

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

PSSRB Pay Equity Employees Association

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

**Treasury Board of Canada
- and -
Public Service Staff Relations Board**

Respondents

Ruling

Member: J. Grant Sinclair

Date: August 1, 2008

Citation: 2008 CHRT 34

[1] The complainant, Public Service Staff Relations Board Pay Equity Employees Association, filed a complaint with the Canadian Human Rights Commission on November 27, 2001, under ss. 10 and 11 of the *Canadian Human Rights Act*. The respondents are Treasury Board of Canada (TB) and the Public Service Staff Relations Board (PSSRB).

[2] The complainant now brings a motion to the Tribunal asking that the Tribunal adjourn its proceeding, pending the release of the decision of the Federal Court in the action *Public Service Alliance of Canada et al v. Her Majesty the Queen in Right of Canada*.

[3] The PSAC action was filed in the Federal Court on November 8, 2000. PSAC's claim is on behalf of employees of seven separate government employers or agencies who were not provided with the same wage rates and benefits given to TB employees as a result of the July 29, 1998 Tribunal pay equity decision and the November 16, 1999 Tribunal Consent Order. PSAC alleges that the failure to do so violates s. 15 of the *Canadian Charter of Rights and Freedoms*.

[4] The complainant Association and the respondents, TB and PSSRB, are not parties in the Federal Court action. The PSSRB is a separate employer under the *Public Service Staff Relations Act*.

[5] It appears from the materials filed, that the main, if not the only issue in the PSAC action is, who is the employer of the employees of the seven separate employers/agencies.

[6] The complainant argues in its motion that the determination of this issue in the PSAC action will be persuasive, serve to narrow the issues before the Tribunal and could even potentially avoid the need for a Tribunal hearing. This is so, says the complainant because the "interpretation of employer" is the threshold issue in the PSAC action and in the complaint before the Tribunal.

[7] The complainant provides no explanation as to why this is the "threshold issue" for the Tribunal and it is unclear why this is so. But, even assuming this to be so, the complainant's

stated position before the Tribunal in pre-hearing case management sessions is that if PSAC action is unsuccessful in the Federal Court, it will still proceed with the complaint before the Tribunal. Similarly, the respondents' stated position is to proceed before the Tribunal even if PSAC is successful in its Federal Court action.

[8] More to the point, the jurisprudence of the Tribunal is very clear with respect to requests to adjourn Tribunal proceedings. The Tribunal decisions in *Leger v. Canadian National Railways* and *Baltruweit v. Canadian Security Intelligence Service* state that a Tribunal, when exercising its discretion to adjourn, should do so when demanded by principles of natural justice. Some examples which could be persuasive to an adjournment, are delay in bringing the complaint; the unavailability of witnesses or evidence; the need to obtain counsel; late disclosure, all of which would prejudice a party's ability to make full representation before the Tribunal. Within this jurisprudence, there is nothing in the complainant's motion that would support an adjournment.

[9] The fact that the Tribunal has not proceeded to hearing in *Thwaites et al*, *Boyes et al*, *Adamson et al*, *Bakker et al* and *Delf v. Air Canada and Air Canada Pilots Association* is not helpful to the complainant. These complaints raise the very issues that were decided by the Tribunal in *Vilven & Kelly v. Air Canada and Air Canada Pilots Association*, which decision is now before the Federal Court on judicial review. The facts in the complainant's motion are totally dissimilar.

[10] The PSAC action is scheduled for October 2008, to run for 40 days. That, plus the time for a decision (assuming no appeals) means that the Tribunal hearing could be delayed for another year. The result would be no Tribunal hearing for at least eight years after the complaint was filed. Certainly, this is not in conformity with the Tribunal's mandate that proceedings before the Tribunal be done expeditiously.

[11] As noted in *Leger* and *Baltruweit*, the appropriate forum to stay the Tribunal hearing is the Federal Court. The motion is dismissed.

Signed by

J. Grant Sinclair
Tribunal Member

Ottawa, Ontario
August 1, 2008

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1266/7807

Style of Cause: PSSRB Pay Equity Employees Association v. Treasury Board of Canada and Public Service Staff Relations Board

Ruling of the Tribunal Dated: August 1, 2008

Appearances:

Richard Harkin, for the Complainant

K.E. Ceilidh Snider, for the Canadian Human Rights Commission

Marie Crowley, Sharon Johnston and Talitha Nabbali, for the Respondents