

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

RONALDO FILGUEIRA

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

GARFIELD CONTAINER TRANSPORT INC.

Respondent

RULING

MEMBER: Dr. Paul Groarke 2005 CHRT 44
2005/11/18

[1] The Respondent has moved for costs. The motion came very late in the inquiry process, some time after I had dismissed the complaint on a non-suit. There is probably an argument that the motion should have been made in the course of the hearing. I am nevertheless willing to put that aside, for the purposes of deciding the application.

[2] The application is also complicated by the fact that the Respondent is seeking costs against the Canadian Human Rights Commission rather than the Complainant. This is in spite of the fact that the Commission did not participate in the hearing. I think the Respondent feels it is sufficient that the Commission is named as a party in the style of cause. The Commission has also filed a judicial review of my decision to dismiss the complaint. This would indicate that it remains a party to the action.

[3] The exact status of the Commission in the inquiry is unclear to me. There is a more fundamental problem, however. The Respondent is relying on the fact that complaints under the *Canadian Human Rights Act* are referred to the Tribunal by the Human Rights Commission. It is the Commission and not the Complainant that decides whether a case will go forward.

[4] The Respondent has at least implicitly submitted that the complaint should never have been referred:

Garfield's counsel spent a significant amount of time in preparation for the said hearing before the Tribunal. Had the Commission effectively requested and/or reviewed

Ronaldo's evidence prior to the commencement of the hearing, the Commission would have recognized Ronaldo's inability to substantiate any aspect of the aforesaid complaint. The Respondent subsequently sent a letter to the Commission, declaring that it would seek costs if the matter went to a hearing.

[5] This is the wrong approach. Once a complaint has been referred to the Tribunal, the Commission cannot stop the process. The inquiry must proceed. If the Respondent was unhappy with the referral, it should have sought a review of the Commission's decision in the Federal Court. This is not a matter that comes within the jurisdiction of the Tribunal.

[6] I have no knowledge of the evidence that was before the Commission. I think I am obliged, however, to proceed on the basis that the complaint was properly referred. The situation might be different if there was something that suggested an improper motive or an abuse of process. It is clear that the Tribunal has the authority to manage and protect the integrity of its own process.

[7] That does not come into play in the situation before me. I think the matter should be dealt with in the Federal Court, which has supervisory jurisdiction over the Commission. The Respondent can always raise the issue on the review.

[8] The motion is dismissed.

"signed by"

Dr. Paul Groarke

OTTAWA, Ontario
November 18, 2005

PARTIES OF RECORD

TRIBUNAL FILE:	T952/7204
STYLE OF CAUSE:	Ronaldo Filgueira v. Garfield Container Transport Inc.
RULING OF THE TRIBUNAL DATED:	November 18, 2005
APPEARANCES:	
Daniel Pagowski	On behalf of the Canadian Human Rights Commission

Harvey Capp

On behalf of the Respondent