

Federal Court



Cour fédérale

Date: 20160104

Docket: T-259-15

Citation: 2016 FC 2

Ottawa, Ontario, January 4, 2016

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

JOSEPH SOHMER

Applicant

and

LE SYNDICAT UNIFOR AND BELL CANADA

Respondents

JUDGMENT AND REASONS

[1] This is an application for judicial review of the refusal of the Canadian Human Rights Commission [Commission] to deal with Joseph Sohmer's [applicant] separate complaints against Bell Canada [Bell] and Le Syndicat Unifor [Unifor], together known as the respondents, on the ground that the complaints are vexatious as defined in paragraph 41(1)(d) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [Act].

[2] The applicant, who is representing himself in this proceeding, is seeking an order of *mandamus* that the Commission deal with his complaints, as well as an order that he be reinstated in his job and receive compensation for all salary and benefits lost. The present application is contested by the respondents. The sole issue in this judicial review application is whether the Commission's decision not to deal with the applicant's complaints is reasonable.

[3] The relevant facts are not seriously contested and may be summarized as follows.

[4] On September 23, 2013, Bell served a notice of bargain to Unifor with its decision to close its telephone operator service. Bell informed Unifor on October 29, 2013 of its decision to close December 31, 2013.

[5] On November 28, 2013, Unifor held a general assembly with its members to address all matters related to the ongoing negotiations with Bell in relation to the closing of the telephone operator service.

[6] On December 3, 2013, Bell and Unifor signed the *Memorandum of Agreement between Bell Canada and Unifor Representing the Employees of the Telephone Operator Service* [memorandum of agreement], which stipulated that the parties agreed to postpone the complete closure of the telephone operator service to December 31, 2016 in order "to allow a greater number of employees to leave the company when they had met the eligibility criteria for retirement." The memorandum of agreement included a clause indicating that employees who were eligible for retirement on or before December 31, 2013 would have to retire by that date

with a termination allowance in the form of a lump sum payment. In order to secure the lump sum, the employees were required to sign a release in which they agreed not to pursue legal action against Bell.

[7] On December 19, 2013, the applicant filed separate complaints against Bell and Unifor with the Commission. The applicant alleged that Bell adopted a discriminatory policy and terminated his employment based on his age, a prohibited ground of discrimination, in breach of sections 7 and 10 of the Act, while Unifor engaged in adverse differential treatment and discriminatory practices also based on age, in breach of sections 9 and 10 of the Act. At the time that the relevant events took place, the applicant had been employed by Bell for 39 years and had been working in the telephone operator service department since 1999.

[8] On December 20, 2013, the applicant signed the release form accepting Bell's Termination Allowance Offer. The Offer included a termination allowance of 12 months' pay in consideration for the applicant's voluntary retirement as of December 31, 2013 with a full and final release in favour of Bell for any complaint or right of complaint he may have in relation to his employment or the end of his employment and the Act.

[9] On December 31, 2013, the applicant retired and from 2014 to 2015, Bell honoured the Termination Allowance Offer by paying the applicant his termination allowance.

[10] On October 17, 2014, the Commission's Section 40/41 Reports were sent to the parties along with an invitation to make submissions in response to the Reports' conclusions, which all parties submitted between October 2014 and December 2014.

[11] On January 21, 2015, the Commission concluded that the applicant's complaints were vexatious and it refused to deal with them pursuant to paragraph 41(1)(d) of the Act. The parties were informed of the decisions on February 5, 2015. The decisions were both based on Section 40/41 Reports prepared by the Commission's Resolution Services Division recommending that the Commission not deal with the applicant's complaints as they were vexatious as defined in paragraph 41(1)(d) of the Act.

[12] The applicant reasserts that he was unlawfully dismissed from his employment by being forced to retire. He considers that the memorandum of agreement between Bell and Unifor is not legal, and that it was the underlying event that led to his retirement. His right to make grievances regarding the suspension of the collective agreement's term stipulating that layoffs would occur in inverse order of seniority was violated by Unifor. Furthermore, certain terms found in the Termination Allowance Offer were unilaterally modified without prior disclosure to all affected parties, while Unifor did not properly represent the applicant's rights during the negotiations with Bell. The applicant submits that he did not voluntarily leave Bell and that the release he signed on December 20, 2013 has no value, notably because of the pressure put on eligible employees who refused to retire, on December 19, 2013. It was therefore unreasonable on the part of the Commission to refuse to deal with his complaints. At the oral hearing of the present application, the applicant also suggested that he was unable to prove to the Commission that he

had been intimated and that he had not been able to submit documentary evidence supporting this point (such as the December 19, 2013 email from Steve Desgagnés).

[13] Bell submits that the Commission's decision to refuse to deal with the applicant's complaint is reasonable and that the facts alleged by the applicant are not supported by the evidence. The Commission's decision was based on the evidence, which included the Section 40/41 Report and both the applicant's and the respondent's additional submissions. The Section 40/41 Report prepared by the Commission considered the relevant factors and made its findings based on the evidence and facts that were before it.

[14] Unifor similarly submits that the Commission's decision is reasonable and that the Commission correctly identified the relevant factors to be considered, which it applied to the facts at hand. In the alternative, Unifor submits that if the application is resolved in the applicant's favour, Unifor cannot be held liable to pay for the applicant's loss in salary and employment benefits (*Progistix-Solutions inc c Commission des normes du travail*, 2009 QCCA 2054; *Commission des normes du travail c Ville de Sherbrooke*, 2011 QCCA 325).

[15] The present application must fail. It appears that the applicant does not fully appreciate the Court's jurisdiction in a judicial review application of the Commissioner's decisions not to deal with his complaints because they are vexatious. It is my understanding that the linchpin of the applicant's case is his submission that he was forced to retire, and that the Commission thus erred by misinterpreting the facts when it concluded that his retirement was voluntary. But there

is also a fundamental distinction between the Canadian Human Rights Tribunal, as an adjudicative body, and the Commission, as a screening body.

[16] The Commissioner's decisions are reasonable. The reasons provided by the Commission are transparent and intelligible. In respect of the determination not to deal with the applicant's complaints, due consideration was given to the following elements:

- a settlement was negotiated;
- the applicant signed a release in relation to the issues found in the complaint before the Commission;
- the applicant had legal representation or advice from a union representative;
- there is evidence regarding the applicant's ability to understand how the release would affect his rights; and
- the applicant freely consented to the negotiation of the settlement and the signing of the release.

[17] More particularly, with respect to Bell's conduct, the Commission found that a settlement was negotiated and the applicant, in exchange for a 12-month termination allowance, signed a release regarding any potential human rights issues that could arise, including in relation to age. The Commission further found that there was no evidence to support the applicant's claims that he was confused or misunderstood the terms of the release, or that he was subject to intimidation, anxiety or pressure, which negated his consent. The Commission noted that the terms of the release were clearly stated and the applicant received independent legal advice prior to signing the release. With respect to the bad faith assessment, the Commission found that there was no evidence to suggest that the applicant was acting in bad faith when he filed his complaint with the Commission.

[18] With respect to Unifor's conduct, the Commission found that although Unifor was not a party to the release signed by the applicant, the complaint could still be considered vexatious if the applicant's human rights issues were dealt with in another forum. The Commission went on to conclude that the settlement with Bell addressed the applicant's human rights issues, and thus the complaint against Unifor was vexatious. Moreover, the Commission concluded, as it did in the Bell Report, that there was no evidence to support the applicant's claim that his consent was vitiated when he signed the release form.

[19] Furthermore, the evidence on record does not support the applicant's allegation that he was forced to retire. He provided no corroborating evidence to the Commission to substantiate this claim. The December 19, 2013 email was before the Commission and it is not determinative in itself. Based on the evidence in the record, there is no indication that the applicant did not sign the release of his own free will or that he did not fully understand the terms and conditions of the Termination Allowance Offer. As for the applicant's other submissions, it is *ultra vires* the Court's jurisdiction to address such issues in a judicial review. The facts of the case at bar are similar to those in *O'Grady v Bell Canada*, 2012 FC 1448, where it was noted that the Court cannot adjudicate matters such as the settlement negotiations with an applicant's employer, or the reinstatement of long-term disability benefits or other compensation (*O'Grady* at paras 5-6). Accordingly, this Court does not have the jurisdiction to adjudicate on the legality of the memorandum of agreement, the applicant's right to make grievances under the collective agreement, whether the terms of the Termination Allowance Offer were unilaterally modified, and whether Unifor adequately represented the applicant during the negotiations with Bell. I would add that the applicant voluntarily decided not to make a grievance, and that, in any event,

he did not make a complaint of unfair representation against his bargaining agent – which is a matter coming under the jurisdiction of the Canada Industrial Relations Board and not the Canada Human Rights Commission.

[20] In conclusion, the Commission's decision is reasonable. The reasoning it adopted was cogent and supported by the evidence in the record. The Commission set out all the relevant factors to a decision under paragraph 41(1)(d) of the Act and remained within the ambit of its guidelines by assessing the evidence against the relevant factors. Based on the evidence before it, the Commission came to a conclusion that falls within the range of possible acceptable outcomes. Finally, I dismiss any allegation or suggestion made by the applicant that the inquiry process of the Commission was unfair, that he did not have the chance to present evidence, or that the rules of natural justice were otherwise violated by the Commission.

[21] Accordingly, this application shall be dismissed.

JUDGMENT

THIS COURT ADJUGES AND ORDERS that the application for judicial review made by the applicant be dismissed.

"Luc Martineau"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-259-15

STYLE OF CAUSE: JOSEPH SOHMER v LE SYNDICAT UNIFOR AND BELL CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 9, 2015

REASONS FOR JUDGMENT AND JUDGMENT: MARTINEAU J.

DATED: JANUARY 4, 2016

APPEARANCES:

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Me Maxime Lazure-Bérubé	FOR THE RESPONDENT LE SYNDICAT UNIFOR
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