Federal Court  Cour fédérale

Date: 20160512

Docket: T-616-15

Citation: 2016 FC 538

Ottawa, Ontario, May 12, 2016

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

DARCEY NOGA

Applicant

and

JAZZ AVIATION LP, AND TERRY GREEN, AND SUZANNE ASSEFF

Respondents

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of the Canadian Human Rights Commission [the Commission] dismissing the Applicant's discrimination complaint against her former employer, Jazz Aviation LP, pursuant to subsection 44(3)(b)(i) of the *Canada Human Rights Act*, RSC 1985, c H-6 [the Act].

I. Background

[2] Darcey Noga [the Applicant] was employed as a flight attendant by Jazz Aviation LP [the Respondent, or Jazz] from December 7, 1999, until July 22, 2008.

[3] On August 28, 2002, the Applicant was diagnosed with serious mental illness by a psychiatrist and was advised to take medical leave from work.

[4] Less than a month following her diagnosis, the Respondent advised the Applicant it had scheduled an Independent Medical Examination on her behalf, which she attended.

[5] The Applicant's claim for total disability with Manulife Financial, the Respondent's insurer, was approved up to August 2, 2007, at which point Manulife withdrew the Applicant's benefits, on the basis it determined the Applicant was no longer totally disabled from performing essential duties of any occupation, as defined by her group contract. She appealed this decision, which was denied in December 2007.

[6] A Manulife Vocational Rehabilitation Specialist contacted the Applicant in late August, and early September of 2007, regarding participation in rehabilitation. The facts are unclear as to whether the Applicant was required to contact Manulife to initiate participation, and thus whether she was "non-compliant" with the rehabilitation process.

[7] In a letter to the Applicant dated February 8, 2008, the Respondent claimed the Applicant had refused to attend vocational rehabilitation, and it offered her modified work in a sedentary position as a Flight Attendant Grooming Audit. She was directed to report at the Toronto base by February 18, 2008, ten days from the date of the letter. The letter concludes:

> Darcy [sic], if we do not hear from you by Monday, February 18th, we will deem you have abandoned your position at Jazz and your employment will be terminated accordingly.

[8] The Applicant replied, through legal counsel, on February 14, 2008, explaining that the vocational rehabilitation was simply a binder of material, not a service, and that she was further appealing Manulife's decision to end her benefits. The letter clarified that the Applicant had not abandoned her employment with Jazz, but that at present, she remained unable to work.

[9] In reply, the Respondent sent a further letter stating that both the Applicant's non-participation in the vocational rehabilitation process, and Manulife's denial of the Applicant's appeal, indicated that the Applicant was effectively abandoning her employment with Jazz. It offered the Applicant a final chance to commence ground duties on March 10, 2008.

[10] On March 6, 2008, the Applicant provided the Respondent with a medical letter from her treating psychiatrist, dated November 13, 2007. The letter described the Applicant's diagnosis, the coinciding symptoms, and her treatment plan. The letter made no conclusion regarding the Applicant's ability to return to work, other than that it might take longer than a year from the date of that letter.

[11] The Respondent sent a letter to the Applicant's Union on May 5, 2008, terminating the Applicant's employment on the basis of abandonment. She could re-establish the employment relationship if she provided medical information within 30 days indicating she was "totally disabled" from employment. The Union communicated to the Applicant the request for her to provide more medical information, or she would be terminated.

[12] On May 29, 2008, the Respondent emailed the Applicant a questionnaire to be answered by the Applicant's treating physician in order to clarify the Applicant's current medical status. The questionnaire sought information about, *inter alia*, objective findings supporting the Applicant's diagnosis; treatment; her ability to perform regular jobs, including with modified duties, and duration for such modified duties; her ability to carry out duties as a Flight Attendant Grooming Audit; and her prognosis for the foreseeable future.

[13] The Applicant faxed a reply medical letter, dated May 22, 2008, to what she had been told was the confidential fax number of Dr. Neal Sutton, the Respondent's medical consultant, who was to advise the Respondent of the Applicant's fitness to perform work. Although the Applicant's medical letter did not specifically answer the 17 questions, the Applicant's psychiatrist wrote again that the Applicant suffered from mental illness with significant comorbid symptoms. The letter indicated:

> There has been some progress but to confirm what was stated in my letter of November 13, 2007, Ms. Noga is still unable to work.
>
> Furthermore, because of the early signs of progress, it would be detrimental to her treatment to leave Saskatoon at present. She is still significantly avoidant and her support network is located in Saskatoon. Moving from Saskatoon would probably result in the reversal of progress that has been made over the past eight months.

[14] The Applicant proposed that Dr. Sutton speak directly to her treating psychiatrist.

[15] In response, the Respondent requested that the Applicant provide her entire medical chart. The Applicant declined, believing such a request was overly broad and invasive of privacy.

[16] As a result, by letter dated July 22, 2008, the Respondent informed the Applicant it was terminating her employment [the Termination Letter]. The Termination Letter indicates:

> This letter will serve as notification that as of today, July 22, 2008 your employment with Jazz is hereby terminated as you have failed to return to work from an absence, and in addition have failed to produce documentation sufficient to justify remaining away from the workplace. We have therefore concluded that you have abandoned your position with Jazz […]
>
> Upon review of the offer for the two medical practitioners to speak, and upon the advice of Dr. Sutton, it was Jazz's decision to decline this offer, however it was requested that Dr. Sutton instead be able to review your clinical chart records, with your signed consent, and from here make an independent determination of your current restrictions and limitations. This offer was communicated to your Union. The answer to Jazz was that you were not willing to consent to the release of your clinical chart records for Dr. Sutton's review […]
>
> As the information that has been provided by you to date has been insufficient, and you have declined our further attempts to resolve this matter, we see no justification for delaying our decision. Essentially we have no reason to believe that information will be provided to us now or in the foreseeable future which would provide needed clarity to your situation.

[17] The Applicant filed a complaint with the Commission on July 15, 2009, alleging that the Respondent, in terminating her employment, had discriminated against her on grounds of disability, contrary to subsection 3(1) and section 7 of the Act.

[18] The complaint was inactive pending the Applicant's grievance with her Union. The investigation was reactivated with the Commission on January 4, 2011, and an Investigator was designated to prepare a Report pursuant to subsections 43(1), and 44(1) of the Act.

[19] The Investigation Report [the Report] is detailed. In preparation, the Investigator reviewed all documentation submitted by the parties, and interviewed the Applicant and four of the Respondent's witnesses; Ms. Suzanne Asseff (Manager of Labour Relations, 2007-2008); Ms. Joan Morant (Occupational Health Nurse); Ms. Joslyn Dicks (former President, Canadian Flight Attendants Union [CFAU]); and Dr. Sutton (the Respondent's medical consultant). The Commission did not interview any of the Applicant's proposed witnesses (her doctor and father), concluding that they did not have direct knowledge of the complaint, or the information sought had already been provided by the witnesses interviewed or through documentation.

[20] The Commission concluded that the Applicant's termination by the Respondent appears to have been linked to her mental disability. Due to her medical illness, the Applicant was unable to work and informed the Respondent about her condition. The Respondent nonetheless terminated her employment on July 22, 2008, when, ten months after her disability benefits were terminated, the Applicant did not return to work.

[21] Accordingly, the Commission went on to assess whether the Respondent could provide a reasonable explanation for its actions that is not a pretext for discrimination on a prohibited ground.

[22] The Commission noted the Respondent's reasons for terminating the Applicant's employment were the Applicant's failure to: (i) provide objective medical information to support continued leave; and (ii) participate in Manulife's rehabilitation process.

[23] In assessing the first reason – sufficiency of medical information – the Report notes the following:

a. From 2002 – 2007, the Respondent received updates from Manulife regarding the Applicant's condition. After being notified that Manulife no longer considered the Applicant to be totally disabled from any occupation in August 2007, the Respondent inquired from Manulife about the Applicant's limitations for accommodation purposes. Manulife informed the Respondent of what it assessed to be the Applicant's capabilities and jobs it identified as suitable.

b. The Respondent stated that the sedentary ground duties as a Flight Attendant Grooming Audit met the Applicant's restrictions, as communicated to it by Manulife. The duties, performed at the Applicant's pace, involved observing cleanliness of the aircraft. Thus, the Respondent considered the Applicant absent without leave and advised her to report to Toronto to commence work in this position. At the time, the Applicant had not informed the Respondent she had a phobia of germs. Had she done so, the Respondent claims it would have adjusted her duties.

c. The Respondent claims it made every effort to obtain objective medical information from the Applicant to clarify the nature of tasks she could perform. Determining an appropriate course of action was difficult, as the Applicant claimed she was unable to work, yet Manulife had concluded she was able to perform some level of duties.

d. Ms. Morant, Occupational Health Nurse, stated that the medical information received from the Applicant's psychiatrist did not support her continued leave; it provided no additional information than that which Manulife had on file when it determined the Applicant was not totally disabled.

e. Dr. Sutton determined that the Applicant's medical information he reviewed, consisting only of the May 22, 2008 medical letter, was not objective, did not indicate measurable abnormality, and did not address the questionnaire. It was insufficient to enable him to make recommendations regarding her ability to return to modified duties.

f. The Applicant explained that her psychiatrist declined to answer the questionnaire, as he had addressed the issues in the November 7, 2007 and May 22, 2008 letters, and in his view, had provided sufficient medical information she was unable to work.

g. There is conflicting information surrounding what Dr. Sutton was informed of and requested from the Applicant. His memo to the Commission indicates he does not believe he was asked to speak with the Applicant's doctor; had he been asked, he would have done so, with the Applicant's written consent. As well, although the Respondent states that Dr. Sutton requested to review the Applicant's complete medical file, Dr. Sutton told the Investigator he does not recall requesting the medical file. Further, in Ms. Morant's experience, Dr. Sutton does not normally request medical chart notes, and she has no idea why he would have made such a request in this case.

h. The Applicant expressed serious privacy concerns surrounding the Respondent's use and protection of her medical information, and she felt that non-medical professionals had access to it. The Applicant also conveyed this concern to Ms. Dicks, former president of CFAU, who met with the Applicant to discuss possible accommodation options.

[24] The Report explains the Respondent's Disability Case Management Policy, implemented to aid in the proper accommodation of disabled employees' restrictions and limitations. The Respondent's temporary accommodation policy aims to provide reasonable accommodation to the point of undue hardship. Permanent accommodation may be provided an employee with sufficient medical information to indicate permanent work restrictions, which requires additional medical evaluations.

[25] The Respondent claims the Applicant obstructed the accommodation process in declining to participate in these policies by failing to provide consent to Manulife's release to the Respondent of all medical information.

[26] In investigating the Respondent's second stated reason for the Applicant's termination – the Applicant's failure to participate in the Rehabilitation Process – the Report notes the parties' conflicting positions. The Respondent claims the Applicant did not respond to Manulife's offer to participate in vocational rehabilitation services. The Applicant claims Manulife never offered her vocational rehabilitation services, but merely provided her with a binder about job searching. The conflicting evidence uncovered by the investigation shows:

a. An August 22, 2007 letter to the Applicant from Manulife indicates the Applicant would be forwarded a Vocational Job Search kit, and that the Applicant could contact a member of the Rehabilitation department with any questions.
b. A September 4, 2007 letter to the Applicant from Manulife indicates again it would be sending this kit. The letter also mentions that the Applicant had been contacted by

telephone at the end of August to offer Vocational Rehabilitation assistance for her job search, and advising the Applicant to respond within ten days.

c. A September 12, 2007 letter to "update" the Applicant on the status of her vocational rehabilitation plan indicates it was sending the Applicant a kit for her review to help facilitate her current efforts to return to employment. Should she require additional assistance with the package, or further information, she could contact the Rehabilitation Supervisor.

d. Ms. Morant, who spoke with the Applicant on October 19, 2007, believes the Applicant was aware she had to follow up with Manulife regarding the rehabilitation service.

[27] Upon review of all the above, the Report concludes that the evidence suggests the Respondent has provided a reasonable explanation for its actions that is not a pretext for discrimination on a prohibited ground.

[28] The Report also indicates that the Respondent's efforts to determine the nature of the Applicant's job limitations and its offer to provide a gradual return to work as a Flight Attendant Grooming Audit suggests that the Respondent discharged its duty to accommodate. Despite multiple efforts, the Respondent was unable to determine the exact nature of the Applicant's condition in order to address it through its accommodation policies. Moreover, the Applicant did not inform the Respondent of any limitations in her ability to carry out the accommodated work offered.

[29] The Commission also did not uncover evidence indicating that the Respondent violated the privacy and confidentiality of the Applicant's medical information.

[30] Finally, the Commission concluded that although there is conflicting evidence as to whether the Applicant had to take action or make a decision to participate in vocational rehabilitation, the evidence suggests the Applicant was aware that she had some obligation to follow-up on the process with her caseworker at Manulife, and that she failed to do so.

[31] The Commission recommended pursuant to subsection 44(3)(b)(i) of the Act that the Commission dismiss the complaint because: (i) the evidence does not support the allegations of the complaint; and (ii) further inquiry is not warranted.

[32] The Commission provided the parties with copies of the Report in August 2013, and invited the Applicant and Respondent to make submissions, which they did on September 10, 2013, and August 21, 2013, respectively [the Initial Responses].

[33] The Commission shared each party's Initial Responses with the other, and invited the parties to respond to the Initial Responses, which they did on October 3, 2013 and October 4, 2013, respectively [the further Responses].

[34] The Commission referred the parties to conciliation from November 2011, to May 2012, in an attempt to facilitate settlement, which was ultimately unsuccessful. The Commission forwarded copies of a Conciliation Report to both parties on September 30, 2014, and the parties

were invited to respond by the same process as for the Report. The Applicant submitted her Initial Response on November 6, 2014, to which the Respondent replied on December 9, 2014. The Applicant did not receive a copy of this reply until May 11, 2015.

[35] The Commission dismissed the Applicant's complaint by way of letter on March 23, 2015 [the Decision]. In rendering the Decision, the Commission reviewed the Report and any submissions filed in response. Under subsection 44(3)(b)(i) of the Act, the Commission dismissed the complaint, concluding that the evidence did not support the allegations of the complaint and having regard to all the circumstances, further inquiry was not warranted.

[36] Pursuant to *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 37 [*Sketchley*], because the Commission's Decision does not provide detailed reasons, the Report constitutes the reasons for the Commission's decision for dismissing the Applicant's complaint.

II. Issues

[37] The issues are:

A. Did the Commission breach procedural fairness in preparing the Investigation Report, and concluding the complaint warranted no further investigation?

B. Was the Commission's Decision unreasonable?

III. Standard of Review

[38] The quality and thoroughness of an investigation upon which the Commission bases its Decision is a matter of procedural fairness and the standard of review is correctness (*Forster v Canada (Attorney General)*, 2006 FC 787 at para 47 [*Forster*]).

[39] As well, the Commission is afforded broad latitude in performing its screening function and in interpreting evidence to determine whether or not a complaint warrants further inquiry (Act, subsections 44(3)(a), (b)). A decision not to refer a complaint to the Tribunal is discretionary, and is reviewable on the standard of reasonableness (*Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 at para 53; *Slattery v Canada (Human Rights Commission)*, [1994] FCJ No 181 at paras 55-57 [*Slattery*], aff'd [1996] FCJ No 385 (FCA)).

IV. Analysis

[40] The relevant provisions of the Act are attached as Annex A.

A. *Did the Commission breach procedural fairness in preparing the Investigation Report, and concluding the complaint warranted no further investigation?*

[41] The Applicant argues the Commission's investigation into her complaint was deficient and constitutes a denial of her right to procedural fairness (*Forster*, above, at para 47).

[42] The Applicant's Initial Response to the Report detailed a number of deficiencies in the Report that were not further investigated or addressed, including:

a. the Investigator's failure to interview any of the Applicant's witnesses;
b. the Report's failure to provide the Commission with rationale for its decisions regarding credibility and investigative omissions;
c. failure to investigate or assess contradictory evidence provided by the Respondent, including: (i) whether Dr. Sutton had requested the Applicant's entire medical report; and (ii) the Respondent's statement that "upon the advice of Dr. Sutton", it declined the Applicant's offer to have her psychiatrist speak to their medical consultant, while the Report indicates Dr. Sutton was unaware the offer had been made, and that it would have been customary for him to accept the offer;
d. failure to investigate the substance of Manulife's vocational rehabilitation program, in the result that the Respondent's assertion regarding the Applicant's participation was accepted as justification for discriminatory action against her.

[43] This Court has affirmed that in making the decision to move onto conciliation and a hearing before the Tribunal, the statutory decision-maker has a duty to ensure its decision is based on sufficient information, gathered through a properly conducted investigation (*Watt v Canada (Attorney General)*, 2006 FC 619 at para 18). A Decision reached on the basis of a deficient investigation will itself be deficient, as the Commission did not have sufficient relevant information upon which it could properly exercise its discretion (*El-Helou v Canada (Courts Administration Service)*, 2012 FC 1111 at para 92).

[44] The Federal Court of Appeal recently outlined what it considered to be a thorough investigation in *Bergeron v Canada (Attorney General)*, 2015 FCA 160 at para 74. In essence, an investigator need not pursue every conceivable angle, as a complainant's interests must be balanced against the Commission's interests in an administratively effective system. Only where there has been an "unreasonable omission", failures to investigate "obviously crucial evidence", or the investigation is "clearly deficient" has procedural fairness been breached (*Slattery*, above, at paras 56, 57).

[45] The Respondent submits that cumulatively the Applicant's alleged investigative omissions were before the Commission when it made its final Decision. Thus, the Commission decided the alleged deficiencies did not warrant reaching a different conclusion than that of the Investigator: this decision is owed deference.

[46] The duty of fairness in the context of a discretionary, administrative decision of the Commission to dismiss the Applicant's complaint following a section 41 investigation is not high, given that "[t]he investigation process is not intended to provide the full range of natural justice to a complainant" (*Shaw v Royal Canadian Mounted Police*, 2013 FC 711 at para 32 [*Shaw*]).

[47] The Investigation in the present case was detailed and thorough. The Report is lengthy, and sets out the evidence, including conflicting evidence, uncovered in the process of the investigation. The Investigator reviewed all submitted documentation and interviewed five individuals in preparation of the Report.

[48] The Investigator's decision not to interview the Applicant's suggested witnesses was not procedurally unfair, particularly considering the Commission's wide latitude to control its process. Further, the Investigator was entitled to conclude that the suggested witnesses would not provide new and probative evidence to which the Investigator did not already have access. As the Respondent points out, the Applicant has no right to choose the witnesses interviewed (*Shaw*, above, at para 32).

[49] In *Slattery*, above, the Federal Court observed that "deference must be given to administrative decision-makers to assess the probative value of evidence and to decide to further investigate or not to further investigate accordingly". Consequently, "[i]t should only be where unreasonable omissions are made, for example where an investigator failed to investigate obviously crucial evidence, that judicial review is warranted" (para 56). In other words, the Court's intervention on matters of procedural fairness in reviewing such decisions is limited to "investigative flaws that are so fundamental that they cannot be remedied by the parties' further responding submissions" (*Sketchley*, above, at para 38).

[50] In this case, the Applicant knew the allegations against her - the Investigator's recommendation - and the case she was required to meet was set out in the Report (*Khapar v Air Canada*, 2014 FC 138 at para 56). The Applicant was provided an opportunity to respond on two occasions; initially, and again in Response to the Respondent's submissions. The Applicant took advantage of both these opportunities, and made lengthy submissions which brought to the Commission's attention what, in the Applicant's mind, constituted deficiencies and gaps in the Report. The Decision notes that the Commission considered the Report and all responding

submissions, and in my view any omissions in the Report were remedied, on a procedural fairness basis, by the Applicant having had the opportunity to draw the Commission's attention to them before rendering its Decision.

B. *Was the Commission's Decision unreasonable?*

[51] The Applicant submits that the Commission's conclusion that the Respondent's termination of her employment was not on account of her disability was unreasonable, as there was no credible evidence it was for any other reason.

[52] Moreover, the Applicant argues there is no evidence before the Commission that the Applicant failed to participate in the rehabilitation program – one of the cited reasons for her termination. In fact, the Applicant submits there is uncontroverted evidence suggesting the opposite: that she participated in the program to the fullest extent possible. Accordingly, the Commission's decision is based on an erroneous finding of fact, contradicted by the material before it.

[53] Further, it is the Applicant's position that there was evidence before the Commission that the Applicant had made considerable effort to provide the Respondent with sufficient medical information necessary to assess her disability. The Respondent's medical consultant, Dr. Sutton, was only provided one of the medical assessments sent to the Respondent, and thus the fact his assessment was based on incomplete information was not the fault of the Applicant. Moreover, the Applicant's unwillingness to provide the Respondent with her entire medical chart should not be held against her.

[54] The Report reviews the evidence regarding the Applicant's required participation in the Manulife rehabilitation program, acknowledges that there is conflicting evidence as to whether the Applicant actually had to take action or make a decision, and ultimately concludes that "the evidence suggests that the complainant was aware that she had some obligation to at least follow-up on the process with her caseworker at Manulife, and that she failed to do so".

[55] Additionally, the Applicant's allegation that the Investigator failed to recognize her efforts to provide sufficient medical information is not supported on the evidence. The Report reviews in detail the exchange of requests for medical information between the Applicant and Respondent: the Investigator explained the questionnaire, the Applicant's offer to have her Doctor speak to Dr. Sutton, that Dr. Sutton does not recall this request, and information that either Dr. Sutton or the Respondent requested her entire medical charts, a request she was unwilling to grant. This led the Investigator to conclude that the Respondent was unable to determine the exact nature of the Applicant's condition to address it through accommodation.

[56] The mere presence of contradictory evidence in a report is not proof an Investigator ignored evidence. As this Court set out in *Shaw*, above, at para 25, "[t]he investigator is not obliged to refer to all the evidence that was submitted." It was not unreasonable for the Investigator and the Commission to decide as they did, particularly given the wide latitude the Commission is afforded in carrying out its screening function, and in interpreting the sufficiency of evidence to determine whether or not a complaint warrants further inquiry. Deference is owed the Commission in its assessment of the probative value of evidence before it, and in its ultimate decision to investigate further or not (*Slattery*, above, at para 57).

[57] The Investigator found evidence that the medical information supplied by the Applicant was insufficient for the Respondent's medical consultant to properly assess her functional state, and that the Applicant was uncooperative in complying with the Respondent's attempts to obtain additional medical information. I am conscious that dismissal of the Applicant's complaint may well preclude any further legal redress for the harm the Applicant alleges. However, upon review of the Decision and the information before the Commission, its finding that the Respondent had an explanation for its actions that was not a pretext for discrimination, and thus the conclusion that further inquiry was not warranted was reasonable, and was justified by transparent and intelligible reasons.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. Based on the facts of this case, I award no costs.

"Michael D. Manson"
Judge

ANNEX A

Canadian Human Rights Act (RSC, 1985, c H-6)

Prohibited grounds of discrimination

3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Motifs de distinction illicite

3 (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.

Employment

7 It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

Emploi

7 Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :

a) de refuser d'employer ou de continuer d'employer un individu;

b) de le défavoriser en cours d'emploi.

Investigation

Designation of investigator

43 (1) The Commission may designate a person, in this Part referred to as an "investigator", to investigate a complaint.

Enquête

Nomination de l'enquêteur

43 (1) La Commission peut charger une personne, appelée, dans la présente loi, « l'enquêteur », d'enquêter sur une plainte.

Report

44 (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.

Rapport

44 (1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.

Idem

(3) On receipt of a report referred to in subsection (1), the Commission

Idem

(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :

(a) may request the Chairperson of the Tribunal to institute an inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and

(ii) that the complaint to which the report relates should not be referred pursuant to subsection (2) or dismissed on any ground mentioned in paragraphs 41(c) to (e); or

(b) shall dismiss the complaint to which the report relates if it is satisfied

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or

(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(c) to (e).

a) peut demander au président du Tribunal de désigner, en application de l'article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue :

(i) d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,

(ii) d'autre part, qu'il n'y a pas lieu de renvoyer la plainte en application du paragraphe (2) ni de la rejeter aux termes des alinéas 41c) à e);

b) rejette la plainte, si elle est convaincue :

(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,

(ii) soit que la plainte doit être rejetée pour l'un des motifs énoncés aux alinéas 41c) à e).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-616-15
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DATED:	MAY 12, 2016

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