

Federal Court



Cour fédérale

Date: 20110902

Docket: T-800-10

Citation: 2011 FC 1046

Ottawa, Ontario, September 2, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

AMARE SHIFERAW

Applicant

and

CANADA POST CORPORATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Amare Shiferaw worked for Canada Post from 1999 to 2008. He injured his back in 2006 and claims that Canada Post discriminated against him from that point on. He brought a number of grievances against his employer, and he also complained to the Canadian Human Rights Commission. The Commission investigated the complaint, then concluded that it should not deal with it primarily because Mr. Shiferaw already had access to the grievance procedure to address his

concerns. The Commission also found some aspects of Mr. Shiferaw's complaint were not linked to a prohibited ground of discrimination, or were time-barred.

[2] Mr. Shiferaw argues that the Commission ignored relevant evidence, made factual errors, was biased against him, and rendered an unreasonable decision. He asks me to quash the Commission's decision, and grant him a variety of remedies. However, I can find no grounds for overturning the Commission's decision and must, therefore, dismiss this application for judicial review.

[3] The issues are:

1. Did the Commission ignore relevant evidence?
2. Did the Commission make erroneous findings of fact?
3. Was the Commission biased against Mr. Shiferaw?
4. Was the Commission's decision unreasonable?

II. Factual and Procedural Background

[4] Mr. Shiferaw maintains that after he injured his back Canada Post moved him between facilities, accused him of insubordination, and ultimately fired him. His complaint to the Commission referred to a number of alleged incidents in the workplace:

- Canada Post assigned him duties that aggravated his injuries, and did not “fit his limitation”;
- In February of 2008, a superintendent falsely accused him of threatening a manager;
- Canada Post harassed him by demanding that he disclose medical information to support his claim of being unable to perform all duties of his position;
- Canada Post forced him to sign an Acquisition of Medical Information (AMI) form, disclosing his medical history;
- His supervisor was biased against him and tried to find some way to fire him;
- In March 2008, he successfully bid on a transfer to a different facility (the VISTA facility) as of April 2008, but his documents were tampered with;
- When he reported to the VISTA facility, he was sent home when he informed his supervisor of his physical limitations;
- He attempted to return to work at his previous facility, but was asked to leave after an altercation;
- His attempts to grieve these and other matters through his union were rejected.

[5] Mr. Shiferaw filed a number of grievances through his union, at least two of which had been resolved by the time the Commission rendered its decision.

[6] In the first, Mr. Shiferaw complained about Canada Post's request for medical information. He maintained that this information had already been provided to the Workplace Safety and Insurance Board of Ontario (WSIB). This grievance resulted in a commitment by Canada Post to treat all employees in a fair and reasonable manner, and to remove the offending letters from Mr. Shiferaw's file.

[7] In the second, Mr. Shiferaw grieved the notice he received from Canada Post after the alleged threat against a manager. He requested that the letter be removed from his file. Canada Post agreed to do so.

[8] At the time of the Commission's decision, two other grievances were apparently still outstanding. In the first, Mr. Shiferaw complained that Canada Post had failed to accommodate his disability. The second related to his dismissal.

[9] Mr. Shiferaw filed his complaint to the Commission in an acceptable form on February 10, 2009. Canada Post responded on August 17, 2009, pointing out that Mr. Shiferaw had access to an internal grievance procedure and, in fact, had used it to dispute the same issues that were contained in his complaint. In addition, Canada Post noted that Mr. Shiferaw's allegations about the bid process were not linked to any prohibited ground of discrimination. Finally, Canada Post observed

that many of the allegations raised had occurred more than one year prior to the complaint and were therefore out of time. Mr. Shiferaw filed a lengthy rebuttal to Canada Post's response.

[10] At that point, the Commission requested an investigator to prepare a "Section 40/41 Report." The investigator concluded that Mr. Shiferaw had full access to the grievance procedure and had invoked it to deal with the same issues as were contained in his complaint to the Commission. Further, the allegations relating to the bid process did not relate to a prohibited ground of discrimination, and were beyond the Commission's jurisdiction. Finally, some of Mr. Shiferaw's allegations were out of time.

[11] Both parties were given an opportunity to respond to the report. On April 12, 2010, the Commission decided not to deal with Mr. Shiferaw's complaint based largely on the investigator's findings that he had access to the grievance process to deal with his concerns, that some aspects of his complaint were beyond the Commission's jurisdiction, and that other parts were out of time (relying on the *Canadian Human Rights Act*, RSC 1985, c H-6, s 41(1)(a), (c) and (e) [CHRA]).

III. Issue One – Did the Commission ignore relevant evidence?

[12] Mr. Shiferaw argues that the Commission ignored "overwhelming and powerful evidence." He has not identified what that evidence is.

[13] The Commission has a duty to conduct a neutral and thorough investigation into a complaint. However, it does not have to refer to every piece of evidence. It is only where an

investigation has overlooked significant evidence that the Commission's decision under s 41 can be overturned (*Slattery v Canada (Human Rights Commission)*, (1994), 73 FTR 161 (FCA)).

[14] Mr. Shiferaw has not identified any serious omissions in the investigator's report. He was given ample opportunity to respond to that report and the Commission considered his submissions before rendering its decision. I cannot find any reviewable error on the Commission's part.

IV. Issue Two – Did the Commission make erroneous findings of fact?

[15] Mr. Shiferaw alleges that the Commission mistakenly concluded that he had been unsuccessful in a bidding process when in fact he had been successful. He also challenges the Commission's conclusion that he ought to have exhausted internal grievance mechanisms under the collective agreement before filing his complaint. In his view, the grievance process was unsatisfactory; his union either ignored or refused to assist him in presenting his grievances.

[16] The Commission may not have correctly characterized the bidding process. However, its main conclusion was that Mr. Shiferaw's complaint about that process was not connected to a prohibited ground of discrimination and could be addressed by way of a grievance. Any mischaracterization of the basis for Mr. Shiferaw's dispute was, therefore, immaterial to the Commission's conclusion.

[17] With respect to the grievance process, the Commission made clear that if Mr. Shiferaw is dissatisfied with the outcome of his grievances, he may ask the Commission to reactivate his

complaint. I see no prejudice to Mr. Shiferaw resulting from the Commission's conclusion that he should exhaust the grievance process first.

V. Issue Three – Was the Commission biased against Mr. Shiferaw?

[18] Mr. Shiferaw alleges that the Commission and the investigator were biased or prejudiced against him on account of his race, or national or ethnic origin.

[19] The question is what an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude in the circumstances. That is, would that person think it more likely than not that the decision-maker would decide the case unfairly (*Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369, at 394)? The threshold for establishing bias is high: *R v S (RD)*, [1997] 3 SCR 484, at para 113.

[20] The Commission clearly treated the parties fairly, having given both of them an opportunity to review the investigator's report and make submissions on it. Further, there is nothing in the record to substantiate a claim of bias or racial prejudice. I see no grounds for overturning the Commission's decision on that basis.

VI. Issue Four – Was the Commission's decision unreasonable?

[21] Mr. Shiferaw submits that the Commission unreasonably concluded that the aspects of his complaint that took place prior to 2007 were time-barred. In fact, he says that his allegations from

2004 to early 2007 constitute a continuing course of discriminatory conduct by Canada Post. In addition, he submits that he did not bring his complaint earlier because he was attempting to resolve the various disputes without recourse to the courts or the Commission.

[22] The limitation period in the CHRA serves to prevent prejudice and unfairness flowing from the lapse of time and the loss of evidence.

[23] The nature of Mr. Shiferaw's allegations, whether before or after 2007, was essentially the same – a failure by Canada Post to recognize and accommodate his physical limitations. Accordingly, to exclude some of them as being out of time did not prevent the Commission from addressing Mr. Shiferaw's overall complaint. The Commission clearly turned its mind to the substance of the complaint and addressed the various applicable grounds set out in s 41. Its reasons for deciding not to deal with Mr. Shiferaw's complaint were transparent, justified and intelligible.

[24] I cannot conclude, therefore, that the Commission's decision was unreasonable. It fell within the range of acceptable, defensible outcomes based on the facts and the law.

VII. Conclusion and Disposition

[25] I am not satisfied that the Commission erred in its treatment of the evidence or rendered an unreasonable decision. Further, the claim of bias is unsupported. Accordingly, I must dismiss this application for judicial review, with costs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed with costs.

“James W. O’Reilly”

Judge

Annex "A"

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 circumstances, before receipt of the complaint.

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 indiqué dans les circonstances.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-800-10

STYLE OF CAUSE: AMARE SHIFERAW v
CANADA POST CORPORATION

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR JUDGMENT
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DATED: September 2, 2011

APPEARANCES:

Amare Shiferaw

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Michael J. Torrance

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Amare Shiferaw
Toronto, Ontario

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Ogilvy Renault, LLP
Toronto, Ontario

FOR THE RESPONDENT