Canadian Human Rights Tribunal **Tribunal canadien des droits de la personne**

BETWEEN:

YVON RHEAULT

DANIEL OUELLETTE

JEAN-LOUIS RENAUD

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

MARITIME EMPLOYERS ASSOCIATION

Respondent

REASONS FOR RULING

PANEL: Roger Doyon, Chairperson

Ruling No. 1

2000/11/03

TABLE OF CONTENTS

I. INTRODUCTION

II. THE COMPLAINTS

(a) Ouellette Complaint
(b) Renaud Complaint
(c) Rheault Complaint

III. PRELIMINARY OBJECTION

A.
B.

IV. CONCLUSION

I. INTRODUCTION

[1] The Maritime Employers Association (M.E.A.) acts for the companies and agencies that represent the owners of vessels operating in the ports of the Great Lakes, Montreal and Trois-Rivières.

[2] The mandate of the M.E.A. consists of three (3) elements:

(a) the negotiation of collective agreements with the following unions:

i) local 1657 which represents the inspectors who inspect cargo arriving and leaving the ports;

ii) local 375 which represents the longshoremen assigned to load and unload the vessels;

(b) the management and administration of the collective agreements;

(c) the deployment of labour according to the needs expressed by the user companies and agencies.

[3] The terms of the longshoremen's collective agreement provide for a mechanism of access to job security. First, the worker must be registered as a non-permanent employee

on a recall list prepared by the union and submitted to the employer. Then, when a position opens up, the worker can become a regular employee with job security after rising successively through the second reserve pool and the first reserve pool.

II. THE COMPLAINTS

(a) Ouellette Complaint

[4] Mr. Daniel Ouellette has been employed by the Maritime Employers Association (M.E.A.) since 1976 as a non-permanent employee. On September 27, 1993, Mr. Ouellette applied to the M.E.A. to be included in the second (2nd) reserve pool. The M.E.A. required the employee to undergo a medical examination on October 12, 1993, and on May 26, 1994, his application was denied.

[5] On January 6, 1995, Daniel Ouellette filed a complaint alleging that the M.E.A. discriminated against him by differentiating adversely in relation to him concerning employment because of a disability, namely, loss of the left eye, contrary to section 7 of the Canadian Human Rights Act.

[6] On January 18, 1995, the M.E.A. was informed of the complaint, of the appointment of the Commission investigator, and advised to inform him of its position. On February 28, 1995, the M.E.A. responded to the complaint. There followed an exchange of correspondence between the M.E.A. and the Commission investigators assigned to the case until September 25, 1998, when the Commission filed its report.

[7] On November 16, 1998, the M.E.A. responded to the investigation report of the Commission, which decided, on November 18, 1998, to refer the complaint to a conciliator. On January 18, 1999, a conciliator was assigned the case. She asked the M.E.A. to inform her of its position on August 24, 1999, and received a response on November 5, 1999. On February 4, 2000, the conciliation failed, and on June 8, 2000, the complaint was submitted to the tribunal, that is, sixty-seven (67) months after the filing of the complaint.

(b) Renaud Complaint

[8] Mr. Jean-Louis Renaud has been employed by the M.E.A. as a non-permanent employee for nine (9) years. On April 23, 1996, he applied to be in the second (2nd) reserve pool. Following a medical examination required by the employer and conducted May 24, 1996, his application was refused on July 31, 1996. Mr. Renaud complained to the Canadian Human Rights Commission on January 21, 1997, maintaining that the M.E.A. had discriminated against him by differentiating adversely in relation to him concerning employment on the pretext of his disability, namely, near blindness in the left eye, contrary to the provisions of section 7 of the Canadian Human Rights Act.

[9] On March 4, 1997, the M.E.A. was informed of the filing of the complaint, of the appointment of an investigator and told to respond to the complaint. The M.E.A. responded to the complaint on April 14, 1997. Thereafter, there was an exchange of correspondence until June 1997. A new investigator was assigned the case on March 25, 1998, and a report was submitted on May 29, 1998, to which the M.E.A. responded on July 9, 1998. On December 18, 1998, the Commission referred the matter to conciliation and a conciliator was appointed on January 18, 1999. The conciliator asked the M.E.A. to state its position on August 24, 1999, and she received a response on November 5, 1999. On February 7, 2000, the parties were informed of the failure of conciliation, and on June 13, 2000, the Commission decided to submit the complaint to the Tribunal. A period of forty-one (41) months had passed since the filing of the complaint.

(c) Rheault Complaint

[10] Employed by the M.E.A. since 1986 as a non-permanent employee, Mr. Yvon Rheault applied, on April 22, 1996, to be admitted to the second (2nd) reserve pool. After undergoing, on May 21, 1996, the medical examination required by the employer, he was notified on March 28, 1997, that his application had not been approved. On November 27, 1997, Mr. Rheault complained that the M.E.A. had treated him in a discriminatory manner by differentiating adversely against him concerning employment because of his disability, namely, strabismus and early presbyopia, in violation of section 7 of the Canadian Human Rights Act.

[11] On January 14, 1998, the Commission informed the M.E.A. of the filing of the complaint, of the appointment of an investigator and asked it to inform him of its position. More than two (2) months later, that is, on March 18, 1998, the M.E.A. responded to the complaint. There followed an exchange of correspondence with the Commission investigator until November 5, 1998. The investigation report was submitted to the parties on April 16, 1999, and the M.E.A. responded to it on May 4, 1999. The Commission decided to submit the case to a conciliator on June 17, 1999. A conciliator was appointed on June 29, 1999. On August 24, 1999, the conciliator asked the M.E.A. to inform her of its position, and received it on November 11, 1999. On February 7, 2000, the conciliation failed and the complaint was submitted to the tribunal on June 8, 2000, that is, thirty (30) months after the filing of the complaint.

III. PRELIMINARY OBJECTION

[12] Counsel for the Respondent raises a two-part preliminary objection concerning the Tribunal's jurisdiction to hear and rule on the complaints filed by the Complainants.

A.

[13] The Respondent argues that the delays in the handling of the three (3) complaints by the Canadian Human Rights Commission are so excessive, unwarranted and unacceptable as to constitute a flagrant violation of the fundamental principles of natural justice and the duty to act fairly. These delays, between the filing of the complaints and their referral to

the Tribunal, were sixty-seven (67) months, forty-one (41) months and thirty (30) months, and are attributable solely to the Human Rights Commission, particularly as it has shown no reason to warrant them. According to counsel for the M.E.A., these excessive delays alone warrant a stay of proceedings.

[14] In support of this claim, counsel for the Respondent refers the Tribunal to the cases Douglas v. Saskatchewan (Human Rights Commission) (1989) S.J. no. 529 - N.L.K. Consultants Inc. v. British Columbia (Human Rights Commission) (1999) A.L.R. (3j) p. 46 - Kodellas et al v. Saskatchewan (Human Rights Commission) 66 D.L.R. p. 143 and Nulla Bona Holdings Ltd v. British Columbia (Human Rights Commission) (2000) B.C.J. no. 1458.

[15] For its part, counsel for the Commission points out that the excessive or unreasonable delays of which the Commission is accused do not in themselves warrant a stay of proceedings. In support of this assertion, counsel for the Commission cites the ruling handed down by the Supreme Court on October 5, 2000, in the Blencoe case, which I have read.

[16] It reads: (p. 64)

"In my view, there are appropriate remedies available in the administrative law context to deal with state-caused delay in human rights proceedings. However, delay, without more, will not warrant a stay of proceedings as an abuse of process at common law. Staying proceedings for the mere passage of time would be tantamount to imposing a judicially created limitation period."

[17] There is no question that the delays that passed between the filing of the complaints and their referral to the Tribunal are unreasonable. Moreover, there is no evidence for finding that the nature of the complaints necessitated such a laborious and complex investigation as would warrant the delays. I believe, however, as the Supreme Court states in the Blencoe case, that these delays alone do not warrant a stay of proceedings.

B.

[18] Counsel for the M.E.A. considers that the mere existence of these delays is so significant that it constitutes in itself a serious harm for the Respondent. Knowledge of the facts, the witnesses' recollection would certainly not have been the same had the Commission acted promptly. The result is a departure from the principles of natural justice and the duty to act fairly which find their application in administrative law.

[19] First of all, the events giving rise to the complaints and their follow-up occurred between 1993 and 1996. At that time, Line Perron oversaw for the M.E.A. the administrative aspect of the management of hiring matters generally. She was assisted in her work by Andrew Mackay. Now, Line Perron was thanked for her services on December 31, 1996, and Andrew Mackay left his job several months later. These witnesses were to review the applications of the Complainants and their files, apply the

standards and make the decisions. These witnesses are no longer available to allow the Respondent to make full answer and defence.

[20] I cannot accept this claim of the Respondent. There is nothing in the evidence to support a finding that these witnesses are not available. In fact, by the very admission of the witness for the M.E.A., Jean-Pierre Langlois, there has been no serious attempt to locate these witnesses, especially in the case of Line Perron; Jean-Pierre Langlois knows she is a member of the Bar.

[21] What is more, counsel for the Respondent argues that the testimony of Line Perron might be unreliable because she had been thanked for her services by the M.E.A. It seems to me that the situation remains the same on this point, regardless of the delays that passed in the Commission's handling of the complaints.

[22] Secondly, counsel for the Respondent alleges that the excessive delays are also prejudicial with respect to the assessment of damages should the Tribunal find the complaints to be valid. It appears that the Commission intends to show that at least one Complainant had been assigned to a user company of the M.E.A. and given a job, a job for which the M.E.A. does not consider him properly qualified because of his disability.

[23] In the period of concern to us, the M.E.A. served nine (9) companies, including two (2) which have disappeared because of bankruptcy. It will therefore be impossible for the M.E.A. to rebut this claim. Nothing in the evidence submitted, however, shows when these companies went bankrupt.

[24] In addition, Jean-Pierre Langlois, in his testimony, stated that, at the time of the labour deployment, the M.E.A. had a document showing the period of work required by the user company and the worker's required classification. Thereafter, the worker was under the control of the user company, which could transfer him to another job according to his qualifications. This transfer could be made without the knowledge of the M.E.A. since the pay remained the same.

[25] The evidence also does not show that the company using the labour has documents showing the job to which the employee had been assigned and the job transfer, if any. The evidence therefore does not allow a finding that the lack of pertinent information about the companies served by the M.E.A. resulted from the lengthy delays in the Commission's handling of the complaints.

[26] The evidence is that the rules of labour deployment were applied with the aid of a computerized system. In 1997, substantial changes were made to the computer system such that all information processed before 1997 can no longer be accepted by the new computer system. As a result, according to Respondent's counsel, it would be impossible to calculate the damages suffered by the Complainants, should they be successful, from the approval of their applications for inclusion in the second (2nd) reserve pool to the start of the year 1997.

[27] This difficulty is not, in my view, attributable to the Commission. Had the complaints been heard within a more reasonable delay, for example in 1997, the problem would have been the same. The excessive delays caused by the Commission change nothing.

IV. CONCLUSION

[28] While the delays in the Commission's handling of the complaints are unacceptable, I am not convinced that they cause the Respondent harm that can prejudice the fairness of the hearing and prevent it from exercising its right to present a full and ample defence.

[29] Accordingly, the preliminary objection is dismissed.

Roger Doyon, Chairperson

OTTAWA, Ontario
November 3, 2000

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

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APPEARANCES:

François Lumbu For the Canadian Human Rights Commission

Gérard Rochon For the Maritime Employers Association