Federal Court Cour fédérale

Date: 20240912

Docket: T-139-22

Citation: 2024 FC 1442

Toronto, Ontario, September 12, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

A.B.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Human Rights Commission of Canada [the Commission], which dismissed a human rights complaint from the Applicant, pursuant to paragraph 41(1)(d) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [the Act], on the basis that it was not in the public interest to proceed with her complaint in light of a settlement offer from the Canada Revenue Agency [the CRA]. I will dismiss this application for the reasons that follow.

I. Background

[2] The Applicant applied for an administrative role with the CRA in July 2017. In August 2018, the CRA verbally offered the Applicant a position. However, the Applicant claimed that she did not receive a written offer of employment after disclosing her need for accommodation.

[3] On August 28, 2019, the Applicant submitted a human rights complaint to the Commission based on alleged discrimination by the CRA due to her disability. On November 10, 2020, the Commission conducted a mediation with the parties. On the same day, during the course of the mediation, the CRA made a settlement offer to the Applicant. The Applicant rejected this offer.

[4] In the mediation report dated June 29, 2021 [the Mediation Report], the mediator noted that the parties had been advised of and had agreed to the following possible outcomes if the mediation was unsuccessful:

a) if the mediation did not result in a settlement offer, the matter may be referred to be investigated by the Commission; and

b) if the mediation, on the other hand, resulted in a settlement offer by the CRA, the CRA could agree to submit the resulting offer to the Commission for a decision on whether it is in the public interest to proceed with the complaint, depending on whether the offer:

i. was consistent with the remedies that could be ordered by the Canadian Human Rights Tribunal [the Tribunal] if the complaint was substantiated; and

ii. remained open for acceptance by the other party for a reasonable period of time after the Commission has rendered a decision on whether or not to proceed with the complaint.

[5] Although the mediation was unsuccessful, the CRA agreed to submit the settlement offer to the Commission to determine whether it is in the public interest to proceed with the Applicant's complaint. The parties were therefore given the opportunity to make submissions to the Commission on whether it should proceed with the complaint.

[6] The Applicant received a copy of the Mediation Report on July 29, 2021, including instructions on how to provide her response to the Commission.

[7] On September 9, 2021, the Applicant, through her counsel, provided submissions on the Mediation Report, explaining why her complaint should proceed despite the CRA's settlement offer. On November 3, 2021, the CRA submitted its position on the matter. The Commission provided each party with the other's submissions on December 1, 2021.

[8] On December 15, 2021, the Commission determined that it was not in the public interest to proceed with the Applicant's complaint in light of the CRA's settlement offer [the Decision]. The CRA's settlement offer stipulated that the Applicant had 30 days to accept the proposal

following a decision by the Commission. The Applicant received a copy of the Decision on December 23, 2021.

II. Positions of the Parties

[9] The Applicant argues that the Decision is unreasonable, and states the Commission based its determination on an erroneous finding of fact without regard to the material before it. In particular, she alleges that the Commission received flawed information and did not appear to consider her arguments. She also asserts that the CRA's settlement offer "fell significantly short" of the remedies available to her under the Tribunal. She argues that the Commission decided the matter incorrectly, and that it could not have assessed the reasonableness of the CRA's offer without an investigation. Furthermore, the Applicant contends that the Commission did not provide adequate reasons in accordance with section 42(1) of the Act.

[10] In relation to the complaint process, the Applicant first asserts that the Commission did not follow the proper procedural steps, preventing her from fully presenting her case. She contends that she did not receive an opportunity to respond to the CRA's submissions. The Applicant argues that the CRA revised their submissions over the course of six months, and she was not given the same opportunity to do so. Second, she claims that she did not receive a copy of the CRA's original submissions, dated May 14, 2021, nor the cross-disclosure on December 1, 2021. Third, the Applicant points out that an attachment to the settlement offer, specifically a template letter requesting medical information, was not placed before the Commission. Fourth, the Applicant claims that the PDF of a covering letter was labelled in a way

that may have been misleading, since it included the words “reasonable offer.” Fifth, she argues that the timing of the Decision limited her opportunity to consider the settlement offer.

[11] For these five reasons, the Applicant maintains that the Commission breached her procedural fairness rights.

[12] The Respondent, on the other hand, asserts that the Decision is reasonable, and argues that the Applicant simply disagrees with the result. In relation to the adequacy or sufficiency of reasons, the Respondent notes that this is not a stand-alone basis for review, and highlights that the Decision’s reasons must be read in conjunction with the record. The Respondent claims that the Commission did not need to address or mention every single argument raised before it.

[13] Regarding procedural fairness, the Respondent argues that there was no breach, as the Applicant had notice of the case to meet. The Respondent notes that the Applicant provided submissions to the Commission with the assistance of counsel. The Respondent contends that all other alleged breaches are simply unsupported by the record, or otherwise do not give rise to a breach of procedural fairness.

III. Analysis

[14] The Commission is not an adjudicative body (*Cooper v Canada (Human Rights Commission)*, 1996 CanLII 152, [1996] 3 SCR 854 at paras 53–54). The Commission performs a screening role to determine whether a complaint warrants investigation (*Davidson v Canada (Attorney General)*, 2019 FC 877 at para 26 [*Davidson*]). The central role of the Commission is

to assess the sufficiency of the evidence before it (*Dixon v TD Bank Group*, 2022 FC 331 at para 47).

[15] Under paragraph 41(1)(d), the Commission has discretion to dismiss a complaint if it is "trivial, frivolous, vexatious or made in bad faith." The applicable test is whether it is "plain and obvious" that a complaint cannot succeed, assuming the facts alleged in the complaint are true: see *Gregg v Air Canada Pilots Association*, 2019 FCA 218 at para 7 [*Gregg*]; *Love v Canada (Privacy Commissioner),* 2015 FCA 198 at para 23. This threshold is low (*Gregg* at para 7).

[16] For the merits of the Decision, the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). As explained by the Supreme Court of Canada, a reasonable decision is one that is based on an internally coherent and rational chain of analysis, and which is justified in relation to the relevant factual and legal constraints: *Vavilov* at para 85. The decisions by the Commission under section 41 of the Act are subject to "a high degree of deference" (*Harvey v Via Rail Canada Inc*, 2020 FCA 95 at para 11).

[17] For questions of procedural fairness, this review exercise is "best reflected" on a correctness standard (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–55). The duty of procedural fairness is eminently variable, inherently flexible and context-specific (*Vavilov* at para 77).

[18] Here, I cannot agree with the Applicant that the Decision is unreasonable based on the arguments that she raises – whether through any errors in rationale, in disregarding or overlooking her arguments, providing inadequate reasons, or not being able to assess the reasonableness of the offer without having performed an investigation.

[19] On the contrary, the Commission clearly indicated why it decided not to proceed with the Applicant's complaint based on the rationale in the Decision. Most notably, the Commission determined that it was not in the public interest to proceed after considering the CRA's settlement offer, as it was consistent with the remedies that the Tribunal could order if the complaint was substantiated. Through its offer, the CRA agreed to provide the Applicant with an employment position, cover her legal fees for the mediation, provide her with general damages of $8,000, and provide training on the Duty to Accommodate process to the Human Resources team to "ensure accommodation requests [during the hiring step] are processed and completed efficiently". The CRA also proposed these settlement terms without knowing the accommodations that would be required, as the Applicant had not yet confirmed her functional limitations.

[20] Based on this evidence which was before the decision-maker in rendering the Decision, I find that the Commission's determination "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Vavilov* at para 86 citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). Although the Applicant disagrees with the result, it is not the role of the Court on judicial review to reweigh evidence and arrive at a different conclusion.

[21] The Commission also considered the Applicant's various arguments prior to making its determination. In the Decision, the Commission expressly stated that it reviewed the submissions of both parties. In any event, I would note that a decision-maker is presumed to have reviewed all of the evidence (*Anderson v Canada (Attorney General)*, 2013 FC 1040 at para 55).

[22] The Commission did not need to investigate the complaint in order to assess its reasonableness. In both her written and oral submissions, the Applicant raised this argument, stating that there was no report, which is called for at Step 5 of the process: see Canadian Human Rights Commission, "About the Process" (31 May 2023), online: <https://www.chrc-ccdp.gc.ca/en/complaints/about-the-process#step5> [the Process]. However, as noted by the Respondent, the parties did not reach this stage of the Process, given mediation (and the ensuing review of the settlement offer) occurred at Step 4 of the Process.

[23] Moreover, the case law recognizes that the Commission is under no duty to investigate a complaint pursuant to subsection 41(1)(d): *Asghar v Rogers Communications Inc*, 2020 FC 951 at para 30 [*Asghar*]; *Davidson* at para 26. The Commission's only function at the screening stage is "to examine, on a *prima facie* basis, whether the grounds set out in subsection 41(1) are present, and if so, to decide whether to deal with the complaint nevertheless" (*Asghar* at para 30 citing *English-Baker v Canada (Attorney General)*, 2009 FC 1253 at para 18 [*English-Baker*]). While the Commission must do its work diligently, it is not held to stringent procedural standards (*English-Baker* at para 18).

[24] As for the reasons provided by the Commission, the adequacy or sufficiency of reasons is not a stand-alone basis for review, as it is subsumed in the reasonableness analysis: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 12, 14, 16 and 21–22. Reasons must be "read holistically and contextually" in "light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at paras 94-96 and 103).

[25] In this circumstance, prior to making the Decision, the Commission reviewed all of the relevant materials, including the complaint form, the Mediation Report and the submissions of both of the parties. The Mediation Report set out the Process, the legislative framework, and the remedies that could be ordered by the Tribunal if the complaint had been substantiated.

[26] The CRA also provided relevant background information to explain why the offer was reasonable. The CRA indicated that the remedies they could offer were based on the only feedback they received from the complainant regarding remedies, and an absence of any information from the complainant regarding her functional limitations. Although the CRA expressed a willingness to continue negotiations, the Applicant disengaged from the process.

[27] The Federal Court of Appeal has previously confirmed that the Commission can refer to the submissions of a party, such as the CRA, and that this can form part of its reasons (see *Cohen v Canada (Attorney General)*, 2007 FCA 190 at para 9). In this case, the CRA provided extensive reasons as to why the Commission should find its offer reasonable, and the Commission incorporated these submissions by reference in the Decision.

[28] Accordingly, when the Decision is considered alongside the totality of materials placed before the Commission, including the complaint form, the Mediation Report and the submissions from both of the parties, I find that the outcome is supported, and the reasons are both adequate and reasonable when read holistically and contextually in light of the record, and with due sensitivity to the human rights regime.

[29] I now turn to the Applicant's procedural fairness assertions. She contends that the Commission failed to afford her procedural fairness. In particular, the Applicant asserts that the Commission did not follow the proper steps in the Process, which prevented her from fully presenting her arguments.

[30] I cannot agree with this assertion. The Applicant had clear notice of the case to meet. She received instructions on July 29, 2021, advising her how to respond to the Mediation Report. Moreover, she had the assistance of competent counsel in preparing and submitting her response to the Commission. Therefore, although the Applicant alleges that she did not have a fair opportunity to present her case, including replying to the CRA's submissions, she clearly had the chance to set out her position and provide her response to the Commission.

[31] Additionally, the Applicant asserts that the CRA revised their submissions over the course of six months, and that she did not receive the same opportunity to amend her submissions, or respond to the changes that the CRA made.

[32] That is not, however, what the record bears out. Based on the certified tribunal record [CTR], the CRA only sent one document to the Commission, which was provided on November 3, 2021. While the CRA's document states, "Original: May 14, 2021," there are no other submissions in the CTR.

[33] Furthermore, contrary to the Applicant's assertions , the CRA did not make any revisions in response to her arguments. Again, the CRA provided their submissions to the Commission on November 3, 2021. Yet the Commission did not disclose the Applicant's arguments to the CRA until December 1, 2021. Nothing in the record indicates – and there is no reason for me to believe – that the Commission provided the CRA with the opportunity to respond to the Applicant's position after having received her counsel's submissions, nor is there any other indication that the Commission conducted an unbalanced or unfair process.

[34] Indeed, there is no evidence that the Commission diverged from its published Process in any manner, or that any disparity emerged, as the parties received an equal opportunity to provide their input – an opportunity which both availed themselves of, and which input the Commission referred to in the Decision.

[35] Further, while the Applicant claims that she did not receive a copy of the CRA's submissions on December 1, 2021, this is not supported by the record. Rather, the record indicates that those submissions were sent to the Applicant on December 1, 2021. The Respondent has shown that the email was sent without any delivery failures to the same email

address which the record indicates the Applicant has used to communicate throughout the course of the matter in question.

[36] Similar to the decision in *Rillon v Canada (Citizenship and Immigration)*, 2019 FC 962 [*Rillon*] and all the cases it relied upon (see *Rillon* at paras 21–27), there is no evidence that the Applicant did not receive an email. As a result, there is a presumption that the Applicant received the message, and she bears the risk of non-receipt (see *Rillon* at paras 28 and 32). In any event, as noted above, her legal arguments were before the Commission prior to its determination, and the Commission referenced those submissions in the Decision.

[37] The Applicant also points out that an attachment – specifically a template letter requesting medical information from her – was not placed before the Commission. However, the Applicant had the opportunity to raise this argument in her submissions, meaning the Commission would have been aware of the letter's content. The Applicant also copied and pasted part of the attachment into her response, and it was presumed to have been before the Commission based on the record, even if it did not appear in the CTR. Therefore, I find that this error does not amount to a breach of procedural fairness.

[38] Additionally, the Applicant states that the PDF of a covering letter was labelled in a way that may have been misleading, since it included the words "reasonable offer." I would note that the parties used this wording during the mediation. It was thus natural for the document to have this title. Therefore, I read nothing sinister and certainly find no procedural unfairness on account of the name attached to the PDF – that is, if the decision-maker even saw the title of the

electronic document, of which there is no evidence either way. And, even if the Commission did, there is no suggestion that they may have been influenced in any way by the name placed on the electronic document.

[39] The Applicant also adds that the timing of the Decision unfairly limited her opportunity to consider the settlement offer. However, this argument does not concord with the facts at hand. The Applicant received a copy of the settlement offer several months before the Commission released its Decision. Furthermore, the settlement terms of the CRA explicitly stated that she would have 30 days to accept the offer after a decision from the Commission. As a result, the Applicant had months to prepare for a potentially unfavorable result.

[40] Finally, the Applicant argues that the timing of the Decision rendered – close to the year-end holiday period – negatively impacted her ability to consider the Decision, or to reach the mediator. While she may have found the timing frustrating, given that it was close to the holiday period, the Applicant's inability to reach the mediator during this time did not amount to a breach of procedural fairness. Although she claims that the delay affected her ability to obtain legal advice and representation, the mediator was not her legal counsel. Rather, the mediator was acting on behalf of the Commission. During the course of her application, the Applicant also conceded that she probably would not have accepted the offer in any event, regardless of when she reached the mediator.

IV. Conclusion

[41] I find that the Decision is reasonable and justified in light of the factual and legal constraints. The process leading to the Commission's determination was fair, and there were no breaches of procedural fairness. I find that there are no reviewable errors in either the process or the outcome of the Decision. Accordingly, this application for judicial review is dismissed.

[42] In relation to costs, the Respondent argues that costs against the Applicant are merited. Indeed, during the course of the judicial review process, both the Associate Judge and I saw a number of requests justifying the Respondent's concerns. Nonetheless, given all of the circumstances raised in this matter, including the situation in which the Applicant has found herself, as explained during the course of these proceedings, including her financial circumstances and her ongoing difficulty to secure employment resulting from her disability, I am exercising my discretion under Rule 400 of the *Federal Courts Rules*, SOR/98-106 not to award costs in this matter.

JUDGMENT in T-139-22

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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