

**ESPER POWELL**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**UNITED PARCEL SERVICE CANADA LTD.**

**Respondent**

**RULING**

MEMBER: Athanasios D. Hadjis 2008 CHRT 43  
2008/10/09

[1] The Respondent, United Parcel Service Canada Ltd. (UPS), claims that the Complainant, Esper Powell, settled her human rights complaint against UPS in 2007. As a result, UPS has filed a motion seeking an order from the Tribunal "confirming" the alleged settlement and bringing the present case before the Tribunal to a close.

[2] In January 2002, Ms. Powell filed her complaint, in which she alleged that she had been discriminated against by her employer, UPS, on the basis of her sex (female) and her race and colour (black). In August 2004, the Canadian Human Rights Commission (Commission) referred the complaint to the Tribunal for inquiry. The hearing into the complaint was scheduled to begin on June 11, 2007. In advance of that date, Ms. Powell and UPS began settlement discussions through their respective counsel, which ultimately resulted in UPS accepting a counter-offer from Ms. Powell. On June 8, 2007, UPS's counsel sent an email message to Mr. Powell's counsel confirming this acceptance. UPS's counsel ended his correspondence by stating, "This matter has therefore settled". Ms. Powell's counsel sent an email message in reply on the same day saying that he "confirms that this matter is resolved accordingly".

[3] UPS's counsel immediately advised the Tribunal that the case had been settled. The Tribunal therefore wrote to the parties on the same day (June 8, 2007), informing them that the matter was adjourned *sine die* pending a notice from the Commission that the minutes of settlement had been approved pursuant to s. 48(1) of the *Canadian Human Rights Act*. The Tribunal added that upon receipt of such notice from the Commission, the Tribunal would issue a Notice of Discontinuance, closing the matter.

[4] According to UPS, Ms. Powell has refused to follow up with the steps needed to finalize the settlement. She did not sign the proposed minutes of settlement nor the "Full and Final Release" prepared by UPS's counsel. On November 20, 2007, UPS's counsel informed the Tribunal that the minutes of settlement had yet to be signed, and on November 27, 2007, Ms. Powell advised the Tribunal that she had changed legal counsel. The Tribunal replied to the parties that in the absence of a signed settlement resolving the complaint, the case would proceed to hearing.

[5] UPS takes the position that the matter before the Tribunal was fully settled through the exchange of correspondence that took place between counsel in June 2007, irrespective of whether or not minutes of settlement were ultimately signed. It has therefore brought the present motion seeking an order "confirming the settlement" of the complaint.

[6] According to s. 48 of the *Act*, settlements of any complaints that are reached before the commencement of a hearing must be referred to the Commission for approval or rejection:

<p><b>48.</b> (1) When, at any stage after the filing of a complaint and before the commencement of a hearing before a Human Rights Tribunal in respect thereof, a settlement is agreed on by the parties, the terms of the settlement shall be referred to the Commission for approval or rejection.</p> <p>(2) If the Commission approves or rejects the terms of a settlement referred to in subsection (1), it shall so certify and notify the parties.</p> <p>(3) A settlement approved under this section may, for the purpose of enforcement, be made an order of the Federal Court on application to that Court by the Commission or a party to the settlement.</p>	<p><b>48.</b> (1) Les parties qui conviennent d'un règlement à toute étape postérieure au dépôt de la plainte, mais avant le début de l'audience d'un tribunal des droits de la personne, en présentent les conditions à l'approbation de la Commission.</p> <p>(2) Dans le cas prévu au paragraphe (1), la Commission certifie sa décision et la communique aux parties.</p> <p>(3) Le règlement approuvé par la Commission peut, par requête d'une partie ou de la Commission à la Cour fédérale, être assimilé à une ordonnance de cette juridiction et être exécuté comme telle.</p>
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In its written submissions on UPS's motion, the Commission points out that "there is no evidence that a settlement has been approved by the Commission". Consequently, the Commission adds, there is no settlement binding upon the parties that could be made an order of the Federal Court, pursuant to s. 48(3).

[7] UPS contends that the Commission's role under s. 48 is simply to approve or reject settlements that have been entered into, and not to determine *whether* a settlement has been reached. UPS submits that this is a matter to be decided by the Tribunal. In the circumstances of the present case, UPS argues that a binding settlement was in fact arrived at, notwithstanding the absence of any Commission approval.

[8] In my view, this argument is based on an erroneous interpretation of s. 48. The terms of the provision are clear. Prior to the commencement of the hearing, no complaint can be settled without Commission approval. The Federal Court pointed out in *Loyer v. Air Canada*, 2006 FC 1172 at para. 87, that:

There has been little judicial consideration of section 48 of the *Canadian Human Rights Act*. However, when the section is read in context, consistent with the aims of the Act as a whole, and

in light of the public interest mandate of the Canadian Human Rights Commission, it is clear that the section is there to ensure that the Commissioners themselves have input into settlements, so as to ensure that the remedial goals of the Act are adequately addressed in the resolution of individual complaints.

[emphasis added]

[9] Under s. 48, there is no option made available to the parties to choose whether or not to submit the settlement to the Commission. In the English rendering of the section, it is stated that the settlement "shall be referred to the Commission". In the French rendering, the parties "present" the terms of the settlement for approval by the Commission. This requirement is consistent with the finding in *Loyer* that the section exists to ensure that the Commissioners have an input into settlements to make certain that the remedial goals of the *Act* are adequately addressed in the resolution of the individual complaints. Without such input, there can be no settlement.

[10] There is no indication that the Commission has either explicitly or tacitly approved the alleged settlement between Ms. Powell and UPS. Absent such approval, it cannot be said that there exists a settlement bringing about an end to the Tribunal's inquiry into the complaint.

[11] Of course, according to s. 48, this approval would only have been required if the settlement was agreed on prior to the commencement of the hearing. UPS submits, as an additional argument, that the settlement in this case was not in fact reached "before the commencement of the hearing", within the meaning of s. 48. It claims that the Tribunal has undertaken steps, including case conferences and the issuance of "various procedural orders", which demonstrate that it has "embarked on the hearing process". As such, the "commencement of a hearing" has taken place and the Commission's approval of the settlement is no longer required.

[12] I do not agree with UPS's submission. While the *Act* refers to a "hearing" and an "inquiry", there is no mention made anywhere of a "hearing process". The Federal Court considered these two terms ("hearing" and "inquiry") in *Canada (Canadian Human Rights Commission) v. Canada Post Corp.*, 2004 FC 81 at para. 17. The Court pointed out that s. 50 of the *Act* makes reference to each of these expressions separately, and treats them as distinct notions. The Court was sitting in review of a ruling by the Tribunal on a preliminary motion that the respondent had filed seeking the dismissal of the complaint prior to the start of the hearing into the merits of the complaint. The Commission had argued that the Tribunal was required to conduct the hearing before dismissing the complaint and that the motion was therefore premature. The Court disagreed. It concluded that although, according to s. 50, a Tribunal must conduct an "inquiry" into every complaint referred to it, there is no requirement that there be a "hearing" in every case. The motion to dismiss was thus not premature.

[13] I take it, therefore, from the Court's finding, that the meaning to be assigned to the term "hearing" is the conduct of the actual hearing into the merits of the complaint itself. It does not encompass any preceding activity, including preliminary motions that the Tribunal may entertain in order to "clear the procedural underbrush" (*Canada Post* at para. 14), such as the motion to dismiss that had been brought in that case.

[14] In the present instance, UPS contends that merely because the Tribunal held a number of case conferences by telephone, issued some directions on matters such as scheduling and disclosure, and ruled on a preliminary motion (which was on the basis of written submissions only), the "hearing" within the meaning of the *Act* has commenced. This contention clearly does not accord with the Court's findings in *Canada Post*. In my view, the hearing with respect to Ms. Powell's human rights complaint has not yet commenced. Section 48 is therefore applicable and, in the absence of Commission approval, the complaint cannot be said to have been settled.

[15] For all the above reasons, UPS's motion is dismissed.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario  
October 9, 2008

#### PARTIES OF RECORD

TRIBUNAL FILE:	T981/10104
STYLE OF CAUSE:	Esper Powell v. United Parcel Service Canada Ltd.
RULING OF THE TRIBUNAL DATED:	October 9, 2008
APPEARANCES:	
Ernest J. Guiste and Thelson Desamour	For the Complainant
K.E. Ceilidh Snider	For the Canadian Human Rights Commission
Douglas F. Best	For the Respondent