

Federal Court



Cour fédérale

Date: 20170613

Docket: T-938-16

Citation: 2017 FC 583

Ottawa, Ontario, June 13, 2017

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

CITY OF OTTAWA

Applicant

and

JAMAL HASSAN

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The City of Ottawa challenges the Canadian Human Rights Commission's decision to refer Mr Jamal Hassan's complaint of discrimination in the workplace to a tribunal for further inquiry. The City alleges that the Commission lacked jurisdiction to deal with the matter as an arbitrator that heard a related labour dispute between the parties had sole jurisdiction. The City also raised a number of other concerns, arguing that the Commission's decision lacked

procedural fairness, particulars, and an ascertainable author, and that the Commission misapplied s 41(1) of the *Canadian Human Rights Act* (RSC 1985, c H-6 (*CHRA*); see Annex).

[2] I agree that the Commission lacked jurisdiction to hear Mr Hassan's complaint as the arbitrator had sole jurisdiction in the circumstances. I must, therefore, grant this application for judicial review. I need not address the other concerns raised by the City.

II. Background

[3] Mr Hassan drove a bus for the City's Transit Services Department (OC Transpo) until he took extended medical leave for approximately five years, working only sporadically during that time. Following his leave, the City terminated his employment in July 2010.

[4] Mr Hassan grieved his termination through his union and his complaint went to arbitration (pursuant to the *Canada Labour Code*, RSC 1985, c L-2). In 2011, the parties signed Minutes of Settlement outlining the steps the City would take, including putting Mr Hassan in the "Priority Placement Program" for a year, after which his employment would be automatically terminated if he was not placed in a position. After a year of unsuccessful attempts to place Mr Hassan in another position, the City terminated Mr Hassan's employment a second and final time. Months later, Mr Hassan complained to the Commission on the basis that the City had failed to "properly accommodate [him] or comply with the Minutes of Settlement that were agreed upon in good faith".

[5] In 2014, a preliminary report recommended that the Commission deal with the complaint. The City and Mr Hassan provided additional submissions, and the Commission ultimately decided to proceed with the complaint. The City's application for a stay and for leave to quash that decision was dismissed on the basis of prematurity (T-2478-14).

[6] The Commission then commenced an investigation. Throughout, the City's complete defence amounted to reliance on the Minutes of Settlement. The investigator recommended that the Canadian Human Rights Tribunal commence an inquiry into Mr Hassan's complaint. Conciliation was attempted, but failed. After considering the reports and the parties' submissions, the Commission decided in May 2016 to refer Mr Hassan's complaint to the Tribunal.

III. Did the Commission Lack Jurisdiction to Hear Mr Hassan's Complaint?

[7] The issue before the Commission was whether it had concurrent jurisdiction with the labour arbitrator to address Mr Hassan's complaint, or whether the arbitrator had exclusive jurisdiction. The standard of review for questions regarding the jurisdictional lines between two specialized tribunals is correctness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 61; *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47, [2016] 2 SCR 293 at para 24).

[8] Mr Hassan argues that he faced discrimination during his time in the "Priority Placement Program", which occurred after his initial termination. He asserts that he was reinstated as an employee on the date the Minutes of Settlement were signed, and that the Minutes did not

contemplate the possibility of future acts of discrimination. Therefore, since his complaint did not relate to the Minutes themselves or to his previous work issues, the Commission had jurisdiction to deal with it.

[9] I disagree. Mr Hassan's argument cannot be reconciled with the Minutes of Settlement. The Minutes make clear that Mr Hassan was to be reinstated as an employee with the City, that he was to be placed in the Priority Placement Program for a maximum of twelve months, and that the arbitrator was seized of "all issues relating to the interpretation or enforcement" of the Minutes. Yet, Mr Hassan's complaint to the Commission specifically relied on the City's alleged breach of the Minutes through its failure to find suitable employment for him. In addition, the Commission's own preliminary and investigatory reports both stated that the relevant time frame for the complaint was from June 2011 to June 2012, the time-period covered by the Minutes. Clearly, any problems relating to the City's obligations under the Minutes should have been brought before the arbitrator.

[10] Mr Hassan submits, in the alternative, that even if the arbitrator had jurisdiction to hear his complaint, the Commission had concurrent jurisdiction to deal with it. He contends that the *Canada Labour Code* does not grant the arbitrator exclusive jurisdiction or oust the Commission's jurisdiction.

[11] However, the arbitrator's jurisdiction here does not derive from the *Canada Labour Code*, but instead from the Minutes of Settlement that state that the arbitrator shall remain seized of all disputes arising out of the terms of the Minutes of Settlement. Again, any failure by the

City to accommodate Mr Hassan during the currency of the Minutes of Settlement would be a dispute arising from the Minutes, and the arbitrator had exclusive jurisdiction to deal with it.

[12] Mr Hassan also argues that awarding exclusive jurisdiction to the arbitrator would effectively allow parties to contract out of the *CHRA*, and that his only real remedy to address discrimination arising from his termination was to file a complaint with the Commission. Again, I disagree. The parties were entitled to agree on an alternate means of redressing any issues between them, including arbitration. The Minutes of Settlement state that Mr Hassan had read and understood the agreement, and that he was represented by both his union and counsel. He freely committed to have the arbitrator deal with any issues arising from the Minutes.

[13] Mr Hassan also argues that he had sought assistance from his union, but that it refused to assist him due to his non-payment of fees, and that this removed jurisdiction from the arbitrator. However, this factor is irrelevant to the arbitrator's jurisdiction: the Minutes of Settlement determine the arbitrator's jurisdiction, not the willingness of a union to represent a member.

IV. Conclusion

[14] Mr Hassan agreed to Minutes of Settlement from the arbitration related to his termination from the City of Ottawa. The Minutes stipulated that the arbitrator maintained exclusive jurisdiction to deal with complaints related to the execution of the Minutes. Accordingly, it was beyond the Commission's jurisdiction to address a complaint arising from the Minutes, including an allegation that the City failed to abide by the Minutes. Therefore, I am granting this application for judicial review and quashing the decision of the Commission, with costs.

JUDGMENT in T-938-16

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the decision of the Canadian Human Rights Commission dated May 11, 2016 is quashed, with costs to the applicant.

"James W. O'Reilly"

Judge

ANNEX

Canadian Human Rights Act,
RSC 1985, c H-6

*Loi canadienne sur les droits
de la personne, LRC (1985),
ch H-6*

Commission to deal with
complaint

Irrecevabilité

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 :

(a) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;

a) la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;

(b) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;

b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale;

(c) the complaint is beyond the jurisdiction of the Commission;

c) la plainte n'est pas de sa compétence;

(d) the complaint is trivial, frivolous, vexatious or made in bad faith; or

d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;

(e) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the

e) la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime

circumstances, before
receipt of the complaint.

indiquer dans les
circonstances

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-938-16

STYLE OF CAUSE: CITY OF OTTAWA v JAMAL HASSAN

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 11, 2017

JUDGMENT AND REASONS: O'REILLY J.

DATED: JUNE 13, 2017

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