Federal Court  Cour fédérale

Date: 20260203

Docket: T-113-25

Citation: 2026 FC 151

Ottawa, Ontario, February 3, 2026

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

DAVID DANCHILLA

Applicant

and

CANADA PACIFIC KANSAS CITY

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a Canadian Human Rights Commission (the "CHRC") decision not to deal with the Applicant's human rights complaint (the "Decision") under paragraph 41(1)(d) of the *Canadian Human Rights Act*, RSC 1985, c H-6 (*CHRA*).

[2] For the reasons that follow, the application is dismissed.

II. Background

[3] The Applicant worked for the Respondent for approximately 30 years. After being dismissed, the Applicant was reinstated following a labour arbitration in 2017. After returning to work in May 2017, the Applicant suffered an off-duty injury in July 2017 and was off-duty until he returned to work briefly in June 2018 in an accommodated arrangement of two-hour shifts.

[4] The Applicant alleges that, after his return, the Respondent failed to provide meaningful accommodation, including flexibility to attend physiotherapy. He also alleges mocking, name calling, and workplace jokes about his injuries, improper requests for medical information, and pressure to return to work despite his unresolved harassment and discrimination concerns. In 2018, the Applicant filed an internal harassment complaint. In 2019, the Respondent provided the investigation results, which substantiated or partially substantiated some allegations.

[5] In June 2018, the Respondent received medical information that the Applicant was unfit for all work duties. The Applicant did not perform any work for the Respondent after June 27, 2018. Over the next four years, the Respondent made multiple attempts to engage the Applicant in an accommodated process for his to return to work, including communication from its Vice-President of Human Resources. The Applicant communicated inconsistently with the Respondent and did not engage further in the accommodation process.

[6] The Respondent closed the Applicant’s employment file on October 12, 2022, relying on medical information that the Applicant was unfit for work and that recovery was not expected.

The Applicant disputes the overall fairness and adequacy of how the Respondent handled his situation, including the steps that culminated in the closure of his employment file.

[7] The Applicant's union advanced three grievances on his behalf alleging:

1. failure to accommodate;
2. harassment and failure to take remedial action leading to constructive dismissal; and
3. continued failure to accommodate resulting in the closure of the Applicant's employment file.

[8] These grievances proceeded to arbitration before the Canadian Railway Office of Arbitration and Dispute Resolution. The arbitrator dismissed all three grievances on May 9, 2024 (the "Arbitration Decision").

[9] The Applicant also filed a complaint with the CHRC. The CHRC invited submissions and received written submissions and reply submissions from both parties.

III. The Decision

[10] The CHRC issued the Decision on December 6, 2024, declining to deal with the Applicant's complaint and closing the file. The Decision addressed only the preliminary screening issue, wherein the CHRC decides whether to "deal with" the complaint by proceeding to investigation or other steps, or to "not deal with" it and close the file. The CHRC concluded it

was “plain and obvious” that paragraph 41(1)(d) of the *CHRA* applied because the Arbitration Decision had already addressed the essence of the Applicant’s allegations. The CHRC stated that, at the preliminary stage, allegations are presumed true and the CHRC may only decide not to deal with a complaint if it is “plain and obvious” that a preliminary issue applies, citing *Keith v Correctional Service of Canada*, 2012 FCA 117 at paragraphs 50-51.

[11] The CHRC summarized the Applicant’s position that the arbitration did not provide a fair or comprehensive resolution, and that it demonstrated bias, contradictions, and a lack of a trauma-informed approach. The Applicant also urged the CHRC to proceed on public interest grounds. The CHRC summarized the Respondent’s position that the same allegations had been raised and determined through three grievances, each dismissed in the Arbitration Decision, and that it would be unfair to require the Respondent to respond to essentially the same allegations in a second process.

[12] The CHRC recognized that, when another process has addressed the complaint, it must consider whether barring the complaint would result in unfairness, including by looking at procedural fairness in the first process and differences between the processes. The Decision set out a list of factors, reproduced in Appendix A of the Decision, including the authority of the other decision maker to decide human rights issues, whether the issues were essentially the same, whether the complainant had a chance to raise relevant human rights issues, whether reviews or appeals were finished, and whether justice requires dealing with the complaint anyway.

[13] The CHRC reviewed the applicable jurisprudence regarding prior proceedings and finality, including *British Columbia* (*Workers' Compensation Board) v Figliola*, 2011 SCC 52 [*Figliola*], *Penner v* Niagara *(Regional Police Services Board)*, 2013 SCC 19 [*Penner*], and *Exeter v Canada (Attorney General)*, 2012 FCA 119 [*Exeter*]. *Exeter* specifically addressed paragraph 41(1)(d) of the *CHRA*.

[14] The CHRC then compared the Applicant's allegations in the complaint to the Arbitration Decision. In substance, the CHRC concluded that the Arbitration Decision addressed accommodation and scheduling flexibility, the Respondent's handling of medical information and requests, allegations of inappropriate comments and the internal harassment investigation, alleged ongoing harassment and a toxic work environment, and the rationale for closing the Applicant's employment file.

[15] The CHRC also considered whether relying on the arbitration outcome would cause unfairness. It concluded there was no evidence of a breach of procedural fairness in the arbitration proceeding, noting that the Applicant was represented by his union, the Arbitration Decision outlined the union's position, and the Applicant had an opportunity to know the case to meet and a chance to meet it.

[16] The CHRC acknowledged the Applicant's disagreements with the Arbitration Decision, including allegations of bias and lack of a trauma-informed approach, but stated that it was not an appeal body for the Arbitration Decision and that the Applicant's disagreement with the arbitrator's findings did not establish unfairness. The CHRC stated that the proper avenue for the

Applicant to challenge alleged errors in the Arbitration Decision was judicial review of that decision to the Federal Court.

IV. Issues

[17] The issues are the following:

1. Was it reasonable for the CHRC to conclude, under paragraph 41(1)(d) of the CHRA, that the Arbitration Decision had addressed the essence of the Applicant's allegations such that the CHRC should not deal with the complaint?

2. Was it reasonable for the CHRC to conclude that declining to deal with the complaint would not result in unfairness to the Applicant, having regard to the Applicant's submissions about bias, the absence of a trauma-informed approach, and barriers to further recourse?

V. Standard of Review

[18] The standard of review with respect to the CHRC's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25; *Exeter* at para 6). In this context, the CHRC is performing its screening function and is "to be afforded great latitude in exercising its judgment and in assessing the appropriate factors when considering the application of paragraph 41(1)(d)" of the *CHRA* (*Miller v Canada (Attorney General)*, 2024 FC 781 at para 11; *Bergeron v Canada (Attorney General)*, 2013 FC 301 at para 39).

VI. Analysis

A. *Statutory Framework*

[19] Paragraph 41(1)(d) of the *CHRA* assigns the CHRC a screening function wherein the CHRC may decline to deal with a complaint that is trivial, frivolous, vexatious, or made in bad faith. The CHRC may treat relitigation of issues already addressed in substance through another appropriate process as "vexatious" within the meaning of paragraph 41(1)(d) (*Exeter* at para 34).

B. *Reasonable Assessment of the Essence of the Applicant's Allegations*

[20] The Applicant submits that the CHRC treated the existence of the Arbitration Decision as dispositive and imported issue estoppel and abuse of process into paragraph 41(1)(d) of the *CHRA* in a way the statute does not support and without the contextual analysis required by the jurisprudence. The Respondent submits that the CHRC conducted the individualized comparison required, and that the Decision was reasonable on the record.

[21] The Decision does not support the Applicant's characterization that the CHRC dismissed the complaint merely because arbitration occurred. The CHRC reviewed the complaint allegations and set out, in some detail, how the Arbitration Decision treated those same subjects across the three grievances. The CHRC's reasons reflect a recognition that overlap must be assessed, not presumed. This approach accords with the case law the CHRC cited in its reasons, including that the CHRC must turn its mind to the prior decision and consider the issues that were raised (*Snook v Canada Post Corporation*, 2014 FC 351 [*Snook*] at paras 17-19; *Khapar v*

Air Canada, 2014 FC 138 [*Khapar*] at para 99, citing *Canada Post Corp v Barrette (CA)*, 2000 CanLII 17127 (FCA), [2000] 4 FC 145 at para 28).

[22] The CHRC's treatment of the accommodation allegations illustrates this consideration. It identified the Applicant's claim that he was denied time off or flexible start times for physiotherapy and that medical restrictions were removed or ignored. It then described the arbitrator's consideration of the doctor's request for flexibility, the arbitrator's analysis of the medical basis for flexibility, and the arbitrator's conclusion that flexibility was not established as a medical requirement and that reasonable accommodation had been provided.

[23] The same is true of the Applicant's harassment and toxic workplace allegations. The CHRC did not treat the internal harassment investigation as determinative. Rather, it described the arbitrator's engagement with the investigation findings, including the arbitrator's view that the internal findings were not binding, the arbitrator's assessment of remedial steps, and the arbitrator's conclusion that there was no continuing pattern of harassment after remediation.

[24] On employment file closure, the CHRC described the arbitrator's findings concerning the Applicant's failure to re-engage with the Respondent in the accommodation process, the lack of the Applicant's reasonable prospect of a return to work, and the arbitrator's conclusion that it was reasonable for the Respondent to close the employment file.

[25] The CHRC's conclusion that the Arbitration Decision addressed the essence of the allegations was justified by the reasoning it provided and by the links it drew to the grievance issues and outcomes.

[26] The Applicant argues that the arbitration process was focused on the collective agreement and was not capable of vindicating quasi-constitutional human rights protections with the "rigour and remedial flexibility" of the *CHRA*. This submission invites a broad pronouncement about what grievance arbitration can or cannot do as a matter of law, which is not relevant to determining the merits of this application. The question on this application is narrower: whether the CHRC concluded, in a way that is intelligible and justified in relation to the record and the legal constraints (*Vavilov* at paras 15, 86, 99, 101), that the Arbitration Decision addressed the essence of the Applicant's complaint allegations such that paragraph 41(1)(d) of the *CHRA* applied. The CHRC's reasons show it answered that question based on specific overlaps between the complaint and the grievances addressed in the Arbitration Decision.

[27] The Applicant also submits that the CHRC failed to appreciate that the complaint included systemic discrimination allegations that were not addressed in arbitration. The Decision shows that the CHRC acknowledged that submission and concluded there was no indication that the arbitrator failed to consider broader allegations placed before her. The Applicant also argues that there was an absence of a trauma-informed approach in the Arbitration Decision, which the CHRC failed to appreciate. However, both in substance and context, the CHRC treated the trauma-informed submission as part of a broader invitation to re-assess the merits and quality of the arbitral reasoning. It was reasonable for the CHRC to decline to do so. Nothing in paragraph

41(1)(d) of the *CHRA* requires the CHRC to adjudicate the reasonableness of arbitration reasons or to treat disagreement with the arbitrator's evaluative approach as proof that the arbitration was unfair. It is not the CHRC's tasks to analyze whether the decision-maker "got it right" (*Ducharme v Canadian Union of Public Employees*, 2021 FC 847 at para 37, citing *Gunn v Halifax Longshoremen's Association, ILA Local 269*, 2020 FC 341 at para 12).

[28] The CHRC's reasons set out that the arbitration dealt directly with disability-related scheduling accommodations, alleged harassment and discriminatory comments, the Respondent's responses, and the Applicant's engagement with the accommodation process. It was reasonable for the CHRC to conclude that the arbitrator's findings and determinations addressed the essence of the Applicant's complaint, even if the Applicant would have preferred a different analysis or different outcome.

[29] The Applicant also submits that the CHRC's reliance on "vexatiousness" improperly imported issue estoppel and abuse of process. The CHRC's reasons, however, cite authorities connecting relitigation and abuse of process concepts to paragraph 41(1)(d) of the *CHRA* (*Exeter* at para 34) and Federal Court decisions upholding the CHRC's approach where the essence of allegations has already been addressed (*Snook* at para 19; *Verhelle v Canada Post Corporation*, 2010 FC 416 at para 11). Whether the underlying concern is described as relitigation, finality, or vexatiousness in the statutory sense, the CHRC's task remained to assess the relationship between the prior process and the complaint. It did so.

C. *Reasonable Assessment of the Arbitration Process' Procedural Fairness*

[30] The Applicant submits that the CHRC failed to meaningfully assess whether it would be unfair to rely on the arbitration outcome to bar his complaint. He points to alleged bias, alleged contradictions in the Arbitration Decision, the absence of a trauma-informed approach, and the union's refusal to pursue judicial review of the Arbitration Decision.

[31] The CHRC identified the correct legal constraints, that it must look at whether the arbitration process was procedurally fair and whether fairness nonetheless requires the CHRC to deal with the complaint (*Khapar* at paras 122-127). It specifically invoked *Penner* and *Figliola* for the balance between finality and fairness. The CHRC then explained why it found no procedural unfairness in the arbitration process, referring to the Applicant's union representation and the arbitrator's engagement with the union's case.

[32] The Applicant's submissions about a trauma-informed approach and asserted contradictions largely attack the quality of the arbitral reasoning and the merits of the Arbitration Decision. The CHRC reasonably treated those points as outside its role on a paragraph 41(1)(d) screening decision, distinguishing between a procedural fairness concern about the arbitration process and dissatisfaction with how the arbitrator weighed evidence and reached conclusions.

[33] Regarding the Applicant's asserted bias in the arbitration, the CHRC expressly addressed that submission and concluded there was no indication that the arbitrator exhibited bias. In the CHRC's view, the arbitrator considered the allegations related to discrimination and harassment

in reaching her conclusions and analyzed the medical evidence in detail and dismissed the Applicant's need for flexible working hours for reasons thoroughly explained in the Arbitration Decision. The Applicant has not shown that this CHRC conclusion lacks justification.

[34] The Applicant also submits that the CHRC failed to grapple with the arbitrator's treatment of the internal harassment investigation findings and systemic discrimination concerns. As noted above, the CHRC's reasons demonstrate that it summarized the arbitrator's reasons for not treating the internal findings as binding and for concluding the substantiated concerns had been remedied, treating it as part of the arbitration's evidentiary assessment. The Applicant may disagree with that approach, but the CHRC reasonably treated it as part of the merits and evidentiary assessment undertaken at arbitration, not as demonstrating that the arbitration failed to address the essence of the allegations.

[35] The union's alleged refusal to pursue judicial review of the Arbitration Decision raises a different point because the Applicant argues that the CHRC told him to both seek judicial review of the Arbitration Decision and at the same time failed to acknowledge that he could not do so independently and that the union refused based on cost. The Respondent disputes the evidentiary foundation for this point, noting that the union's refusal to pursue judicial review of the Arbitration Decision appears in the Applicant's memorandum but not elsewhere in the record.

[36] Even accepting that the Applicant asked his union to seek judicial review of the Arbitration Decision and the union declined, that does not establish that the CHRC's screening decision is unreasonable. While the CHRC's reasons would have been clearer if they had

addressed this submission directly, the question on judicial review is whether any shortcomings or flaws in a decision are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100; *Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 49). I am not persuaded that the Decision is unreasonable.

[37] The CHRC did not treat exhaustion of judicial review as a precondition to applying paragraph 41(1)(d) of the *CHRA*. The CHRC's core reasoning treated the Arbitration Decision as final for the purposes of assessing whether substantially the same issues were addressed and that the arbitration process was not shown to be procedurally unfair. The CHRC's determinative fairness finding was that the arbitration process itself afforded the opportunity for the Applicant to know and meet the case, and that there was no evidence of procedural unfairness in that process. The CHRC's comment that judicial review is the avenue to challenge arbitral errors does not transform the paragraph 41(1)(d) screening analysis into an assessment dependant on whether judicial review of the prior decision was pursued.

[38] To the extent the Applicant's complaint is that the union failed to represent him fairly in deciding whether to pursue judicial review of the Arbitration Decision, the Respondent submits that the labour relations regime provides a dedicated statutory avenue for that dispute, including a duty of fair representation complaint. Where the CHRC declines to deal with a complaint under paragraph 41(1)(d) on the basis that the essence of the allegations was addressed through a fair and comparable arbitration process, a complainant's concerns about the adequacy of union representation are properly pursued through a duty of fair representation complaint rather than by

seeking to relitigate the arbitral decision through the CHRC (*Klimkowski v Canadian Pacific Railway*, 2017 FC 438 at para 63).

[39] The Applicant relies on *White v Canada Post Corporation*, 2024 FC 198, *Gillespie v Canada (Revenue Agency)*, 2025 FC 1, and *Green v Ontario*, 2025 ONSC 6223, to support his arguments that the Decision was unreasonable. Those decisions turn on their own facts, which are quite different from the facts of this matter. Those decisions are distinguishable.

[40] Considering the CHRC's reasons as a whole and the screening context, the Applicant has not met his burden to show that the Decision is unreasonable (*Vavilov* at paras 99-100).

D. *Costs*

[41] Both parties seek costs. The Respondent has been successful. The parties made no submissions identifying special circumstances that would justify departing from the usual result that costs follow the event. The Respondent is entitled to costs, assessed in accordance with column 2 of Tariff B.

VII. Conclusion

[42] The application is dismissed.

[43] The Respondent is awarded costs, to be assessed in accordance with column 2 of Tariff B.

JUDGMENT in T-113-25

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. The Respondent is awarded costs, to be assessed in accordance with column 2 of Tariff B.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-113-25
STYLE OF CAUSE:	DAVID DANCHILLA v CANADA PACIFIC KANSAS CITY
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 29, 2026
JUDGMENT AND REASONS:	MANSON J.
DATED:	FEBRUARY 3, 2026

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