

Federal Court



Cour fédérale

Date: 20110329

Docket: T-208-10

Citation: 2011 FC 376

Ottawa, Ontario, March 29, 2011

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

ANDREA BLACKETT

Applicant

and

**PETER BISONETTE, PRESIDENT OF SHAW
CABLESYSTEMS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Ms. Andrea Blackett, is a self-represented litigant who seeks judicial review of a decision of the Canadian Human Rights Commission (the Commission). The Commission decided not to deal with the Applicant's complaint pursuant to paragraph 41(1)(d) of the *Canadian Human Rights Act* (the Act).

[2] The Applicant's complaint was filed with the Commission on May 13, 2009, and relates to allegations of sexual harassment, invasion of her privacy and failure by her employer to

accommodate a stress-related illness which led to her dismissal all while in the employ of Shaw Cablesystems G.P. (Shaw). The Commission summarized the Applicant's complaint as follows:

The complainant alleges that the respondent discriminated against her on the grounds of sex (female) and disability (stress-related illness) by failing to provide her with a harassment-free work environment, by treating her in an adverse differential manner, by failing to accommodate her disability, and by constructively dismissing her. The complainant alleges that she was harassed by supervisors and managers who made sexually harassing comments towards her at staff parties, who watched her perform very private acts inside a washroom stall at work through a video camera and then teased her about it, who monitored her home digital cable box and teased her about the shows she watched, who read personal and sexual text messages she sent on her work cell phone, accessed through an employee at Rogers. The complainant also alleges that she developed a stress-related illness that the respondent failed to accommodate when it did not approve her doctor-recommended sick leave, and that the respondent constructively dismissed her because she "felt forced to quit because of ongoing sexual harassment".

The decision under review

[3] The Commission conducted the requisite investigation under the Act. In so doing, it prepared a Section 40/41 Report dated September 16, 2009 and a Supplementary Section 40/41 Report dated October 28, 2009. These reports set out information from the parties relating to the complaint and their respective positions. They also set out the Commission's analysis on the complaint and options open to it relating to its disposition of the complaint. Both reports were circulated to the parties. The Applicant and Respondent responded to both reports and subsequently provided to their respective responses to the Supplementary Report.

[4] The Commission ultimately decided not to deal with the complaint under section 41(1)(d) of the Act, because it found the complaint trivial, frivolous, vexatious or made in bad faith. The Commission closed the file and provided the following reasons for its decision:

The complainant was not aware that an objection under section 41(1)(d) would be raised and has not provided a position on the matter.

The respondent raised its objection in its October 21, 2009, submission to the Section 40/41 Report. Its objection can be summarized as follows:

- that the complainant's allegations are factually baseless;
- that the respondent does not have the technology to commit the breaches of privacy alleged in the complaint;
- that the complainant filed an internal complaint which was investigated by the respondent in the spring of 2007 and was found to be baseless;
- that the complainant failed to bring any new allegations of harassment to the respondent's attention after the April 2007 investigation;
- that the complainant was denied short-term disability benefits because she did not provide medical information to confirm that she had a disability;
- that senior management for the respondent did not settle with the complainant in December 2008 because her concerns were the same as those already brought forward and determined in April 2007 to be unfounded;
- that it is technically impossible for the complainant's allegations surrounding her digital cable.

The Commission notes and accepts the following statements made by the respondent in its November 25, 2009 submission:

Therefore, since the public's resources should not be wasted upon a Complaint which, in fact, "plainly and obviously' cannot succeed," we have spoken to the witnesses upon whom she relies, several of whom no longer work for the Respondent and have no interest in this investigation. The witnesses, who the Complainant purports to have had conversations with state not only did they not have such conversations but that the information the Complainant alleges is false and, in fact, in some cases, technically impossible.

Based on the objections of the respondent, and the submissions made, the Commission decides not to deal with the complain under section 41(1)(d) of the *Canadian Human Rights Act*, because it would not be in the public interest to pursue the complaint.

The Issues raised by the Applicant on judicial review

[5] The Applicant appears to argue that the Commission erred in deciding as it did because it did so by failing to conduct a proper investigation in that it failed to undertake certain inquiries in relation to various witnesses and conduct certain investigations to explore the merits of her complaint. In her application the Applicant sets out the following grounds for the Court's review:

- (a) The Commission's failure to interview the programming department of Shaw to investigate whether Shaw has technology to view customer's cable channel, DVD, and music selections;
- (b) The Commission's failure to investigate whether and how many times the Applicant's selection of internet sites was viewed by Shaw through their technology, which the Applicant purports permits such viewing;
- (c) The Commission's failure to investigate whether a camera placed in the washroom stall at Shaw's offices in Vancouver, which the Applicant alleges was authorized by Shaw's employees;
- (d) The Commission's failure to audit Blackett's work emails to confirm whether or not meetings were set up with various employees of Shaw.

The standard of review

[6] The applicable standard of review of the Commission's decision not to deal with a complaint pursuant to subsection 41(1)(d) of the *Canadian Human Rights Act* is reasonableness.

See: *Dunsmuir v. New Brunswick*, 2008 SCC 9; *Morin v. Canada (Attorney General)*, 2007 FC 1355; and *English Baker v. Canada (Attorney General)*, 2009 FC 1253.

[7] Breaches of the duty of procedural fairness are reviewable on the correctness standard.

McConnell v. Canada (Canadian Human Rights Commission), 2005 FCA 289, at para 7.

Analysis

[8] The Commission has the discretion pursuant to subsection 44(3) of the Act to decide whether a particular complaint warrants a more in-depth investigation. To this end, it may appoint a Tribunal or it may dismiss a complaint. The Commission's discretion is subject to the rules of procedural fairness. It is obligated to inform the parties of the substance of the evidence obtained by the investigator and which was put before it and give the parties the opportunity to respond to the evidence and make all relevant representation in relation thereto. The Commission is entitled to consider the Report(s) and the underlying material before it and then render its own decision. See: *S.E.P.Q.A. v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879 at 902.

[9] In my view the Commission has complied with the rules of procedural fairness in exercising its discretion to not deal with the Applicant's complaint. The Commission provided the parties with the reports along with the evidence collected on the investigation and afforded the parties multiple opportunities to respond to this evidence. It also received the parties' submissions in response to arguments made. The Applicant adduced no evidence to support the contention that the Commission failed in its obligation of fairness relating to its treatment of the Applicant's complaint.

[10] Further, on a careful review of the record, for the reasons set out below, I am also satisfied the Commission's decision is reasonable.

[11] The grounds set out in the Application are, in essence, the Applicant's responses to materials submitted to the Commission by the Respondent which should have been made before the Commission at the appropriate time. The Applicant has adduced no evidence to establish that any of the elements raised in support of her application were not available to her at the time of the decision.

[12] The Applicant submitted three separate written submissions to the Commission, on October 21, November 13, and December 10, 2009. Those submissions and the Applicant's responses to the Respondent's materials were all considered by the Commission before it rendered its decision.

[13] The Applicant has adduced no evidence to refute the facts set out in the witnesses' statements as set out in the Respondent's materials which facts were, without exception, accepted by the Commission. The very witnesses relied upon by the Applicant in her claim were approached by the Commission's investigator. These witnesses denied the Applicant's allegations stating these to be false and, in some cases, technically impossible. The investigator was under no obligation to interview each and every witness that the Applicant would have liked, nor is the investigator obligated to address each and every alleged incident of discrimination which the Applicant would have liked. See: *Murray v. Canada (Canadian Human Rights Commission)*, 2002 FCT 699 at para 24. In the circumstances, it was not unreasonable for the Commission to decide as it did and close the file. It committed no reviewable error by not furthering its investigation in the manner suggested by the Applicant.

[14] This Court has recognized that the Commission has "considerable expertise in human rights matters and in balancing the competing interests of the parties to a complaint" and that the

“Canadian Human Rights Act grants the Commission a remarkable degree of latitude when it is performing its screening functions.” See: *Khanna v. Canada (Attorney General)* 2008 FC 576 at para 23.

[15] In the circumstances, I find that the Commission has properly performed its screening function. Its decision is reasonable in that it is defensible in respect of the facts and law and is justified, transparent and intelligible within the prescribed decision-making process.

Conclusion

[16] For the above reasons, the Application for Judicial Review of the January 14, 2009 decision of the Commission dismissing the Applicant’s claim will be dismissed.

JUDGMENT

[17] **THIS COURT ADJUDGES that** the Application for Judicial Review of the January 14, 2009 decision of the Commission dismissing the Applicant's claim is dismissed.

"Edmond P. Blanchard"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-208-10

STYLE OF CAUSE: ANDREA BLACKETT v. PETER BISONETTE,
PRESIDENT OF SHAW CABLESYSTEMS

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: February 16, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** Blanchard J.

DATED: March 29, 2011

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