

Federal Court



Cour fédérale

Date: 20100416

Docket: T-840-09

Citation: 2010 FC 416

Ottawa, Ontario, April 16, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

TERRY A. VERHELLE

Applicant

and

CANADA POST CORPORATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Terry Verhelle worked as a letter carrier for Canada Post in Renfrew, Ontario for almost 25 years. In 2004, he was diagnosed with osteo-arthritis and required hip replacements. To accommodate his disability, he asked Canada Post to assign him to a mobile route or to a clerk position. He had trouble lifting heavy objects and climbing stairs.

[2] Nothing was arranged for him until 2007, when he was given a midnight shift at the Ottawa Mail Processing Plant. In the interim, Mr. Verhelle submitted a number of grievances based on Canada Post's alleged failure to accommodate him. He also filed a complaint with the Canadian Human Rights Commission, alleging that he was discriminated against due to his disability. He maintained that Canada Post failed to provide adequate accommodation and denied him jobs that he could have performed. Mr. Verhelle now works as a clerk for Canada Post in Ottawa.

[3] At first, the Commission concluded that it would not deal with Mr. Verhelle's complaint because he had not yet exhausted the grievance procedure under his collective agreement.

[4] After he had received decisions relating to his grievances, Mr. Verhelle reactivated his complaint. In February 2009, the Commission asked the parties to make submissions on the question whether it should decline to deal with the complaint because it had been addressed through the grievance process. Both parties filed materials with the Commission. On April 21, 2009, the Commission decided not to deal with the Mr. Verhelle's complaint.

[5] Mr. Verhelle argues that the Commission's decision was unreasonable because his complaint had not been properly dealt with by the arbitrators seized with his grievances. He asks me to overturn the Commission's decision and order it to reconsider. I can find no basis for overturning the Commission's decision and must, therefore, dismiss this application for judicial review.

II. Issue

[6] There is only one issue – was the Commission’s decision reasonable?

(1) The Commission’s decision

[7] The Commission decided that it would not deal with Mr. Verhelle’s complaint because it was “trivial, frivolous, vexatious or made in bad faith” (*Canadian Human Rights Act*, R.S. 1985, c. H-6, s. 41(1)(d)). In particular, it found that the issues raised in it had already been addressed by another body. The Commission noted the arbitrators’ decisions dealing with Mr. Verhelle’s various grievances. It also referred to the submissions that had been filed by the parties at the Commission’s request.

(2) The arbitrators’ decisions

[8] One of Mr. Verhelle’s grievances (#580-07-00007) was settled. Two others (#580-03-01722 and #580-03-01854) were decided by Arbitrator O’Shea on August 23, 2007. He dismissed them on the grounds that there was no suitable position in Renfrew that would have accommodated Mr. Verhelle’s physical restrictions.

[9] Two other grievances (#594-03-00026 and #594-03-00030) were decided by Arbitrator Picher on October 31, 2007. He concluded that the clerk position provided to Mr. Verhelle was a

suitable means of accommodating him. However, he also determined that, because Canada Post's conduct caused Mr. Verhelle to lose wages from January 2, 2007 to the date when he returned to full-time employment, Canada Post should compensate him.

[10] With regard to two other grievances (#594-03-00027 and #594-03-00028), the outcome is not as clear. Mr. Verhelle maintains that these grievances remain outstanding; Canada Post submits that, although these grievances were not mentioned by Arbitrator Picher, they were effectively dealt with in his earlier rulings because they arose out of the same set of circumstances. Further, Canada Post argues that, even if these grievances were not formally disposed of by the arbitrator, they relate to issues that are not raised in Mr. Verhelle's complaint to the Commission. They involve issues about his pension and benefits during his leave of absence.

(3) Was the Commission's decision reasonable?

[11] Mr. Verhelle argues that the Commission's decision was unreasonable, in effect, because the arbitrators' decisions did not fully satisfy his disagreement with how Canada Post treated him while he was seeking accommodation of his disability. Part of his concern is that he was poorly represented before the arbitrators. However, this is not a valid ground for challenging a decision of the Commission: *English-Baker v. Canada (Attorney General)*, 2009 FC 1253. Clearly, Mr. Verhelle is unhappy with his employer's treatment of him. His dissatisfaction gave rise to numerous grievances, a complaint to the Commission and this application for judicial review. I commend Mr. Verhelle for his dogged pursuit of justice. At the same time, however, I cannot find a basis for

overturning the Commission's decision. In my view, it was not unreasonable for the Commission to conclude that the essence of his dispute with Canada Post had been dealt with by way of the grievance process available under his collective agreement.

III. Conclusion and disposition

[12] I am not persuaded that the Canadian Human Rights Commission's decision not to deal with Mr. Verhelle's complaint against Canada Post was unreasonable. Accordingly, I must dismiss this application for judicial review, with costs. I would fix costs in the amount of \$200.00.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. This application for judicial review is dismissed with costs, fixed at \$200.00.

“James W. O’Reilly”

Judge

Annex "A"

Canadian Human Rights Act, R.S. 1985, c. H-6

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

...

(d) the complaint is trivial, frivolous, vexatious or made in bad faith.

Loi canadienne sur les droits de la personne, L.R. 1985, ch. H-6

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 :

[...]

d) la plainte est frivole, vexatoire ou entachée de mauvaise foi.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-840-09

STYLE OF CAUSE: TERRY A. VERHELLE v.
CANADA POST CORPORATION

PLACE OF HEARING: Ottawa, ON.

DATE OF HEARING: March 21, 2010

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

DATED: April 16, 2010

APPEARANCES:

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