

Federal Court



Cour fédérale

**Date: 20161122**

**Docket: T-669-16**

**Citation: 2016 FC 1288**

**Toronto, Ontario, November 22, 2016**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**NICHOLAS MANOUSOS**

**Applicant**

**and**

**FEDERAL EXPRESS CANADA LTD.**

**Respondent**

**JUDGMENT AND REASONS**

[1] The present Application concerns the Applicant's late-filed complaint to the Canadian Human Rights Commission (Commission) in which he alleged that, in the course of his employment as a courier, the Respondent discriminated against him on the ground of disability by treating him in an adverse differential manner and by terminating his employment contrary to s. 7 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (*Act*).

[2] The basis of the Applicant's complaint is that he has been diagnosed with a chronic disease being Crohns and Ulcerative colitis resulting in irritable bowel syndrome and, for which, the Respondent failed to provide accommodation.

[3] The Applicant's employment was terminated on November 21, 2013. As a result, he was required to file his complaint with the Commission within one year of that date. However, instead of so applying, in error the Applicant applied to the Human Rights Tribunal of Ontario. The error was not corrected until January 22, 2015 when the Applicant late-filed with the Commission.

[4] Pursuant to s. 41(1)(e) of the *Act*, the Commission has statutory authority to grant relief with respect to late-filed complaints if to do so is considered to be "appropriate":

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

[...]

(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.

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 :

[...]

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.

[5] In the present case an investigation Report dated December 23, 2015 was prepared for the Commission's consideration in which the circumstances were detailed. In the Report at paragraph 19, a key opinion with respect to the substance of the Applicant's complaint was expressed:

The complaint raises allegations of failure to accommodate the complainant's disability and termination of his employment. The complainant admits in his complaint form that he falsified a document by bypassing the signature panel and typing in the receiver's name. The respondent says this was the third time he had falsified documents. This complaint is a private dispute between the parties and does not raise any allegations of systemic discrimination.

[Emphasis added]

[6] The conclusion reached in the Report at paragraph 24 was recommended to the Commission:

#### Conclusion

The present complaint was filed on January 22, 2015, fourteen months after the complainant's termination on November 21, 2013. The question for the Commission is whether it should exercise its discretion to deal with the complaint, even though it was filed two months after the statutory time limit set out in the Act. The complainant explains that the reason for the delay is that he did not know until December 28, 2014, that the Commission existed. Ignorance of the law or of the Commission's existence is not an excuse or a reason for the Commission to exercise its discretion to deal with a complaint that has been filed out of time. Furthermore, the respondent's employee handbook mentions the Canadian Human Rights Act in its Workplace Violence and Harassment Policy, which states that FedEx condemns any acts of violence, harassment and/or discrimination in its work environments. The complainant could have informed himself of his rights if he had consulted his employee handbook. It appears that the complainant did not do everything he could and should have done to file his complaint in time. The complainant has not provided a reasonable

explanation for the delay in filing, and therefore the Commission should not deal with the complaint.

[Emphasis added]

[7] The Commission accepted the recommendation and decided not to deal with the Applicant's complaint. This result was communicated to the Applicant on March 30, 2016.

[8] With respect to the level of deference that should be paid to the Commission's screening decisions, two precedents are important to consider.

[9] The Federal Court of Appeal made this point in *Bell Canada v. Communications, Energy and Paperworkers Union of Canada* [1999] 1 F.C. 113 at paragraph 38:

The Act grants the Commission a remarkable degree of latitude when it is performing its screening function on receipt of an investigation report. Subsections 40(2) and 40(4) and sections 41 and 44 are replete with expressions such as "is satisfied", "ought to", "reasonably available", "could more appropriately be dealt with", "all the circumstances", "considers appropriate in the circumstances" which leave no doubt as to the intent of Parliament. The grounds set out for referral to another authority (subsection 44(2)), for referral to the President of the Human Rights Tribunal Panel (paragraph 44(3)(a)) or for an outright dismissal (paragraph 44(3)(b)) involve in varying degrees questions of fact, law and opinion (see *Latif v. Canadian Human Rights Commission*, [1980] 1 F.C. 687 (C.A.), at page 698, Le Dain J.A.), but it may safely be said as a general rule that Parliament did not want the courts at this stage to intervene lightly in the decisions of the Commission.

[Emphasis added]

[10] In *Zavery v Canada (Human Resources Development)* 2004 FC 929 at paragraph 27, the Federal Court had this to say:

The determination of timeliness is a discretionary decision of the Commission that attracts the highest degree of deference. If the decision of the Commission to reject all of the allegations due to the lack of timeliness was not patently unreasonable or otherwise reviewable, the error of jurisdiction becomes irrelevant. The Commission is obliged, when determining whether a complaint filed beyond the one-year limit should be dealt with, to put its mind to whether the circumstances would warrant a longer filing period (s.41(1)(e)).

[Emphasis added]

[11] I find that the Commission certainly did put its mind to the circumstances of the Applicant's complaint, and provided a clear reasonable decision. As a result, the present Applicant must be dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the present Application is dismissed.

"Douglas R. Campbell"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-669-16

**STYLE OF CAUSE:** NICHOLAS MANOUSOS v FEDERAL EXPRESS  
CANADA LTD.

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 21, 2016

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** NOVEMBER 22, 2016

**APPEARANCES:**

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[ON HIS OWN BEHALF]

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