Federal Court  Cour fédérale

Date: 20170712

Docket: T-1742-15

Citation: 2017 FC 678

Ottawa, Ontario, July 12, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MUNGLEGEET SIDDOO

Applicant

and

THE INTERNATIONAL LONGSHOREMAN'S WAREHOUSEMEN'S UNION, LOCAL 502

Respondent

JUDGMENT AND REASONS

INTRODUCTION

[1] Ms. Munglegeet Kaur Siddoo (the " Applicant") seeks judicial review of the decision of Mr. David Thomas sitting as the Canadian Human Rights Tribunal (the "Tribunal"), upon adjudication of her complaint of discrimination, pursuant to the *Canadian Human Rights Act*,

R.S.C., 1985, c. H-6 (the "Act"), against the International Longshoremen's and Warehousemen's Union, Local 502 (the "Respondent" or the "Respondent Union").

[2] In its decision, dated September 15, 2015, the Tribunal dismissed the Applicant's complaint.

[3] The Applicant filed her application for judicial review of the Tribunal's decision on October 15, 2015. She seeks the following relief:

1. Quash this decision and make a new objective one.
2. Charge these people under Sec 221 of the Canada Criminal Code for causing me bodily harm. Charge these people for continuing to harass and delay the process and not allowing me to move forward with my life.

BACKGROUND

[4] The facts below are taken from the decision of the Tribunal and the affidavit of the Applicant filed in support of her application for judicial review. The transcript of the hearing before the Tribunal has also been reviewed.

[5] The Applicant and Mr. Christopher Verbeek were the only witnesses before the Tribunal. Mr. Verbeek was the foreman at Terminal Systems Inc. ("TSI") at the relevant time.

[6] The Applicant describes herself as an Indo-Canadian woman with a disability. She held an identity card issued by the British Columbia Maritime Employers' Association ("BCMEA") that allowed her to apply for casual work through the Respondent.

[7] The BCMEA represents a number of ship owners, agents, stevedores, container and terminal operators on the West Coast of Canada. The BCMEA represents the employers concerning labour and employee relations.

[8] The Respondent is the bargaining agent for Longshore workers working out of the New Westminster, British Columbia Dispatch Hall. Work assignments and decisions about who will be provided with training sessions are governed by the collective agreement between the BCMEA and the Respondent.

[9] The Applicant was a casual worker under the collective agreement and was represented by the Respondent in all labour relations matters. Longshore workers, such as the Applicant, are employed by employer members of the BCMEA on a daily shift basis, upon dispatch by the Respondent from the Dispatch Hall.

[10] The Applicant began working out of the Dispatch Hall as a labourer. In June 2005, after being trained to, she sometimes worked as a multi-tractor driver.

[11] While on her way to work on or about January 10, 2007, the Applicant was involved in a car accident. Her car slid off the road in two separate incidents that day. After the final collision

with the pole, she abandoned her vehicle and proceeded to the workplace in a taxi. She went to the first-aid office and for some time that day, she operated a stacker loading vehicle. As a result of injuries sustained in the car accident, she did not work for a long period after that date. She attempted to work again for one or two days a week beginning in November or December 2007 until February 2008. However, lower back pain prevented her from driving the multi-tracker for any length of time and her doctor advised her not to continue working.

[12] In the winter of 2010, the Applicant worked as a volunteer at the Vancouver Olympics. She felt well enough to contemplate return to work. She contacted the Respondent and discussed options for that prospect with Mr. Verbeek. Discussions touched upon training at the Delta port so that she could avoid jobs that imposed high physical demands. The Applicant requested some upgrade training on the multi-tracker to see how that job affected her physical injuries. Shortly afterwards, Mr. Verbeek scheduled her for two days upgrade training on the multi-tracker.

[13] Following that training, the Applicant found that she could not tolerate the motion of the vehicle and its effect on her spine and hip. After receiving medical advice, she wrote to Mr. Verbeek on June 14, 2010 and suggested training in a job with less physical impact.

[14] Soon after that request, the Applicant was assigned for training as a “Checker” with TSI, one of the employer members of the BCMEA. The training began on or about July 5, 2010. The Applicant was one of four employees taking the training.

[15] On the third day of the training, the trainers concluded that the Applicant had less experience than the other employees and that it would be better to give her spot to a more experienced employee so that the group could progress faster. The Applicant was rescheduled for the training and began that training two months later.

[16] The Applicant was unhappy with her removal from the first training session and sent an email to Mr. Verbeek and others on July 7, 2010, alleging that her removal from the training was discriminatory and that she had been subject to harassment.

[17] Mr. Verbeek responded to that email. He arranged for the Applicant to begin the training with another group, beginning on September 13, 2010.

[18] The Applicant began the Checker training on September 13, 2010. The training course was due to last for approximately eight weeks. Around the beginning of November 2010, she was suspended from the training and asked to attend the Respondent's Grievance and Credentials meeting on November 9, 2010. The Respondent said that the Applicant had missed work on October 22, 2010 without explanation and had left early on another occasion. Apparently there also were allegations that TSI, the employer, was concerned about the Applicant's conduct.

[19] The Applicant did not attend that meeting. She testified that she did not receive notice of that meeting. By means of a telephone call, she was asked to provide an explanation. In response, she sent an email to the President of the Respondent and advised that she had filed a complaint

with the Canadian Human Rights Commission. She also advised that she was considering a complaint to the police.

[20] Mr. Verbeek replied to the Applicant's email. He referred to the allegations of absenteeism and the concerns of TSI. He advised that suspension of her training would continue until the next Grievance and Credentials meeting set for January 4, 2011.

[21] The Applicant attended the meeting on January 4, 2011. She presented an explanation for her absence on October 22, 2010, including a letter from her physiotherapist relative to that absence. The Respondent accepted the explanation. The Applicant also submitted a medical note advising that she was physically capable of returning to the Checker training as of January 4, 2011.

[22] The Respondent accepted the medical note but before sending the Applicant back to the training, requested that her doctor complete a form called "Physical Demands Analysis Summary Table". This form was provided by the BCMEA and was specific to the job title "Head Checker", and set out the specific requirements of that job.

[23] The Applicant's Doctor completed the form on February 1, 2011. His report indicated that the Applicant was unable to perform the walking and standing demands of the job. The Doctor also recommended a gradual return to work, beginning with four hours a day.

[24] The Applicant sent an email to the President of the Respondent Union on February 1, 2011, advising that she had delivered the BCMEA medical report in person to the Hall on February 1, 2011. Before receiving a response, she wrote another email on February 2, 2011, to the Respondent Union, saying that she was filing the complaint to the Canadian Human Rights Commission.

[25] The Applicant's complaint, dated October 30, 2011, alleges "ongoing harassment, discrimination, intimidation, differential treatment in work flow and procedural treatment because I am a single, Indo-Canadian female with a disability".

[26] The complaint was investigated and was referred to the Tribunal for adjudication.

[27] The hearing before the Tribunal was held in Vancouver on February 23, 24 and 26, 2015. The Applicant testified on her own behalf and called no other witnesses. Mr. Verbeek was the sole witness for the Respondent.

DECISION OF THE TRIBUNAL

[28] The Tribunal delivered its decision on September 15, 2015 and dismissed the Applicant's complaint. In the decision, the Tribunal set out the facts and the legal issues.

[29] It first addressed the burden of proof upon a complainant to establish a *prima facie* case of discrimination. It then identified the prohibited grounds of discrimination in issue as race, national or ethnic origin, religion, sex, marital status and disability.

[30] The Tribunal then addressed the alleged adverse impact upon the Applicant arising from the prohibited grounds of discrimination. It framed this issue in terms of adverse impact resulting from discriminatory practices referred to in sections 5 to 14.1 of the Act. It then considered if the prohibited grounds were a factor in the adverse impact. It first addressed the allegations under sections 7, 9 and 10 together, with a separate analysis to address the allegations under section 14.

[31] The allegations pursuant to section 7, 9 and 10 of the Act relate, generally, to allegations of discrimination in the context of employment. The Tribunal found that the Applicant was deprived of employment opportunities as a result of her removal from Checker training in July and November 2010. It found that she suffered an adverse impact pursuant to paragraph 9(1)(c) of the Act. However, it also found that the Applicant failed to establish that her race, national or ethnic origin, sex and or disability was a factor in her removal from the Checker training.

[32] The Tribunal found that while there may have been some animosity between the Applicant and Mr. Verbeek and other colleagues, there was no evidence to show that such animosity was based upon a prohibited ground.

[33] The Tribunal found that the Applicant failed to show that a prohibited ground of discrimination was a factor in any adverse treatment of the Applicant. It concluded that she failed to establish a *prima facie* case of discrimination under sections 7, 9 or 10 of the Act.

[34] The Tribunal addressed the Applicant's claim that the Respondent had failed to accommodate her disability after she provided the requested medical information on February 1, 2011.

[35] The Tribunal found that it was up to the Applicant to show that the failure of the Respondent to reinstate her in the Checker training, after she provided the requested medical report, was "somehow influenced by a prohibited ground". The Tribunal found that the Applicant had "walked away from the accommodation process" when she informed the Respondent of her intention to pursue her complaint under the Act.

[36] Accordingly, the Tribunal dismissed all complaints of discrimination pursuant to sections 7, 9 and 10 of the Act.

[37] The Tribunal then addressed the complaint under section 14 of the Act. That provision prohibits harassment in matters related to employment. At paragraph 46 of its decision, the Tribunal said the following:

> I do not think that every act of foolishness or insensitivity in the workplace was intended to be captured under section 14 of the *CHRA*. Harassment is a serious word, to be used seriously and applied vigorously when the occasion warrants its use. To do otherwise would be to trivialize it. It should not be cheapened or

> devalued in its meaning by using it to loosely label petty acts or foolish words where the hard, by any objective standard, is fleeting.

[38] The Tribunal reviewed specific instances identified by the Applicant as constituting harassment, including her removal from the training sessions in 2010 and an argument in 2005 with Mr. Verbeek. It found that there was insufficient evidence to show that a prohibited ground gave rise to the alleged harassment. It also found that the Applicant's claim of continual harassment by members of the Respondent was not supported by the evidence. It ultimately dismissed her complaint of harassment on the basis that the Applicant was unable to show a *prima facie* case of such prohibited behaviour.

SUBMISSIONS OF THE PARTIES

[39] In her written submissions filed as part of her Application Record, the Applicant sets out several issues, as follow:

> Did the HRT [*sic*] refuse to exercise it's [*sic*] jurisdiction? Did the decision maker appropriately analyze the evidence and circumstances and determine the substance of each allegation. [*sic*]
>
> Did the HRT [*sic*] fail to observe the principles of natural justice? The decision makes [*sic*] was not objective and allowed the respondent nemo judex in parte sua, hence entertaining the bias rule and favored one part over another. The tribunal ignored evidence.
>
> Did the HRT [*sic*] base it's decision on an erroneous finding of fact. [*sic*] In fact, the tribunal added in their own allegations which were never communicated by me in any written testimony/evidence, this is erroneous and not factual, a very big

> legal mistake. I spoke to several people and they agree it was very unprofessional, and found if very peculiar. In fact, they agreed it was a form of harassment and it appeared as though the HRT [*sic*] was calling me a spinster.
>
> How is the ILWU Local #502 liable under the Human Rights Code and what was the unions role in representing me. [*sic*]
>
> How has the ILWU #local 502 [*sic*] participated in *prima facie* discrimination. [*sic*]

[40] The Respondent, for its part, begins its arguments by objecting to the Applicant's affidavit, saying that it contains documents that were not before the Tribunal, contrary to the general rule that an application for judicial review proceeds only on the basis of material that was before the decision-maker, relying on the decision in *Samuel v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 1320. It submits that the Applicant's affidavit should be disregarded.

[41] Otherwise, the Respondent argues that the decision of the Tribunal, in interpreting its own statue, should be reviewed on the standard of reasonableness. It relies on the decisions in *McLean v. British Columbia (Securities Commission)*, [2013] 3 S.C.R. 895 (S.C.C.) and *Canadian National Railway Co. v. Canada (Attorney General)*, [2014] 2 S.C.R.135 (S.C.C.).

[42] The Respondent submits that the decision meets the standard of "reasonableness", as set out by the Supreme Court of Canada, in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 (S.C.C).

DISCUSSION AND DISPOSITION

[43] The matter was set for hearing in Vancouver on December 16, 2016. Pursuant to a Direction issued on December 13, 2016, the Court noted that no Certified Tribunal Record ("CTR") had been filed and the parties were asked to advise the Court if the CTR could be filed by December 16, 2016.

[44] The matter was called on December 16, 2016. In the absence of the Applicant from the Courtroom, the usher was directed to call out her name in the lobby of the building and outside the registry. The Applicant did not respond.

[45] Another Direction was issued on December 16, 2016 concerning the offer of Counsel for the Respondent to provide a CD containing the CTR, with a copy of that CD to be provided to the Applicant as well.

[46] The matter was called again on December 19, 2016 for the purpose of setting a new date. By written Directions, the matter was set over for hearing on January 9, 2017. A copy of the Directions were sent to the parties.

[47] Counsel for the Respondent submitted a letter on December 20, 2016 forwarding a USB key containing the CTR.

[48] On December 21, 2016, Counsel for the Respondent submitted an affidavit of service concerning service of the USB key upon the Applicant by mail on December 20, 2016.

[49] A letter was sent by the Registry of the Federal Court to the Applicant on December 22, 2016, advising that a paper copy of the CTR was available at the local office of the Court in Vancouver, for her, until January 9, 2017.

[50] The matter was called on January 9, 2017. Again, the Applicant did not appear. An usher was sent to the lobby and to the registry to call out the Applicant's name, there was no response.

[51] The hearing proceeded in the absence of the Applicant.

[52] I will first address the Respondent's objections to the Applicant's affidavit.

[53] I agree that this affidavit contains evidence that is not in the CTR, for example the affidavit of Mr. Al Lemont, which was objected to at the Tribunal and rejected as evidence.

[54] Paragraphs 8, 10 and 40 also included objectionable material. Paragraph 8 illustrates the problem and reads as follows:

> **In paragraph 36 of the BCMEA's response to Complainant's Submission on the commission report it says The** [*sic*] **"I'll take the heat" allegation relates to a statement made by a union representative (Chris Verbeek) to the BCMEA representatives** [*sic*] **(Chris Fletcher) when the BCMEA tried to convince the union to place the complainant back into training to complete it.** I didn't bring this document at the hearing but will add it on to

> the end of the hearing. **See appendix D** it also states this in an email from Chris Verbeek to Chris Fletcher, but I can't find the email at the moment. This proves that the ILWU was going to take responsibility for removing me from checker training, for the second time, and not allowing me to finish the 1 week I had left in training.
>
> [Emphasis in original]

[55] In *Samuel*, *supra*, the Court said the following at paragraph 4:

> Judicial review is ordinarily to be conducted on the basis of the record that was before the original decision-maker. Additional evidence may be admitted in limited circumstances where, for example, there is an issue of procedural fairness or jurisdiction: see *Assn. of Architects (Ontario) v. Assn. of Architectural Technologists (Ontario)*, 2002 FCA 218 (Fed. C.A.) at para. 30, (2002), [2003] 1 F.C. 331 (Fed. C.A.). Ms. Samuel has not, however, challenged the decision of the Immigration Officer on procedural fairness grounds, nor has she raised a question going to the Officer's jurisdiction. Consequently, her new evidence is not properly before the Court and will not be considered in deciding the application.

[56] In the exercise of my discretion, I decline to strike the Applicant's affidavit but to the extent that it attempts to supplement the CTR, the affidavit will not be considered.

[57] I turn now to the merits of this application for judicial review. In order to succeed, the Applicant must show either a breach of procedural fairness or an unreasonable decision by the Tribunal.

[58] Issues of procedural fairness, including an allegation of bias, are reviewable on the standard of correctness; see the decision in *Mission Institute v. Khela*, [2014] 1 S.C.R. 502 (S.C.C.) at paragraph 79.

[59] The interpretation by the Tribunal of its own statute, that is the Act, is reviewable on the standard of reasonableness. I refer to the decision in *McLean, supra*, where the Supreme Court of Canada said the following at paragraph 21:

> Since *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9, [2008] 1 S.C.R. 190 (S.C.C.), this Court has repeatedly underscored that "[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity" (para. 54). Recently, in an attempt to further simplify matters, this Court held that an administrative decision maker's interpretation of its home or closely-connected statutes "should be presumed to be a question of statutory interpretation subject to deference on judicial review" *(A.T.A. v. Alberta (Information & Privacy Commissioner)*, 2011 SCC 61, [2011] 3 S.C.R. 654 (S.C.C.), at para. 34). [Footnote removed]

[60] In *Dunsmuir, supra*, the Supreme Court of Canada commented on the standard of reasonableness in paragraphs 46 and 47 as follows:

> What does this revised reasonableness standard mean? Reasonableness is one of the most widely used and yet most complex legal concepts. In any area of the law we turn our attention to, we find ourselves dealing with the reasonable, reasonableness or rationality. But what is a reasonable decision? How are reviewing courts to identify an unreasonable decision in the context of administrative law and, especially, of judicial review?
>
> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of

> reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[61] Although awkwardly framed, the Applicant raises an issue of procedural fairness when she alleges bias on the part of the Tribunal.

[62] The Applicant makes a bald assertion of bias on the part of the Tribunal. However, she does not give particulars of such bias.

[63] I have read the transcripts of the hearing before the Tribunal. I see no interventions which would support an allegation of bias. In my opinion, the Applicant was given a full opportunity to present her case and to cross-examine Mr. Verbeek, the witness produced by the Respondent. As well, the Applicant made oral submissions to the Tribunal.

[64] There is no breach of procedural fairness apparent from the transcript of the proceedings before the Tribunal. The additional evidence submitted in the Applicant's affidavit does not establish a breach of procedural fairness.

[65] At paragraphs 10 and 11 of her affidavit, the Applicant alleges that the Tribunal deliberately delayed releasing its decision and showed discrimination against her. Paragraphs 10 and 11 provide as follows:

> I was told at the hearing, by David Thomas, the decision would come at the end of June or before. After inquiries and going to the local M.L.A. On August 18 received an e mail [*sic*] from the tribunal saying "Furthermore, Tribunal members must manage the **competing priorities of several other cases**." Along with other explanations. I believe this delay was being done deliberately, hence the discriminatory/error filled decision letter.
>
> A decision letter was produced from the Human Rights Tribunal on September 15, 2015 which I find to biased [*sic*] and discriminatory in nature. It said "the complaint has not substantiated and is therefore dismissed. [*sic*] I shouldn't have to prove prima facie, when res ipsa loquitur is obvious, prima facie is irrelevant. That being said, I more than proved a prima facie case and showed piles of evidence linking the discriminatory acts to that evidence.
>
> [Emphasis in original]

[66] These paragraphs do not establish a basis for finding a breach of procedural fairness. They contain improper opinion evidence and will not be considered.

[67] I turn now to the merits of the decision whereby the Applicant's claims of discrimination were dismissed.

[68] The Tribunal first addressed the burden of proof when a complaint of discrimination is raised. I refer to paragraph 28 of the decision where the Tribunal said the following:

> In human rights cases, a complainant has the burden of proof to establish a *prima facie* case. A *prima facie* case is "…one which covers the allegations made and which, if they were believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent" (*Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 S.C.R. 536, at para. 28). To demonstrate *prima facie* discrimination in the context of the *CHRA*, the complainants are required to show: (1) that they have a characteristic or characteristics protected from discrimination under the *CHRA*; (2) that they experienced an adverse impact with respect to a situation covered by sections 5 to 14.1 of the *CHRA*; and (3) that the protected characteristic or characteristics were a factor in the adverse impact (see *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, at paras. 55-69).

[69] The Tribunal identified the correct legal framework within which the Applicant's claim was to be analyzed.

[70] The Tribunal then considered if the Applicant suffered an adverse impact in a situation subject to sections 5 to 14.1 of the Act. It decided to address the allegations pursuant to sections 7, 9 and 10 of the Act together and to deal with the complaint under section 14 on an independent basis.

[71] Section 7, 9 and 10 deal with discrimination relative to employment. The provisions that are relevant to this application are set out below.

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	a) de refuser d'employer ou

continue to employ any individual, or	de continuer d'employer un individu;
(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.	b) de le défavoriser en cours d'emploi.
[…]	[…]
9(1) It is a discriminatory practice for an employee organization on a prohibited ground of discrimination	9 (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour une organisation syndicale :
[…]	[…]
(c) to limit, segregate, classify or otherwise act in relation to an individual in a way that would deprive the individual of employment opportunities, or limit employment opportunities or otherwise adversely affect the status of the individual, where the individual is a member of the organization or where any of the obligations of the organization pursuant to a collective agreement relate to the individual.	c) d'établir, à l'endroit d'un adhérent ou d'un individu à l'égard de qui elle a des obligations aux termes d'une convention collective, que celui-ci fasse ou non partie de l'organisation, des restrictions, des différences ou des catégories ou de prendre toutes autres mesures susceptibles soit de le priver de ses chances d'emploi ou d'avancement, soit de limiter ses chances d'emploi ou d'avancement, ou, d'une façon générale, de nuire à sa situation.
[…]	[…]

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, that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.	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.

[72] The Tribunal found that the Applicant had indeed suffered an adverse impact pursuant to paragraph 9(1)(c) as a result of her removal from Checker training on two occasions, that is in July and November 2010. However, the Tribunal proceeded to find that her removal from that training was not due to her race, nation or ethnic origin, sex, and or disability.

[73] The Tribunal exercised its discretion, pursuant to paragraph 50(3)(c) of the Act in the matter of evidence that she as allowed to submit, notably the admission of Facebook email

conversations. However, it found that this evidence did not assist the Applicant since much of it predated the events of 2010.

[74] The Tribunal clearly stated, in paragraph 39 of its reasons, that the Applicant had not "established a *prima facie* case of discrimination under sections 7, 9 or 10" of the Act.

[75] The Tribunal was equally clear in saying that it accepted the explanations of the Respondent about the removal of the Applicant from training in 2010. It found that there was insufficient evidence to support a conclusion that discrimination was a factor in those decisions.

[76] In my opinion, this conclusion is reasonable in light of the evidence submitted.

[77] The Tribunal found that the Applicant, by her actions, did not try to work with the Respondent in finding accommodation for her situation after the further medical report was completed by her doctor and delivered to the Respondent on February 1, 2011. Again considering the evidence before the Tribunal, this conclusion is reasonable.

[78] In my opinion, the Tribunal reasonably concluded, on the basis of the evidence, that the Applicant had not shown discrimination under sections 7, 9 and 10 of the Act.

[79] The last issue to be addressed is the Tribunal's disposition of the complaint under section 14 of the Act, that is about harassment in connection with employment. At paragraph 47, it said the following:

> The Tribunal has attempted to define harassment as any words or conduct that is unwelcome or ought to be known to be unwelcome, based on a prohibited ground of discrimination, and evaluated on a case-by-case basis from the standard of a reasonable person in the circumstances. It usually denotes repetitious or persistent acts, although a single serious event can be sufficient to constitute harassment (see *Janzen v, Platy enterprises ltd.*, [1989] 1 SCR 1252; and, *Canada (Human Rights Commission) v. Canada (Armed Forces)*, [1999] 3 FC 653). In the employment context, the key is to examine whether the conduct has violated the dignity of the employee such that it has created a hostile or poisoned work environment (see *Day v. Canada Post Corporation*, 2007 CHRT 43, at paras. 184; and, *Croteau v. Canadian National Railway Company*, 2014 CHRT 16, at para. 43).

[80] The Tribunal stated, again, the applicable legal principles and jurisprudence. It referred to specific instances of alleged harassment relied on by the Applicant, including what she perceived as attempts by Mr. Verbeek to humiliate her. It concluded that the Applicant failed to show that Mr. Verbeek was trying to do so and that she failed to show that his actions involved a prohibited ground.

[81] The Tribunal specifically found that there was insufficient evidence to support the other allegations of harassment or that the events involved a prohibited ground of discrimination.

[82] Again, in light of the evidence submitted by the Applicant and the Respondent, as found in the CTR and in the transcripts of the hearing, these findings of the Tribunal are reasonable. The Tribunal, not the Court, is mandated to weigh the evidence. The Court, in an application for judicial review, can look at the evidence before a decision-maker and can consider whether relevant evidence was overlooked or if evidence is lacking to support the findings under challenge.

[83] I am satisfied that no breach of procedural fairness occurred. I am satisfied that the decision meets the applicable standard of review as set out in *Dunsmuir, supra*. The reasons are justifiable, intelligible and transparent. The dismissal of the Applicant's complaint falls with a reasonable range of outcomes acceptable on the facts and the law. The application for judicial review will be dismissed.

[84] The Respondent seeks costs of this application.

[85] The *Federal Courts Rules*, SOR/98-106, Rule 400 grants the Court full discretion over costs.

[86] In the exercise of that discretion, I decline to make any order as to costs.

JUDGMENT FOR T-1742-15

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed; in the exercise of my discretion there is no order as to costs.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1742-15
STYLE OF CAUSE:	MUNGLEGEET SIDDOO v. THE INTERNATIONAL LONGSHOREMEN'S WAREHOUSEMEN'S UNION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	DECEMBER 19, 2016, JANUARY 9, 2017
JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	JULY 12, 2017

APPEARANCES:

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