

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE

COMMUNICATIONS, ENERGY AND PAPERWORKERS
UNION OF CANADA AND FEMMES-ACTION

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BELL CANADA

Respondent

RULING ON MOTIONS TO RECONSIDER A PREVIOUS DECISION ,
TO EXCLUDE AN EXPERT REPORT AND TO
LIMIT THE CROSS-EXAMINATION OF A WITNESS

PANEL: J. Grant Sinclair
Pierre Deschamps

2004 CHRT 26
2004/07/28

[1] The Tribunal has three motions, two from the respondent, Bell and one from the complainant CEP.

[2] In its first motion, Bell asks the Tribunal to reconsider its decision precluding it from cross-examining Ms. Blackstaffe on the AT&T Study, the Terms of Reference pertaining to the Joint Study and the training given to members of the Joint Committee and Subcommittee.

[3] Bell's second motion is for an order that the expert report of Dr. Lawrence Gould dated March 25, 2004 on the calculation of interest, not be received in evidence by the Tribunal, or alternatively, that certain portions be struck.

[4] CEP requests that the remainder of Ms. Blackstaffe's cross-examination by Bell be limited in time and specifically suggests an end date of September 14, 2004.

A. Bell's reconsideration request - Cross-Examination on the AT&T Study

[5] In her examination in chief, Ms. Blackstaffe testified that the Subcommittee for the Joint Study visited New Jersey to discuss with representatives of AT&T and CWA, their job evaluation study. Bell vigorously objected to this evidence because Ms. Blackstaffe had no direct personal knowledge of the AT&T Study. Bell also objected that this evidence was not relevant, the AT&T Study was never implemented and thus could not be used to evaluate the Joint Study. Bell was also concerned that Ms. Blackstaffe's evidence was hearsay, based on what she had been told by persons involved in the AT&T Study who could not be cross-examined.

[6] The Tribunal concluded that Ms. Blackstaffe could be asked about the Subcommittee's visit to New Jersey, the information she obtained and what use was made by the Subcommittee of this information. Subsequently, Bell discounted its previous objections and sought to cross-examine Ms. Blackstaffe on the AT&T Study, specifically as to the difference between the point scores given to splicers versus operators at AT&T as compared to the point scores for these two jobs in the Joint Study. The Tribunal did not allow this questioning to continue because it involved direct knowledge of the AT&T

Study and required an evaluative comparison. Ms. Blackstaffe was not qualified in either case.

[7] In Bell's *Outline of the Cross-examination of CEP Witness, Patricia Blackstaffe*, dated June 30, 2004 and provided to the Tribunal, Bell states that the cross-examination on the AT&T Study is important for evaluative purposes so that "one can properly appreciate the complete lack of reliability of the audit results". This alleged lack of reliability is to be proved by comparison of the AT&T Study process to the Joint Study process.

[8] In oral submissions on this matter, Bell's position is that the cross-examination on the AT&T Study would not involve any comparison to the Joint Study. Rather Bell proposes to ask Ms. Blackstaffe what she learned about the AT&T Study and how she used such information; why she hired a consultant to review the AT&T Study; its value in the pay equity negotiations between Bell and CEP in 1988-1990, and finally, whether the Joint Committee was given any information relating to the AT&T Study.

[9] In our opinion, these proposed questions parallel to a large extent what CEP asked Ms. Blackstaffe in chief. We have concluded that Bell can cross-examine Ms. Blackstaffe on the AT&T Study, but the questions must be strictly limited to the matters outlined in the preceding paragraph.

B. The Terms of Reference - Joint Study

[10] As we understand from Bell's *Outline for the Cross-Examination* and oral submissions, Bell wants to establish through cross-examination of Ms. Blackstaffe that decision-making for the Joint Study was located not in the Joint Committee as per the Terms of Reference. But, in fact, was relocated to the Subcommittee. Bell alleges that this was achieved by Ms. Blackstaffe, so that CEP was able to unduly influence the results of the Joint Study.

[11] The Tribunal has heard extensive evidence from both Linda Wu and Ms. Blackstaffe relating to the negotiations leading to the adoption by the parties of the Terms of Reference. More to the point, there has been exhaustive evidence from Ms. Wu and more particularly Ms. Blackstaffe, pertaining to the operations of the Subcommittee. Ms. Blackstaffe has produced voluminous documentation including hand-written notes, meeting agendas of the two committees, memoranda to CEP officials, minutes of Subcommittee and Joint Committee meetings and much more documentation, all of which show how the Subcommittee operated, the decisions it made and the role it played in the Joint Study, all in contrast to the role of the Joint Committee. Ms. Blackstaffe was cross-examined in great detail on this documentation.

[12] In our opinion, there is no need for any further evidence on this matter for Bell to pursue its allegations. Further cross-examination on the Terms of Reference would add little if anything to the Tribunal's knowledge and understanding of this area.

C. Training of the Joint Committee

[13] Bell asserts that the Joint Committee did not receive adequate training on job evaluation or pay equity. Bell alleges that Ms. Blackstaffe had much more expertise and used this to CEP's advantage. It is not clear for the Tribunal just what the nature of Bell's cross-examination will be. The Tribunal will deal with the appropriate scope of Bell's cross-examination on this matter if and when any objections are made.

D. Dr. Gould's expert report on the calculation of interest

[14] Bell's motion is that the Tribunal not receive in evidence the report of Professor Lawrence Gould on the calculation of interest. At this point in the hearing, Dr. Gould has not been called as a witness nor has the Tribunal been apprised of his qualifications. We understand that it is at the request of CEP that Bell brought this motion at this time, rather than at the time when Dr. Gould is to testify. CEP made the request of Bell to avoid any delay in the hearing and to provide certainty for Dr. Gould as to if and when he would be testifying.

[15] In our view, the timing of this motion is ill advised. Bell has made it clear that if it does not succeed on this motion, it reserves its right to cross-examine Dr. Gould on his qualifications and make further objections to his expert report if so advised. The Tribunal having learned this, indicated to the parties that this motion would be better dealt with after the Tribunal has heard from Dr. Gould about his qualifications and how these relate to the purpose and scope of his report. The parties resisted this suggestion.

[16] We do not see any useful purpose being served by hearing this motion now. CEP intends to call a number of witnesses before Dr. Gould. As to when he would testify is not predictable. Bell intends to cross-examine Dr. Gould on his qualifications so that any contemplated time saving is illusory. Finally, it is not particularly advisable for this Tribunal to deal with the admissibility of potentially important expert evidence without knowing anything about the qualifications of the witness, except as set out in Dr. Gould's draft, expert report which has been left to the Tribunal to plow through with no guidance from the parties.

[17] The Tribunal has concluded that this motion is premature and untimely for the reasons set out above. Accordingly, the Tribunal will not decide this motion at this time. This is without prejudice to Bell to bring this motion or any other motion regarding the proposed evidence of Dr. Gould at some future time. It is also without prejudice to CEP to offer any arguments in response to any motion by Bell.

E. CEP's request to limit the cross-examination of Ms Blackstaffe

[18] CEP seeks to limit Bell's cross-examination of Ms. Blackstaffe to 10 or 12 more days. From what the Tribunal has heard to date, it appears that what is primarily if not entirely, driving this request, is Ms. Blackstaffe's desire to complete her cross-examination because of her job pressures.

[19] Ms. Blackstaffe's cross-examination commenced on December 15, 2003. As of June 30, 2004 it had not yet been completed. From December 15, 2003 to June 30, 2004, Ms. Blackstaffe was on the witness stand for approximately 26 days. In the same period, the Tribunal had scheduled 57 hearing days. Thirty-one hearing days were cancelled at the instance of the parties. There were various reasons for this including, counsel mistaking the date for school break holidays, the witness attending other meetings, counsel providing further and late document disclosure, and medical/personal reasons. It is obvious that if the hearing had proceeded as scheduled, or even on most of the scheduled dates, Ms. Blackstaffe's cross-examination and any re-examination would have been completed on or before June 30, 2004.

[20] As acknowledged by the parties, the Tribunal is the master of its own proceedings. According to Brown and Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Canvasback Publishing, 2003), a "tribunal has the discretion to limit cross-examination in order to keep the proceedings within reasonable bounds". Mewett and Sankoff, *Witnesses* (Toronto: Carswell, 2004) also recognize that the right to cross-

examine is not unlimited and that courts have a discretion to limit questioning that is repetitive or prolix, but that this discretion should be exercised carefully.

[21] CEP has identified a number of ways by which the remaining cross-examination of Ms. Blackstaffe could be shortened, as follows:

- a) maintain the Tribunal's ruling on AT&T Study;
- b) limit the cross-examination to matters not already covered. The Tribunal has done this for the Terms of Reference;
- c) Counsel should not be repetitive with questions already asked. The Tribunal has previously directed this and Bell counsel has essentially complied and will continue to do so;
- d) Bell counsel should and has agreed to provide Ms. Blackstaffe with documents to read in advance of being cross-examined on them;
- e) Counsel should and will agreed in advance to enter documents on consent;
- f) the Tribunal has directed that Bell counsel should not pursue a line of questioning where Ms. Blackstaffe has indicated that she has no recollection or knowledge of the subject matter. Bell counsel has complied and will continue to comply with this direction.
- g) CEP argues that if these suggestions are adopted, then the cross-examination of Ms. Blackstaffe should take only 10 to 12 days to complete. Ergo, its request to limit her cross-examination to that time.

[22] In our opinion, this is not a situation that calls for the Tribunal to exercise its discretion and time limit Bell's cross-examination. Bell has withdrawn the 17 questions that it proposed to ask Ms. Blackstaffe. This, plus the limits on cross-examination for the AT&T Study, no further cross-examination on the Terms of Reference, and compliance by counsel with the procedures referred to above, should reduce significantly the time required to complete Ms. Blackstaffe's cross-examination, perhaps even to the number of days suggested by CEP. Accordingly, the Tribunal does not grant CEP's request.

Signed by

J. Grant Sinclair, Chairperson

Signed by

Pierre Deschamps, Member

OTTAWA, Ontario

July 28, 2004

PARTIES OF RECORD

TRIBUNAL FILE: T503/2098

STYLE OF CAUSE: Communications, Energy and Paperworkers Union of
Canada and Femmes-Action v. Bell Canada

DATE AND PLACE OF HEARING: Ottawa, Ontario
July 5, 6 and 9, 2004

RULING OF THE TRIBUNAL DATED: July 28, 2004

APPEARANCES:

Peter Engelmann For the Communications, Energy and
Fiona Campbell Paperworkers Union of Canada

Andrew Raven For the Canadian Human Rights
Ceilidh Snider Commission

Gary Rosen
Peter Mantas For Bell Canada
Steve Katkin