

Date: 20080107

Docket: T-24-06

Citation: 2008 FC 16

Ottawa, Ontario, January 7, 2008

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

RITA MAKRI

Applicant

and

GARDA OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] In 2002, Ms. Rita Makri began working as a security screener at Pearson International Airport. In 2004, her employer, Garda of Canada, dismissed her. Ms. Makri laid a complaint against Garda with the Canadian Human Rights Commission alleging discrimination on the basis of race, national and ethnic origin, and sex. The Commission decided that a hearing into Ms. Makri's complaint was not warranted based on an investigator's conclusion that it was unsupported by the evidence (under s. 44(3)(b) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6; see Annex).

[2] Ms. Makri argues that the Commission erred and asks me to order it to reconsider. I can find no basis for overturning the Commission's decision and must, therefore, dismiss this application for judicial review.

I. Issues

[3] Did the Commission err when it dismissed Ms. Makri's complaint for a lack of evidence?

I. Analysis

(1) Factual Background

[4] When Ms. Makri first began working at Pearson International Airport, she was employed by a company called Group 4 Falck (Canada). In 2004, Garda won the contract to provide security services at the airport and, as of April 1, 2004, became Ms. Makri's employer. Garda hired persons who had worked for the previous contractor but put all of them on probation for 120 days. Ms. Makri's employment was terminated on July 12, 2004, within the period of probation.

(2) The Investigator's Report

[5] The investigator reviewed the submissions of both Ms. Makri and Garda. She also interviewed several witnesses. In her report, the investigator summarized Garda's grounds for

dismissing Ms. Makri. They included allegations that she used her cell-phone for personal calls while on duty, was absent or late for work on a number of occasions, took unauthorized breaks, occasionally forgot to check passengers' boarding passes, skipped training sessions, and failed to obey her supervisor's instructions. In particular, in June 2004, Ms. Makri had allegedly refused to obey her supervisor's direction to change work stations. She was temporarily suspended as a result.

[6] The investigator also noted Ms. Makri's submission that her supervisors, who were of East Indian ancestry, treated her differently because she was a woman of Albanian origin. Ms. Makri alleged that she was treated rudely and harassed by co-workers, and was denied opportunities to receive training that would have allowed her to upgrade her qualifications.

[7] The investigator concluded that evidence supported Garda's contention that Ms. Makri "displayed work performance difficulties". However, there was also evidence showing that Ms. Makri had been denied breaks and treated rudely by her supervisor. But, given that many other employees had been treated the same way, there was no basis for concluding that Ms. Makri was singled out because of her race, national or ethnic origin, or sex. Nor was there any evidence showing that Ms. Makri's dismissal was based on any of those grounds.

[8] Accordingly, the investigator recommended that the Commission dismiss Ms. Makri's complaint because it was unsupported by evidence of discrimination and because there was evidence that Ms. Makri's employment had actually been terminated for cause. After inviting and

reviewing further submissions from the parties, the Commission accepted the investigator's recommendation and so informed Ms. Makri by letter dated November 29, 2005.

(3) Ms. Makri's Concerns

[9] Ms. Makri submits that the investigator made a number of errors of fact. She suggests that the investigator unfairly accepted all of Garda's submissions and took at face value the statements of witnesses who were motivated to lie about her, out of fear for their own jobs. In addition, Ms. Makri claims that the investigator ignored important evidence, particularly relating to the basis for her suspension in June 2004.

[10] Clearly, Ms. Makri feels that she was treated poorly in the workplace and that her dignity and worth as a human being was not respected by many of her co-workers and supervisors. In this regard, it appears that the investigator's report, at least in part, supports Ms. Makri's description of her work environment.

[11] However, the role of the investigator was primarily to determine whether there were grounds for a complaint of discrimination based on race, national or ethnic origin, or sex. It is clear that the investigator found no basis for that particular complaint. It appears that other employees were treated similarly to Ms. Makri, regardless of race, national or ethnic origin, or sex. Despite Ms. Makri's assertion that persons of East Indian ancestry were treated better, there was no evidence before the investigator to corroborate that claim.

[12] I have reviewed the investigator's report carefully, as well as all of the documentary evidence before her. I can find no basis for concluding that the investigator failed to discharge her duty to conduct a thorough and neutral investigation of Ms. Makri's complaint (*Slattery v. Canada (Human Rights Commission)* [1994] 2 F.C. 574, [1994] F.C.J. No. 181 (T.D.) (QL)). Equally, then, there is no basis for concluding that the Commission erred in relying on that report in deciding that an inquiry into Ms. Makri's complaint was not warranted in the circumstances.

III. Conclusion

[13] This application for judicial review is dismissed. Garda has asked for fixed costs in the amount of \$1200.00. Taking account of all the circumstances, including the fact that the investigator found some basis for Ms. Makri's complaint, I decline to make any award as to costs.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. This application for judicial review is dismissed.
2. There is no order as to costs.

“James W. O’Reilly”

Judge

Annex

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

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

Report

Rapport

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.

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

...

[...]

Idem

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

Idem

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

...

[...]

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

b) rejette la plainte, si elle est convaincue :

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

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

(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(c) to (e).

(ii) soit que la plainte doit être rejetée pour l'un des motifs énoncés aux alinéas 41c) à e).

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-24-06

STYLE OF CAUSE: RITA MAKRI v. GARDA OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: Sepember 19, 2007

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

DATED: January 7, 2008

APPEARANCES:

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Ms. Nadia Pazzano FOR THE RESPONDENT

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