Federal Court  Cour fédérale

Date: 20170502

Docket: T-1959-16

Citation: 2017 FC 440

Toronto, Ontario, May 2, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

NADINE WISDOM

Applicant

and

AIR CANADA

Respondent

JUDGMENT AND REASONS

Overview

[1] This is an application for judicial review of a decision of the Canadian Human Rights Commission [the Commission] dated October 13, 2016, advising that it would not proceed with the Applicant's complaint against the Respondent, Air Canada, under the *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA].

[2] As explained in greater detail below, this application is dismissed, because the Applicant has not demonstrated the Commission's decision to fall outside the range of possible acceptable outcomes, defensible in respect of the facts and the law, and therefore to be unreasonable.

Background

[3] The Applicant, Ms. Nadine Wisdom, is a station attendant working in Air Canada's cargo facility in Toronto. Her position falls under the auspices of the collective agreement between her employer and her union, the International Association of Machinists and Aerospace Workers [the Union].

[4] Leading up to March 2015, Ms. Wisdom had been working on a rotating schedule between the hours of 10pm and 6am. In March 2015, she approached Air Canada's management to discuss and formally request a temporary, short term work shift scheduling accommodation over the upcoming summer months, as her personal circumstances had changed such that her previous childcare arrangements for her five-year-old son were no longer consistently available.

[5] Ms. Wisdom attended two meetings with Air Canada's management on April 13, 2015 and April 21, 2015, following which Air Canada wrote to her on April 24, 2015, listing information that it stated was required prior to considering her accommodation request. Ms. Wisdom responded on the same date, clarifying that four of the seven listed items had been previously provided, but taking issue with requests relating to the demonstration of her custody of her son and her adult daughter's personal schedule.

[6] On May 27, 2015, the Respondent proposed a potential accommodation plan, but consideration of this plan did not progress, because representatives of the Union and Air Canada were away on vacation. In the meantime, Ms. Wisdom was without child care and was unable to attend for her scheduled work shifts. On June 2, 2015, the Union filed a grievance based on Ms. Wisdom's resulting financial hardship. The following day Air Canada commenced a disciplinary process against Ms. Wisdom relating to unsubstantiated absences, ordering Ms. Wisdom to immediately return to her regularly scheduled work shift, failing which progressive discipline, up to and including termination, would ensue.

[7] On June 3, 2015, Ms. Wisdom attended her regularly scheduled work shift, bringing her son with her, because she was without child care and in order to verify the legitimacy of her shift accommodation requirement. Air Canada's management ordered her to return home and, on June 5, 2015, emailed Ms. Wisdom and immediately terminated her employment.

[8] The grievance previously filed by the Union was expanded to include this termination. On August 4, 2015, an arbitration award ordered that Ms. Wisdom be reinstated in her position. Arbitrator William Kaplan [the Arbitrator] concluded that Ms. Wisdom did not fully cooperate in the accommodation process and that some of her communications and behaviour appropriately attracted discipline. However, the Arbitrator found that, while just cause for discipline was established, this was not a case in which termination was justified. He ordered that Ms. Wisdom be reinstated to employment effective immediately with no loss of seniority and no compensation. The full decision states as follows:

> The grievor is a station attendant in the Cargo Branch. In the spring of 2015 she sought accommodation to facilitate childcare

> arrangements. Detailed briefs and ancillary documents were filed. The matter proceeded to a hearing and the grievor also testified. The evidence makes it very clear that the grievor did not fully cooperate in the accommodation process. Moreover, some of her communications and behaviour – in particular certain emails and bringing her child to work – were completely unacceptable and appropriately attracted discipline. The fact is that the grievor absented herself from work, insisted on a particular accommodation solution, and would not cooperate in a facilitative discussion that would consider various accommodation options, nor would she respond to legitimate requests for further information. However, while just cause for discipline is established, this is not a case in which termination is justified. Accordingly, the grievor is reinstated to employment effective immediately with no loss of seniority or service and no compensation. She was advised at the hearing that further behaviour of the kind exhibited prior to her discharge will attract significant discipline and her reinstatement is with a suspension for time served along with a final warning. If she wishes, the grievor may make her and the employer's pension contributions for the period of her suspension and she has 12 months from the date of this award in which to do so. It should be noted that the grievor indicated at the hearing that there is no outstanding accommodation issue.

[9] On September 3, 2015, Ms. Wisdom filed an application with the Federal Court, seeking judicial review of the Arbitrator's decision. On September 29, 2015, Air Canada filed a motion seeking to have the application dismissed. Ms. Wisdom explains that the Union declined to support her in the Federal Court application and that, on October 6, 2015, she withdrew it by notice of discontinuance.

[10] In the meantime, Ms. Wisdom also initiated a complaint with the Commission, alleging discrimination by Air Canada in her employment, on the ground of family status, contrary to s.7 and 10 of the CHRA. In connection with this complaint, on January 29, 2016, the Commission wrote to the parties, noting that s.41(1) of the CHRA applied, as another process (the arbitration)

may have already dealt with Ms. Wisdom's allegations. The Commission explained that a report would be prepared to assist with its decision whether to deal with the complaint and sought submissions from the parties on this issue. Both Ms. Wisdom and Air Canada participated in this process.

[11] This report was issued on June 30, 2016 [the Report], recommending pursuant to s.41(1)(d) of the CHRA that the Commission not deal with the complaint because the arbitration had addressed the allegation of discrimination overall. The parties made further submissions in response to the Report, following which the Commission delivered its October 13, 2016 decision not to proceed with Ms. Wisdom's complaint.

The Commission's Decision

[12] The parties are in agreement that the reasons for the Commission's decision are found in the Report on which the decision was based. The Report noted that the Commission can refuse to deal with a complaint if another process has already addressed the allegations of discrimination, such a complaint being "vexatious" within the meaning of s.41(1)(d) of the CHRA. The Report also reviewed jurisprudence explaining the Commission's role in considering whether it should refuse to deal with the complaint under s.41(1)(d).

[13] The Report then set out the positions of both parties, followed by the analysis which led to the resulting recommendation. That analysis recited the Arbitrator's decision, noting that it clearly addressed the complainant's allegations related to the respondent's invasive demands for information and adverse treatment of her following her request for a short-term accommodation

to meet her child-care needs. In considering Ms. Wisdom's position that the Arbitrator did not fully consider the human rights violations, the Report reviewed the Union's arbitration brief and found that all relevant information was put before the Arbitrator. The Report noted that the complainant's human rights complaint raises the same issues that were raised in the arbitration process, that the complainant had a chance to raise all of her human rights issues through the arbitration process, that she was represented by her union, and that she had the opportunity to testify on her own behalf at the hearing.

[14] The Report found that there was not a significant difference between the arbitration process under the complainant's collective agreement and the Commission's process. As such, the Report found that the grievance arbitration process was fully capable of dealing with the complainant's human rights issues and, if warranted, could have provided her with appropriate remedies for any human rights violations.

[15] The Report observed that, if the Commission were to decide to deal with Ms. Wisdom's complaint, it would be addressing issues already decided by a decision-maker that has the authority to apply and award remedies under the CHRA. It noted that the CHRA complaint process is not an appeal mechanism for grievance arbitration decisions and found that the complainant had not demonstrated that justice required that the Commission deal with the complaint. Relying on the guidance by the Supreme Court of Canada in *British Colombia (Workers' Competition Board) v Figliola*, 2011 SCC 52 [*Figliola*], the Report concluded that the Commission must respect the finality of decisions made by other administrative decision-makers with the authority to apply human rights legislation. Considering *Penner v Niagara*

(Regional Police Services Board), 2013 SCC 19 [*Penner*], as no information had been presented to suggest that the grievance arbitration process was unfair, or that it would be unfair to use the Arbitrator's decision in considering whether the Commission should deal with the complaint, the Report concluded that justice does not require that the Commission deal with the complaint.

Issues and Standard of Review

[16] The Applicant articulates the following issues for the Court's consideration and has structured her arguments around these issues:

A. What is the appropriate standard of review?

B. Did the Commission have jurisdictional authority to receive the Applicant's discrimination complaint?

C. Did the Commission err in law in interpreting and applying sections 40 and 41 of the CHRA?

D. Was the Commission's decision reasonable?

E. Was the Commission's denial decision based on a serious misunderstanding and misapplication of the facts and evidence?

F. Did the Commission err in adherence to principles of natural justice and procedural fairness by failing to provide adequate reasons for its decision?

[17] The Respondent submits that the only issues raise by this application are:

A. What is the appropriate standard of review?

B. Was the Commission's decision reasonable?

[18] The parties are in agreement that the standard of review applicable to the Court's review of the Commission's decision is reasonableness, as informed by the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para 47, which explains that reasonableness is concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. This entails affording deference to the decision under review. In the specific context of the Commission's consideration of claims under s. 41(1) of the CHRA, the Federal Court of Appeal noted in *Canada (Attorney General) v Davis*, 2010 FCA 134, at para 5, that the Commission enjoys considerable latitude when performing its screening function on receipt of an investigator's report and that the courts must not intervene lightly in its decisions at this stage.

[19] As the standard of review is not contested, my conclusion is that the only issue for the Court's consideration is whether the Commission's decision is reasonable. In performing that assessment, I will address the various arguments raised by Ms. Wilson.

Analysis

[20] Section 41(1) of the CHRA, which provides the basis for the Commission's screening function, states as follows:

Commission to deal with complaint	**Irrecevabilité**
41 (1) Subject to section 40, the Commission	41 (1) Sous réserve de l'article 40, la

shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that a) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available; b) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act; c) the complaint is beyond the jurisdiction of the Commission; d) the complaint is trivial, frivolous, vexatious or made in bad faith; or e) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.	Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants : a) la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts; b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale; c) la plainte n'est pas de sa compétence; d) la plainte est frivole, vexatoire ou entachée de mauvaise foi; e) la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.

[21] The subsection employed by the Commission, in reaching the decision impugned in the case at hand, is s. 41(1)(d), related to vexatious complaints. As noted in the Report, the Commission can refuse to deal with a complaint that is considered vexatious, because another complaint or grievance process has already addressed the allegations of discrimination.

[22] The first argument raised by Ms. Wisdom in her Memorandum of Fact and Law is that the Commission had jurisdiction to receive her discrimination complaint. This argument is not contested by Air Canada. As identified in decisions of the Canadian Human Rights Tribunal

upon which Ms. Wisdom relies (*Coulter v Purolator Courier Limited*, 2004 CHRT 1, at para 32; *Eyerley v Seaspan International Limited*, [2000] CHRD No 14 , at para 21), the Commission has jurisdiction to address complaints of discrimination in the workplace, notwithstanding the existence of a collective agreement. Rather, the issue for consideration in the present case is not whether the Commission lacked jurisdiction but whether it reasonably made its decision under s. 41(1)(d) not to exercise that jurisdiction.

[23] In addressing this issue, Ms. Wisdom submits that the Commission erred in its interpretation and application of s. 41 of the CHRA, misunderstood and misapplied the facts and evidence, and did not provide adequate reasons for its decision, all amounting to the making of an unreasonable decision. In advancing those arguments, I have identified Ms. Wisdom's contentions, that the Commission's decision was unreasonable, as falling principally into three categories. First, Ms. Wisdom submits that the Commission has failed to consider her evidence, which she argues substantiates her discrimination complaint and demonstrates that the Arbitrator did not receive all the evidence available. Second, she argues that the Commission's decision was unreasonable because the Arbitrator's decision did not address her allegations of discrimination. Third, she argues that there were aspects of the arbitration process that were procedurally unfair.

[24] Turning first to the argument that the Commission failed to consider her evidence, I note that, at the hearing of this application for judicial review, Ms. Wisdom clarified that she is not arguing that the Commission failed to consider evidence that she submitted to it. Rather, her argument is that, because it screened out her complaint under s. 41(1)(d) of the CHRA, and

therefore did not investigate it further, the Commission did not review what Ms. Wisdom describes as "verifiable evidence" which substantiates her complaint. She advised at the hearing that the evidence she is referring to consists of the communications between her and Air Canada management during her pursuit of her accommodation request. I understand Ms. Wisdom's position to be that this evidence demonstrates that the Arbitrator was biased or otherwise erred in reaching his conclusions, including that she was not cooperative in the accommodation process and that Air Canada's requests for information were legitimate.

[25] Ms. Wisdom also explained at the hearing that the crux of her position before the Arbitrator, the Commission, and now the Court was that Air Canada's requests for information were not legitimate. She refers to their requests for documentation establishing her custody of her son and for information relating to her adult daughter's personal schedule. She takes the position, as she did with Air Canada at the time, that these requests were inappropriately intrusive and represent discrimination based on her family status.

[26] The difficulty for Mr. Wisdom, in terms of her ability to succeed on this argument, is that the evidence of her communications was not before the Commission when it made the impugned decision at the screening stage of its process, nor is it relevant to that decision, because the merits of the complaint were not under consideration at that stage. She correctly points out that she was instructed by the Commission not to include such evidence in connection with its consideration of s. 41(1) of the CHRA. The Commission's letter to her, dated January 29, 2016, explained that it would not look at any evidence related to the human rights allegations at that time. However, this is because the Commission was at the screening stage of its process, at which point it does

not consider the merits of the complaint but rather the question of whether the complaint is vexatious, in the sense that another process had already dealt with the allegations.

[27] In *Khapar v Air Canada*, 2014 FC 138 [*Khapar*] (affirmed 2015 FCA 99, application for leave to SCC dismissed), at paragraph 64, Justice Kane explained the Commission's role at the screening stage as follows:

> 64 The case law is clear that the section 40/41 stage is for screening. Accordingly, the focus of the Commission is whether there is sufficient evidence before it to refer the complaint for further inquiry. It is not the role of the Commission at the section 40/41 stage to look behind the facts and to determine if a complaint is made out. As the Supreme Court held in *Cooper v. Canada (Canadian Human Rights Commission)*, [1996] 3 S.C.R. 854 at para 53, 140 D.L.R. (4th) 193:
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> > 53 The Commission is not an adjudicative body; that is the role of a tribunal appointed under the Act. When deciding whether a complaint should proceed to be inquired into by a tribunal, the Commission fulfills a screening analysis somewhat analogous to that of a judge at a preliminary inquiry. It is not the job of the Commission to determine if the complaint is made out. Rather its duty is to decide if, under the provisions of the Act, an inquiry is warranted having regard to all the facts. The central component of the Commission's role, then, is that of assessing the sufficiency of the evidence before it.

[28] The process followed by the Commission in the present case is consistent with this jurisprudence. The Commission did not receive and consider evidence relevant to determining whether Ms. Wisdom's complaint was made out but restricted its inquiry to whether another process had already dealt with the allegations. Therefore, I can find no error by the Commission

in declining to receive or consider the evidence that Ms. Wisdom argues would have substantiated her complaint.

[29] I note Ms. Wisdom's reliance on the decision in *Canada Post Corp. v Barrette*, [2004] 4 FCR 145 [*Barrette*], in which the Federal Court of Appeal addressed the process under s. 41(1) of the CHRA as follows, at paragraphs 23 to 25:

> [23] Section 41 imposes a duty on the Commission to ensure, even *proprio motu*, that a complaint is worth being dealt with. There is obviously no duty to investigate at that stage and the Commission is asked no more than to examine on a *prima facie* basis whether the grounds set out in subsection 41(1) are present and, if so, to decide whether to nevertheless deal with the complaint.
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> [24] With respect to the grounds set out in paragraphs 41(1)(a) to (e), a person against whom the complaint is made is expressly given two opportunities to raise them: one at the section 41 preliminary screening stage, the other at the section 44 screening stage (see paragraphs 44(2)(a) and (b) and subparagraphs 44(3)(a)(ii) and (b)(ii)). The Commission may not simply ignore or routinely dismiss submissions made by a person at the preliminary screening stage on the ground that in any event that person still has the opportunity to reiterate its submissions at the screening stage. The person is entitled to expect the Commission to examine its submissions on their merit, as required by the statute, at the preliminary screening stage albeit, as I have indicated, in a summary way.
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> [25] Unless the Commission turns its mind to the issues raised by the person against whom the complaint is made, in this case the employer, it neglects a duty imposed by law. An employer has a legal right to seek an early brushing aside of a complaint for the reasons set out in subsection 41(1). This is not to suggest that stringent procedural standards be imposed on the Commission at that stage nor that a close scrutiny of decisions made under subsection 41(1) be undertaken by the courts. This is only to say that the Commission must do its work diligently even at a preliminary stage where only a *prima facie* screening is required.
>
> (Applicant's emphasis)

[30] I do not find the guidance by the Federal Court of Appeal in *Barrette* to assist Ms. Wisdom. That case involved a decision of the Commission which was based on a staff recommendation that pre-dated further submissions from the respondent. The Court found that the Commission had ignored these further submissions, thereby failing in its statutory requirement to examine submissions on their merit at the preliminary screening stage. However, I do not read *Barrette* as requiring the Commission to consider the merits of the underlying allegations of discrimination, only the merits of the parties' submissions on the question whether the grounds set out in s. 41(1) are engaged.

[31] Ms. Wisdom also refers the Court to judicial and tribunal authorities surrounding allegations of discrimination in the context of denial of workplace accommodation on the ground of family status (see, e.g. *SMS Equipment Inc v Communications, Energy and Paperworkers Union, Local 707*, 2015 ABQB 162; *Clark v Bow Valley College*, 2014 AHRC 4; *Hoyt v Canadian National Railway*, 2006 CHRT 33). However, while these authorities may be relevant to the merits of discrimination allegations of the sort upon which Ms. Wisdom's complaint is based, they are not applicable to the Commission's decision, under its s. 41(1) screening process, as to whether another process had already addressed the allegations of discrimination.

[32] I turn now to Ms. Wisdom's arguments that the Commission's decision was unreasonable because the Arbitrator's decision did not address her allegations of discrimination. She submits that the Arbitrator's decision was focused upon her termination, not her discrimination allegations. Ms. Wisdom also notes that the Report cites a list of nine issues identified in the Union's arbitration brief, but she argues that the Arbitrator's decision addressed only two of

these issues, being whether Air Canada had just cause to terminate her employment and whether she acted unreasonably during the accommodation process. Other issues in this list are: whether Air Canada had just cause to issue a demand for Ms. Wisdom to return to work; whether the accommodation process had concluded by the time of this demand and the subsequent termination; whether Air Canada acted unreasonably during the accommodation process; whether Air Canada's requests for personal information were beyond the scope of their entitlement; whether the information Ms. Wisdom provided was sufficient for the accommodation process; whether her refusal to disclose the requested personal information was reasonable; and whether she should be reimbursed for expenses incurred in the accommodation process and resulting from the termination.

[33] These submissions do not convince me that the Commission's decision was unreasonable. In reaching its conclusion, that the arbitration process had addressed the allegations of discrimination overall, the Commission considered both the Union's brief and the arbitration decision itself, noting that the Arbitrator found that Air Canada's requests for information were legitimate and that Ms. Wisdom had not fully cooperated during the accommodation process. While these findings by the Arbitrator are brief and are not supported by any substantial analysis, they are clear, and the finding that the disclosure requests were legitimate addresses precisely the point that Ms. Wisdom describes as the crux of her position. While she takes issue with these findings, I cannot conclude that it was unreasonable for the Commission to determine based on these findings that Ms. Wisdom's discrimination allegations had been addressed by the Arbitrator.

[34] Nor does consideration of the list of issues identified in the Union's brief support a conclusion that the Commission's decision was unreasonable. While there are nine issues identified, they all surround the details of the Union's position Air Canada had not acted reasonably in addressing Ms. Wisdom's accommodation request, including making the impugned requests for information, and in subsequently terminating her employment, and that Ms. Wisdom should therefore be entitled to relief. The Arbitrator's decision, while brief and while certainly not addressing each of the nine issues individually, does sufficiently address the substance of these issues such that it was reasonable for the Commission to reach the decision it did.

[35] Ms. Wisdom also argues that there were aspects of the arbitration process that were procedurally unfair. In addressing this argument, I note first that the complaint process under the CHRA does not operate as an appeal, or akin to a judicial review, of the arbitration decision, from either a substantive or procedural perspective. As explained by the Supreme Court of Canada in *British Columbia (Workers'Compensation Board) v. Figliola*, 2011 SCC 52, at paragraph 38:

> … When an adjudicative body decides an issue within its jurisdiction, it and the parties who participated in the process are entitled to assume that, subject to appellate or judicial review, its decision will not only be final, it will be treated as such by other adjudicative bodies. The procedural or substantive correctness of the previous proceeding is not meant to be bait for another tribunal with a concurrent mandate.

[36] However, as noted by the Commission in its decision, the Supreme Court also stated in *Penner*, at paragraph 39, that it may be unfair to apply the doctrine of issue estoppel, to prevent an administrative tribunal from considering an issue previously decided in a prior proceeding, if

the prior proceeding was procedurally unfair or if it would be unfair to use the results of the prior proceeding to preclude consideration of the issue. The Commission's decision also refers to Ms. Wisdom's arguments that the arbitration process was procedurally unfair. She asserted that her arguments were interrupted by the Arbitrator, preventing her from presenting a full case, while Air Canada made an uninterrupted presentation and examination and was the only party entitled to present closing argument at the conclusion of the hearing. She also asserted that the Arbitrator allowed Air Canada to examine her without allowing for any rebuttal examination of Air Canada's witnesses, and submitted that the Arbitrator did not allow her and the Union to introduce evidence to refute that of Air Canada.

[37] The Commission's decision states that it appears Ms. Wisdom had the chance to raise all of her human rights issues through the arbitration process, that she was represented by her Union at the hearing, and that she had the opportunity to testify on her own behalf. The Commission concluded, in considering *Penner*, that no information had been presented to suggest that the grievance arbitration process was unfair, or that it would be unfair to use the Arbitrator's decision in considering whether the Commission should deal with the complaint.

[38] At the hearing of this judicial review application, Ms. Wisdom submitted in particular that the Commission erred in stating that she had the opportunity to testify on her own behalf before the Arbitrator. However, there is no transcript of the hearing before the Arbitrator, and the Arbitrator's decision, as recited by the Commission in the Report, expressly states that Ms. Wisdom testified. Ms. Wisdom's written submissions to the Commission, in commenting upon the Arbitrator's statement that she testified, does not deny that she testified but rather asserts that

the Arbitrator interrupted her. This is consistent with the Commission's description of Ms. Wisdom's allegations of unfairness. I therefore cannot find the Commission's decision to be unreasonable in concluding, based on the information before it, that Ms. Wisdom had the opportunity to testify at the arbitration hearing.

[39] Ms. Wisdom also submits that the grievance process was initiated and controlled by the Union. However, no authority has been provided to support the proposition that this undermines the Commission's ability to rely on the arbitration decision to invoke s. 41(1) of the CHRA. The Commission noted that Ms. Wisdom had the benefit of representation by the Union. While she argues that the Union did not represent her interests well, I am conscious of the deference to which the Commission's decision is entitled. The Commission appears to have relied on the fact that Ms. Wisdom had the benefit of union representation, in concluding that she had the chance to raise all her human rights issues through the arbitration process, and I find no basis to determine that conclusion to be unreasonable.

[40] More broadly, the Commission's decision clearly identifies the assertions of unfairness that Ms. Wisdom raised for its consideration. It cannot be concluded that those arguments were overlooked, and I cannot find that it lies outside the range of possible acceptable outcomes, defensible in respect of the facts and the law, for the Commission to have decided, based on the information before it, that there were no fairness-based grounds to preclude the application of s. 41(1) of the CHRA.

[41] Having found no basis to conclude that the Commission's decision is unreasonable, Ms. Wisdom's application for judicial review must be dismissed.

Costs

[42] Having been successful in responding to this application, Air Canada is entitled to costs. At the hearing, Ms. Wisdom advised the Respondent's counsel and the Court of the quantum of costs she was seeking in the event she was successful on this application. That figure, which was based on her expenses in pursuing the application, was $730.50. In the course of the hearing, both parties advised the Court of their agreement that this figure was an appropriate quantification of costs regardless of which party prevailed.

[43] Air Canada shall accordingly have lump sum costs of $730.50.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. The Respondent is awarded costs of 730.50.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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