

Federal Court



Cour fédérale

Date: 20190711

Docket: T-1831-18

Citation: 2019 FC 916

Ottawa, Ontario, July 11, 2019

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ARAVINTHAN PARANTHAMAN

Applicant

and

ROGERS COMMUNICATION INC.

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Aravinthan Paranthaman, seeks judicial review of the September 12, 2018 decision of the Canadian Human Rights Commission [the Commission]. The Commission dismissed the Applicant's complaint, which alleged discrimination on the ground of disability by his employer, because the complaint had not been submitted within one year from the date of the last act or omission giving rise to the complaint.

[2] For the reasons that follow, the Application is allowed.

I. Background

[3] Mr. Paranthaman worked for the Respondent, Rogers Communication Inc. [Rogers], from 2000 until his termination by Rogers on January 5, 2016. Rogers' position is that Mr. Paranthaman was terminated for cause due to his history of erratic, disruptive, abusive, threatening, dangerous, and insubordinate conduct. Mr. Paranthaman denies these allegations. Mr. Paranthaman submits that he has a history of depression, which was known to Rogers, and that he was subjected to harassment by coworkers because of his mental health issues, which Rogers failed to address.

[4] Mr. Paranthaman and his union grieved his termination. Rogers and the union settled the grievance, signing the minutes of settlement on March 10, 2017. However, Mr. Paranthaman refused to sign the minutes of settlement as he did not agree that the offer of five months' severance pay adequately addressed his complaint.

[5] On February 13, 2017, Mr. Paranthaman first contacted the Commission to inquire about filing a human rights complaint. He attests that he spoke to a representative who stated that his claim would not necessarily be rejected for being outside of the time limit as exceptions can be made, particularly because his complaint related to a mental health disability.

[6] In early March 2017, Mr. Paranthaman submitted a complaint. On March 9, 2017, a representative of the Commission noted problems with the complaint, including the need for Mr.

Paranthaman to remove the allegations against his union. On March 13, 2017, Mr. Paranthaman resubmitted his complaint. On May 5, 2017, he contacted the Commission requesting an update and was again advised that he was required to remove the allegations against his union and resubmit the complaint. On May 12, 2017, Mr. Paranthaman received another complaint kit from the Commission.

A. *The complaint*

[7] On May 15, 2017, the Commission accepted Mr. Paranthaman's complaint. The Commission summarized the complaint as alleging that Rogers discriminated against Mr. Paranthaman in employment on the ground of disability, by treating him in an adverse differential manner, by terminating his employment, and by failing to provide a harassment free workplace.

B. *The submissions*

[8] In late June 2017, the Commission sent both parties letters noting that paragraph 41(1)(e) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*] may apply because the complaint had not been filed within one year of the last alleged act of discrimination. The Commission noted that a Human Rights Officer [the Officer] would prepare a "section 40/41" report [the Report] to inform the Commission's decision whether to deal with the complaint. Both parties were invited to make submissions.

[9] Mr. Paranthaman asserted that his delay in contacting the Commission was only one month and one week beyond the time limit. He explained that he did not contact the Commission earlier because he had detrimentally relied on his union to resolve the issue, and that the delay was beyond his control.

[10] Rogers requested that the complaint be dismissed pursuant to paragraphs 41(1)(a) and (d) of the *CHRA* because the matter had been addressed through arbitration. With respect to paragraph 41(1)(e), Rogers submitted that the complaint was well outside the one-year limitation period.

C. The Section 40/41 Report

[11] In the Report dated June 11, 2018, the Officer summarized the complaint, the chronology of Mr. Paranthaman's contact with the Commission, and the parties' submissions. The Officer noted that there was no dispute that Mr. Paranthaman did not contact the Commission until 13 months after the last act of alleged discrimination. (The Officer appears to have accepted that the complaint was made in February and not in May when it was ultimately received in the proper form). As a result, the only consideration was whether the delay was reasonable. The Officer noted that the jurisprudence has established that complainants must contact the Commission within one year even if they are seeking alternative avenues of redress, and added that Mr. Paranthaman's reliance on his union is not a valid reason for the Commission to exercise its discretion to accept the complaint beyond the time limit. The Officer also noted the jurisprudence which has found that, generally, the Commission should consider whether a disability was a factor in a late filing. The Officer concluded, "While the complainant notes that

he has mental health disabilities, he has not indicated that his disability, or symptoms of his disability, was a factor in his failure to meet the one-year time limit.” [Emphasis added.] The Officer recommended that the Commission not deal with the complaint because it was filed more than a year after the last alleged date of discrimination and Mr. Paranthaman had not provided a reasonable explanation for the delay. The parties were again invited to make submissions in response to the Report by July 9, 2018.

D. Submissions in Response to the Section 40/41 Report

[12] On June 26, 2018, Mr. Paranthaman made oral submissions to the Officer via telephone, which were transcribed by the Officer in a note to file. He stated that he had been stressed and had difficulties coping with “the whole issue”. He noted that he was diagnosed with depression 10 years earlier and remained on medication for this condition, which he alleged was a result of his work environment. He stated that sometimes his “brain doesn’t work right” and it makes it hard for him to “understand and figure stuff out”. He noted his frustration with the grievance process, explaining that he first contacted the Ontario Human Rights Commission and was eventually told that his employer was under federal jurisdiction.

[13] Rogers submitted that Mr. Paranthaman’s alleged medical condition was being raised for the first time, without particulars, and that he did not state that his alleged disability was a factor in his delay in making the complaint.

[14] On August 17, 18 and 19, 2018, Mr. Paranthaman provided additional submissions in response to Rogers’ submission via a series of emails. . In his email dated August 17, 2018, Mr.

Paranthaman stated that “one of the main reason[s] why I did not file the complain[t] within one year is [be]cause [of] me[n]tal illness caused by Rogers Communications and ongoing harassment and threatening by them... and the [sic] detrimentally relying on [the] Union to resolve and get my job reinstated with back pay.” In his emails of August 18 and 19, Mr. Paranthaman stated that Rogers was aware of his medical condition, that he had proof that he takes medication for anxiety and depression, and that the reason for the delay was “well expressed to the CHRC”.

II. The Decision under Review

[15] The Commission issued its decision by way of a brief letter addressed to Mr. Paranthaman dated September 12, 2018. The letter stated that the Commission reviewed the report and “any submission(s) filed in response to the report” and concluded:

After examining this information, the Commission decided, pursuant to paragraph 41(1)(e) of the *Canadian Human Rights Act*, not to deal with the complaint because it is based on acts which occurred more than one year before the complaint was filed and the complainant has not provided a reasonable explanation for the delay in filing.

III. The Issues

[16] Mr. Paranthaman submits that the Commission’s decision to dismiss his complaint breached the duty of procedural fairness for two reasons. First, the Commission’s reasons are inadequate and not responsive to his submissions that his mental health disability was a reason for his delay in filing his complaint. Second, he was not given an adequate opportunity to explain

how his mental health issues contributed to the delay in filing his complaint and to provide proof of his medication.

[17] Mr. Paranthaman also submits that the Commission's decision is unreasonable because it does not address his submissions, making it impossible for him and for the Court to determine why the Commission found that his explanation for the short delay was unreasonable. In other words, the decision is not transparent or intelligible.

IV. The Standard of Review

[18] Issues of procedural fairness are reviewed on the non-deferential standard of correctness, which focuses on whether the process followed by the decision-maker was fair (*Khapar v Air Canada*, 2014 FC 138 at para 45, 449 FTR 1 [*Khapar*], *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at 53, [2006] 3 FCR 392 [*Sketchley*]; *Canada Post Corp v Canadian Postmasters and Assistants Association*, 2016 FC 882 at para 30, 269 ACWS (3d) 134).

[19] The standard of review for a decision of the Commission not to deal with a complaint is reasonableness (*Richard v Canada (Attorney General)*, 2010 FCA 292 at para 9, [2010] FCJ No 1370 (QL); *Berberi v Canada (Attorney General)*, 2013 FC 99 at para 10, [2013] FCJ No 113 (QL)). Such decisions are discretionary and are entitled to deference (*Conroy v Professional Institute of the Public Service of Canada*, 2012 FC 887 at para 16, 415 FTR 179 [*Conroy*]; *Khapar*, at paras 46-47). In the event that the Court finds such a decision to be not reasonable, the complaint would be referred back to the Commission for reconsideration.

[20] Where the standard of reasonableness applies, the Court determines whether the Commission's decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]. This requires the Court to consider "the existence of justification, transparency and intelligibility within the decision-making process" (*Dunsmuir*, at para 47).

[21] Contrary to Mr. Paranthaman's characterization of the adequacy of reasons as an issue of procedural fairness, the jurisprudence has established that the adequacy of reasons should be addressed in the consideration of whether the decision is reasonable. Nor is the inadequacy of the reasons an independent ground of judicial review.

[22] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland Nurses*], the Supreme Court of Canada elaborated on the requirements of *Dunsmuir*, noting at paras 14-16 that reasons are not required to set out all the arguments, statutory provisions, jurisprudence or other details that a reviewing Court might prefer. Nor is the decision-maker required to make an explicit finding on each element that leads to the final conclusion. The reasons are to "be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland Nurses*, at para 14). In addition, where necessary, courts may look to the record to assess the reasonableness of the outcome (*Newfoundland Nurses*, at para 15). The Court summed up the key principle at para 16, stating that, "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met."

V. The Commission did not Breach Procedural Fairness

[23] Mr. Paranthaman submits that the Commission failed to provide him with reasons that were responsive to his submissions, which violates the statutory requirement to provide reasons. Mr. Paranthaman further submits that the Commission failed to provide him with an adequate opportunity to make his case regarding the impact his mental health had on his ability to file his complaint in time. In his supplementary email submissions, he noted that he could provide the Commission with medical evidence; however, the Commission did not respond to this offer or address any of the mental health concerns.

[24] Contrary to Mr. Paranthaman's view, the Commission fully met its duty of procedural fairness. Mr. Paranthaman had ample notice of the case to be met and several opportunities to make submissions, even after the July 9, 2018 deadline had passed. Before drafting the Report, the Commission sent Mr. Paranthaman an information sheet regarding the timeliness of complaints and included a list of questions for him to address in his response. After the Officer wrote the Report, it was provided to Mr. Paranthaman with an opportunity to make responsive submissions. Mr. Paranthaman made telephone submissions on June 26, 2018. He made further submissions by email following receipt of the Respondent's submissions. Moreover, he was prompted by the Commission with respect to the issues to address in his submissions, including regarding the possible reasons to excuse a delay.

[25] There was no obligation on the Commission to request that Mr. Paranthaman provide proof of the medication he was taking. Moreover, the Commission did not appear to base its decision on a lack of proof that he was taking medication.

[26] The Commission did not breach the requirement in subsection 42(1) of the *CHRA* to send a written notice of its decision to the complainant setting out the reason for its decision when it decides not to deal with a complaint. The Commission sent Mr. Paranthaman the Report and, after the final determination, sent a brief letter which set out the decision. The issue of the adequacy of the reasons is addressed below in the assessment of whether the decision is reasonable.

VI. The Decision is Not Reasonable

[27] Mr. Paranthaman submits that the lack of mention in the Commission's decision of his submissions, which noted the impact of his disability on the delay in filing his complaint, prevents him and the Court from understanding why the Commission found that his explanation was not reasonable.

[28] Mr. Paranthaman relies on *Conroy*, where the Court found that a complainant made submissions that were serious enough to warrant at least a mention in the Commission's decision (*Conroy*, at para 40). Justice Bédard stated that the Commission must leave the complainant with the impression that it considered the submissions, especially when they were only raised in response to the section 40/41 report (*Conroy*, at para 41).

[29] In the alternative, Mr. Paranthaman submits that in light of the relatively short delay in filing and the impairing effect of his mental health disability, the Commission's decision to dismiss his complaint was not within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[30] Rogers submits that although the decision letter was in the nature of a form letter, there is no reason to doubt that the submissions made after the Report were considered. The jurisprudence has established that the Commission is presumed to have considered the submissions and Rogers notes that the decision letter states that the Commission did so. Rogers submits that there is no obligation on a decision-maker to refer to every argument made.

[31] Rogers also submits that the decision and the Report both support a conclusion that the Commission determined not to exercise its discretion because Mr. Paranthaman had not provided a reasonable explanation for the delay in filing his complaint.

[32] Rogers notes that *Newfoundland Nurses* and subsequent jurisprudence have clearly established that the reasons, which in this case include the Report, must be read together with the record to determine whether the decision is reasonable. Rogers argues that the record fully supports the outcome, noting among other things that Mr. Paranthaman repeatedly stated that he did not pursue the complaint within the one year time frame because he was relying on his union's grievance process. Rogers notes that Mr. Paranthaman acknowledges in his complaint to the Commission that he pursued the complaint only after the outcome of the grievance process,

which did not satisfy him. Rogers adds that Mr. Paranthaman did not explain how any disability he may have prevented him from pursuing his complaint within the one year period.

[33] Rogers also notes that Mr. Paranthaman participated in the grievance process without alleging any inability to do so and submits that he was equally capable of filing the complaint within one year of the last alleged act of discrimination, which he failed to do. Rogers adds that Mr. Paranthaman further demonstrated his ability to competently pursue the complaint since 2017.

[34] Where the Commission adopts the recommendations of a section 40/41 report and provides no reasons or only brief reasons, the section 40/41 report generally constitutes the reasons for the screening decision (*Sketchley*, at para 37; *Anderson v Canada (Attorney General)*, 2018 FC 834 at para 39, 299 ACWS (3d) 382).

[35] In this case, the Commission's decision is set out in a brief form letter, which states that the Commission had reviewed "any submission(s)" filed in response to the Report and concluded that the "complainant has not provided a reasonable explanation for the delay". The letter does not acknowledge Mr. Paranthaman's submissions responding to the Report that his mental health issues were a factor in the delay. The Commission's statement that "any" submissions were considered does not assist the Court to understand whether the Commission considered this late day explanation and rejected it, and if so, why, or whether the Commission overlooked the submission altogether in the chain of email.

[36] The longstanding general principle is that a decision-maker is assumed to have considered all the evidence, even though every piece of evidence is not addressed in the reasons, unless the contrary is shown: *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL), 1993 CarswellNat 3983 (CA). There is usually no reason to question a statement that submissions have been considered. However, in the present case, the submissions that were made by Mr. Paranthaman in response to the Report cannot be reconciled with the Report, which would generally constitute the reasons for the decision.

[37] When a complaint is submitted, the Commission must determine whether to deal with it or to screen it out for one or more of the reasons set out in subsection 41(1). In the present case, there is no dispute that the complaint was filed outside the one year time frame. Given this finding, the issue is whether the Commission's decision not to exercise its discretion to grant a longer period of time to file the complaint is reasonable (*Bredin v Canada (Attorney General)*, 2007 FC 1361 at paras 27-28, 332 FTR 145 [*Bredin FC*], aff'd 2008 FCA 360, 383 NR 192). In the Report, the Commission noted the factors it considers in determining whether it should exercise its discretion.

[38] The Commission specifically noted that the jurisprudence has found that if a disability contributed to the delay in filing the complaint, this should be taken into account (see for example, *Bredin FC*, at para 31; *Hicks v Canadian National Railway*, 2015 FCA 109 at para 13, 253 ACWS (3d) 423 [*Hicks*]).

[39] Mr. Paranthaman had the burden of establishing a satisfactory explanation for his delay (*Bredin v Canada (Attorney General)*, 2008 FCA 360 at para 5, 383 NR 192) and the Commission had the discretion to determine if that explanation was reasonable. However, without some acknowledgement of the explanation offered, it is not possible to determine whether the Commission's decision is reasonable.

[40] The reasons set out in the Report conflict with the record which was before the Commission. The Report states at para 31 that Mr. Paranthaman did not indicate that his disability was a factor in his failure to meet the one-year time limit. In his emailed submissions dated August 17, 2018 he states, "one of the main reason[s] why I did not file the complain[t] within the one year time limit is [be]cause [of] me[n]tal illness caused by Rogers Communications and ongoing harassment and threatening by them." The decision letter not only did not address these submissions, but relied on the Report which states that such submissions were not made.

[41] Contrary to Rogers' submission that the Commission had considered whether Mr. Paranthaman's disability was a factor in the delay before he made his submissions on this point, the Officer simply noted that it was a factor but it had not been raised. The Officer could not "pre-emptively" consider submissions that had not yet been made.

[42] The present circumstances do not nicely fit in the established jurisprudence regarding section 40/41 reports constituting the reasons for a decision which is transmitted in a brief form letter. The decision letter does not reflect and cannot be reconciled with the Report. As a result,

in the present case, the Report cannot be considered to be the reasons for the decision, which leaves only the brief form letter as the Commission's reasons.

[43] In *Hicks*, the Federal Court of Appeal found the Commission's decision, which had dismissed Mr. Hicks' complaint of discrimination on the basis of disability because it was filed more than one year after the last alleged act of discrimination, to be unreasonable. Among the reasons relied on for this finding, the Court of Appeal noted at para 13:

[13] First, the Commission was under a duty to consider whether the applicant's failure to file his complaint within the one year time period following his meeting with Dr. Sutton in February, 2006, or following the exhaustion of internal remedies in late October 2009, could be explained by the appellant's disability. The judge found, and I agree, that the Commission failed to analyze the appellant's disability and the possible impact of this disability on the delay in filing.

[44] With respect to the lack of formal medical reports to support the disability, the Court of Appeal found that the supporting evidence could be found on the record, noting at para 14:

[14] The respondent contends that the Commission's failure to examine this issue is of no consequence because there was no medical evidence which would support a conclusion that the appellant's disability affected his ability to file. In my view, there was evidence before the Commission, albeit not in the form of formal medical reports, but in the documents and submission before the Commission attesting to the appellant's continuing treatment and therapy for mental illness. There is also the fresh evidence on appeal, which was not before the Federal Court. This evidence suggests that the appellant had undergone surgery for an aneurism in 2009. In sum, there was evidence before the Commission, now supplemented by fresh evidence, which if

considered, could have lead the Commission to conclude that his failure to file was attributable to a medical disability.

[45] Mr. Paranthaman's email of August 17, 2018 clearly advanced his mental health as a reason, along with his reliance on his union. Although Rogers points out that this differs from the reason previously cited, it must be recalled that Mr. Paranthaman was invited to make submissions in response to the Report, and his submissions raised an issue that the Commission is required to consider (*Bredin FC*, at para 31).

[46] It is true that Mr. Paranthaman initially explained his delay in filing by stating that he had detrimentally relied on his union. He only raised his mental health issues as a reason for his delay in filing his complaint after being alerted in the Report that this was a relevant consideration. However, once this reason was asserted, the Commission should have addressed it with regard to all the information on the record.

[47] Although there were no medical reports submitted, as in *Hicks*, the record before the Commission, including the initial complaint and the submissions both before and after the Report, refers to Mr. Paranthaman's past experiences with depression and anxiety. His post-Report submissions note his stress and confusion, which were exacerbated after his dismissal. Unlike *Hicks*, there is no fresh evidence. However, where a complaint is based on allegations of discrimination based on a mental health disability, the submissions which refer to the mental health issues should be carefully considered, including whether they have contributed to the delay in bringing the complaint. The Commission acknowledged this in the Report, but did not address these submissions in its ultimate decision.

[48] Rogers submits that it was open to the Commission to conclude, based on all the evidence on the record, that Mr. Paranthaman's explanation was not reasonable, given that his assertion came after some prompting by the Commission, he did not elaborate on how his mental health issue caused him to delay, he did not provide any supporting evidence, and he had previously stated that the reason for the delay was due to his reliance on the union to advance his grievance. However, these reasons are offered by Rogers and were not the reasons provided by the Commission.

[49] The Commission's brief decision letter does not permit the Court to determine whether the Commission overlooked Mr. Paranthaman's submissions or whether and how the Commission considered the submissions and found the explanation not to be reasonable. As a result, the decision cannot be found to be reasonable in accordance with the guidance in *Dunsmuir* because it is not transparent or intelligible. The Commission must redetermine whether to deal with Mr. Paranthaman's complaint with regard to all the evidence on the record.

JUDGMENT in T-1831-18

THIS COURT'S JUDGMENT is that

1. The Application for Judicial Review is allowed.
2. The matter shall be remitted to the Canadian Human Rights Commission for redetermination.

“Catherine Kane”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1831-18

STYLE OF CAUSE: ARAVINTHAN PARANTHAMAN v ROGERS
COMMUNICATION INC.

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 4, 2019

JUDGMENT AND REASONS: KANE J.

DATED: JULY 11, 2019

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