

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

ROGER VIRK

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BELL CANADA (ONTARIO)

Respondent

RULING ON AMENDMENT OF COMPLAINT

MEMBER: Pierre Deschamps

2004 CHRT 10
2004/02/27

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I. BACKGROUND

[1] On April 11, 2002, Mr. Roger Virk filed a human rights complaint with the Canadian Human Rights Commission against Bell Canada. In his complaint, Mr. Virk alleges that Bell Canada discriminated against him in the course of his employment on the ground of national or ethnic origin by demoting him, contrary to section 7 of the *Canadian Human Rights Act*.

[2] The Commission referred Mr. Virk's complaint to the Tribunal for an inquiry and decision on September 17, 2003. Mr. Virk now seeks to amend his original complaint to add allegations of retaliation against him by the respondent, pursuant to section 14.1 of

the *Act*. In a letter dated January 13, 2004, the Commission made it known to the Tribunal that it would take no position with respect to Mr. Virk's preliminary issue of retaliation and would not be filing submissions.

II. POSITION OF THE PARTIES

[3] In his original complaint, Mr. Virk states that he is of South Asian descent, that in or around October of 2001, he was assigned as Acting Manager for a new project, that on November 30, 2001, he was told that he would be demoted from this position and placed in a position of Resource Associate on the same project. Mr. Virk also states that he was told at the time that there would be no more acting managers or new manager assignments in the department and that he would be replaced by someone from another section who was already a manager. Mr. Virk's demotion was to be effective January 1, 2002. According to Mr. Virk, on January 2, 2002, two new acting manager assignments took effect in his department.

[4] In his amendment request, Mr. Virk alleges that subsequent to the filing of his complaint, Bell Canada aggressively retaliated against him by advising him that his employment with Bell was being terminated because the latter was putting an end to the Globe and Mail project to which Mr. Virk had been assigned. Mr. Virk alleges that Bell exploited that situation, i.e. the end of the Globe and Mail project, to camouflage its retaliation against him for filing his human rights complaint. Mr. Virk contends that the project was merely suspended and would most likely resume in 2004.

[5] For its part, Bell submits that at no time did it retaliate against Mr. Virk for filing a human rights complaint. According to Bell, Mr. Virk's termination of employment, which took effect on January 11, 2004, happened in the context of a reorganization of the department where the group Mr. Virk was working in was eliminated. Bell further alleges that Mr. Virk was well informed of his displacement right but chose not to exercise it. Had he done so, he would have at least extended his employment period, thus allowing him more time to seek alternate employment with the company.

[6] In reply to Bell's arguments, Mr. Virk asserts that Bell failed to inform him of the change in status of the job of Resource Associate, thus preventing him from exercising his displacement rights in November 2003. Mr. Virk views the failure by Bell to inform him about this crucial change as another retaliatory measure.

III. THE LAW

[7] It is now undisputed that this Tribunal has the authority to amend a complaint to add an allegation of retaliation¹. As a rule, an amendment should be granted unless it is plain and obvious that the allegations in the amendment sought could not possibly succeed². In any case, the Tribunal should not embark on a substantive review of the merits of an amendment. That should be done only in the fullness of the evidence after a full hearing³. Thus the test to be applied is whether the allegations of retaliation are by their nature linked, at least by the complainant, to the allegations giving rise to the original complaint and disclose a tenable claim for retaliation⁴.

[8] That said, there is discretion in the Tribunal to amend a complaint to deal with additional allegations. The Tribunal must at all times ensure that sufficient notice is given to the respondent so that it is not prejudiced and can properly defend itself.

IV. ANALYSIS

[9] After having carefully reviewed the content of the documents filed by Mr. Virk with the Tribunal in support of his amendment request, the Tribunal finds that the allegations

made with respect to the issue of retaliation are, on the whole, linked to the original complaint and disclose a tenable claim for retaliation. By this finding, the Tribunal is in no way adjudicating on the merits of the amendment. The veracity of the allegations as to the existence or non existence of retaliation will only be determined at the hearing of the complaint. The respondent will then have full opportunity to make its case against these allegations.

[10] Furthermore, the Tribunal is of the view that the respondent is in no way prejudiced by the granting of the amendment request. In the documents filed with the Tribunal, the complainant has clearly identified the facts upon which he relies to assert that the respondent retaliated against him. The Tribunal is thus of the view that the respondent has proper knowledge and adequate notice of the case to be met with respect to the allegations of retaliation and that it can properly defend itself against these allegations.

V. RULING

[11] For the foregoing reasons, the complainant's request to amend his original complaint to add allegations of retaliation pursuant to section 14.1 of the *Act* is granted. The Tribunal directs the Commission to help the complainant draft and file his amended complaint.

Signed by

Pierre Deschamps

OTTAWA, Ontario
February 27, 2004

PARTIES OF RECORD

TRIBUNAL FILE:	T858/10803
STYLE OF CAUSE:	Roger Virk v. Bell Canada (Ontario)
RULING OF THE TRIBUNAL DATED:	February 27, 2004
APPEARANCES:	
Roger Virk	On his own behalf
Ikram Warsame	For the Canadian Human Rights Commission

Johanne Cav

For the Respondent

¹*Schnell v. Machiavelli and Associates and John Micka*, T594/5220, April 25, 2001, Ruling No. 1; *Warman v. Kyburz*, 2003 CHRT 6, 2003/02/13; *Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 02, 2004/01/15.

²*Bressette v. Kettle and Stony Point First Nation Band Council*, supra, note 1.

³*Ibidem*.

⁴*Schnell v. Machiavelli and Associates and John Micka*, supra note 1; *Bressette v. Kettle and Stony Point First Nation Band Council*, supra note 1.