

Federal Court



Cour fédérale

Date: 20250707

Docket: T-2246-24

Citation: 2025 FC 1196

Toronto, Ontario, July 7, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

KAREN SMITH

Applicant

and

CANADA POST CORPORATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Karen Smith, seeks judicial review of a decision dated July 31, 2024 [Decision] of the Canadian Human Rights Commission [Commission] dismissing her complaint [Complaint] under subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, RSC, 1985, c H-6 [CHRA] on the basis that no further inquiry was warranted.

[2] For the reasons set out below, the application is allowed.

I. Background

[3] The Applicant was employed by the Respondent, Canada Post Corporation [Canada Post] from November 4, 2018 to January 10, 2022 as a Temporary Postal Clerk. She was a member of the Canadian Union of Postal Workers [the Union] and subject to the Urban Collective Bargaining Agreement [Collective Agreement] between Canada Post and the Union.

[4] On November 23, 2020, Canada Post implemented a Mandatory Face Covering Practice [Practice] for all employees across Canada pursuant to the Public Health Agency of Canada's directive that required all individuals in Canada to wear a face covering when sharing indoor spaces with people outside of their immediate household to prevent the spread of COVID-19. Prior to its implementation, the Union distributed a directive to all employees with information relating to the Practice, including the following details regarding exemptions and non-compliance:

4.2 Exemptions

The Face Covering requirements in this Practice do not apply to persons in the following situations:

- persons who are the sole occupant of an enclosed vehicle;
- persons who are the sole occupant of an enclosed office or room with a closed door,
- persons consuming food or drink in an area designated for this purpose and where 2 metres physical distancing is maintained;
- persons engaging in other activities that briefly require the temporary removal of a Face Covering and where 2 metres physical distancing is maintained;
- persons receiving alternate accommodations under the Canadian Human Rights Act based on an inability to wear a face covering;
- and persons under the age of 5.

[...]

6. Non-Compliance

All Canada Post employees are responsible for complying with this Practice. Failure to comply with this Practice will result in discipline up to and including dismissal from Canada Post. Contractors, visitors and customers are responsible for complying with this Practice. Contractors, visitors and customers who do not comply with the Practice will not be permitted access to Canada Post Facilities. Accommodated arrangements will be made with persons who require accommodation on human rights grounds.

[5] On November 25, 2020, the Applicant was brought into a meeting with representatives from Canada Post and the Union to discuss her failure to comply with the Practice. In the meeting, the Applicant requested an exemption from wearing a face mask but was advised that any request for accommodation would have to be supported by some medical documentation from a physician submitted to Canada Post's disability management provider Canada Life, and that until any such request was assessed, the Applicant would not be permitted on Canada Post property unless she complied with the Practice.

[6] On December 10, 2020, the Applicant's supervisor requested an update from the Applicant by voicemail of her efforts to obtain a medical note to provide to Canada Life. The Applicant informed her supervisor the following day that she was on a waitlist to see a physician.

[7] On December 14, 2020, Canada Life mailed the Applicant an accommodation package [Accommodation Package] that provided information on Canada Life's Disability Management Program, including instructions on what to do next, a letter to be sent to the Applicant's physician with a medical questionnaire, and a consent form to be signed by the Applicant authorizing the release of medical information to Canada Life and allowing them to share and discuss certain details relating to the status of the Applicant's accommodation claim with Canada

Post. The Accommodation Package indicated that the Applicant was to submit the consent form and medical questionnaire within 14 days of the date of the letter. The Applicant did not receive the Accommodation Package until December 21, 2020.

[8] On December 22, 2020, the Applicant sent Canada Life an email advising that the deadline for submitting medical documentation was unattainable as she did not have a family doctor and was on a waiting list to see a physician. Canada Life responded by advising that the email would be placed on the Applicant's file. Canada Post was not included on the email exchanges.

[9] On January 27, 2021, Canada Life notified Canada Post that as the Applicant had not submitted the required accommodation forms her file would be closed. The Applicant was not provided with this update.

[10] On March 16, 2021, the Applicant's Canada Post supervisor contacted the Applicant about putting her back on the work rotation. However, the supervisor was informed that the Applicant had at that point been unable to secure supportive medical documentation from a walk-in doctor and therefore had not been granted an exemption and would be unable to comply with the Practice.

[11] Sometime in March 2021, the Applicant attempted to file a grievance but allegedly did not complete all the standard forms. On May 18, 2021, the Applicant had a phone call with the Vice President of the Union [Union VP]. During the conversation, the Union VP stated that

while the Applicant required a medical note, disclosure of her specific medical condition was not required to support an accommodation request.

[12] After an earlier attempt, the Applicant filed the Complaint on June 16, 2021, alleging that the Respondent discriminated against her in employment on the ground of disability by treating her in an adverse differential manner and by pursuing a discriminatory policy or practice, contrary to sections 7 and 10 of the CHRA.

[13] On July 14, 2021, the Applicant submitted a medical note to Canada Life, but did not include the paperwork enclosed with the Accommodation Package. The medical note identified the Applicant as having one of a list of conditions that would make her exempt from wearing a face mask. Canada Post did not receive a copy of this correspondence. There was no response from Canada Life to the Applicant.

[14] On January 10, 2022, Canada Post issued a letter of termination pursuant to Article 44.11(a) of the Collective Agreement on the basis that the Applicant had not worked for a period of twelve continuous months.

[15] On January 11, 2023, after considering submissions from both the Applicant and Canada Post, a Human Rights Officer concluded that the Complaint should not be dismissed under paragraph 41(1)(d) of the CHRA as being frivolous and vexatious.

[16] Following consideration of submissions from both Canada Post and the Applicant, as well as further investigations, on June 10, 2024, a second Human Rights Officer [HRO] prepared a Report for Decision [Report] that recommended that the Complaint be dismissed under subparagraph 44(3)(b)(i) of the CHRA.

[17] In the Report, the HRO found that section 10 of the CHRA was not engaged and that the allegations should only be assessed under section 7 of the CHRA. In recommending that the Complaint be dismissed under subparagraph 44(3)(b)(i) of the CHRA, the HRO set out the following factors, which guided the analysis. The HRO stated that he considered only “as many factors as [were] necessary to make a recommendation.”

Step 1:

The investigation will examine whether there is a reasonable basis in the evidence to support the complainant’s allegation of discrimination in employment by considering the following:

Step 1A - Alleged discriminatory practice

- a) What is the negative treatment alleged and is there a reasonable basis in the evidence to support that it could have occurred?
- b) Is there a reasonable basis in the evidence to support that the alleged treatment could be linked directly or indirectly to [insert applicable grounds of discrimination]?

Step 1B - Reasonable explanation

- c) Has the respondent provided an explanation for what happened?
- d) Is there a reasonable basis in the evidence to question whether the respondent's explanation is reasonable, rational, consistent, credible and non- discriminatory?

Step 2:

Defence of *bona fide* occupational requirement (BFOR)

- a) What is the policy, practice, rule or standard (all referred to hereafter as “the standard”) relied on by the respondent to refuse to employ or continue to employ the complainant, or to differentiate adversely in relation to the complainant?
- b) Is there a reasonable basis in the evidence to question whether the standard can be justified using the following test:
 - i. Is the general purpose of the standard rationally connected to the performance of the job?
 - ii. Did the respondent adopt the particular standard in an honest and good faith belief that it is necessary in order to fulfill the purpose or goal?
 - iii. Is the standard reasonably necessary to achieve the purpose or goal? To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the complainant without imposing undue hardship upon the employer.

Complaints involving a possible failure to accommodate

In complaints where accommodation is in issue, the following questions may be considered at the beginning of Step 2 BEFORE the full bona fide occupational requirement defence is analysed. For most accommodation related complaints these questions are critical to the accommodation analysis.

- e) Did the complainant require accommodation for reasons related to one or more prohibited grounds of discrimination; if so, what accommodation measures were required?
- f) Did the complainant communicate his/her need for accommodation to the respondent or should the respondent have known of his/her need for accommodation from the circumstances?

- g) Did the complainant cooperate with the respondent in the search for accommodation? and,
- h) Was the required accommodation denied?

[18] The HRO reviewed the arguments of the Applicant and Canada Post and found that Steps 1A and 1B were satisfied: There was sufficient evidence to support an allegation that negative treatment occurred and that it was linked to disability. However, the HRO found that Canada Post provided a reasonable explanation for what happened, and that its explanation appeared to be rational, consistent, credible, and non-discriminatory.

[19] The HRO did not conduct an analysis under Step 2 as they considered the real dispute to be whether the Applicant's disability required accommodation and whether the Applicant had participated in the accommodation process. Upon conducting an accommodation analysis, the HRO found that the information demonstrated that the Applicant did not cooperate with the accommodation process as she failed to provide the information that was required for Canada Life to support her need for a mask exemption.

[20] After considering further submissions from the Applicant, the Commission issued the Decision, dismissing the Complaint. In the Decision, the Commission adopted the Report as its own and provided additional responses to the Applicant's submissions, concluding that: there was no indication of adverse differential treatment when Canada Life closed the Applicant's file or when her July 14, 2020 letter was not actioned; whether or not the Applicant was contacted multiple times by the Respondent regarding accommodations needing to go through Canada Life was not material to the conclusions and recommendations in the Report; and that there was no

indication of errors in the Report due to inaccurate comments, misleading information, or incorrect dates that would render it deficient.

II. Analysis

[21] The sole issue before the Court is whether the Decision was reasonable. The standard of review is accordingly that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[22] A reasonable decision is one that is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at para 85. When read as a whole and taking into account the administrative setting, it is a decision that bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 95-96.

[23] When reviewing a decision for reasonableness, it is not the role of the Court to reweigh the evidence or to interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. To succeed in an application for judicial review under the reasonableness standard, the applicant must establish the decision contains fundamental flaws that are so sufficiently central or significant that they warrant intervention: *Vavilov* at para 100.

[24] In this case, the Applicant argues that the Decision is unreasonable because: it is not consistent with the statutory purpose and authority of the Commission; it fails to address the core issues and arguments raised by the Applicant and to fairly review responses from the Applicant

to the Report; and it fails to address deadlines and communication issues with the Respondent that fatally prejudiced the outcome against the Applicant.

[25] While I see no error with the legal framework applied in the analysis, for the reasons set out below, I agree with the latter argument and that this failure renders the Decision unreasonable.

[26] It is important to recognize that the Decision here is one of the Commission, which is not an adjudicative body. The role of the Commission is not to determine whether discrimination has occurred, but to screen human rights complaints to determine, having regard to all the circumstances under the appropriate provisions of the CHRA, whether further inquiry is warranted: *Canadian Union of Public Employees (Airline Division) v Air Canada*, 2013 FC 184 at paras 60-63; *Ritchie v Canada (Attorney General)*, 2017 FCA 114 [*Ritchie*] at para 38. The investigative role of the Commission is fact and policy driven and is to be afforded a broad degree of deference: *Ritchie* at paras 38-39.

[27] Here, the HRO (and Commission through adoption of the Report) applied the principles from *Moore v British Columbia (Education)*, 2012 SCC 61 at para 33, and accepted that there was sufficient evidence to advance past Step 1A of the discrimination analysis (*i.e.*, the Commission accepted that the Applicant had a disability that prevented her from wearing a face mask). However, the HRO and Commission found that the Respondent provided a reasonable explanation for its actions which were grounded in the Applicant's failure to cooperate with the accommodation process in place.

[28] As noted by the Respondent, accommodation triggers reciprocal responsibilities. While there is an obligation on the employer to consider accommodation, there is also an obligation on the employee to communicate enough information about their disability for the request for accommodation to be properly assessed: *Air Canada v Marcovecchio*, 2024 FC 1639 at para 62.

[29] The Report concludes that the Applicant did not establish the requested need for accommodation because she did not cooperate with the accommodation process. The Applicant submitted her medical note after the original accommodation process deadline, and did not meet Canada Life's requirements for information as outlined in the Accommodation Package.

[30] In the Decision, the Commission considers the Applicant's further submissions that she did not receive the Accommodation Package from Canada Life until December 21, 2020. However, it disputes the Applicant's suggestion that this means that the Applicant did not have 14 days to provide the information requested on the basis that the file was not closed until January 26, 2021.

[31] The Commission recognizes that the Applicant emailed Canada Life the day after she received the Accommodation Package to inform Canada Life that the deadline was unattainable, but states that there was "no information that the [Applicant] followed up with her case manager to provide an update or to request another deadline to provide the medical documents." I do not find this statement intelligible in view of the correspondence exchanged.

[32] As noted earlier, Canada Life responded to the Applicant's letter by advising that the email would be placed on the Applicant's file. While the Commission asserts that it was not up to Canada Life to conduct additional follow-up with the Applicant, in view of the acknowledgement given by Canada Life, in my view, it was reasonable for the Applicant to assume that Canada Life accepted that additional time would be taken even if no new deadline was set.

[33] As conceded in argument by counsel for the Respondent, the 14-day timeline was an arbitrary timeline chosen by Canada Life. It was in their discretion to extend the timeline as needed. Based on this discretion, and the correspondence from the Applicant, it is unclear how Canada Life arrived at the conclusion that the Applicant's file should be closed. Moreover, it is unclear what significance can be given to this step as it was not conveyed to the Applicant and was inconsistent with Canada Post's own actions and follow-up with the Applicant in March 2021. Indeed, the Respondent suggested that had the Applicant submitted the required documents at any time prior to the Applicant's termination of employment, the documents would have been considered.

[34] The Applicant concedes that she did not complete the documents from the Accommodation Package. However, she provided a note from a medical practitioner on July 14, 2021 that identified her as someone with a condition that required mask exemption. The letter was never acknowledged by Canada Life nor brought to Canada Post's attention.

[35] In the Report, the HRO accepts Canada Life's explanation that it did not respond to the medical exemption letter because it was "not actionable," as it had insufficient information. In the Decision, the Commission further supports Canada Life's failure to respond on the basis that the Applicant's file was considered closed for failure to meet the initial deadline or to request an extension in December 2020.

[36] However, as the Applicant was never advised that her file was closed, it is difficult to understand how the Applicant would not have expected some form of response from Canada Life to her exemption letter.

[37] Similarly, I find insufficient justification for the Commission's assertion that any lack of response is irrelevant as the Applicant was fully aware of the information required by Canada Life to make an accommodation assessment. In my view such conclusion cannot reasonably be made without consideration for when and how the Applicant received the Accommodation Package, and of the information the Applicant was receiving from others, including the Union VP, as to the nature of the medical information that was required.

[38] Indeed, while the Applicant acknowledges that she received the Accommodation Package in December 2020, the Commission does not consider that this was provided to the Applicant right before the seasonal holidays, without any noted verbal explanation.

[39] Moreover, the Applicant asserts that she was advised by her employer during the November 25, 2020 meeting that she did not need to disclose the details of her specific medical

condition. Further, as noted earlier, in a conversation with the Union VP from May 2021 (excerpted below from the transcript), the Union VP stated that all the Applicant needed was a doctor's note to say that she had a condition where she could not wear a mask:

It's not a medical information, its simply a doctor saying Karen has an exemption from wearing a mask, period, it's not medical information, it's nothing, it's just a doctor saying you cannot wear a mask. That's all, we don't care what's wrong with you, it doesn't matter what's wrong with you as long as the doctor says she does not need to wear a mask, there's not personal information, nothing that's required besides that. If there is a legitimate reason why you can't wear a mask then a doctor should have no problem telling that.

[40] Although the Commission was provided with the transcript from the conversation between the Union VP and the Applicant, it did not factor into the Commission's analysis. The failure of the Commission to consider this full factual context, when considering the information that was provided and given, in my view, calls into question the justification provided by the Commission for its Decision and whether the determination that the Applicant did not cooperate with the accommodation process was reasonable.

[41] For all these reasons, it is my view that the Decision must be set aside and sent back for redetermination.

[42] As the Applicant was self-represented, there shall be no order as to costs.

JUDGMENT IN T-2246-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The August 1, 2024 decision of the Canadian Human Rights Commission is set aside, and the complaint is sent back to the Canadian Human Rights Commission for redetermination on the basis of the reasons set out herein.
2. There shall be no order as to costs.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2246-24

STYLE OF CAUSE: KAREN SMITH V CANADA POST CORPORATION

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

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