Federal Court Cour fédérale

Date: 20160803

Dockets: T-887-15
T-1379-15

Citation: 2016 FC 894

Ottawa, Ontario, August 3, 2016

PRESENT: The Honourable Mr. Justice Boswell

Docket: T-887-15

BETWEEN:

MILLBROOK FIRST NATION

Applicant

and

STACEY LEE TABOR

Respondent

Docket: T-1379-15

AND BETWEEN:

MILLBROOK FIRST NATION

Applicant

and

STACEY LEE TABOR

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Millbrook First Nation, has brought an application pursuant to subsection 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, for judicial review of a decision of the Canadian Human Rights Tribunal dated April 29, 2015; that decision upheld the Respondent's claims that Millbrook had denied her employment in its fishery over several years because she is a woman and, in 2008, excluded her from captaining a fishing vessel based on her marital status because Millbrook had a dispute with her husband following his captaincy of a vessel in 2007. The Applicant has also brought an application for judicial review of a further decision of the Tribunal dated July 23, 2015; that decision upheld, in part, the Respondent's claims that Millbrook retaliated against her because of her initial discrimination complaint.

[2] In the first application (Court File T-887-15), the Applicant seeks an order setting aside the Tribunal's decision [the Discrimination Decision] and returning the matter to another member of the Tribunal for reconsideration. In the second application (Court File T-1379-15), the Applicant seeks an order setting aside that portion of the Tribunal's decision in which it found that two of the Respondent's complaints of retaliation were substantiated [the Retaliation Decision] and returning the matter to another member of the Tribunal for reconsideration. The Respondent asks that each application be dismissed with costs. Although these two applications were heard together, it will be necessary to review each of the Discrimination Decision and the Retaliation Decision separately in the following reasons for judgment.

I. Background

[3] The Respondent, Stacey Lee Tabor, is a Mi'kmaq woman who resides in the Millbrook First Nation community located in Truro, Nova Scotia. In 1996, she worked as a student fishery guardian for Millbrook. Between 1998 and 2000, she obtained various certificates relating to marine emergencies, radio operations, and simulated electronic navigation and also completed a captain's training course. Initially, Millbrook refused to pay Ms. Tabor's tuition for the captain's course because she had "taken a spot from a man," but on the last day of the course Millbrook agreed to pay her tuition.

[4] In April 2001, Ms. Tabor was employed by Millbrook as a deckhand during the lobster fishing season, and in 2002 she again worked as a deckhand for the lobster season. She became pregnant in July 2002 and by the end of September 2002 was unable to fish the remainder of the crab season due to the pain caused by her pregnancy. She gave birth to her son in March 2003 and returned to work in the fishery in September 2003; she had to stop working though because the scar from her caesarean-section ripped open after her first trip back to fishing. From January to March 2004, Ms. Tabor worked for Millbrook making lobster traps. She made several unsuccessful attempts from 2004 to 2007 to obtain a position in the Millbrook fishery.

[5] In April 2007, the Respondent's husband, Craig Tabor, became the captain of a vessel for the lobster season in Lismore and the Respondent worked with him as a deckhand. Ms. Tabor says she was the one who taught her husband about fishing since he had little experience prior to 2002 when they met. According to Ms. Tabor, her husband was offered opportunities in the

Millbrook fishery (such as participating in the snow crab fishery in June 2002) that were denied to her because the fisheries manager told her she did not have the proper experience.

[6] In January 2008, the Respondent and her husband had a discussion with Alex Cope, the Millbrook Band Administrator, who informed them that neither she nor Mr. Tabor would be considered for a fishing license for the upcoming lobster season. Adrian Gloade, the Band Fisheries Manager, told the Respondent in February 2008 that the lobster licenses had been distributed without any type of bidding process. All of those who previously had licences were again granted licenses, with the license previously held by Mr. Tabor going to Frank Gloade. According to Ms. Tabor, Adrian Gloade advised her that she had been considered for a licence, but that her qualifications and training were not considered.

[7] On May 21, 2008, the Respondent filed a human rights complaint against Millbrook with the Canadian Human Rights Commission [the Discrimination Complaint] on the basis that Millbrook had discriminated against her because of her sex and her marital status. The Respondent complained that the denial of a lobster fishing license was discrimination not only on the basis of her sex but also by reason of her marital status due to the conflict between Mr. Tabor and Millbrook which, according to Ms. Tabor, influenced the decision to not grant her a license.

[8] Subsequent to the filing of the Discrimination Complaint against Millbrook, Dr. Tom Cooper hired Ms. Tabor in June 2009 to assist with a research project that required travel to First Nation communities. Ms. Tabor says she lost this job in September 2009 after Millbrook refused to take part in the project if she was part of the research team. Also, in 2009, the Respondent

applied for funds to allow her and Mr. Tabor to travel to Halifax to take an exam for qualification as an officer with the Department of Fisheries and Oceans. According to the Respondent, Bill Pictou, the Millbrook Employment Training Officer, advised her that since she was already a student at Nova Scotia Community College, she did not qualify for this funding. The Millbrook fisheries office also denied funding for this travel. Ultimately, funds from the Respondent’s house maintenance budget were reallocated to pay for this travel.

[9] On January 16, 2009, the Respondent filed a second complaint with the Canadian Human Rights Commission [the Retaliation Complaint], complaining of retaliation by Millbrook for the Discrimination Complaint. The Retaliation Complaint was amended to include Ms. Tabor’s loss of the job with Dr. Cooper and her being unable to complete a work placement at the Millbrook Health Centre. Both complaints were referred to the Canadian Human Rights Tribunal [the CHRT] on March 7, 2011.

[10] There were various disputes involving Ms. Tabor and Millbrook following the filing of the Retaliation Complaint. These included: an allegation that the Respondent owed money to Millbrook; home oil deliveries to the Respondent; the Respondent’s late father’s residence; and cheques in the Respondent’s name that were cashed without her signature. On August 27, 2012, the Respondent advised the CHRT through her counsel that she wished to add a further retaliation complaint concerning the behaviour of Milbrook in making a false representation at a hearing before the Social Assistance Appeal Board.

[11] On May 4, 2013, the Respondent provided an Amended Statement of Particulars concerning these disputes, and further complained that following the Discrimination Complaint Millbrook had made baseless claims of welfare fraud against the Tabors, threatened the Respondent with action for not “keeping up” her property while also not paying rent for a welfare recipient who lived with her, and refused or obstructed Mr. Tabor in his attempts to secure funding for education. On May 27, 2013, Millbrook denied these further allegations in a Response, to which the Respondent subsequently provided a Reply.

[12] The Discrimination Complaint and the Retaliation Complaint were heard together in Truro, Nova Scotia, over the course of seven days in late July and early August 2014, and on September 16, 2014. The CHRT provided its own recording system to record the testimony at the hearing and, after the hearing, provided the parties with a CD Rom copy of the audio recording. Millbrook employed a transcription service to prepare a transcript of the hearing before the CHRT.

[13] The parties agreed to bifurcate the hearing before the CHRT between the merits of the two complaints and what remedies, if any, were warranted. The CHRT, however, rendered two separate decisions on the merits of the complaints: the Discrimination Decision dated April 29, 2015 in relation to the Discrimination Complaint (see *Tabor v. Millbrook First Nation*, 2015 CHRT 9 (CanLII)); and the Retaliation Decision dated July 23, 2015 in relation to the Retaliation Complaint (see *Tabor v. Millbrook First Nation*, 2015 CHRT 18 (CanLII)).

II. The Discrimination Decision

[14] The CHRT found that the Respondent's Discrimination Complaint under sections 7 and 10 of the *Canadian Human Rights Act*, RSC 1985, c. H-6 [*CHRA*], was substantiated. These sections provide as follows:

Employment	**Emploi**
7 It is a discriminatory practice, directly or indirectly,	**7** Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :
(a) to refuse to employ or continue to employ any individual, or	**a)** de refuser d'employer ou de continuer d'employer un individu;
(b) in the course of employment, to differentiate adversely in relation to an employee,	**b)** de le défavoriser en cours d'emploi.
on a prohibited ground of discrimination.	
…	…
Discriminatory policy or practice	**Lignes de conduite discriminatoires**
10 It is a discriminatory practice for an employer, employee organization or employer organization	**10** Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :

(a) to establish or pursue a policy or practice, or	**a)** de fixer ou d'appliquer des lignes de conduite;
(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,	**b)** de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.
that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.	

[15] The CHRT noted that a complainant has the burden of proof to establish a *prima facie* case, and that Ms. Tabor's allegations here were broader than the 2008 decision to deny her a fishing license. Following the test from *Ontario Human Rights Commission v Simpsons-Sears*, [1985] 2 SCR 536, 23 DLR (4th) 321 (SCC) [*O'Malley*], the CHRT stated that Ms. Tabor had to establish that: (1) she had a characteristic protected from discrimination under the *CHRA*; (2) she was refused or deprived employment or treated adversely in employment; and (3) the protected characteristic was a factor in the refusal to employ her. If a *prima facie* case was established, the CHRT stated that Millbrook then had the evidentiary burden of rebutting the *prima facie* case.

[16] The CHRT categorized Ms. Tabor's evidence of discrimination into six areas: (1) derogatory comments about women; (2) difficulty accessing funding for captain's training; (3) work experience with Millbrook and the Millbrook fishery from 2000 to 2006; (4) the 2007 lobster season; (5) the 2008 captain's license; and (6) the experience of other women in

Millbrook's administration and fishery. Based on this evidence, the CHRT found Ms. Tabor had established a *prima facie* case of discrimination under sections 7 and 10 of the *CHRA*, on the compound grounds of sex and marital status.

[17] The CHRT found that Ms. Tabor's testimony and that of her husband was consistent even under cross-examination and was both credible and reliable. Ms. Tabor's evidence as to the larger context of the Millbrook community was corroborated by two witnesses, Clara Gloade and Loretta Bernard. The CHRT further found, based upon Ms. Tabor's testimony and that of Ms. Gloade and Ms. Bernard, that the facts leading up to the 2008 decision to deny a captaincy for Ms. Tabor presented a *prima facie* case under section 7 of the *CHRA* on the basis of sex and on the basis of marital status, as well as a *prima facie* case under subsection 10(a) on the basis of sex.

[18] The CHRT then considered Millbrook's evidence. With respect to the derogatory comments about women, the CHRT found Mr. Cope's evidence on this issue was "unconvincing and unreliable" and accepted that the comments were in fact directed at Ms. Tabor in 2005. On the issue of funds for the captain's training, the CHRT found that while Ms. Gloade's memory had faded, her testimony was otherwise reliable on two specific points: that women were treated differently than men in Millbrook; and that Ms. Gloade had raised the issue of Ms. Tabor's funding for her course at the School of Fisheries before the Millbrook Band Council. The CHRT further found Millbrook's explanation for Ms. Tabor's difficulty in obtaining funding for captain's training to be "unreliable and unconvincing." In the CHRT's view, the illness of Ms. Tabor's father in 1997, along with the inconsistency between Mr. Cope's testimony and his

affidavit, put into question the credibility of Mr. Cope's response and Millbrook's explanation for the initial denial of funding.

[19] As to the Millbrook fishery between 2003 and 2006, the CHRT found Ms. Tabor's testimony credible and reasonable as to why she could not secure employment in Millbrook's fishery and why she eventually gave up trying to work in the fishery and dedicated herself to her childcare responsibilities. Ms. Bernard's testimony corroborated that of Ms. Tabor that she was interested in obtaining fishery employment throughout this time period.

[20] With respect to the 2007 lobster season and Millbrook's dispute with Ms. Tabor's husband, the CHRT found that the pictures of the boat provided by Millbrook were undated and no damage to the boat was apparent from the pictures. The CHRT also found that the alleged maintenance issues were not brought to Mr. Tabor's knowledge until 2008, nor was there a survey of the vessel, although the gear and sales issues had been promptly raised with him. The CHRT noted contradictions between Adrian Gloade's testimony and Millbrook's original response about the lobster sales, and the CHRT found Mr. Gloade's evidence on this issue unreliable. The CHRT further found that nothing in Ms. Tabor's employment agreement held her responsible for any sales, maintenance, and gear storage issues. In the CHRT's view, it was more probable than not that Millbrook's dispute with Mr. Tabor excluded her from future work in the fishery and that Ms. Tabor's marital status was a factor in her not being considered for a captain's license in 2008.

[21] With respect to the 2008 fishing license, the CHRT found Millbrook's position - that the Respondent did not apply but they considered her - to be contradictory, and that Millbrook did not consider her because of her gender and its conflict with Mr. Tabor. The CHRT noted that there is no formal application process for a licence, and found Adrian Gloade's evidence in this regard was not credible. The CHRT also found Ms. Tabor's explanation for why she saw no reason to take the drug test in April 2008, since the license had already been awarded to Frank Gloade, to be logical and credible.

[22] The CHRT found that Millbrook's expert, Allan Tobey, who testified as to who was more qualified to captain a fishing boat in 2008 as between Frank Gloade and Ms. Tabor, had not been provided with a complete overview of Ms. Tabor's seafaring experience prior to working for Millbrook, nor with a complete list of her training certificates. The CHRT acknowledged Mr. Tobey's opinion that this additional information would not have changed his opinion, yet it found his evidence unreliable because his information came solely from Millbrook and its characterization of some of Ms. Tabor's experience as being that of a "student deckhand", while the mentoring of Frank Gloade and Mr. Tabor was not so characterized.

[23] The CHRT determined that whether Ms. Tabor's Master Limited certificate expired in 2008 was irrelevant because it did not support Millbrook's position that a comparison of candidate qualifications was performed. The CHRT found that if Frank Gloade was more qualified at fishing in Lismore, it was in part because the years in which he did so were years when Millbrook refused to employ Ms. Tabor and he was therefore given opportunities she was not. There was, in the CHRT's mind, no reason to believe that Millbrook's attitude towards Ms.

Tabor changed in 2008 because her requests for employment in the fishery from 2004 to 2006 were not taken seriously by Millbrook officials. The CHRT thus concluded:

> [130] I find Millbrook's explanation for not awarding Ms. Tabor the captain's license in 2008, based on qualifications, to be unreliable, unconvincing and unreasonable. The impression I am left with after analyzing Millbrook's response to this complaint is that it crafted an explanation to Ms. Tabor's allegations, after the fact, and tailored its argument and evidence in an attempt to narrow the issues in this complaint to a simple comparison of the qualifications of Ms. Tabor and Frank Gloade for the 2008 captain's license. The emphasis on qualifications, including having an expert testify on the issue in an attempt to validate a stated "formal" comparison of candidates; and, raising an insurance issue related to qualifications, which was not supported by any documentation or otherwise, are all indications of this. It is also contradictory in my mind, and indicative of a pretext, that Millbrook would, on one hand, argue Ms. Tabor did not apply for the captain's license in 2008 and, on the other hand, say she was fully considered based on comparing her qualifications against the other candidates who applied. As stated above, the issues in this complaint are much broader than the 2008 captain's decision and Ms. Tabor's treatment in the years leading up to that decision is indicative that she was not considered at all for that license and that Millbrook's response to this complaint is pretextual.

[24] The CHRT then considered the experience of other women in Millbrook, dismissing Millbrook's argument that as a First Nations people who had been discriminated against, it would not discriminate against others. The CHRT considered Millbrook's evidence that five women had worked in the fishery in 2008, but upon closer scrutiny the CHRT found that only two women out of the 45 to 60 individuals hired as crewmembers actually fished for Millbrook. After noting that there still were few women working in Millbrook's fishery in 2014, the CHRT stated:

> [143] On its own, the statistical evidence of women being a minority in Millbrook's fishery does not substantiate that Ms. Tabor, or women generally, are denied employment opportunities in Millbrook's fishery (*Canada (Attorney General) v. Walden*,

> 2010 FC 490 (CanLII) at paras. 109-110). However, it is circumstantial evidence from which inferences of discriminatory conduct may be drawn (*Canada (Human Rights Commission) v. Canada (Department of National Health and Welfare)*, 1998 CanLII 7740 (FC) at para. 22).
>
> [144] In my view, the statistical evidence reinforces Ms. Tabor's evidence regarding the comments about women in the fishery and her difficulty in gaining employment and funding for training within Millbrook's fishery. When combined with Mr. Tabor's evidence on his career path with Millbrook's fishery, a stark contrast between the treatment of men and women in Millbrook's fishery emerges. Finally, there was Ms. Gloade and Ms. Bernard's evidence regarding Ms. Tabor's treatment and their own experience with Millbrook's administration and fishery, evidence I found to be credible despite Millbrook's challenges thereto as addressed above. With specific regard to Ms. Gloade, I would note that while she could not remember some conversations and events, her consistent and repeated impression of her two decades on Band Coucil [*sic*], through her testimony and affidavit, was that men and women are treated differently in Millbrook. This long-term impression is reliable and is distinguishable from remembering specific events or conversations. For all these reasons, I am convinced that Ms. Tabor's experience, and the statistical representation of women in Millbrook's fishery, is reflective of a practice of depriving women of employment opportunities fishing for Millbrook's fishery.
>
> [145] As a result, I find Millbrook has engaged in a discriminatory practice pursuant to section 10(a) of the *CHRA*.

[25] The CHRT thus concluded that Ms. Tabor's complaint had been substantiated. Since the parties had agreed they would attempt to resolve the issue of remedy before the CHRT made an order against Millbrook pursuant to subsection 53(2) of the *CHRA*, the CHRT invited the parties to begin settlement discussions in response to the findings in the Discrimination Decision and further stated that, until such time as the issue of remedy was resolved, it retained jurisdiction over the matter.

III. The Retaliation Decision

[26] The CHRT noted at the outset of its decision dated July 23, 2015, that section 14.1 of the *CHRA* provides that it is a discriminatory practice for a person against whom a complaint has been filed, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim. Citing *O'Malley*, the CHRT stated that a complainant must provide evidence which, if believed, is complete and sufficient to justify a finding that the respondent retaliated against him or her. To establish a *prima facie* case of retaliation, the CHRT further stated that complainants are required to show that: they have made a complaint under the *CHRA*; they experienced adverse treatment following the filing of their complaint from the person against whom the complaint was filed or any person acting on behalf of such person; and that, the human rights complaint was a factor in the adverse treatment.

[27] The CHRT determined that it is inconsistent with the broad and liberal interpretation of the *CHRA* to require proof of intent for a party to establish retaliation, and the motive of the discriminator is not central. In the CHRT's view, a complainant must still present sufficient evidence to justify that their human rights complaint was a factor in any alleged adverse treatment following the filing of their complaint, whether based on a reasonable perception thereof or otherwise. If sufficient evidence is presented to establish a *prima facie* case of retaliation, the CHRT stated its role is then to consider the complainant's evidence, alongside any evidence presented by the respondent, to determine whether it is more probable than not that retaliation had occurred.

[28] The CHRT concluded that two of the nine allegations in the Retaliation Complaint were substantiated. The first substantiated allegation was that Millbrook interfered with the Respondent's research position. The CHRT found that the affidavits of Dr. Cooper and Mr. Hickey should be given little weight as they did not testify and were not cross-examined, and their evidence was inconsistent with the preponderance of evidence. The Respondent filed emails from Mr. Hickey which contradicted Dr. Cooper's statement that he did not want the Respondent to contact Millbrook fishery, and in the CHRT's view this evidence rendered their depiction of the Respondent's termination unreliable. Their statements that Ms. Tabor spontaneously volunteered to resign also made no sense, the CHRT found, and the CHRT preferred Ms. Tabor's evidence which was detailed, credible, and upon which she was cross-examined. The CHRT thus found it was more probable than not that Millbrook refused to participate if the Respondent remained involved in the research project, and this was a factor in losing her position as a research assistant.

[29] The second substantiated allegation was that Millbrook denied travel funds to Ms. Tabor to upgrade her education and job qualifications. The CHRT rejected Millbrook's argument that because the Respondent had a history of starting and not finishing training, and was already studying as a medical assistant, that Millbrook would not fund her travel. The evidence, the CHRT found, did not support Millbrook's claims that the Respondent failed to finish various training programs, except for when she left captain's training in 1997 to care for her ill father. Similarly, the CHRT found that, contrary to Mr. Cope's affidavit, the evidence also did not demonstrate that Ms. Tabor had a history of not finishing training. The CHRT found that Ms. Tabor's human rights complaint was a factor in the denial of travel funds. The CHRT determined

that the Respondent's perceptions of retaliation were reasonable, considering the denial of opportunities to her and the unreliability of the explanations by Mr. Cope and Millbrook for the denial of funds.

[30] The CHRT found the Respondent's other allegations of retaliation were not substantiated. In particular, the CHRT determined that Millbrook had not: taken improper action against Ms. Tabor under its social welfare system; delayed issuing a possession certificate with regard to her late father's residence; charged her for the cost of a new stove; held her accountable for cheques issued in her name which were cashed without her signature; refused to pay her power bill; required her to pay rent; and, had not denied her a work placement at Millbrook's Health Centre. It is not necessary, in the context of these reasons for judgment, to summarize the CHRT's specific findings and reasons for why these allegations were not substantiated because the Respondent has not challenged the CHRT's findings in this regard and because Millbrook seeks an order setting aside only that portion of the Retaliation Decision in which two of the Respondent's allegations of retaliation were substantiated.

IV. Issues and Standard of Review

[31] The Applicant raises various issues with respect to the Discrimination Decision and the Retaliation Decision, and for her part the Respondent adopts the issues as formulated by the Applicant. In my view though, the overarching issues are whether each decision was rendered in a procedurally fair manner and in accord with the standard of reasonableness.

[32] The CHRT's substantive decisions in this case are each to be reviewed in view of the reasonableness standard (see: *Adamson v Canadian Human Rights Commission*, 2015 FCA 153, 474 NR 136, at paras 29 and 30). Consequently, the CHRT's findings with respect to questions of fact and of mixed fact and law are to be assessed with regard to whether they were reasonable (see: *Seeley v. Canadian National Railway*, 2014 FCA 111, 458 N.R. 349, at para 35).

[33] Accordingly, the Court will not intervene if each of the CHRT's decisions is justifiable, transparent, and intelligible, and it must determine "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*], at para 47. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at para 16.

[34] Furthermore, each of the decisions under review must be considered as an organic whole and the Court should not embark upon a line-by-line treasure hunt for error (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd.*, 2013 SCC 34, [2013] 2 SCR 458, at para 54; see also *Ameni v Canada (Citizenship and Immigration)*, 2016 FC 164, [2016] FCJ No 142 (QL), at para 35). Moreover, "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; and it also is "not … the

function of the reviewing court to reweigh the evidence”: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at paras 59 and 61.

[35] Judicial review of the CHRT’s decisions in this case is not, therefore, a rehearing of the facts and evidence upon which Ms. Tabor relied at the hearing before the CHRT to support her complaints of discrimination and retaliation. The CHRT’s determinations and assessment of the evidence before it are entitled to deference by this Court (see: *Dunsmuir* at paras 48 to 53).

[36] As for the issues of procedural fairness raised by the Applicant, this involves review by the Court on a standard of correctness, rather than a deferential standard of reasonableness. As noted by the Supreme Court in *Mission Institution v Khela*, 2014 SCC 24, [2014] 1 SCR 502, at para 79: “the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be ‘correctness’”. This requires the Court to determine whether the process followed by the CHRT achieved the level of fairness required by the circumstances of the matter (see: *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3, at para 115). It is not, therefore, so much a question of whether the CHRT’s decisions were correct as it is a question of whether the process followed by the CHRT in making its decisions was fair (see: *Hashi v Canada (Citizenship and Immigration)*, 2014 FC 154, [2014] FCJ No 167, at para 14; and *Makoundi v Canada (Attorney General)*, 2014 FC 1177, [2014] FCJ No 1333, at para 35).

V. Analysis

A. *Procedural Fairness Issues*

[37] The Applicant contends that the recording of the hearing before the CHRT is so deficient that the Court is unable to properly and fully assess the CHRT's decisions and, based on *CUPE Local 301 v Montreal (City)*, [1997] 1 SCR 793, 144 DLR (4th) 577 [*CUPE*], that the only option is a new hearing. According to the Applicant, it is impossible to tell whether the inaudible portions of the recording as reflected in the written transcript it commissioned are just a couple of words or pages of evidence.

[38] For her part, the Respondent notes that in *CUPE*, unlike the present case, the tape was completely blank. In this case, the Respondent points to the substantial record and any inaudible testimony in the recording is an insignificant part of the record. She argues that the Applicant has not pointed to any specific evidence that is missing or shown how any gaps in the recording prejudice Millbrook's ability to seek judicial review. The Respondent further notes that some of the sections marked inaudible in the transcript are not truly inaudible, when one listens to the recording, and that the transcriptionist identified the short timeline imposed by the Applicant for preparation of the transcript as being a problem.

[39] I agree with the Respondent that the Applicant has not pointed to any specific evidence that is missing or shown how any gaps in the recording prejudice Millbrook's ability to seek judicial review. Some of the sections marked "inaudible" in the transcript commissioned by Millbrook can be clearly heard and understood upon listening to the audio recording supplied by

the CHRT. For example, the transcriptionist wrote the following for the first portion of testimony on August 1, 2014:

> **THE CHAIR:** Good morning. First of all, we will discuss… (inaudible – too far from microphone). Mr. Kayter?
>
> (Application Record, Court File T-1379-15, at page 1584)

[40] However, in listening to the audio recording, the statement is quite clearly:

> **THE CHAIR:** Good morning. First of all, we will discuss the expert report that was just handed in… umm. Mr. Kayter?
>
> (Audio recording, Day 4, August 1, 2014)

[41] It is true that the other two inaudible markings on that page of the record are difficult to make out when listening to the recording. However, just because there may be some portions of the transcript which are marked as being inaudible does not necessarily mean that the testimony was not heard by the CHRT or that its decisions were made in a procedurally unfair manner.

[42] In addition, it should be noted that at least some other portions of the transcript marked as being inaudible are not in fact inaudible: for example, in the Application Record for Court file T-1379-15, at page 987, the second inaudible is clearly “your representative”; and at page 1835, the first inaudible is clearly “…kinda some tentative dates …”. Consequently, I reject the Applicant’s argument that the absence of a complete recording of the hearing prevents a proper judicial review of the CHRT’s decisions. Any inaudible section of the recording as reflected in the transcript and as assessed by the Court is insignificant upon review of the otherwise voluminous record before the Court.

[43] The Applicant also contends that it was denied procedural fairness because the CHRT unilaterally decided to issue two separate decisions, several months apart, stemming from the same hearing. In this regard, the Applicant relies upon *Carpenter Fishing Corp. v Canada*, [1998] 2 FC 548, 155 DLR (4th) 572 [*Carpenter*], leave to appeal refused (1999) 249 NR 200 (SCC), and argues that the CHRT's rendering of two decisions was "an unusual approach." The Applicant further complains that the CHRT breached the commitment in its Practice Note No. 1 that decisions are to be released "as often as possible within a four month time frame". The Applicant asserts that the CHRT kept its bifurcation plan to itself until the Discrimination Decision was released and that it is inappropriate to release a decision in installments.

[44] In contrast, the Respondent says that the Applicant's reliance on *Carpenter* is misguided because that decision was subsequently rendered moot following enactment of Rule 107 of the *Federal Courts Rules*, as noted in *Illva Saranno SPA v Privilegiata Fabbrica Marashine Excelsior*, [1998] FCJ No 1500, 157 FTR 217. This matter, the Respondent notes, involves two separate decisions emanating from one hearing and it is a judicial review, not a trial in respect of some cause of action in the Federal Court, both of which differentiate this case from *Carpenter*. According to the Respondent, there was a "natural and practical break" between the two decisions which are mutually exclusive and involve functionally distinct complaints, and the Applicant has suffered no prejudice as it is still able to seek judicial review of both decisions.

[45] I find no merit in the Applicant's arguments that it was denied procedural fairness by the CHRT's determination to render the Discrimination Decision and, subsequently, the Retaliation

Decision following the conclusion of the hearing at which both complaints were heard. The Applicant grounds its arguments in this regard on the following passage in *Carpenter*:

> **8** Before dealing with the merit of the appeal, I cannot help but observe, although the parties did not raise any objection in that respect, that the procedure followed by the Trial Judge is, to say the least, unusual. Excepting the cases where a contrary practice is authorized by the Federal Court Rules, only one judgment should be rendered following the trial of an action and that judgment should dispose of all the issues between the parties. A trial judge may certainly split a trial into many phases; he should not, however, after a phase of the trial, render a judgment unless that judgment disposes of the action. A judgment should not be rendered "by instalments". Despite of this irregularity we have nevertheless heard the appeal; a year has elapsed since the reasons for judgment have been issued and the interests of all require that no further delay be incurred. In view of the conclusion we have ultimately reached, the decision to hear the appeal has now proved to be a wise one. However, we do not wish to be seen as condoning the practice of splitting the judgment followed by the Trial Judge in a case such as the present one.

[46] The Applicant's reliance upon *Carpenter* is misguided for various reasons. First, the quoted passage is clearly *obiter dicta* because, although the issues at trial in *Carpenter* had been bifurcated and split into the legality issue and, if and when illegality was found, the issue of relief, the case did not decide the propriety of a bifurcation of issues or of a decision in a proceeding; on the contrary, *Carpenter* decided only whether a portion of the fishery quota system at issue in the case was unlawful. Second, and more to the point, *Carpenter* dealt with the bifurcation of issues in the context of a statement of claim against the Crown and against the then Minister of Fisheries and Oceans in Federal Court where it is well-established that "there should only be one final order in an action" (see: *Time Warner Entertainment Co., LP v Jane Doe*, [2000] 186 FTR 303, 6 CPR (4th) 124, at para 6). The rationale for the principle that a judgment

should not be rendered in installments is clearly stated in *Time Warner Entertainment Co, LP v Jane Doe*, 2002 FCT 394, 113 ACWS (3d) 528, where Justice Pelletier stated:

> **3** … It is well established that only one final order will issue on a claim. See *Carpenter Fishing Corp. v. Canada* (1997), [1998] 2 F.C. 548 (Fed. C.A.). The underlying rationale is that upon judgment being issued, the underlying cause of action merges in the judgment and will not support any further adjudication by the court except in terms of the judgment issued. This is so whether the judgment in question is issued after adjudication or upon consent. *Prairie Hydraulic Equipment Ltd. v. Everest Equipment Inc.*, [1998] B.C.J. No. 1121 (B.C. C.A.).

[47] In this case, there are two separate decisions of the CHRT relating to two separate and distinct complaints. Although the decisions emanated from one hearing, the CHRT in this case simply released one set of reasons on the Discrimination Complaint, and a second set of reasons on the Retaliation Complaint. Even if this procedure adopted by the CHRT may be unusual, as the Applicant suggests, in my view there is nothing inherently unfair to the Applicant by the CHRT releasing its decisions in this manner following the hearing which dealt with two distinct complaints. Although this manner of proceeding may not be the best practice in all cases, as it could cloud the question of when a tribunal becomes *functus officio* or possibly prevent the parties from negotiating a remedy for a complaint because they might need the entire outcome of the matter determined before they can do so, this is not the case here because the CHRT explicitly retained jurisdiction over the two complaints, not only in the Discrimination Decision but also in the Retaliation Decision where it concluded:

> [93] As the [retaliation] complaint has been substantiated in part, I may make an order against Millbrook First Nation pursuant to section 53(2) of the *CHRA*. However, the parties agreed to bifurcate argument on remedy from the merits of the complaint. Following Tabor #1 [the Discrimination Decision], I invited the parties to begin settlement discussions in response to the findings in that decision and would seek an update from them thereon

> following the release of this decision (see Tabor #1 at para. 148). The parties have subsequently indicated that settlement discussions have not been successful. As a result, the CHRT will be in contact with the parties shortly to obtain submissions from them on the issue of remedy resulting from both decisions.
>
> [94] Until such time as the issue of remedy is finally resolved in both Ms. Tabor's complaints, the CHRT retains jurisdiction in both matters.

[48] On a broader level, when it comes to procedural fairness, the Court is required to look at the specific context of the case and consider all the circumstances (*Knight v Indian Head School Division No. 19*, [1990] 1 SCR 653, 106 NR 17) as well as the procedural fairness factors set forth in *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817, 174 DLR (4th) 193, at paras 21 to 28. It is true that neither party expected the CHRT's decision with respect to the outcome of the hearing would be bifurcated. However, I fail to see how this fact, alone, can justify quashing the CHRT's decisions on the ground they were rendered in a procedurally unfair manner. There were two complaints before the CHRT and, in my view, it was neither unfair nor incorrect (nor for that matter unreasonable) for the CHRT to release a decision considering each of the complaints separately. The Applicant makes no argument that its presentation of evidence and submissions to the CHRT would have somehow been different had it known there would be a separate decision in respect of each complaint. The CHRT was at liberty to follow its own procedure to yield a just and expeditious outcome with respect to each complaint following the hearing, so long as it did so fairly; and in this case it did so.

B. *The Discrimination Decision*

[49] The Applicant identifies and argues that the CHRT made six substantive errors in the Discrimination Decision, such that the Court's intervention is required. In particular, the Applicant states the CHRT erred by: (1) attributing to the First Nation the comment allegedly made by Mr. Cope about women and their breasts; (2) misstating the evidence and making a credibility finding against Mr. Cope on that basis; (3) ignoring or failing to hear that the Respondent was "okay" at times with staying home with her child; (4) finding that the Respondent did not pursue fishery training after 2000 due to lack of funding when she had not applied for funding; (5) ignoring or failing to hear that the Respondent was expecting a child in 2006 and therefore unable to work on the boat Mr. Tabor was operating; and (6) finding that the Respondent was related to Donald Marshall Jr.

[50] In my view, none of these alleged errors is sufficient, whether considered individually or cumulatively, to warrant the Court's intervention. For the most part, the Applicant's arguments about the errors allegedly made by the CHRT amount to, in effect, nothing more than a request for this Court to reweigh and reassess the evidence and outcomes before the CHRT. A judicial review is not, as the Applicant would have it, a rehearing of the facts and evidence upon which Ms. Tabor relied at the hearing before the CHRT to support her complaints of discrimination and retaliation. On the contrary, the Court's role on judicial review is limited to looking at the CHRT's Discrimination Decision and the record which formed the basis of that decision, and assessing whether the decision reached by the CHRT satisfies the reasonableness standard. Reweighing the evidence that was before the CHRT to reach a conclusion or outcome different

from that of the CHRT is not the proper role of this Court on judicial review. It is not the place of this Court, as noted above, to reweigh the evidence before the CHRT and come to its own conclusion or preferred outcome.

[51] Although there may be some merit in the Applicant's complaints about the discrepancy in the dates when Mr. Cope commented about women and their breasts, these comments were not, as the Applicant suggests, attributed to Millbrook as a whole by the CHRT. It was not unreasonable for the CHRT to consider these comments, regardless of when they may have actually been made, in considering systemic discrimination against women in the Millbrook fishery.

[52] Furthermore, the errors allegedly made by the CHRT are not sufficient to show that the CHRT ignored or misconstrued the evidence before it in such a significant or material manner that its Discrimination Decision was unreasonable and requires the Court's intervention. On a reasonableness outcome, even if the CHRT may have erred, as the Applicant suggests, in its findings as to why the Applicant left her educational program in 1997 and that she did not have a history of leaving courses unfinished, that does not render the Discrimination Decision, when reviewed as an organic whole, unreasonable.

[53] In short, I find the CHRT's Discrimination Decision is justifiable, transparent, and intelligible, and it falls well within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

C. *The Retaliation Decision*

[54] The Applicant argues that the Retaliation Decision was unreasonable because the CHRT relied upon cases that did not deal with retaliation (i.e., *O'Malley and Moore v British Columbia (Education)*, 2012 SCC 61, [2012] 3 SCR 360 [*Moore*]) and adopted an improper test for retaliation. According to the Applicant, by requiring that a complainant show only a *prima facie* case, the CHRT utilized a much lower threshold test for retaliation than that adopted in several decisions of the CHRT. By rejecting case law which suggests that a complainant must show proof of intention to retaliate, the Applicant says the CHRT placed too much weight on the Respondent's perception of herself as a victim. According to the Applicant, intention must be an element of the test for retaliation in order to maintain objectivity in the test.

[55] With respect to the CHRT's findings of retaliation, the Applicant argues that the CHRT erred by failing to consider relevant evidence and therefore breached natural justice and procedural fairness, and also erred in finding the allegations of retaliation to be substantiated in part. It was unreasonable, the Applicant says, for the CHRT to find that Ms. Tabor lost her research job due to retaliation because her evidence was limited and constituted double hearsay inasmuch as it was based on what Dr. Cooper told her about his conversation with Millbrook's Chief, Lawrence Paul. As to the denial of travel funds, the Applicant criticizes the CHRT for not analyzing the actual amount in issue, being only about $90, and argues that the CHRT's reasons in this regard were conclusory in nature and insufficient for Millbrook to know why its argument on this issue was unsuccessful. According to the Applicant, this approach by the CHRT was unreasonable and unfair.

[56] For her part, the Respondent notes that retaliation is a well-established form of discrimination, and since *O'Malley* and *Moore* both deal with the general requirements for finding *prima facie* discrimination, it was not unreasonable for the CHRT to rely upon these two decisions in formulating a test for retaliation. The Respondent says that the test adopted by the CHRT is commonsensical and well-reasoned, and that the CHRT did not reject established jurisprudence but made a well-reasoned decision. According to the Respondent, the CHRT was required to analyze the reasonableness of her perception of retaliation, which is an objective element, and cases such as *Warman v Winnicki*, 2006 CHRT 20 (CanLII), reject intent as being a required element to establish a retaliation complaint. Intent, she argues, can be used to satisfy the retaliation test but is not necessary.

[57] The Respondent submits that, while the case law may be unsettled about whether an intention to retaliate is a necessary element to establish a retaliation complaint, requiring proof of intention would impose a heavier burden than is required by human rights legislation. The Respondent points to this Court's decision in *Boiko v Canada (National Research Council)*, 2010 FC 110, 362 FTR 258, at para 35 [*Boiko*]), for the proposition that retaliation can be established when a complainant reasonably perceives an act to be retaliation for a human rights complaint. The Respondent says the CHRT's approach for finding retaliation under section 14.1 of the *CHRA* was reasonable and one which does not require a complainant to prove a "subjective thought" in the perpetrator's head.

[58] With respect to the CHRT's findings of retaliation, the Respondent argues that none of the Applicant's evidence concerning the loss of her research job could be considered "best

evidence" when compared to her detailed testimony. According to the Respondent, it was open to the CHRT to give the affidavits of Dr. Cooper and Mr. Hickey little weight and to accept the Respondent's evidence. As to the denial of travel funding, the Respondent argues that the $90 amount for mileage is a fabrication by the Applicant, and the CHRT never made a finding that it was solely travel to Halifax that made up this aspect of the retaliation complaint. The Respondent argues that the CHRT's findings that the Respondent proved *prima facie* retaliation were reasonable, and that, contrary to the Applicant's position, the CHRT provided a detailed and well-reasoned decision.

[59] The parties disagree as to whether an intention to retaliate is a required element to establish a retaliation complaint. The CHRT framed this issue as follows in setting out its test for retaliation:

> [6] The onus of establishing retaliation rests on the complainant, who must present a *prima facie* case. That is, the complainant must provide evidence which, if believed, is complete and sufficient to justify a verdict that the respondent retaliated against him or her (see *Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC), [1985] 2 SCR 536 at para. 28 [*O'Malley*]). To establish a *prima facie* case of retaliation, complainants are required to show that they have made a complaint under the *CHRA*; that they experienced adverse treatment following the filing of their complaint from the person they filed a complaint against or any person acting on their behalf; and, that the human rights complaint was a factor in the adverse treatment (see *Moore v. British Columbia (Education)*, 2012 SCC 61 (CanLII) at para. 33).
>
> [7] To prove a previous human rights complaint was a factor in any adverse treatment a complainant suffered, the CHRT has sometimes required the complainant to establish proof of an intention to retaliate (see *Virk v. Bell Canada*, 2005 CHRT 2 (CanLII); *Malec*, *Malec*, *Kaltush*, *Ishpatao*, *Tettaut*, *Malec*, *Mestépapéo*, *Kaltush v. Conseil des Montagnais de Natashquan*, 2010 CHRT 2 (CanLII); and, *Cassidy v. Canada Post Corporation & Raj Thambirajah*, 2012 CHRT 29 (CanLII)). Others have

> examined a complainant's reasonable perception that the act is retaliatory instead of requiring proof of intent (see *Wong v. Royal Bank of Canada*, 2001 CanLII 8499 (CHRT); and *Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 40 (CanLII)). In the second group of cases, the reasonableness of the complainant's perception is measured so as not to hold the respondent accountable for unreasonable anxiety or undue reaction by the complainant.
>
> [8] In my view, to require proof of intent in order to establish retaliation places a higher burden to substantiate this discriminatory practice than for any of the others outlined in the *CHRA*. This is not consistent with a broad and liberal interpretation of the *CHRA* or human rights legislation in general (see *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2015 CHRT 14 (CanLII) at paras. 3-28).
>
> [9] Retaliation is a discriminatory practice under the *CHRA* (see sections 4 and 39 of the *CHRA*). The *CHRA* is primarily aimed at eliminating discrimination, not punishing those who discriminate. Therefore, "the motives or intention of those who discriminate are not central to its concerns" (*Robichaud v. Canada (Treasury Board)*, 1987 CanLII 73 (SCC) at para. 10 [*Robichaud*]) Rather, the *CHRA* is "…directed to redressing socially undesirable conditions quite apart from the reasons for their existence" (*Robichaud* at para. 10). Furthermore, to require proof of intent to establish discrimination would "…place a virtually insuperable barrier in the way of a complainant seeking a remedy" as "[i]t would be extremely difficult in most circumstances to prove motive…" (*O'Malley* at paragraph 14). As the CHRT has stated many times: "Discrimination is not a practise which one would expect to see displayed overtly" (*Basi v. Canadian National Railway*, 1988 CanLII 108 (CHRT)).

[60] Case law has established that an act of retaliation is an independent discriminatory practice (see, e.g. *Gainer v Canada (Export Development Canada)*, 2006 FC 814 at para 36, 295 FTR 137). Furthermore, in *Boiko*, this Court adopted the decision of the CHRT in *Wong v. Royal Bank of Canada*, [2001] C.H.R.D. No. 11 [*Wong*], stating that there are two ways to establish retaliation:

> [35] Under section 14.1 of the Act, there are two ways to establish a retaliation complaint. The first is where there is evidence that the respondent intended the act to serve as retaliation; and the second is where the applicant reasonably perceives the act to be retaliation for the human rights complaint: *Wong v. Royal Bank of Canada*, [2001] C.H.R.D. No. 11 at paragraph 219.

[61] In *Wong*, the CHRT made the following observations about section 14.1 of the *CHRA*:

> **218** There have been a number of decisions dealing with retaliation/reprisal/provision under provincial Human Rights Codes. The decision most often referred to is *Entrop v. Imperial Oil Ltd. (No. 7)*.[2] [(1995), 23 C.H.R.R. D/213; aff'd (1998) O.A.C. 188 (Div. Ct.); varied on other grounds (2000), 50 O.R. 3(d) 18 (C.A.).] In *Entrop*, the Ontario Board of Inquiry dealt with interpretation of section 8 of the Ontario Human Rights Code. The wording of this section is different from that of section 14.1 of the Act. Nonetheless, in my opinion, the purpose of and protection offered by section 8 of the Ontario Code is similar to section 14.1. It prohibits reprisal against an individual for exercising their rights under the Act.
>
> **219** According to *Entrop*, to prove a violation under this section, there must be a link between the alleged act of retaliation and the enforcement of the complainant's rights under the Act. Where there is evidence that the respondent intended the act to serve as retaliation for the human rights complaint, the linkage is established. But if the complainant reasonably perceived that the act to be retaliation for the human rights complaint, this could also amount to retaliation, quite apart from any proven intention of the respondent. Of course, the "reasonableness" of the complainant's perception must be measured. Respondents should not be accountable for unreasonable anxiety or undue reaction of the complainant. [footnote omitted]

[62] More recently, in *First Nations Child & Family Caring Society of Canada v Canada (Minister of Indian and Northern Affairs)*, 2015 CHRT 14 (CanLII) [*First Nations*], the CHRT reviewed the law on retaliation and determined that, as with any other discrimination complaint: "…the complainant must provide evidence which, if believed, is complete and sufficient to

justify a verdict that the respondent retaliated against him or her" (at para 4). Rather than being founded on a prohibited ground of discrimination, however, retaliation complaints are founded on a previous human rights complaint, the complainant's subsequent experience of some adverse treatment following the filing of their complaint, and the human rights complaint being a factor in the adverse treatment (*First Nations* at para 5). The CHRT's decision in *First Nations* concluded that the *Wong* approach is preferable in that a requirement to establish intent is a higher burden than the one to establish any other discriminatory practice and intention is not required for other discrimination claims.

[63] In this case, it was reasonable for the CHRT in the Retaliation Decision to adopt and apply the approach followed in *First Nations*. It also was reasonable for the CHRT to note the Supreme Court's decisions in *O'Malley* (at para 14) and in *Robichaud v Canada (Treasury Board)*, [1987] 2 SCR 84, [1987] SCJ No 47, at para 9, where the Supreme Court held that intention is not a necessary element to prove discrimination. While these Supreme Court decisions may be somewhat dated, they nonetheless remain good law as the Supreme Court noted in *Quebec (Commission des droits de la personne et des droits de la jeunesse) c Bombardier Inc.*, 2015 SCC 39, [2015] 2 SCR 789, at para 40.

[64] The CHRT did not, in my view, err in determining that there did not need to be proof of intention in order for the Respondent to prove retaliation. This does not mean that the test for retaliation is purely or totally subjective because there still must be at least a *reasonable* perception that retaliation has occurred. The requirement for there to be a reasonable perception of retaliation injects the necessary objective element into the test. In this case, the CHRT rejected

some of the Respondent's perceptions of retaliation because they were not reasonable, and in this regard the CHRT clearly had the appropriate test in mind.

[65] As to the Applicant's argument that the decision is unreasonable because the CHRT accepted Ms. Tabor's "double hearsay" evidence about the loss of her research job over the evidence of Dr. Cooper, Mr. Hickey, and Mr. Gloade, this argument is devoid of any merit because it is simply a request by the Applicant for a reweighing of the evidence, and any concerns about hearsay in this regard should have been raised at the hearing before the CHRT. The CHRT has wide latitude to weigh evidence and prefer some evidence over other evidence, and it is owed deference on its weighing of the evidence. In this case, the CHRT provided clear reasons for why it chose to place little weight on the evidence of Dr. Cooper and Mr. Hickey. Although it might not be the Court's preference to rely on hearsay evidence, the CHRT's control over its own procedures permit it to do so. Indeed, paragraph 50(3)(c) of the *CHRA* explicitly provides that the CHRT may, subject to two limited exceptions, "receive and accept any evidence and other information, whether on oath or by affidavit or otherwise, that the member or panel sees fit, whether or not that evidence or information is or would be admissible in a court of law".

[66] The Applicant's arguments as to the CHRT's finding of retaliation due to the Respondent being denied travel funds are also without merit. Regardless of the actual amount of these expenses, the pertinent question is the reasonableness of the CHRT's decision that the denial of travel funds was retaliation by Millbrook. In my view, the CHRT's findings in this regard were justifiable, transparent, and intelligible, and therefore reasonable, and its Retaliation Decision is

well within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

VI. Conclusion

[67] For the reasons stated above, I conclude that neither the Discrimination Decision nor the Retaliation Decision was procedurally unfair or substantively unreasonable. Accordingly, Millbrook's applications for judicial review are dismissed.

[68] The Respondent is entitled to and has requested her costs with respect to each application for judicial review. Pursuant to Rule 400 of the *Federal Courts Rules*, SOR/98-106, I award costs to the Respondent in the fixed lump sum of $3,000.00 (inclusive of any taxes, disbursements and other expenses) in respect of each application, for a total amount of $6,000.00 (inclusive of any taxes, disbursements and other expenses).

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. the Applicant's applications for judicial review are each dismissed;
2. the Respondent is awarded costs in the fixed lump sum of $3,000.00 (inclusive of any taxes, disbursements and other expenses) in respect of each application, for a total amount of $6,000.00 (inclusive of any taxes, disbursements and other expenses); and
3. a copy of this judgment and reasons shall be placed in each of Court File No. T-887-15 and Court File No. T-1379-15.

"Keith M. Boswell"

Judge