

Federal Court



Cour fédérale

Date: 20130104

Docket: T-556-12

Citation: 2013 FC 2

Ottawa, Ontario, January 4, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

RAYMOND ALLAN MENARD

Applicant

and

ROYAL BANK OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Raymond Menard worked for the Royal Bank of Canada (RBC) from March 2007 until his dismissal two years later. Due to a gambling problem and symptoms of Attention Deficit Hyperactivity Disorder (ADHD), Mr Menard manipulated his and his wife's bank accounts to cover money he was losing at the casino. He misappropriated about \$40,000 in RBC funds. In 2009, RBC froze his accounts.

[2] Mr Menard initially lied to RBC about the reason for his behaviour but, the next day, he thought better of it and disclosed his gambling problems. RBC suspended him with pay and then, on March 18, 2009, it terminated Mr Menard for misappropriation of funds.

[3] Mr Menard filed a complaint with the Canadian Human Rights Commission (CHRC) alleging that he was terminated and treated adversely on the basis of his disability. The CHRC assigned an investigator to the complaint, who found that RBC had a reasonable explanation – the misappropriation of funds – for terminating Mr Menard and that this was not a pretext for discrimination. The investigator also concluded that Mr Menard had not been adversely treated because of his disability. She recommended that the CHRC dismiss Mr Menard's complaint.

[4] In turn, the CHRC accepted the investigator's recommendation, finding that RBC had a reasonable basis for dismissing Mr Menard, that RBC did not treat him differently from other employees, and that further inquiry by the Canadian Human Rights Tribunal was not warranted.

[5] Mr Menard submits that he was treated unfairly, in particular, because the investigator did not conduct a sufficiently thorough review of the evidence and because the CHRC apparently failed to consider his comments on the alleged errors in the investigator's report. In addition, he argues that the CHRC's decision was unreasonable. He asks me to quash the CHRC's decision and order it to reconsider his complaint.

[6] I am satisfied that Mr Menard was treated fairly and that the CHRC rendered a reasonable decision. I must, therefore, dismiss this application for judicial review.

[7] There are two issues:

1. Did the CHRC treat Mr Menard unfairly?
2. Was the CHRC's decision unreasonable?

[8] RBC raised a preliminary issue about the admissibility of some portions of Mr Menard's affidavit, arguing that it included materials that were not before the CHRC when it rendered its decision. I am satisfied that these materials are admissible to support Mr Menard's argument that he was treated unfairly. The real question is whether those materials actually support Mr Menard's argument on that issue.

II. Issue One – Did the CHRC treat Mr Menard unfairly?

[9] Mr Menard argues that the CHRC treated him unfairly in two respects. First, the investigator failed to conduct a neutral and thorough investigation. Second, the CHRC failed to consider his concerns about the investigator's report.

[10] I am satisfied that Mr Menard was treated fairly.

[11] Mr. Menard suggests that the investigator did not fully appreciate the significance or the timing of his performance reviews. However, he had an opportunity to respond to the investigator's conclusions and put his position directly to the CHRC.

[12] Mr. Menard also maintains that the investigator overlooked or misunderstood significant evidence about his access to disability benefits. He submits that he requested access to disability benefits and that RBC turned him down on numerous occasions: first, because he had been suspended with pay and had no reason to request benefits; and, second, because he sought benefits after his termination when he was no longer an employee and, therefore, no longer entitled to benefits.

[13] The investigator acknowledged that there was conflicting evidence on this point. Yet, she found that Mr Menard had been informed that he could contact an RBC Employee Helpline to inquire about benefits. In fact, he told his employer that he intended to do so. However, Mr. Menard maintains that he was referring to a helpline for employee assistance, not a helpline from which he could access disability benefits. He pointed out this distinction to the CHRC, but it did not specifically respond to his submissions.

[14] If the CHRC fails to respond to material omissions in the investigator's report, it has failed to treat the complaint fairly: *Dupuis v Attorney General of Canada*, 2010 FC 511, at para 16. However, I am not satisfied that Mr Menard's submissions to the CHRC actually pointed to a material omission.

[15] Clearly, there was a dispute about whether Mr Menard had asked for access to disability benefits and whether he had the means to do so. However, that was not an issue at the core of his complaint. He claimed that he was dismissed because of his disability. That claim was rejected by the investigator and that conclusion is not seriously challenged here. Mr Menard also claimed that

he received adverse treatment from RBC and points to the evidence of his contacts with RBC relating to his disability benefits as evidence of discrimination. As mentioned, the investigator acknowledged the factual dispute yet concluded that Mr Menard had not been adversely treated because of his disability.

[16] Therefore, I see nothing unfair in these circumstances. Perhaps Mr. Menard could have been treated better when he asked about disability benefits. But I see no evidence that the manner in which he was treated was different from the treatment of other employees or that it had anything to do with his disability. Accordingly, even if Mr. Menard is correct that the investigator was confused and that the CHRC failed to consider his attempt to correct the investigator's shortcomings, no unfairness resulted because the evidence in issue did not support his claim of discrimination based on disability.

III. Issue Two – Was the CHRC's decision unreasonable?

[17] Mr Menard argues that the CHRC's decision was unreasonable, mainly because it failed to take account of the fact that could not access information about disability benefits either before his dismissal or after. As mentioned, he alleges that the investigator had confused the Employee Helpline with the Employee Assistance Program. The former would have given him information about his available benefits while the latter afforded him counselling for his gambling addiction. After his suspension, Mr Menard had access only to the latter.

[18] Again, I am not satisfied that the evidence shows that RBC subjected Mr Menard to adverse treatment based on his disability. RBC appears to have stated to Mr Menard that he did not require disability benefits while he was suspended with pay, nor was he entitled to benefits after he had been dismissed for cause. I see no evidence that RBC's position was based on, or connected in any way, to Mr Menard's disability. Mr Menard's disability simply did not appear to be a factor in RBC's treatment of him.

IV. Conclusion and Disposition

[19] I am not persuaded that Mr Menard was treated unfairly in the handling of his complaint. Further, I am not satisfied that the CHRC's decision not to refer his complaint for a hearing was unreasonable. The investigator and, in turn, the CHRC, considered the evidence and concluded that Mr Menard's complaint was not substantiated. That conclusion was a defensible outcome based on the facts and the law and, therefore, was reasonable. 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

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-556-12

STYLE OF CAUSE: RAYMOND ALLAN MENARD
v
ROYAL BANK OF CANADA

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: December 18, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: January 4, 2013

APPEARANCES:

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Lorene Novakowski

FOR THE APPLICANT
(ON HIS OWN BEHALF)
FOR THE RESPONDENT

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