

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Linda Marshall

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Cerescorp Company

Respondent

Ruling

Member: Susheel Gupta

Date: July 7, 2011

Citation: 2011 CHRT 9

[1] This is a ruling concerning a motion by the Complainant dated June 10, 2011 for an adjournment of a hearing in this matter pending the outcome of an investigation by the Canadian Human Rights Commission (the “Commission”) into possible systemic discrimination by the Respondent.

[2] The complaint in this matter was filed by the Complainant on September 11, 2006. The complaint alleges that the Respondent, between June 2006 and August 25, 2006, discriminated against her, on the grounds of sex, in relation to her employment, by failing to hire her for a foreman position, notwithstanding she had the skills of the male workers hired and more experience than they did. The complaint further alleges discrimination, on the grounds of sex, that she was subject to adverse differential treatment. The Complainant is a stevedore who works with the Respondent loading and unloading cruise ships in the Vancouver harbour.

[3] On July 29, 2010, the Commission, pursuant to s. 44 (3) (a) of *Canadian Human Rights Act* (“CHRA”) requested the Canadian Human Rights Tribunal (the “Tribunal”) to institute an inquiry into the complaint. The Commission also requested that the Tribunal conduct an inquiry, based on the Commission’s investigation, into possible systemic discrimination by the Respondent.

[4] On August 30, 2010, the Respondent filed its Notice of Application for judicial review in Federal Court in File No. T-1388-10. The hearing of the Application for judicial review was heard on March 15, 2011.

[5] The Federal Court issued its decision on April 15, 2011. Russell J., in his decision, found that the Complainant did not possess all of the posted qualifications for the foreperson position. At paragraph 67, Russell J. stated:

To have overlooked this was a fundamental mistake of fact on the part of the Investigator which renders the Decision to refer the complaint to a tribunal on the basis of denial of promotion unreasonable.

[6] As such, the Federal Court set aside this portion of the complaint and the July 27, 2010 decision of the Commission referring the complaint except as follows, and I quote from the Russell's J. judgment:

2. The Decision of the Canadian Human Rights Commission dated 27 July 2010 is set aside except as follows:

a. The issue of "Thwarted in Efforts to get Floater Experience" as identified in paragraphs 102-107 of the Investigator's Report; and

b. The issue of "Singled out for Scrutiny More Than Male Employees," as identified in paragraphs 108-115 of the Investigator's Report

can, pursuant to paragraph 44(3)(a) of the *Canadian Human Rights Act*, proceed to the chairperson of the Canadian Human Rights Tribunal to institute an inquiry into these two aspects of the Complaint alone;

3. The aspect of the Decision that deals with possible systemic discrimination against women in the promotion process is remitted to the Commission for investigation by a different investigator acting in a procedurally fair manner and subsequent re-determination by the Commission; ...

[7] The Tribunal wrote to the parties on June 3, 2011 requesting written submissions on the issue of how to proceed with this matter.

[8] Subsequently, the parties filed written submissions with respect to the Complainant's adjournment request.

[9] The crux of the Respondent's submission, in opposition to the adjournment request, is that the Federal Court was clear in that the two aforementioned issues proceed to an Inquiry alone while the systemic discrimination complaint is referred back to the Commission for a new

investigation. Further, that the remaining allegations are isolated instances not dependent upon the new investigation and a possible referral of a complaint into systemic discrimination.

[10] The crux of the Complainant's submission is that they will suffer prejudice without the evidence of the Commission's investigation into systemic discrimination. Further, that hearing the "two" complaints separately would be contrary to the Tribunal's goals of expeditiously adjudicating upon human rights complaints as this would result in the holding of "two" hearings requiring the repetition of evidence, the additional costs of two hearings and the possible inconsistency of results.

[11] According to section 48.9 (1) of the *Canadian Human Rights Act*, proceedings before the Tribunal are to be conducted as informally and, of particular relevance to this motion, as expeditiously as the requirements of natural justice and the rules of procedure allow. As master of its own procedure, the Tribunal may, nonetheless, adjourn its proceedings where appropriate in its discretion (See *Léger v. Canadian National Railways* [1999] C.H.R.D. No. 6 (CHRT), at para. 4; *Baltruweit v. Canadian Security Intelligence Service*, 2004 CHRT 14 at para. 15). The Tribunal must exercise this discretion having regard to principles of natural justice (*Baltruweit*, at para 17).

[12] Currently, there are only two issues comprising the complaint before the Tribunal. That there will be a further complaint referred by the Commission emanating from their investigation into systemic discrimination is speculative at this point in time. It is also possible that the Commission will not find that there is a practice of systemic discrimination emanating from their new investigation.

[13] The ultimate length of time and outcome for the Commission to complete its further investigation is unknown at this time. The Commission states in their submission dated June 10, 2011, at page 2:

I am not able to make any predictions at this time about the length of time that it may take for a fresh investigator to conduct an investigation, or for the Commission to make its subsequent re-determination.

[14] It took several years from the filing of the initial and updated complaint to the date when the complaint arrived at the Tribunal for an inquiry. Any further such delay would be counter to section 48.9 (1) of the *Canadian Human Rights Act*.

[15] The Federal Court in its decision did not direct that the portions of the referral it upheld should be stayed pending the outcome of the Commission's new investigation. The Federal Court indicated that the two allegations in the complaint can proceed forward to an Inquiry under the *Canadian Human Rights Act*.

[16] In order for the Complainant to succeed on its Motion for an adjournment request, the Complainant must establish that allowing the Tribunal to proceed with hearings would result in a denial of natural justice.

[17] I find that the Complainant has not established that she would suffer prejudice and a denial of natural justice if the adjournment were not granted.

[18] The Complainant's motion is therefore dismissed.

Signed by

Susheel Gupta
Tribunal Vice-Chairperson

OTTAWA, Ontario
July 7, 2011

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1491/3710

Style of Cause: Linda Marshall v. Cerescorp Company

Ruling of the Tribunal Dated: July 7, 2011

Appearances:

Scott Brearley, for the Complainant

Brian Smith, for the Canadian Human Rights Commission

Marino Sveinson and Ryan Copeland, for the Respondent