

Date: 20071214

**Dockets: T-67-07
T-68-07**

Citation: 2007 FC 1309

BETWEEN:

ABDOURAHMAN MOHAMED SADICK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

PINARD J.

[1] These are applications for judicial review of two decisions of the Canadian Human Rights Commission (the Commission). The Commission dismissed the applicant's complaints against his employer to the effect that the employer had discriminated against him.

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[2] The applicant was employed as an administrative support officer at the CR-04 level from August 1, 2001 to May 26, 2004. From August 1, 2001 to June 2, 2003, he worked under the supervision of Alain Belleville. Following problems between them and also with another employee, the applicant received a temporary transfer to the ministerial reports unit, under the supervision of Ginette Giroux.

[3] The applicant was on sick leave from July 23, 2003 to November 16, 2003. On his return, he was again placed in the public rights administration unit, under the supervision of Suzanne Cardinal. The applicant went back on sick leave in February 2004. His contract was not renewed and he has not been on the employee list since May 26, 2004.

[4] On May 26, 2004, the applicant filed a first complaint with the Commission, alleging that his employer had discriminated against him based on his race and his national or ethnic origin.

[5] On August 30, 2005, the applicant filed a second complaint with the Commission, alleging that he had knowledge of new facts and documents and that his employer had discriminated against him based on his race, his national or ethnic origin and his disability, which led to his layoff.

* * * * *

[6] Louise Chamberland investigated for the Commission and prepared two investigation reports on May 26, 2006, recommending that both complaints be dismissed.

[7] In regard to the first complaint, the applicant named 34 witnesses. Of these witnesses, the investigator consulted those whom she considered the most relevant as well as several others chosen at random. These witnesses included the applicant's supervisor, Diane Burrows, who was the supervisor of Mr. Belleville, and some of the applicant's colleagues. The investigator reviewed the many aspects of the complaint and summarized the submissions of the applicant, respondent and witnesses whom she had questioned. She determined that the evidence did not support the applicant's allegations, but that it indicated rather that the applicant had performance and work attendance issues, and that management had done its best to help him improve his performance.

[8] In regard to the second complaint, the investigator summarized the submissions of the parties and the witnesses to determine that [TRANSLATION] "the evidence established that the complainant had performance and work attendance issues in the three positions that he occupied," and that this was the reason his contract had not been renewed, rather than race, colour, national or ethnic origin.

[9] Both reports were disclosed to the parties and, following their response, the Commission sent its decisions by letter dated December 12, 2006:

[TRANSLATION]

. . . the Commission has decided to dismiss the complaint (20040511) pursuant to paragraph 44(3)(b) of the *Canadian Human Rights Act*, because

- The evidence does not support the complainant’s allegations to the effect that he had been subject to harassment and differential treatment based on his race, his colour and his ethnic origin.

In regard to the complaint (20051699), the Commission also decided to dismiss the complaint pursuant to paragraph 44(3)(b) of the *Canadian Human Rights Act*, because

- The evidence gathered does not support the complainant’s allegation to the effect that he had been dismissed on the basis of his race, his colour, his ethnic origin or his disability.

These decisions are the subject of these applications for judicial review in docket numbers T-67-07 and T-68-07.

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[10] The relevant provisions of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, (the Act) read as follows:

44. (3) On receipt of a report referred to in subsection (1), the Commission

...

(b) shall dismiss the complaint to which the report relates if it is satisfied
 (i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or
 (ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(c) to (e).

44. (3) Sur réception du rapport d’enquête prévu au paragraphe (1), la Commission:

[. . .]

b) rejette la plainte, si elle est convaincue :
 (i) soit que, compte tenu des circonstances relatives à la plainte, l’examen de celle-ci n’est pas justifié,
 (ii) soit que la plainte doit être rejetée pour l’un des motifs énoncés aux alinéas 41c) à e).

* * * * *

[11] The applicant is essentially complaining that procedural fairness was not observed in this matter.

[12] The parties agree that when the Commission investigates a complaint, they expect the Commission to proceed in a neutral and rigorous fashion. No judicial deference is given to the Commission if it does not act in accordance with the principles of procedural fairness (see *Sketchley v. Canada (Attorney General)*, [2006] 3 F.C.R. 392 (C.A.) and *Slattery v. Canada (Human Rights Commission)*, [1994] 2 F.C. 574, at paragraph 56).

[13] In this case, the applicant claims that the Commission is in default because the investigator failed to question certain witnesses whom he considered to be key: the ombudsman, the union representatives, the ministerial representative responsible for the campaign against harassment in the workplace and two of the three general directors. Further, the applicant claims that the investigator did not inquire to determine who made the decision not to renew his contract and therefore could not determine whether race, national or ethnic origin or disability may have been factors in that decision.

[14] I agree with the respondent that the witnesses proposed by the applicant would not at all have contributed to the investigation, because they had no direct knowledge of the facts alleged by the applicant. It is only in exceptional circumstances that the Court can intervene with a decision by the Commission based on the lack of an interview (see, *inter alia*, *Tahmourpour v. Canada (Solicitor General)*, 2005 FCA 113, [2005] F.C.J. No. 543 (C.A.) (QL), *Grover v. Canada*

(National Research Council), 2001 FCT 687, [2001] F.C.J. No. 1012 (F.C.T.D.) (QL) and *Singh v. Canada (Attorney General)*, 2001 FCT 198, [2001] F.C.J. No. 367 (F.C.T.D.) (QL)). In this case, the investigator questioned the witnesses who were directly involved in the events leading to the applicant's complaints. The applicant consulted the ombudsman and the union representatives, but these individuals were not directly involved in the decisions. Similarly, there is no indication that the general directors, other than Ms. Burrows, who was questioned by the investigator, had been involved in the decisions involving the applicant.

[15] In regard to whether prohibited grounds played a role in the decision not to renew the applicant's contract, it appears that the investigator did not only investigate the applicant's performance, but that she also determined that the prohibited grounds he alleged did not play a role in the decision not to renew his contract. My review of the record indicates that the investigation was sufficiently rigorous on this issue.

[16] Further, the applicant appears to claim that the investigator did not examine whether the employer discharged its duty of reasonable accommodation of his disability. In my opinion, the Commission's investigation was also sufficiently rigorous on this issue. Specifically, the investigator makes the following remarks in her report:

[TRANSLATION]

The complainant alleges that no measure was taken by the Department to come to assist him. On February 3, 2004, he found himself compelled to take a second sick leave on the advice of his attending physician. The complainant adds that Ms. Cook [Ms. Giroux' supervisor] and Ms. Giroux were aware of his problems with Mr. Belleville and Mr. Virgo [one of the applicant's colleagues],

they told him that their work environment would be different. He adds that he did not have any problem in terms of his performance or attendance under the supervision of Ms. Cook. On November 17, 2003, the complainant had returned to the public rights administration branch. On November 14, 2003, his physician asked his employer to accommodate him.

According to the mis en cause, in May 2003, the complainant filed a grievance in which he stated he had been harassed by his supervisor and by some of his colleagues. In order to resolve the situation, Ms. Burrows offered the complainant a new assignment with the ministerial report unit, a new supervisor, Ms. Cook, giving her minimal information about the situation. This assignment began on June 4, 2003, for an initial three-month period. The same problems in terms of performance and attendance were soon apparent in this new position . . .

The mis en cause explained that the complainant returned to work in his former position on November 17, 2003. In order to facilitate his reintegration, he was assigned new duties and a new supervisor, the same performance and attendance problems were apparent.

According to the mis en cause, Ms. Burrows allegedly tried on several occasions to communicate with the complainant's physician for details about measures that could be taken to help the complainant. The physician never returned her calls.

[17] In my opinion, this passage tends to establish that the investigator effected the necessary research on the applicant's accommodation, which precludes the intervention of the Court.

[18] Finally, the applicant contends that the Commission had an obligation to provide reasons to explain its decisions, given the deficient investigation, the importance of the question raised and the long period of time that had elapsed since the complaints were filed. For his part, the respondent argues that the Act does not require the Commission to give reasons for its decisions.

[19] On this point, the Act is clear that “[w]here the Commission’s decision gives effect to the investigator’s report, a complainant can reasonably assume that the Commission adopted the investigator’s reasoning” (*Gardner v. Canada (Attorney General)*, 2005 FCA 284, [2005] F.C.J. No. 1442 (FCA) (QL), at paragraph 23). As the Federal Court of Appeal properly noted in *Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, [1999] 1 F.C. 113, at paragraph 30: “The Act does not require the Commission to give reasons and in any event . . . the reasons for the Commission’s decision may be found in the very extensive report of the investigator which the Commission adopted . . .” In view of the elaborate investigation reports in this matter, the Commission was not bound to provide additional distinct reasons.

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[20] For all of these reasons, the applications for judicial review are dismissed, with costs.

“Yvon Pinard”

Judge

OTTAWA, Ontario
December 14, 2007

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-67-07 and T-68-07

STYLE OF CAUSE: ABDOURAHMAN MOHAMED SADICK v.
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Ottawa, Ontario

DATES OF HEARING: November 20, 2007

REASONS FOR JUDGMENT: Pinard J.

DATE OF REASONS: December 14, 2007

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