Federal Court  Cour fédérale

Date: 20250213

Docket: T-411-24

Citation: 2025 FC 285

Ottawa, Ontario, February 13, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

NENAD HABUS

Applicant

and

LEANNE W. WALSH AND WEST COAST WORKPLACE LAW CORPORATION

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Nenad Habus, is appealing the June 17, 2024 decision ("Order") of Associate Judge Coughlan ("Associate Judge") that directed his notice of application for judicial review be struck. Mr. Habus is out of time to do so. He has asked for an extension of time to appeal the decision.

[2] I am refusing Mr. Habus' request for an extension of time because I do not find that the appeal has merit or that he has provided a reasonable explanation for the delay.

II. Background and Procedural History

[3] In 2022, Mr. Habus initiated a workplace harassment complaint under section 15 of the *Federal Work Place Harassment and Violence Prevention Regulations*, SOR/2020-130 ("Regulations") issued under Part II of the *Canada Labour Code*, RSC, 1985, c L-2, by filing three notices of occurrence of harassment against his employer. Section 19(1) of the Regulations provide that if the issue is not resolved through a negotiated resolution, an investigation must be conducted.

[4] Leanne M. Walsh, a lawyer and owner of the West Coast Workplace Law Corporation, the Respondents in this matter, conducted a workplace investigation and made conclusions and recommendations based on that investigation (Regulations, section 30). The Regulations provide that, following the receipt of the investigator's report, the employer and a workplace committee or health and safety representative must decide which of the recommendations to implement (Regulations, subsection 31(1)). As explained by the Associate Judge at paragraph 13 of the Order dated June 17, 2024, there is nothing in the Regulations that make an investigator's recommendations mandatory or binding.

[5] On February 27, 2024, Mr. Habus challenged the investigation report in this Court, naming Leanne M. Walsh and West Coast Workplace Law Corporation as the Respondents.

[6] On March 14, 2024, the Respondents brought a motion asking the Court to amend the notice of application to remove them as Respondents or, in the alternative, to set aside the proceedings in whole. On June 17, 2024, the Associate Judge decided that: i) the Respondents were not "directly affected by the matter in respect of which relief is sought" and therefore were improperly named and ought to be removed from the Application; and ii) that the "Application is so fatally flawed that it is bereft of any possibility of success" and therefore struck the Application in its entirety.

III. Analysis

[7] Mr. Habus had ten days to bring an appeal under Rule 51(2) of the *Federal Courts Rules*, SOR/98-106. On July 14, 2024, approximately seventeen days after the deadline to file an appeal, Mr. Habus submitted a letter to this Court indicating that he needed an extension of time to file an appeal of the Order because he was overseas for a family emergency. Justice Norris directed that Mr. Habus file a formal motion, as the request for an extension was being opposed by the Respondent. No formal motion was brought at that time. Instead, Mr. Habus brought this motion approximately three months later in October, 2024.

[8] The factors to consider in whether to grant an extension of time were set out by the Federal Court of Appeal, in *Canada (Attorney General) v Hennelly (1999)*, 244 NR 399, 1999 CanLII 8190 (FCA) [*Hennelly*]: (i) a continuing intention to pursue the application; (ii) that the application has some merit; (iii) that no prejudice arises from the delay; and (iv) that there is a reasonable explanation for the delay (*Hennelly* at para 3).

[9] I accept that Mr. Habus had a continuing intention to file the appeal and I do not have a sufficient basis to find that the Respondent will suffer prejudice by his delay. I am refusing Mr. Habus' extension of time for two reasons: (i) Mr. Habus' failure to provide a reasonable explanation for the delay, and (ii) the lack of merit of the appeal.

[10] In the record before me, Mr. Habus provides little evidence about the reasons for an extension. The only explanation is that there was a family emergency overseas. No specific timeframes are provided for when Mr. Habus was overseas, nor is there an explanation as to how this impacted his ability to be able to file an appeal, or request an extension of time at an earlier date.

[11] With respect to the merits of the appeal, I must review the decision of the Associate Judge on a standard of palpable and overriding error for questions of fact and questions of mixed fact and law, except where there is an extricable legal principle at issue and then, like on any question of law, the standard is correctness (*Housen v Nikolaisen*, 2002 SCC 33; *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 64, 66).

[12] Mr. Habus argues that the Associate Judge's decision should be set aside because the focus of her decision is the ability of the investigator to make recommendations and not conclusions. Further, he argues that the Associate Judge was biased.

[13] Mr. Habus' claim of bias is a bald assertion made without explanation. The test for determining reasonable apprehension of bias is well known: whether a reasonable person, who is

reasonably informed of the facts, viewing the matter realistically and practically and having thought it through, would think it more likely than not that the tribunal was biased (*Committee for Justice and Liberty et al v National Energy Board et al*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at 394). The burden of proof lies with the party who is making the claim of bias and the threshold to establish it is a high one, requiring that "substantial grounds" or a "real probability" of bias be demonstrated (*R v S (RD)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484 at paras 113, 114). Mr. Habus has not made out with any particularity the basis on which he claims that the Associate Judge was biased.

[14] The other issue Mr. Habus raises is that the Order focuses on the investigator's recommendations, but not their ability to make conclusions in their report. The problem highlighted by the Associate Judge is that because the investigator's role is complete with the issuance of the report, the investigator would have no standing to bring a judicial review in this matter themselves. As explained in paragraphs 12 and 13 of the Order:

> Rule 303(1)(a) has been interpreted as restricting the category of parties who may be added as respondents to those who, if the tribunal's decision were different, could have brought an application for judicial review. Put another way, to be directly affected, a party would have to be able to bring an application for judicial review themselves had the decision of the tribunal gone the other way.
>
> Here, the Respondents correctly note that the Regulations give investigators only the authority to make recommendations. Those recommendations are neither mandatory nor binding. Rather, if a resolution is not reached under subsection 31(1), the employer's decision prevails. While that decision may align with the investigators' recommendations, that does not make it a decision of the investigators. In these circumstances, the investigators would have no standing to bring their own application for judicial review challenging the employer's decision.

[15] I do not see how Mr. Habus' argument on appeal regarding conclusions in the investigator's report assists with challenging the Associate Judge's analysis. The issue remains that the Respondents could not challenge the employer's decision themselves.

[16] At the hearing before me, Mr. Habus pointed to the recent case of *Marentette v Canada (Attorney General)*, 2024 FC 676. This case related to procedural fairness concerns with respect to the workplace investigation process under the Regulations, but the particular investigator was not named as the Respondent, instead the Attorney General was named. This case also does not help Mr. Habus' position.

[17] Considering all the circumstances as a whole, I do not find there is a basis to grant Mr. Habus' request for an extension of time. The motion to appeal the Associate Judge's Order is accordingly dismissed.

JUDGMENT in T-411-24

THIS COURT'S JUDGMENT is that:

1. The extension of time to file an appeal is not granted; and
2. The motion to appeal the June 17, 2024 Order of Associate Judge Coughlan is dismissed.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-411-24
STYLE OF CAUSE:	NENAD HABUS v LEANNE W. WALSH AND WEST COAST WORKPLACE LAW CORPORATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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JUDGMENT AND REASONS:	SADREHASHEMI J.
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APPEARANCES:

Nenad Habus	FOR THE APPLICANT (ON HIS OWN BEHALF)
Renée Gagnon	FOR THE RESPONDENTS

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