tribunal to order, depending on the circumstances:

> a) that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice;

[67] The jurisprudence established by the Tribunal is that the expenses claimed pursuant to paragraph 53 (2) d) of the Act must result directly from the discrimination practised against the Complainant and not from a labour dispute or denial of a claim against the CSST. These criteria have been clearly established in *Pond v. Canada Post Corporation*[(18)] and in *LeBlanc v. Canada Post Corporation*.[(19)]

[68] The costs claimed by the Complainant being in no way directly related to the complaint of discrimination presented to this Court, the Tribunal refuses to allow the respective amounts of $6,354.79 and $851.76 led in evidence by the Complainant.

[69] Finally, the Complainant is seeking reimbursement of her legal expenses in the amount of $10,850.85, representing the additional costs of this case from October 15, 1997, to September 21, 2001.

[70] The Tribunal must consider that a sum of $3,000 was awarded in October 1997 for the additional costs incurred by the client because she represented herself. This amount is not questioned, and the calculation of interest of 7.78% on this amount over four years gives us a total of $3,954.72 as of November 16, 2001.

[71] In a recent decision concerning legal expenses, *Nkwazi v. Correctional Service Canada*,[(20)] the Tribunal chairperson, Ms. Anne Mactavish, after analyzing jurisprudence on this point, found, at paragraph 18, as follows:

> For all of these reasons I am satisfied that the term 'expenses' as it is used in paragraphs 53 (2) c) and d) of the *Canadian Human Rights Act* should be interpreted to include the legal costs incurred by a Complainant in connection

> with the pursuit of a complaint. This does not mean that successful Complainants will automatically be entitled to indemnification for their legal expenses in every case: Section 53 (2) makes it clear that the Tribunal has the power to make the remedial orders that are appropriate having regard to the circumstances of each individual case.

[72] The Canadian Human Rights Tribunal has no jurisdiction to award additional costs or legal costs for expenses incurred in respect of the Federal Court and the Bankruptcy Court. Only expenses in respect of the determination of the quantum and of the liability of the CSN may be considered direct consequences of the complaint.

[73] We are convinced that the present case falls within the exceptional circumstances recognized by jurisprudence given the many difficulties the Complainant has encountered in this case, to wit: the withdrawal of the Canadian Human Rights Commission, the Complainant's many fruitless attempts to obtain payment, and the bankruptcy of the Syndicat des employé(e)s de terminus de Voyageur Colonial Limitée (CSN).

[74] Therefore, the Tribunal awards an additional amount of $3,000 covering the fees of Mr. Romani and the expenses incurred, namely: travel, parking, and photocopies needed to prepare for the hearing days in the month of August 2001 and of September 20, 2001.

[75] In addition, the Complainant is seeking an amount of $5,400 as compensatory payment for the hours spent preparing her case before the Federal Court, Trial Division, the Federal Court of Appeal and the Canadian Human Rights Tribunal.

[76] In *Lambie v. Canada (Canadian Armed Forces)*,[(21)] the Federal Court examined paragraph 53 (2) d) of the Act and concluded that the word "expense" could include time spent in preparation for the filing of a complaint only in exceptional circumstances.

[77] If we refer to *Morell v. Canada (Canada Employment and Immigration Commission)*,[(22)] the Tribunal did not order payment of the wages lost by the Complainant to attend the hearing:

> Counsel for the Commission also requested payment of the wages lost by the Complainant while attending the hearing. S. 41(2) d) allows for an award for expenses incurred as a result of the discriminatory practice. However, in my view, this is intended to cover expenses directly related to the discriminatory conduct, and not expenses related to legal proceedings under the Human Rights Act. The latter are more a question of costs, and there is no provision in the Act for recovery of costs. Consequently, I do not believe I have any authority to make an award for expenses related to the hearing. I would note that evidence respecting the lost wages was not led before me so that, even if I had the authority to include them in my award, I would not be able to determine the amount.

[78] The Tribunal sets the quantum in the present case as of November 16, 2001, as follows:

> a) Loss of salary: $19,307.73 capital

$15,005.00 interest

For a total of: $**34,312.73**

b) Hurt feelings: $**5,000.00** with no interest;

c) Additional costs awarded

October 14, 1997: $3,000.00 in capital

$954.72 in interest

Total: $**3,954.72**

d) Additional costs for expenses incurred

from October 14, 1997, to September 20, 2001,

for the present proceeding: $**3,000.00** in capital

[79] The amount for additional costs of $3,000 bears interest at the rate of 7.78% as of the present decision.

[80] As for the other amounts, except for the amount of $5,000 awarded for hurt feelings, which bears no interest, the interest will continue to run at the same rate of 7.78% per year until execution.

VII. ORDER

[81] In view of the foregoing reasons, the Tribunal orders the Syndicat des employé(e)s de terminus de Voyageur Colonial limitée (CSN) to pay Ms. Goyette the above-mentioned amounts.

"Original signed by"

Jacinthe Théberge, Chairperson

Athanasios Hadjis, Member

Marie-Claude Landry, Member

OTTAWA, Ontario

November 16, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T431/1295

STYLE OF CAUSE: Lise Goyette v. Syndicat des employé(e)s deTerminus de Voyageur Colonial Limitée (CSN)

PLACE OF HEARING: Montreal, Quebec

August 16, 17, 27 and 28, 2001

September 20, 2001

DECISION OF THE TRIBUNAL DATED: November 16, 2001

APPEARANCES:

Marco Romani For Lise Goyette

Marie Pepin For the Syndicat des employé(e)s de Terminus Voyageur Colonial Limitée (CSN)

Jean-François Cliche For the Conseil des syndicats nationaux

Reference: T.D. 8/97

14/10/97

1. R.S.C. 1985, c. H-6.

2. (1997) 30 C.H.R.R. D/175

3. *Ibid*, at paragraphs 27-28.

4. R.S.C. 1985, c. B-3.

5. *Confédération des syndicats nationaux* v. *Goyette* , (3 August 2001) T-1318-01 (F.C., Trial Division).

6. *Chandler v. Alberta Association of Architects* 1989 2 S.C.R. 848, at page 861.

7. *Ibid*, at page 862.

8. 1990 3 F.C. 288 (F.C.A.).

9. *Ibid*, at page 294.

10. (1996) 24 C.H.R.R. D/390 (F.C., Trial Division)

11. *Ibid*, at paragraph 32.

12. *Ibid*, at paragraph 43.

13. *An Act to amend the Canada Evidence Act and the Criminal Code in respect of persons with disabilities, to amend the Canadian Human Rights Act in respect of persons with disabilities and other matters and to make consequential amendments to other Acts, S*.C. 1998, c. 9, s. 29.

14. (1989) 1 S.C.R. 560, at 568-9.

15. *Supra*, note 10.

16. (2000) 38 C.H.R.R. D/1.

17. (1989) 10 C.H.R.R., D/6236, (C.H.R.T.), conf. [1991] 1 F.C. 391 (F.C.A.)

18. (1994) 94 C.L.L.C. 17,024 (C.H.R.T.).

19. (1993) 18 C.H.R.R., D/57, 92 C.L.L.C. 17,043.

20. (29 March 2001) No. T538/3399 (C.H.R.T.).

21. (1995) 95 C.L.L.C. 230-035 (C.H.R.T. appeal tribunal), rev. (1996) 124 F.T.R. 303 (F.C., Trial Division)

22. (1985) 6 C.H.R.R. D/3021 (C.H.R.T.), at paragraph 24348.