

Date: 20071022

Docket: T-818-07

Citation: 2007 FC 1094

Toronto, Ontario, October 22, 2007

PRESENT: Madam Prothonotary Milczynski

BETWEEN:

**DENNIS BOISSONNEAULT and
RODNEY LLOYD HOFF**

Plaintiffs

and

**CANADA POST CORPORATION,
ASSOCIATION OF POSTAL OFFICIALS OF CANADA,
ALTERNATIVE DISPUTE RESOLUTION SERVICES and
(CANADIAN HUMAN RIGHTS COMMISSION)**

Defendants

REASONS FOR ORDER AND ORDER

[1] This motion to strike the statement of claim and dismiss the action is brought by Canada Post Corporation (“Canada Post”) and the Association of Postal Officials of Canada (“APOC”). The Canadian Human Rights Commission (the “Commission”) or the Alternative Dispute Resolution Services group of the Commission did not file a separate motion. The Commission, however, filed submissions consenting to an order that would strike the entire claim.

[2] Upon review of the statement of claim, it is plain and obvious that many of the claims as advanced by the Plaintiff, Dennis Boissonneault arise from his employment with Canada Post and the interpretation or application of the terms of the applicable collective agreement that governed the terms and conditions of his employment. The claims fall within the exclusive jurisdiction of the grievance and arbitration procedure provided by a collective agreement. Those that do not fall within the scope of the collective agreement between Canada Post and APOC, fall within the scope of the collective agreement between Canada Post and the Canadian Union of Postal Workers (“CUPW”) – (claims that Mr. Boissonneault was not paid the proper amount between 1998-2000).

[3] The claims advanced by the Plaintiff, Rodney Lloyd Hoff are ancillary claims all of which arise from the employment relationship between Mr. Boissonneault and Canada Post. The allegations do not disclose a reasonable cause of action as against any of the Defendants that may be advanced by Mr. Hoff.

[4] For the reasons set out below, I conclude that all of the claims should be struck, and the action dismissed in its entirety. The essential character of the dispute falls within the scope of the collective agreement, and as against Canada Post and APOC, cannot succeed by way of this action. With respect to the Commission, any challenge of a decision of the Commission made in respect of the Plaintiffs, must be taken by way of application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, (see: *Grenier v. Canada*, [2005] FCA 348).

Background Facts

[5] As set out in the written submissions of Canada Post, Mr. Boissonneault commenced employment with Canada Post on November 9, 1998. He was first a temporary letter carrier, and

then on March 5, 2001, he became a part-time mail service courier – a position he held until September 26, 2001.

[6] During that time, Mr. Boissonneault was represented by CUPW and was bound by the collective agreement between Canada Post and CUPW. This collective agreement governed the terms and conditions of employment, including applicable pay rates and pension, and also provided for a grievance and arbitration procedure for disputes arising out of the collective agreement – including disputes relating to termination of employment, alteration of existing working conditions, payments of premiums, allowances or other benefits and any discriminatory application of such premium, allowance or financial benefit.

[7] Mr. Boissonneault became a supervisor at Canada Post in 2001. As such, he commenced being represented by APOC and bound by the collective agreement between Canada Post and APOC. During the relevant time in this proceeding, there were two collective agreements. One was in force from June 7, 2001 to March 31, 2005; and the other was and continues in force from April 1, 2005 to March 31, 2009.

[8] The terms of the collective agreement between Canada Post and APOC govern the terms and conditions of employment, including such matters as termination, pay and benefits, staffing procedures, harassment and discrimination. The collective agreement also provides for a grievance and arbitration procedure for differences between the parties arising out of the interpretation, application, administration or alleged violation of the collective agreement.

[9] Thus at all material times relevant to this proceeding, Mr. Boissonneault has been represented by a union – either CUPW or APOC, and his employment has at all times been governed by the terms of a collective agreement.

[10] Nonetheless, in May of 2007, Mr. Boissonneault commenced this action, claiming in excess of \$17 million in damages based on allegations of workplace harassment, discrimination, dismissal and various torts. The statement of claim also alleges that Mr. Boissonneault was not paid properly while he was a letter carrier. Mr. Boissonneault's spouse, Mr. Hoff, claims damages for what essentially is the harm alleged to have been caused to Mr. Hoff as a result of the treatment of Mr. Boissonneault.

[11] Certain of the allegations relate to the actions of the Alternative Dispute Resolution Services group of the Commission and their actions in mediating a settlement between Mr. Boissonneault and Canada Post. Other allegations relate to the failure of APOC to take appropriate action to represent Mr. Boissonneault.

Analysis

[12] Rule 221(1) of the *Federal Courts Rules* provides that the Court may strike out pleadings, with or without leave to amend, if it is satisfied that the pleadings:

- (i) disclose no reasonable cause of action or defence, as the case may be;
- (ii) are immaterial or redundant;
- (iii) are scandalous, frivolous or vexatious;
- (iv) may prejudice or delay the fair trial of the action;
- (v) constitute a departure from a previous pleading; or

(vi) are otherwise an abuse of the process of the Court.

[13] It is well settled that the courts have no jurisdiction with respect to matters which arise out of the interpretation, application, administration or alleged violation of a collective agreement that contains a binding arbitration clause. The Supreme Court of Canada stated in *Weber v. Ontario Hydro* (1995), 125 D.L.R. (4th) 583 (SCC), at pp.603-604:

Disputes which expressly or inferentially arise out of the collective agreement are foreclosed to the courts...to summarize, the exclusive jurisdiction model gives full credit to the language of section 45(1) of the *Labour Relations Act*...It satisfies the concerns that the dispute resolution process which the various labour statutes of this country have established should not be duplicated and undermined by concurrent actions. It conforms to a pattern of growing judicial deference for the arbitration and grievance process and correlative restrictions on the rights of parties to proceed with parallel or overlapping litigation in the courts.

[14] In determining whether the jurisdiction of this Court has been ousted, the principles to be taken into account provide:

1. Labour arbitrators have exclusive jurisdiction to resolve employment disputes arising directly or inferentially out of a collective agreement.
2. Courts have adopted a deferential approach when evaluating whether a particular dispute arises out of a collective agreement.
3. There is a two-stage analysis to determine whether the dispute, in its essential character, arises in any way from the collective agreement:
 - (i) Courts should define the essential character of the dispute by looking at the

surrounding facts – as opposed to how the dispute might be characterized legally;

- (ii) Then, determine if that factual context falls within the scope of the collective agreement, either implicitly or explicitly. (*Lavigne v. Canada Post Corporation*, [2006] FCJ No. 1689 (FC); *Bisailon v. Concordia University*, [2006] 1 S.C.R. 666).

[15] I find that the essential character of the Plaintiffs' dispute as against Canada Post involves issues related to alleged wrongful dismissal, pay, payment of benefits, promotion, transfer and improper treatment. These are matters that arise out of the employment relationship and out of the interpretation, application or administration of the collective agreement either between Canada Post and CUPW or Canada Post and APOC. Each respective collective agreement contains provisions for a grievance and arbitration procedure. Accordingly, that is the only appropriate forum for the resolution of these matters.

[16] Specifically, the Plaintiffs have made allegations as follows:

- sexual harassment – this is explicitly addressed in Art. 49 of the collective agreement between Canada Post and APOC;
- discrimination – this is specifically addressed in Art. 43 and Art. 49 of the same collective agreement;
- aggravated or constructive dismissal – this is specifically addressed in Art. 14.10 of the collective agreement;

- unjust pay definition – pay rates and salaries are set out in Part IV and Appendix A of the collective agreement between Canada Post and APOC; and Art. 35 and Appendix A of the Collective Agreement between Canada Post and CUPW;
- that Mr. Boissonneault was improperly denied health and welfare benefits coverage – these are set out in Art. 26 of the collective agreement between Canada Post and APOC;
- that Mr. Boissonneault experienced loss of salary while collecting long-term disability benefits. The disability insurance plan, including entitlement to long-term disability benefits is incorporated by reference in the collective agreement between Canada Post and APOC in Art. 26. Salaries and wage rates are set out in Appendix A of the collective agreement between Canada Post and APOC; and
- that Mr. Boissonneault suffered a loss of promotion and/or improper transfer. Promotions and transfers are addressed in Art. 43 of the APOC collective agreement.

[17] As against APOC, any complaint or dispute that the union did not advance claims properly through the grievance or arbitration process or otherwise denied the assistance that was required to be forthcoming, can only be the subject of an allegation of a violation of the duty of fair representation.

[18] As against the Commission, any complaint or dispute that the Commission's decision or decisions were invalidly made or wrong or improper, can only be the subject of an application for judicial review (*Grenier v. Canada*, [2005] FCA 348).

[19] With respect to the claims of Mr. Hoff, it is clear from the pleading that whatever damages he is claiming, flow from the dispute between Mr. Boissoneault and Canada Post, between Mr. Boissoneault and his union, and former union; and between Mr. Boissoneault and the Canadian Human Rights Commission or its Alternative Dispute Resolution Services group. Mr. Hoff has never been an employee of Canada Post, and has never been a member of APOC. The Statement of Claim does not disclose an independent or a reasonable cause of action that Mr. Hoff may assert against any of the Defendants.

ORDER

THIS COURT ORDERS that

1. The statement of claim is struck without leave to amend.
2. The action is dismissed.
3. If any of the Defendants are seeking costs and the parties cannot agree, the parties may file, within twenty days of the date of this Order, written submissions no longer than three (3) pages in length.

“Martha Milczynski”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-818-07

STYLE OF CAUSE: DENNIS BOISSONNEAULT and
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CANADA POST CORPORATION,
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CANADA, ALTERNATIVE DISPUTE
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(CANADIAN HUMAN RIGHTS COMMISSION)

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 25, 2007

REASONS FOR ORDER: MILCZYNSKI P.

DATED: OCTOBER 22, 2007

APPEARANCES:

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Rodney Lloyd Hoff

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(Alternative Dispute Resolution Services
(CHRC))

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