

Federal Court



Cour fédérale

Date: 20170321

Docket: T-948-16

Citation: 2017 FC 295

Ottawa, Ontario, March 21, 2017

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

VAHID MAJIDIGORUH

Applicant

and

JAZZ AVIATION LP

Respondent

JUDGMENT AND REASONS

[1] Vahid Majidigoruh seeks judicial review of a decision of the Canadian Human Rights Commission dismissing his complaint against his employer, Jazz Aviation LP, in which he alleged that he had been discriminated against by his employer on the basis of his race, national or ethnic origin, and age. Following an investigation, the Commission concluded that further inquiry into Mr. Majidigoruh's complaint was not warranted. Consequently, the complaint was dismissed.

[2] I understand Mr. Majidigoruh's argument to be that the Commission's investigation was insufficiently thorough and overlooked crucial evidence. He further submits that the Commission investigation was unfair as the investigator had prejudged the outcome of her investigation, and was biased against him. Jazz Aviation has not participated in this application.

[3] It is clear from Mr. Majidigoruh's submissions that the events giving rise to his human rights complaint have affected him deeply. However, as I explained to him at the hearing, my role is not to decide whether I would have come to the same conclusion as did the Commission in relation to his human rights complaint. My role is limited to considering whether the Commission's decision was reasonable in light of the evidence that was before it, and whether the process that was followed by the Commission in the course of the investigation was fair.

[4] While I have carefully considered his submissions, Mr. Majidigoruh has not persuaded me that there is a basis for this Court to intervene in the Commission's decision. Consequently, the application for judicial review will be dismissed.

I. Background

[5] Mr. Majidigoruh is of Iranian descent. At the time of the Commission's investigation, he was 40 years old. He had been employed by Jazz Aviation since September 22, 1998.

Mr. Majidigoruh occupies the position of crew chief, and he is classified as a mechanical engineer. He is a member of Jazz Tech, a Unifor local bargaining unit which has approximately 700 members.

[6] Jazz Aviation offers private charter flights throughout North America. It is headquartered in Nova Scotia, and has regional offices in Vancouver, Calgary, Toronto, and Montreal.

[7] In his human rights complaint, Mr. Majidigoruh alleged that his employer had treated him in an adverse differential manner, and had failed to provide him with a harassment-free workplace in the period between October 1, 2014 and January 1, 2015 because of his race, his age, and his national or ethnic origin. Mr. Majidigoruh also filed a complaint against his union. Although the two complaints were dealt with together by the Commission, this application only relates to Mr. Majidigoruh's complaint against his employer.

[8] Mr. Majidigoruh alleges that between 2010 and 2013, he was harassed by his shift supervisor, AF, who displayed hostility towards Mr. Majidigoruh by using an offensive or mocking tone in dealing with him, and through his body language and unprofessional comments. On July 7, 2013, Mr. Majidigoruh made a formal complaint of harassment to his employer regarding AF's conduct.

[9] Jazz Aviation and the union carried out a joint investigation into Mr. Majidigoruh's complaint. The investigation resulted in a report dated August 20, 2013, which concluded that AF had engaged in "hostile, unprofessional and negative behaviour", but had not engaged in "personal harassment". By letter dated August 29, 2013, Mr. Majidigoruh was told that his supervisor would be required to take leadership training and coaching.

[10] On or about October 7, 2014, Mr. Majidigoruh filed a second complaint regarding AF's conduct with both his employer and his union. In this complaint, Mr. Majidigoruh alleged that AF had ignored him, walked away from him on two occasions, demeaned him, and made him feel incompetent in front of other crew chiefs. The Commission's investigation report notes that two Caucasian crew chiefs also filed complaints against AF alleging similar conduct.

[11] Jazz Aviation's Human Resources Manager and the Union's Human Rights Coordinator investigated Mr. Majidigoruh's new allegations. On November 19, 2014, Mr. Majidigoruh was advised that his complaint of personal harassment had been substantiated, but that there was no evidence to support his claim to have been discriminated against on the basis of his race. Mr. Majidigoruh was advised that "[r]emedial steps will be placed to ensure this sort of behaviour does not continue".

[12] The company further expressed regret with respect to the way Mr. Majidigoruh had been treated by his supervisor, and advised him that AF wished to apologize to him and to have "a facilitated discussion to help remedy the current situation". AF's employment with Jazz Aviation was terminated on January 20, 2015, when it was determined that his conduct had not improved.

[13] Mr. Majidigoruh filed his complaint with the Commission on January 4, 2015.

II. The Commission's Decision

[14] Following an investigation into Mr. Majidigoruh's complaint, the Commission concluded that his complaint should be dismissed on the basis that further inquiry into the complaint was not warranted. Where, as is the case here, the Commission provides only brief reasons for its decision, the investigation report will be treated as constituting the Commission's reasoning: *Sketchley v. Canada (Attorney General)*, 2005 FCA 404 at para. 37, [2006] 3 F.C.R. 392.

[15] Based on the results of the internal investigation, the Commission investigator concluded Mr. Majidigoruh had been harassed by his supervisor. The investigator was also satisfied that AF's harassment was repeated and unwelcome, and that it detrimentally affected

Mr. Majidiguruh's work environment. The evidence did not, however, establish that AF's conduct was linked to Mr. Majidiguruh's national or ethnic origin, race, or age.

[16] The investigator was further satisfied that Jazz Aviation took appropriate action after Mr. Majidiguruh filed his complaints with the company and the union, and that the investigation into each of the complaints was completed in a timely manner. After the initial investigation, Jazz Aviation provided AF with training and coaching, and his conduct was noted in his performance reviews. Moreover, when AF's conduct did not improve, his employment was terminated.

[17] Mr. Majidiguruh also alleged that he had suffered adverse differential treatment on a prohibited ground of discrimination. Specifically, he alleged that his employer had reduced the number of regular crew chiefs at his base in an attempt to eliminate his position. He also alleged that, despite his seniority, the company did not select him for the position of temporary shift supervisor.

[18] The investigator did not review audio recordings of conversations with witnesses that Mr. Majidiguruh had provided, which, he said, supported his allegations. The investigator reasoned that there was no way to authenticate whose voices in the recordings and the contexts in which the conversations had occurred.

[19] The investigator found that the evidence showed that Jazz Aviation had reduced the number of crew chiefs at Mr. Majidiguruh's base in Vancouver in consultation with the union and in accordance with the collective agreement. The reduction of crew chiefs was a management decision and affected other crew chiefs at the Vancouver base. The investigator

noted that this change also did not affect Mr. Majidigoruh's position designation or his compensation, and that he remained a crew chief.

[20] The investigator also found that the evidence did not support Mr. Majidigoruh's claim that his manager had not selected him to be a shift supervisor multiple times, and that the manager was deliberately overlooking him for the position. The investigator noted that Mr. Majidigoruh had acknowledged that he never asked his manager to allow him to work as a shift supervisor, although Mr. Majidigoruh says that he verbally advised his union representative that he wanted to be shift supervisor.

[21] Mr. Majidigoruh was provided with a copy of the investigation report and was afforded the opportunity to provide a written response to the report. The investigation report and Mr. Majidigoruh's response to it were before the Commission when it made the decision under review.

III. Legal Principles Governing the Review of Commission Decisions

[22] Before addressing the issues raised by Mr. Majidigoruh, it is helpful to start by examining the nature and extent of the Commission's obligations when investigating a complaint under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

[23] The Supreme Court of Canada discussed the Commission's role in *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, 140 D.L.R. (4th) 193. There, the Court observed that the Commission is not an adjudicative body, and that the adjudication of human rights complaints is reserved to the Canadian Human Rights Tribunal. The Commission's duty "is to decide if, under the provisions of the Act, an inquiry is warranted having regard to all facts.

The central component of the Commission's role, then, is that of assessing the sufficiency of the evidence before it": at para. 53. See also *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879, [1989] S.C.J. No. 103 (SEPQA).

[24] The Commission has a broad discretion to determine whether, having regard to all of the circumstances, further inquiry is warranted: *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at paras. 21 and 25, [2012] 1 S.C.R. 364. Indeed, in *Bell Canada v. Communications, Energy and Paperworkers Union of Canada* (1998), [1999] 1 F.C. 113, [1998] F.C.J. No. 1609, the Federal Court of Appeal noted that "[t]he Act grants the Commission a remarkable degree of latitude when it is performing its screening function on receipt of an investigation report": at para. 38, (my emphasis).

[25] However, when deciding whether further inquiry is warranted, the process followed by the Commission must be fair.

[26] In *Slattery v. Canada (Canadian Human Rights Commission)*, [1994] 2 F.C. 574, [1994] F.C.J. No. 181, aff'd 205 N.R. 383 (F.C.A.), the Federal Court of Appeal discussed the content of the duty of fairness required of Commission investigations. The Court observed that in fulfilling its statutory responsibility to investigate complaints of discrimination, the Commission's investigations must be both neutral and thorough.

[27] Insofar as the requirement of thoroughness is concerned, the Court in *Slattery* observed that "[d]eference must be given to administrative decision-makers to assess the probative value of evidence and to decide to further investigate or not to further investigate accordingly": at

para. 56. The investigator is not obliged to interview each and every person suggested by the parties: *Slattery*, above, at para. 69; see also *Miller v. Canada (Canadian Human Rights Commission) (re Goldberg)* (1996), 112 F.T.R. 195 at para. 10, [1996] F.C.J. No. 735. It is only “where unreasonable omissions are made, for example where an investigator failed to investigate *obviously crucial evidence*, that judicial review is warranted”: *Slattery*, above, at para. 56 (my emphasis).

[28] As to what will constitute “obviously crucial evidence”, this Court has stated that “the ‘obviously crucial test’ requires that it should have been obvious to a reasonable person that the evidence an applicant argues should have been investigated was crucial given the allegations in the complaint”: *Gosal v. Canada (Attorney General)*, 2011 FC 570 at para. 54, [2011] F.C.J. No. 1147, citing *Beauregard v. Canada Post*, 2005 FC 1383 at para. 21, 294 F.T.R. 27.

[29] The requirement for thoroughness in investigations must also be considered in light of the Commission’s administrative and financial realities. With this in mind, the jurisprudence has established that Commission investigations do not have to be perfect. As the Federal Court of Appeal observed in *Tahmourpour v. Canada (Solicitor General)*, 2005 FCA 113 at para. 39, [2005] F.C.J. No. 543:

Any judicial review of the Commission’s procedure must recognize that the agency is master of its own process and must be afforded considerable latitude in the way that it conducts its investigations. An investigation into a human rights complaint cannot be held to a standard of perfection; it is not required to turn every stone. The Commission’s resources are limited and its case load is heavy. It must therefore balance the interests of complainants in the fullest possible investigation and the demands of administrative efficacy. [Citations omitted]

[30] The jurisprudence has further established that some defects in the investigation may be overcome by providing the parties with the right to make submissions with respect to the investigation report: *Slattery*, above at para. 57. As the Federal Court of Appeal observed in *Sketchley*, above, the only errors that will justify the intervention of a court on review are “investigative flaws that are so fundamental that they cannot be remedied by the parties’ further responding submissions”: at para. 38.

[31] As was noted earlier, where the Commission adopts the recommendations of an investigation report and provides limited reasons for its decision, the investigation report will be viewed as constituting the Commission’s reasoning for the purpose of a decision under section 44(3) of the Act: see *SEPQA*, above at para. 35; *Bell Canada*, above at para. 30.

[32] However, if the Commission decides to dismiss a complaint based upon a deficient investigation, that decision will be deficient because “[i]f the reports were defective, it follows that the Commission was not in possession of sufficient relevant information upon which it could properly exercise its discretion”: see *Grover v. Canada (National Research Council)*, 2001 FCT 687 at para. 70, 206 F.T.R. 207; see also *Sketchley*, above, at para. 112.

[33] With this understanding of the Commission’s role and responsibilities in dealing with complaints of discrimination, I will next consider Mr. Majidiguruh’s arguments as to the unfairness of the process followed by the Commission investigator and the inadequacy of the investigation in this case.

IV. Bias on the Part of the Investigator

[34] Mr. Majidiguruh submits that the investigator assigned to investigate his human rights complaint prejudged his case. In support of this argument he says the investigator told him at the outset of the investigation that she did not see his complaint going forward to the Canadian Human Rights Tribunal for a hearing. According to Mr. Majidiguruh, this comment is evidence of a closed mind on the part of the investigator. There are, however, two difficulties with this argument.

[35] The first is that there is no evidence in the record supporting Mr. Majidiguruh's allegation. All I have is Mr. Majidiguruh's statement in his memorandum of fact and law and at the hearing that the investigator made the comment in question. There is no mention of any such comment being made by the investigator in the affidavit that Mr. Majidiguruh swore in support of his application for judicial review, with the result that his argument lacks an evidentiary foundation.

[36] The second problem is that Mr. Majidiguruh never drew his concern about possible bias to the attention of the investigator herself, nor did he raise the issue in the submissions that he filed with the Commission in response to the investigation report.

[37] An objection to the jurisdiction of an administrative decision-maker based upon a reasonable apprehension of bias must be raised at the earliest practicable opportunity, failing which a party will be deemed to have waived his right to object: see for example, the decisions of the Supreme Court in *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, [1990] S.C.J. No.129, and of the Federal Court of Appeal in *Zündel v. Canada (Canadian Human Rights Commission) (re Canadian Jewish Congress)* (2000), 195 D.L.R. (4th) 399,

[2000] F.C.J. No. 1838 (FCA), and *In Re Human Rights Tribunal and Atomic Energy of Canada Ltd.*, [1986] 1 F.C. 103 at p. 112 (C.A.).

[38] Having failed to raise the bias issue before the Commission, it follows that Mr. Majidigoruh cannot now raise it.

V. The Sufficiency of the Commission Investigation

[39] Mr. Majidigoruh asserts that the investigation was insufficiently thorough in a number of respects.

[40] Mr. Majidigoruh provided the investigator with a tape recording of portions of a meeting between himself and union representatives that, he says, corroborated his claim that his position had been eliminated for discriminatory reasons. The investigator stated in the investigation report that she did not review the recordings as “there was no way to authenticate whose voices were being heard and in which context the conversations had occurred”.

[41] I agree with Mr. Majidigoruh that the investigator’s rationale for refusing to listen to the recordings was not reasonable. Mr. Majidigoruh could have provided her with the context of the discussions that had been recorded, and could as well have told her whose voices were on the tape. Had she felt it necessary to do so, the investigator could then have asked the individuals identified by Mr. Majidigoruh to confirm the accuracy of the recordings and the context in which their comments had been made.

[42] That said, not every defect in an investigation will be fatal to a Commission decision. As noted earlier, the jurisprudence teaches that some defects in a Commission investigation may be overcome by providing the parties with the right to make submissions with respect to the

investigation report: *Slattery*, above at para. 57. The only errors that will justify the intervention of a court on review are “investigative flaws that are so fundamental that they cannot be remedied by the parties’ further responding submissions”: *Sketchley*, above, at para. 38.

[43] Having listened to the recordings in question, I have not been persuaded that they constitute “obviously crucial evidence”. Moreover, the snippets of conversation that were recorded by Mr. Majidigoruh were very brief, and could easily have been summarized by him in his response to the investigation report. To the extent that the refusal of the investigator to listen to the tape recording constitutes an “investigative flaw”, I am satisfied that it is one could have been easily remedied by Mr. Majidigoruh in his responding submissions. Indeed, Mr. Majidigoruh did in fact summarize the content of the tape recordings in his responding submissions, and the Commissioners would thus have been aware of the contents of the tape at the time that they made the decision under review.

[44] Mr. Majidigoruh also argues that the investigator erred by failing to interview two crew chiefs identified by him. The investigation report states that the investigator did not interview the two witnesses “because it is not in dispute that the complainant was subject to harassment in the workplace”. Mr. Majidigoruh addressed this issue in his response to the investigation report, explaining that the witnesses would not just provide evidence regarding his harasser, but about other issues as well. Mr. Majidigoruh did not, however, explain what the evidence of the two witnesses would add to his complaint.

[45] Mr. Majidigoruh was also able to address the other errors that he says were committed by the Commission investigator in his responding submissions. He was able to make his argument that the investigator erred in accepting evidence of union officials who, he says, were friendly

with management. He was also able to point out to the Commission that the harassment did not start with his first internal complaint in 2013, but had been going on since 2010, a point that he says undermines the investigator's conclusion that investigations into his internal complaints had been carried out in a timely manner. In addition, Mr. Majidiguruh was able to draw the Commission's attention to an email that could be interpreted as him having advised his union of his interest in a shift supervisor position. None of these matters constitute "investigative flaws that are so fundamental that they cannot be remedied by the parties' further responding submissions": *Sketchley*, above at para. 38.

VI. Conclusion

[46] As was noted at the outset of these reasons, it is obvious that Mr. Majidiguruh has been deeply hurt by his experience in the workplace, and that he is very disappointed by the decision made with respect to his human rights complaint. While I am sympathetic to the position in which Mr. Majidiguruh finds himself, I am not persuaded that he was treated unfairly by the Commission, or that a reviewable error was made in investigating his complaint.

[47] Consequently, the application for judicial review will be dismissed. Given that Jazz Aviation did not appear in this matter, there will be no order as to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
without costs.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-948-16

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APPEARANCES:

Mr. Vahid Majidigoruh

FOR THE APPLICANT
(ON HIS OWN BEHALF)

No one appearing

FOR THE RESPONDENT

SOLICITORS OF RECORD:

No Solicitors of Record

FOR THE RESPONDENT