Federal Court  Cour fédérale

Date: 20140410

Docket: T-1231-13

Citation: 2014 FC 351

Ottawa, Ontario, April 10, 2014

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

MARIA SNOOK

Applicant

and

CANADA POST CORPORATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Canadian Human Rights Commission (CHRC or the Commission) decided not to reactivate a complaint before it filed by the applicant, Maria Snook. It did so because it determined that the allegations of discrimination in the complaint had been addressed through an internal review procedure available to Ms. Snook under the collective agreement between Ms. Snook's union and Canada Post Corporation (Canada Post). In reaching this conclusion, the

Commission exercised a discretion given to it under section 41(1)(d) of the *Canadian Human Rights Act* (RSC, 1985, c H-6) (the *Act*). That section provides:

41. (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that	41. (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :
[…]	[…]
(d) the complaint is trivial, frivolous, vexatious or made in bad faith;	d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;

[2] Ms. Snook has brought this application pursuant to section 18(1)(d) of the *Federal Courts Act* for judicial review of that decision.

II. The Facts

[3] The applicant's complaint was filed before the Commission in April, 2011. She alleged that her employer, Canada Post, discriminated against her by reason of disability and infringed section 7 of the *Act*. At that time, the Commission decided not to deal with the complaint pending disposition of an internal grievance in respect of the same issue. Ms. Snook was advised that she could return to the Commission and reactivate her complaint at the conclusion of the grievance.

[4] Ms. Snook had been sent home March 29, 2010 because, in her supervisor's view, no suitable work could be found for her. She remained off work until July 2, 2010 when she began training for a new, permanent position, which she began on July 19, 2010.

[5] The *gravamen* of Ms. Snook's complaint before the Commission was that, in sending her home, without work, during that period of time, Canada Post breached its duty to accommodate and contravened section 7 of the *Act*. Notably, during the period from March 29, 2010 to July 2, 2010, Canada Post assigned work to others which she could have performed. Accommodation, therefore, was available to her.

[6] The matter proceeded through the internal grievance procedure at Canada Post as follows.

[7] First, the partied requested mediation. Mediation failed.

[8] Next, the parties proceeded to arbitration. The union representative for Ms. Snook, Mr. Craig Dyer, and the Canada Post representative, Ms. Ellen Campbell, presented their positions to the arbitrator. A settlement was reached and an award on consent was issued by the arbitrator on May 31, 2012. The award provided:

> Grievance #126-07-01131 is considered settled based on this consent award.
>
> The hearing was scheduled to be heard by Arbitrator Mac Lellan on May 29, 2012. At the joint request of the parties, mediation talks were undertaken and an agreement was reached, whereby the grievor is to be paid for seventy (70) days at 8 hours a day from March 29, 2010 to July 2, 2010. This is to be paid at the Relief Letter Carrier rate of pay for 2010.
>
> There are no damages awarded under the collective agreement.

[9] The issue of damages was before both the mediator and the arbitrator. The evidence of Ms. Ellen Campbell, Labour Relations Officer for Canada Post was that the arbitrator indicated,

based on what he had heard from the parties, that he would not award damages in excess of lost wages if the matter proceeded.

[10] This evidence is un-contradicted.

[11] It is common ground that the effect of the award was to fully reimburse Ms. Snook for all wages and benefits she would have earned had she worked between March 29, 2010 and July 2, 2010, the same period of time covered by the *CHRA* complaint. However, following the arbitral award, Ms. Snook returned to the Commission and requested that her discrimination complaint be reactivated, which the Commission declined to do. It chose to not reactivate the file because the grievance and arbitration was in respect of "essentially the same human rights issues as raised in the complaint." Secondly, and importantly, the Commission observed that:

> At the mediation, the complainant decided to reject the respondent's offer of compensation for damages in exchange for withdrawing the present complaint. She apparently felt that accepting the offer would in some way condone the respondent's alleged discriminatory treatment of her and might imply that the respondent could treat other disabled employees in the same way. However, the present complaint appears to be a private dispute between the parties and does not raise allegations of systemic discrimination. The amicable settlement of a grievance cannot be construed as an admission of liability or wrongdoing on the part of either party.

[12] The crux of the applicant's argument before this Court is that as the arbitrator could not award damages under the collective agreement, and the Canadian Human Rights Tribunal (Tribunal) can, the internal recourse proceedings were not an adequate alternative and did not provide redress for the discriminatory conduct of Canada Post. Further, she argues that the decision to settle on the terms reflected in the consent award was that of her union, and not her

own. In Ms. Snook's view, the personal injury to her dignity, which section 7 strives to protect, was never settled, and only an award of damages could provide adequate compensation.

III. Analysis

[13] The issue before this Court is whether the decision of the Commission was reasonable. In *Kwon v Federal Express Canada Ltd*, 2014 FC 268, Justice Richard Mosley surveyed the jurisprudence with respect to the standard of review of decisions of the Commission under section 41(1)(d) of the *Act* and concluded, at paragraph 13, that it was one of reasonableness. I agree.

[14] Three principles regarding the assessment of reasonableness in the context of a workplace grievance and settlement are relevant here. First, an arbitrator determining workplace grievance issues has the power to apply and determine human rights obligations and broad authority to provide remedies for breach of a collective agreement: *Parry Sound (District) Social Services Administration Board v OPSEU, Local 324*, 2003 SCC 42, [2003] 2 SCR 157. Second, in *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52, [2011] 3 SCR 422, the Supreme Court of Canada made clear that the reasonableness inquiry was informed by public interest considerations, such as the importance of finality in decision making. Third, reasonableness is not synonymous with complete satisfaction and vindication on all issues from the perspective of one of the parties. As Justice André Scott (now of the Court of Appeal) observed in *Lawrence v Canada Post Corporation*, 2012 FC 692 at paras 44-47, the fact that damages or letters of apology were not included in a settlement does not mean that they were never discussed, concluding that "[b]y its very nature, a settlement is a compromise."

[15] This latter observation is particularly apt in this case. Damages were discussed in the mediation. Canada Post offered to pay damages to Ms. Snook in return for the withdrawal of her *CHRA Act* complaint. However, Ms. Snook rejected the offer. In her affidavit of August 12, 2013, Ms. Snook said that:

> Any consideration of such a bribe from CPC by me to suppress their abuse of the Charter rights of me and on behalf of all employees would not be in the best interest of the public trust. It would be unethical of me to put a price on the principles of fundamental justice which I consider to be priceless. The ransom money offered by CPC to me for withdrawal of my complaints before the Canadian Rights Commission was denied.

[16] The applicant is to be commended for her adherence to principles and the welfare of her co-workers. However, here, as in life, adherence to principles often come at a cost, and in this case, the decision to reject an offer that was put on the table in the context of the mediation and settlement forms an important part of the factual background underlying the reasonableness inquiry. Moreover, the Commission's reasons for rejecting Ms. Snook's request to reactivate her complaint expressly refer to the damages offer she declined, providing for an intelligible, transparent, and justifiable basis upon which to base the Commission's decision.

[17] The circumstances of this case are analogous to those before Justice James O'Reilly in *Verhelle v Canada Post Corporation*, 2010 FC 416. In that case it was argued that the refusal of the Commission to proceed with a complaint in the face of an arbitral award was unreasonable because it did not expressly address two of the multiple grievances before the arbitrator, nor did the award address lost pension and other benefits. In dismissing the application, Justice O'Reilly focused the analysis on the factual *substratum* of the complaint and not the result. The issue was whether it was reasonable for the Commission to conclude that "the essence of [the] dispute with

Canada Post had been dealt with by way of the grievance process." In Ms. Snook's case, the "essence" of her dispute was also addressed by the grievance process, and the Commission's decision to not reactivate her application was reasonable as a result.

[18] The Commission based its decision on the complete record before it, namely, the refusal by Canada Post to accommodate her in the period from March 29, 2010 to July 2, 2010, her reinstatement to a full time, permanent accommodated position, and the consent award, which made her whole. The Commission also reviewed submissions from the applicant and Canada Post on whether or not the grievance and arbitration process had adequately addressed the human rights complaint which underpinned the complaint. The Commission concluded that it had. As Justice James Russell said in *Chan v Canada (Attorney General)*, 2010 FC 1232, the question is if the Commission "turned its mind" to whether the alternate procedure addressed the human rights complaint.

[19] In assessing the reasonableness of the decision not to proceed with a complaint, it is important to understand that section 41(1)(d) of the *Act* performs a screening function. It allows the Commission to determine whether the essence of a human rights complaint has been otherwise adequately addressed through a parallel process. The Commission is not under a duty to investigate every complaint, or to ensure that where an alternative procedure has produced a remedy, it would mirror with precision the remedies which might have been given by the Tribunal. Rather, the Commission is to examine, on a *prima facie* basis, whether the grounds set out in section 41(1)(d) have been met: *English-Baker v Canada (Attorney General)*, 2009 FC 1253 at para 18.

IV. Conclusion

[20] The Commission decided against reactivating Ms. Snook's complaint after it was addressed through arbitration. The Commission's decision taken under section 41(1)(d) of the *Act* falls within the range of acceptable outcomes which are defensible in light of the law and facts: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47. The reasons by which the Commission reached that conclusion were intelligible, transparent and justified in light of the facts. In other words, the Commission's decision was reasonable. I therefore dismiss the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Costs in favour of the respondent in the amount of $1,000.00.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1231-13
STYLE OF CAUSE:	MARIA SNOOK v CANADA POST CORPORATION
PLACE OF HEARING:	SAINT JOHN, NEW BRUNSWICK
DATE OF HEARING:	JANUARY 16, 2014
REASONS FOR JUDGMENT AND JUDGMENT:	RENNIE J.
DATED:	APRIL 10, 2014

APPEARANCES:

Maria Snook	APPLICANT
Peter Lecain	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cox & Palmer Halifax, Nova Scotia	FOR THE RESPONDENT