

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROIT
DE LA PERSONNE**

PAWEL KOWALSKI

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

RYDER INTEGRATED LOGISTICS

Respondent

RULING

MEMBER: Athanasios D. Hadjis 2009 CHRT 22
2009/07/29

[1] The Respondent, Ryder Integrated Logistics ("Ryder"), has filed a motion to strike several passages from the Complainant's Statement of Particulars. Ryder alleges that the Canadian Human Rights Commission ("Commission") never referred the matters raised in these passages to the Tribunal for further inquiry.

[2] In his complaint, dated April 20, 2007, the Complainant, Pawel Kowalski, recounted several instances of discrimination that he allegedly experienced in the course of his employment with Ryder. These allegations are that:

- (1) Mr. Kowalski's manager repeatedly used a "slur" relating to his national or ethnic origin;
- (2) Mr. Kowalski was harassed by another Ryder employee on the basis of his disability;
- (3) Another employee (to whom I need only refer by the initials "M.O." for the purposes of this ruling) made disparaging remarks against Mr. Kowalski;
- (4) Two other employees ("T.B." and "D.S.") discriminated against Mr. Kowalski by denying him a job opportunity on the basis of his disability.

[3] On April 30, 2008, the Commission rendered a decision, pursuant to s. 41 of the *Act*, with respect to whether it would "deal with" all or any of the allegations in the complaint. The decision was issued in writing and sent to the parties. The Commission determined that Allegations #1 and #2 were based on one or more prohibited grounds of discrimination set out in s. 3 of the *Act*, and that consequently, the Commission would deal with these allegations. However, the Commission was also "of the view" that Mr. Kowalski had not established that either of the two remaining allegations (#3 and #4) could be linked to a prohibited ground. Accordingly, the Commission determined that those two allegations "ought not to be considered further".

[4] On January 21, 2009, the Commission issued another decision in writing. It stated that the Commission would be requesting that the Chairperson of the Tribunal institute an inquiry into the complaint because, based on the evidence gathered by the Commission's investigator with respect to allegations #1 and #2, "further enquiry [was] warranted". The decision also contained a reference to Ryder's *Policy against Harassment, Discrimination and Retaliation*. Apparently, the Commission investigator who had investigated the complaint had concluded that the policy was somehow inadequate. Ryder made a submission in reply to the Commission, arguing that the policy complies with the *Act*. In its January 21st decision, the Commission wrote that it "accepted" Ryder's submission.

[5] The Commission sent a copy of this decision to the parties. I note, however, that the Commission never provided a copy of either of its decisions to the Tribunal. In the

Commission's referral letter, dated February 9, 2009, the Commission requested that the Tribunal Chairperson institute an inquiry "into the complaint as it is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted". The letter enclosed a copy of the complaint. There is nothing in the letter to suggest that the Commission had decided to deal with only two of the four allegations in the complaint.

Paragraphs 23, and 29 to 31 of Mr. Kowalski's Statement of Particulars

[6] On June 8, 2009, Mr. Kowalski filed his Statement of Particulars, in accordance with the Tribunal's *Rules of Procedure*. In Paragraphs 29 to 31, under the heading "Issues", Mr. Kowalski recounted the incidents in Allegations #3 and #4 of the complaint, in terms that are virtually identical to those set out in the complaint. In Paragraph 23, Mr. Kowalski mentioned two of the Ryder employees (M.O. and T.B.) in relation to Allegations #3 and #4. Ryder contends that Paragraphs 29 to 31 and the reference to these employees in Paragraph 23, must be struck because in light of the Commission's two decisions, the Tribunal lacks the jurisdiction to deal with these matters.

[7] The Tribunal's jurisdiction to conduct inquiries into complaints is derived from s. 49 of the *Act*, pursuant to which the Tribunal Chairperson must institute an inquiry into a complaint upon receipt of a request from the Commission (s. 49(2)). The scope of Tribunal inquiries is thus limited to the matters arising from the complaints accompanying such requests.

[8] Did the Commission refer Mr. Kowalski's entire complaint to the Tribunal in the present case? The Commission gave no indication in its letter to the Tribunal Chairperson that it had decided to limit the complaint's scope. This would suggest, therefore, that the Commission referred the entire complaint, as drafted by Mr. Kowalski on April 20, 2007, to the Tribunal.

[9] A similar issue arose before me in *Côté v. Attorney General of Canada*, 2003 CHRT 32. In that case, there was also no indication in the Commission's letter to the Tribunal Chairperson from which it could be inferred that only certain portions of the complaint were being referred. I therefore concluded that the Tribunal was seized with the entire complaint. There was no evidence in *Côté*, however, of any formal decision by the Commission to restrict the ambit of the inquiry. Rather, two Commission investigators assigned to the case had merely expressed the view, in their pre-referral correspondence with the parties, that the Commission lacked the jurisdiction to investigate certain elements of the complaint, as they fell outside the purview of the *Act*.

[10] In the present case, the Commission specifically decided not to deal with two of the four allegations in the complaint, and provided the parties with written decisions to that effect, which were both in fact entitled "*Decision of the Commission*". As such, it is clear that the Commission exercised its discretion, pursuant to s. 41, not to deal with these allegations. In light of the Commission's explicit determinations in this regard, I am satisfied that the Commission did not ultimately refer these portions of the complaint to the Tribunal.

[11] In his reply to Ryder's motion, Mr. Kowalski argued that the content in Paragraphs 29 to 31 and the references to M.O. and T.B. had been included "simply" as "background information". They are not allegations for which Mr. Kowalski is seeking a finding of discrimination from the Tribunal. He pointed out that this is why these paragraphs were not included in the section of his Statement of Particulars entitled "Theory of the Complainant's Case, including Factual Connections".

[12] I am not persuaded by Mr. Kowalski's argument. As I already indicated, the passages in question are practically identical to the corresponding paragraphs in the complaint. These events had clearly been referenced in the complaint as allegations of discrimination rather than mere background information. Furthermore, Mr. Kowalski characterized these events as discriminatory practices in the Statement of Particulars itself. At Paragraph 31, he states that

"at no point was [he] offered the position" he was seeking and that as a result he had been "discriminated against". It is thus evident that these references are not just "background information" but rather an attempt to litigate issues that the Commission decided not to refer to the Tribunal. Besides, at the very least, even if Mr. Kowalski is not alleging that the events described in Allegations #3 and #4 are discriminatory practices, they are in my view irrelevant to the remaining allegations in the complaint that the Commission did actually refer to the Tribunal.

[13] Paragraphs 29 to 31 of Mr. Kowalski's complaint, as well as the references to M.O. and T.B., are therefore stricken from his Statement of Particulars.

Paragraph 38 of Mr. Kowalski's Statement of Particulars

[14] Ryder also submits in its motion that Paragraph 38 of Mr. Kowalski's Statement of Particulars should be stricken as well. In that paragraph, Mr. Kowalski asserts that "[e]vidence shows that the respondent's policy on its face does not comply with the *Canadian Human Rights Act*". Ryder contends that since the Commission stated in its January 21, 2009, decision that it "accepted" Ryder's submissions on the policy's conformity with the *Act*, it would be "improper and beyond the jurisdiction of the Tribunal" to permit Mr. Kowalski to proceed on this allegation.

[15] I do not agree. In dealing with the two allegations in the complaint that were referred to the Tribunal (Allegations #1 and #2), it is relevant and within the Tribunal's jurisdiction to inquire into the adequacy of any policies and measures taken by the employer. Questions regarding an employer's policies may also be considered by the Tribunal in determining the appropriate remedial order, pursuant to s. 53, should there be a finding of discrimination against Ryder. Besides, all that the Commission stated in the January 21, 2009, decision was that it accepted Ryder's submissions in reply to the Commission investigator's conclusions. It is a reflection of the Commission's opinion. I do not consider this remark to be an exercise of the Commission's discretion to decide not to refer to the Tribunal any particular allegation in the complaint.

[16] Ryder's motion to strike Paragraph 38 is therefore dismissed.

Paragraph 74 of Mr. Kowalski's Statement of Particulars

[17] In Paragraph 74 of his Statement of Particulars, Mr. Kowalski states that among the remedial orders he is seeking from the Tribunal is special compensation, within the meaning of s. 53(3) of the *Act*, claiming that Ryder's alleged breaches of the *Act* were wilful and/or reckless. Ryder argues in its motion that Mr. Kowalski failed to particularize any "underlying material facts or legal position" to support his claim.

[18] I agree with Mr. Kowalski's response to the motion, however, that the Statement of Particulars refers to several facts or incidents that could support a claim that the violations were carried out wilfully or recklessly. This determination will ultimately be made by the Tribunal based on the evidence presented at the hearing, and following the final submissions of the parties.

[19] Ryder's motion to strike Paragraph 74 is therefore dismissed.

Other orders sought

[20] In its motion, Ryder was also seeking a number of other orders, including further particulars regarding Mr. Kowalski's claim for lost wages and more fulsome "will-say" statements with respect to several witnesses. It is my understanding that these issues were all

addressed during the case management conference call conducted by the Tribunal Chairperson on July 9, 2009.

Order

[21] Ryder's motion is therefore granted in part only. I order that Paragraphs 29 to 31 be stricken from the Complainant's Statement of Particulars and that the references to the two Ryder employees mentioned by name in Ryder's motion (whose initials are M.O. and T.B.) be stricken from Paragraph 23.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario
July

29,

2009

PARTIES OF RECORD

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STYLE OF CAUSE:	Pawel Kowalski v. Ryder Integrated Logistics
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APPEARANCES:	
Paul Brooks	For the Complainant
(No one appearing)	For the Canadian Human Rights Commission
S. Jodi Gallagher	For the Respondent