

Federal Court



Cour fédérale

Date: 20130710

Docket: T-2240-12

Citation: 2013 FC 759

Ottawa, Ontario, July 10, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

BARBARA DUNKLEY-CHIEFFALLO

Applicant

and

CANADA POST CORPORATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms Barbara Dunkley-Chieffallo has worked at Canada Post Corporation (CPC) since 2000. In 2009, she complained to the Canadian Human Rights Commission (CHRC) about discriminatory treatment she experienced at CPC over the years. She alleged differential treatment based on her race, national and ethnic origin, and disability. In particular, she claimed that one of her superiors had harassed her, and another had unfairly disciplined her for taking an extended break. She also contended that a fellow employee refused to pick up mail that she had sorted. Finally, she

maintained that a human resources official had improperly reprimanded her for absenteeism after she returned to work from stress leave.

[2] The CHRC appointed an investigator to look into Ms Dunkley-Chieffallo's complaint. The investigator reviewed the written submissions of Ms Dunkley-Chieffallo and CPC, and spoke with Ms Dunkley-Chieffallo's supervisor. She concluded that CPC had not discriminated against Ms Dunkley-Chieffallo. The employer did not engage in any differential treatment of her; indeed, it was entitled to record the fact that she had taken an extended break without notifying her supervisor, and to encourage better attendance at work by meeting with an employee who was returning from leave. The supervisor had instructed other employees to be sure to pick up the mail Ms Dunkley-Chieffallo had sorted.

[3] The investigator recommended that the CHRC dismiss Ms Dunkley-Chieffallo's complaint because it did not merit further inquiry by a tribunal. CPC and Ms Dunkley-Chieffallo made further submissions to the CHRC in response to the investigator's report.

[4] In turn, the CHRC appointed a conciliator to try to resolve the dispute. However, the parties failed to settle. CPC offered to assist Ms Dunkley-Chieffallo in finding an alternative assignment, but refused to grant the other remedies she was seeking – an apology, reimbursement of sick leave, and substantial monetary damages. The parties provided additional submissions to the CHRC to accompany the conciliator's report.

[5] In 2012, after considering the investigator's report, the parties' submissions, the conciliator's report, and CPC's offer to find Ms Dunkley-Chieffallo alternate employment, the CHRC decided to dismiss Ms Dunkley-Chieffallo's complaint because, "having regard to all of the circumstances of the complaint, an inquiry into the complaint [was] not warranted" (relying on s 44(3)(b)(i) of the *Canadian Human Rights Act*, RSC 1985, c H-6; see Annex).

[6] Ms Dunkley-Chieffallo argues that the CHRC treated her unfairly and failed to take account of the evidence in her favour. She asks me to quash the CHRC's decision and order it to reconsider her complaint.

[7] I can find no basis on which to overturn the CHRC's decision. In my view, the CHRC gave Ms Dunkley-Chieffallo a full opportunity to participate in the process leading to its decision. She made numerous detailed submissions and commented both on the investigator's and the conciliator's reports. The CHRC took those submissions into account before reaching its decision.

[8] Further, the CHRC based its conclusion in large part on the investigator's recommendations. The investigator's report sets out a reasonably thorough and balanced account of the evidence and submissions, and provides an adequate justification for the CHRC's conclusion.

[9] Therefore, I must dismiss this application for judicial review.

[10] There are two issues:

1. Did the CHRC treat Ms Dunkley-Chieffallo unfairly?
2. Was the CHRC's decision unreasonable?

II. Issue One – Did the CHRC treat Ms Dunkley-Chieffallo unfairly?

[11] Ms Dunkley-Chieffallo submits that the investigator's report was one-sided and unfair. She also contends that the CHRC's decision contains no rationale for dismissing her complaint.

[12] I disagree.

[13] The CHRC has a duty to ensure that an investigator's report is neutral and thorough, to communicate to the parties the essence of the evidence obtained by the investigator, to give the parties an opportunity to respond to the investigator's report, and to consider the parties' submissions (*Slattery v Canada (Canadian Human Rights Commission)*, [1996] FCJ No 385 (CA), at paras 1-2).

[14] Here, the investigator reviewed all of Ms Dunkley-Chieffallo's allegations and arrived at a conclusion based on the evidence. She considered the evidence put forward by both parties; I see nothing that indicates any bias against Ms Dunkley-Chieffallo or in favour of CPC.

[15] Further, the CHRC provided the investigator's report to the parties and invited their submissions on it. They also had an opportunity to comment on each other's representations.

[16] While Ms Dunkley-Chieffallo disagreed with some of the investigator's findings, she did not identify any substantial omissions or errors in the report. Therefore, the CHRC had no obligation to comment explicitly on her submissions (*Herbert v Canada (Attorney General)*, 2008 FC 969, at para 26).

[17] Finally, since Ms Dunkley-Chieffallo had been intimately involved in the process that resulted in the CHRC's decision, she would have been aware that the CHRC's decision relied on the investigator's conclusions and understood the basis for its decision (*Gardner v Canada (Attorney General)*, 2005 FCA 284, at para 28). Therefore, while the CHRC's decision sets out few explicit reasons for its conclusion, the underlying rationale is clearly set out in the record.

[18] I find that the CHRC treated Ms Dunkley-Chieffallo fairly and provided an adequate explanation for its conclusion.

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

[19] Ms Dunkley-Chieffallo has raised the following concerns about the CHRC's decision:

- It was unreasonable for the CHRC to rely on the investigator's report for its conclusion since, after receiving the report, it referred the matter to a conciliator; obviously, the CHRC did not find the report persuasive.

- The investigator and, in turn, the CHRC found that CPC's conduct toward her did not amount to differential treatment. However, the investigator relied on CPC's employment policies instead of the *Canadian Human Rights Act*.
- The CHRC relied on CPC's offer to try to find Ms Dunkley-Chieffallo another position, yet it did not impose any time limit on CPC. As it turns out, CPC has not yet identified any alternate assignment and has given Ms Dunkley-Chieffallo contradictory information about how to apply for a transfer.

[20] The CHRC must act in good faith, consider the evidence before it, and discard irrelevant considerations and improper purposes (*Slattery v Canada (Human Rights Commission)*, [1994] FCJ No 181 (FCTD), at para 81). I can see no basis for concluding that the CHRC violated any of these requirements.

[21] Regarding Ms Dunkley-Chieffallo's specific allegations, the fact that the CHRC referred her complaint to a conciliator should not be interpreted as a lack of faith in the investigator's report. The CHRC has explicit authority to promote conciliation of complaints (s 47). Its efforts in that regard do not necessarily reflect on the strength or weakness of the complaint.

[22] The investigator noted that Ms Dunkley-Chieffallo had taken an authorized absence, in the form of an extended break, contrary to CPC's "Team Leader's Guide to Labour Relations". She found that Ms Dunkley-Chieffallo's supervisor had not treated her differentially when he documented her absence since CPC's guidelines are neutral; they apply to all employees. I cannot

see anything unreasonable about that finding. There was no evidence that CPC applied the guidelines in a discriminatory way.

[23] I cannot see any basis for finding that the CHRC's decision was unreasonable. However, I agree with Ms Dunkley-Chieffallo that CPC's offer to find her an alternate position figured in the CHRC's decision to dismiss her complaint. I assume that offer remains open. At a minimum, if it has not already done so, I would expect CPC to provide Ms Dunkley-Chieffallo with clear instructions on how to arrange a transfer.

IV. Conclusion and Disposition

[24] The CHRC treated Ms Dunkley-Chieffallo fairly throughout the various stages of considering her complaint. She had a full opportunity to make her case and to respond to the other materials that were before the CHRC. Further, the CHRC's decision not to refer her complaint to a tribunal was a defensible outcome based on the facts and the law. It was not unreasonable. I must, therefore, dismiss this application for judicial review.

[25] CPC has asked for costs based on the mid-point of Tariff B. Before making any cost award, I would ask CPC to serve and file a bill of costs, or a statement of a fixed amount of costs, within 10 days of this judgment.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. Canada Post Corporation is asked to serve and file a bill of costs, or a statement of a fixed amount of costs, within 10 days of this judgment.

“James W. O’Reilly”

Judge

Annex

Canadian Human Rights Act, RSC, 1985, c H-6

Loi canadienne sur les droits de la personne, LRC, 1985, ch H-6

Report

44. (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.

...

Idem

(3) On receipt of a report referred to in subsection (1), the Commission

...

(b) shall dismiss the complaint to which the report relates if it is satisfied

- (i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted.

Appointment of conciliator

47. (1) Subject to subsection (2), the Commission may, on the filing of a complaint, or if the complaint has not been

(a) settled in the course of investigation by an investigator,

(b) referred or dismissed under subsection 44(2) or (3) or paragraph 45(2)(a) or 46(2)(a), or

(c) settled after receipt by the parties of the notice referred to in subsection 44(4),

appoint a person, in this Part referred to as a “conciliator”, for the purpose of attempting to bring about a settlement of the complaint.

Rapport

44. (1) L’enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l’enquête.

[...]

Idem

(3) Sur réception du rapport d’enquête prévu au paragraphe (1), la Commission :

[...]

b) rejette la plainte, si elle est convaincue :

- (i) soit que, compte tenu des circonstances relatives à la plainte, l’examen de celle-ci n’est pas justifié.

Nomination du conciliateur

47. (1) Sous réserve du paragraphe (2), la Commission peut charger un conciliateur d’arriver à un règlement de la plainte, soit dès le dépôt de celle-ci, soit ultérieurement dans l’un des cas suivants :

a) l’enquête ne mène pas à un règlement;

b) la plainte n’est pas renvoyée ni rejetée en vertu des paragraphes 44(2) ou (3) ou des alinéas 45(2)a) ou 46(2)a);

c) la plainte n’est pas réglée après réception par les parties de l’avis prévu au paragraphe 44(4).

Eligibility

(2) A person is not eligible to act as a conciliator in respect of a complaint if that person has already acted as an investigator in respect of that complaint.

Confidentiality

(3) Any information received by a conciliator in the course of attempting to reach a settlement of a complaint is confidential and may not be disclosed except with the consent of the person who gave the information.

Incompatibilité

(2) Pour une plainte donnée, les fonctions d'enquêteur et de conciliateur sont incompatibles.

Renseignements confidentiels

(3) Les renseignements recueillis par le conciliateur sont confidentiels et ne peuvent être divulgués sans le consentement de la personne qui les a fournis.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2240-12

STYLE OF CAUSE: BARBARA DUNKLEY-CHIEFFALLO
v
CANADA POST CORPORATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: July 3, 2013

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

DATED: July 10, 2013

APPEARANCES:

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