

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Heather Lynn Grant

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Manitoba Telecom Services Inc.

Respondent

Ruling

Member: Sophie Marchildon

Date: January 7, 2011

Citation: 2011 CHRT 1

[1] I have carefully reviewed the arguments from both parties in accordance with the principles of fairness and the relevance of the evidence the Respondent wants to bring forward. Another issue at stake in the present is the impact on the process as a whole.

The Respondent's position in sum is as follows:

[2] The Respondent argues that the evidence brought forward by this additional witness goes directly to a key area of this case being the Complainant's poor performance and that it is relevant. The Respondent specifies that he will tender evidence to prove that the Complainant's lay-off was selected as a result of a *bona fide* comparison of the two Brandon RASRs pursuant to the collective agreement. The outcome of this analysis resulted in finding that the Complainant's skills, abilities, performance and qualifications were inferior to the other employee and that there is a noted distinction in performance between the two incumbents.

[3] In his arguments, the Respondent says that his witnesses, already on the list for the hearing, made a *bona fide* comparison of the incumbents and learned that the Complainant had a history of not getting along with those that she reported to, including Account Managers. The Respondent wishes to bring the new witness following the Complainant's testimony in which she alleged that she "got along good" with her Account Managers and disputed the trend of performance in her 2003 and 2004 performance appraisals.

[4] In addition, the Respondent argues that evidence will be put forward to support its position that one aspect of the Complainant's poor performance was her inability to get along with those she reported to, including her Account Managers. The Respondent also says that given the fact that his position relies on the previous arguments, the Account Manager's testimony will assist the Tribunal in finding the truth and is probative of the merit that the Complainant did not get along with those she reported to.

[5] Lastly, the Respondent argues that without that additional witness, the Tribunal will be left with performance appraisals, the Complainant's testimony and her supervisor that the

Respondent anticipates will say the appraisals were filled out honestly and that the Complainant got along well, with the proposed additional witness.

Analysis

[6] This issue addresses the credibility of the Complainant on a statement she made on the stand on getting along with others including the additional witness requested by the Respondent. The Complainant was cross-examined by the Respondent. The Respondent already planned to prove that the Complainant had a history of not getting along with those that she reported to, including Account Managers. The Respondent could have easily anticipated this argument or testimony. Moreover; the Respondent did anticipate it and sent a letter the Complainant's counsel on October 28 prior to the hearing starting November 1 in that line of thought. The letter mentioned that if the Complainant would question the contents of the performance appraisals, a request would be made to the Tribunal to call new witnesses. The Respondent will have the opportunity to bring evidence with his witnesses that are already on the list. Other than the comment on leaving the Tribunal with having to decide with the Complainant's testimony and the performance appraisals and a manager that might concur, the Respondent did not explain why the other witnesses scheduled for appearance before the Tribunal cannot bring evidence on this aspect of the case. More importantly, even if it is an aspect of the issue at stake, I do not think it is prejudicial if it is not adduced with a new witness. The prejudice the whole process would bear outweighs the potential prejudice made to the Respondent.

[7] The Complainant-witness has completed her testimony and is no longer under oath. I note the efforts of the Respondent to detail the will-say and narrow the issues in asking the addition of only one of the two Account Managers but I do not wish to delay the hearing any further in addressing a motion to reopen the Complainant's testimony or adding any other witnesses.

[8] The Respondent will have a full opportunity to present his evidence and to cross-examine all remaining witnesses of the Complainant.

[9] The additional witness requested by the Respondent is not available on the hearing dates already scheduled and this would increase the delay for the hearing.

[10] It is the Tribunal's role to evaluate the proper weight to give to the evidence put forward by the Complainant in the perspective of all the evidence. With the evidence that I have heard from the Complainant and, keeping in mind the substantial issues of this case, I do not consider it crucial to hear from an additional witness.

[11] The Tribunal has the discretion according to the *Rules of Procedure* to allow additional witnesses', if required, once the hearing has started but must use its discretion in accordance with other considerations. This issue must be considered in light of the public interest in having complaints of discrimination dealt with expeditiously (*Bell Canada v. Communications, Energy and Paperworkers Union of Canada et al.*, (1997) F.C.J. N0, 207 (F.C.T.D.));

[12] The exercise of the Tribunal's discretion is subject to the rules of natural justice, and the regime of the *CHRA*. It has not been shown how the result sought by the Respondent better accords with natural justice, nor how it better advances the legislative objectives of the inquiry process, in particular, expeditiousness, and the granting to all parties of a full and ample opportunity to participate (*CHRA* s. 50(1)).

[13] For all of the above reasons I rule as follows:

The Respondent's request for leave and to add a new witness is denied.

Signed by

Sophie Marchildon
Tribunal Member

Ottawa, Ontario
January 7, 2011

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1452/7809

Style of Cause: Heather Lynn Grant v. Manitoba Telecom Services Inc.

Ruling of the Tribunal Dated: January 7, 2011

Appearances:

R. Ivan Holloway, for the Complainant

No one appearing, for the Canadian Human Rights Commission

Gerald D. Parkinson and Paul A. McDonald, for the Respondent