Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Between:

Linda Marshall

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Cerescorp Company

Respondent

Ruling

Member: Edward P. Lustig

Date: March 16, 2011
Citation: 2011 CHRT 5

[1] This is a ruling concerning a motion by the Respondent dated January 19, 2011 for an adjournment of the proceedings in this matter pending the outcome of its application to the Federal Court for judicial review of the decision of the Canadian Human Rights Commission (the "Commission") requesting the Canadian Human Rights Tribunal (the "Tribunal") to institute an inquiry into the complaint.

[2] The complaint in this matter was filed by the Complainant on September 11, 2006. The complaint alleges that the Respondent, between June, 2006 and August 25, 2006, discriminated against her, on the grounds of sex, in relation to her employment, by failing to hire her for a foreman position, notwithstanding she had the skills of the male workers hired and more experience than they did. The Complainant is a stevedore who works with the Respondent loading and unloading cruise ships in the Vancouver harbour.

[3] On July 29, 2010, the Commission, pursuant to s. 44 (3) (a) of *Canadian Human Rights Act* ("*CHRA*") requested the Tribunal to institute an inquiry into the complaint.

[4] On August 30, 2010, the Respondent filed its Notice of Application for judicial review in Federal Court in File No. T-1388-10.

[5] On January 10, 2011, the Respondent also filed a motion with the Federal Court seeking an Order expediting the hearing of its judicial review application.

[6] On January 27, 2011, the Federal Court issued an order dismissing the motion for an expedited hearing and setting the date for the hearing of the application for judicial review on Tuesday, March 15, 2011 and Wednesday, March 16, 2011. In its decision the Federal Court stated as follows:

> The Applicant has not discharged its burden of demonstrating that the circumstances in this case are exceptional such as to warrant an expedited

hearing. Further, the motion has also been rendered redundant by Order dated January 14, 2011 granting the Applicant leave to requisition a hearing date immediately. Nonetheless, I conclude that hearing dates should be fixed immediately to allow the Applicant to request an abeyance of proceedings from the Tribunal based on the imminent hearing before this Court, if so advised.

[7] On December 16, 2010, the Tribunal requested the parties to indicate whether they wished to participate in evaluative mediation. All of the parties indicated an interest in participating in such a process subject, in the case of the Respondent, to a condition that the Tribunal issue a non-binding opinion to the parties. No dates have been set for the mediation and no dates have been set for pleadings, disclosure or a hearing in this matter.

[8] The parties filed with the Tribunal submissions with respect to the Respondent's motion for an adjournment.

[9] The essence of the Respondent's submissions, in support of its motion, is that it is unreasonable to proceed with the Tribunal process when the judicial review application is so near to resolution. Without an adjournment, if the judicial review application is successful, there will be a needless expenditure of public and private resources occasioned by two concurrent proceedings. If the application for judicial review is unsuccessful, the length of delay that can reasonably be expected to occur from an adjournment would be relatively short and would not prejudice the parties.

[10] The essence of the submissions of both the Complainant and the Commission, in opposition to the motion for an adjournment, is that there is nothing yet to adjourn. Further, that even with hearing dates set for the judicial review application before the Federal Court, the ultimate timing and outcome of that process is unknown. As such, there is no justification for the Respondent's request based upon cases decided by the Tribunal in similar situations, on the basis of a denial of procedural fairness or natural justice, or a full and ample opportunity to present evidence and make representation if an adjournment is not granted.

[11] According to section 48.9 (1) of the *Canadian Human Rights Act*, proceedings before the Tribunal are to be conducted as informally and, of particular relevance to this motion, as expeditiously as the requirements of natural justice and the rules of procedure allow. However,

as master of its own procedure, the Tribunal may, nonetheless, adjourn its proceedings where appropriate in its discretion (See *Léger v. Canadian National Railways* [1999] C.H.R.D. No. 6 (CHRT), at para. 4; *Baltruweit v. Canadian Security Intelligence Service*, 2004 CHRT 14 at para. 15). The Tribunal must exercise this discretion having regard to principles of natural justice (*Baltruweit*, at para 17). Some examples of natural justice concerns to which the Tribunal could respond would include the unavailability of evidence, the need to adjourn to obtain counsel, or late disclosure by an opposite party.

[12] In spite of the fact that dates have now been set for the hearing of the application for judicial review, there is no certainty with respect to either the timing or the eventual outcome of that process. In order for the Respondent to obtain an adjournment, it must establish that allowing the proceedings before the Tribunal to follow their normal course will result in a denial to the Respondent of natural justice. The Respondent has not persuaded me that any such prejudice would necessarily result if an adjournment were not granted.

[13] The Respondent's motion is therefore dismissed.

Signed by

Edward P. Lustig
Tribunal Member

OTTAWA, Ontario
March 16, 2011

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1491/3710

Style of Cause: Linda Marshall v. Cerescorp Company

Ruling of the Tribunal Dated: March 16, 2011

Appearances:

Scott Brearley, for the Complainant

Brian Smith, for the Canadian Human Rights Commission

Marino Sveinson and Ryan Copeland, for the Respondent