Federal Court of Appeal | Cour d'appel fédérale

Date: 20211217

Docket: A-300-19

Citation: 2021 FCA 241

CORAM: **GAUTHIER J.A.**
WOODS J.A.
DAWSON D.J.C.A.

BETWEEN:

VIOREL MARIAN ROSIANU

Appellant

and

WESTERN LOGISTICS INC.

Respondent

Heard at Vancouver, British Columbia, on November 16, 2021.

Judgment delivered at Ottawa, Ontario, on December 17, 2021.

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: WOODS J.A.
DAWSON D.J.C.A.

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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] Mr. Rosianu appeals the decision of the Federal Court (*per* Chief Justice Crampton) dismissing his application for judicial review of a decision of the Canadian Human Rights Commission (the CHRC). In this decision, the CHRC dismissed Mr. Rosianu's complaint pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the *Act*) because, having regard to all of the circumstances, further inquiry was not warranted.

I. The Facts

[2] Mr. Rosianu is a line haul truck driver who worked for Western Logistics Inc. ("Western") between January 30, 2011 and November 25, 2013.

[3] As the Federal Court noted at paragraph 2 of its reasons, Western terminated Mr. Rosianu after he allegedly drove a company truck in an unsafe manner. Specifically, even though the rear passenger axle on the truck's trailer was locked up, Mr. Rosianu continued to pull the trailer until the tires exploded. He speeded excessively, despite the dangerous road conditions that day, which included snow and ice. Even when a motorist pulled Mr. Rosianu over to let him know that his tires had exploded and that there was tire debris flying across the highway, Mr. Rosianu allegedly dismissed him and continued driving. Although this reported event ultimately triggered his termination, it was the latest of a series of workplace incidents involving Mr. Rosianu.

[4] In its letter of termination, Western stated that it had cautioned Mr. Rosianu on several occasions over the past two years about several safety concerns, excessive speeding, and the need to adhere to its Operating and Safety Policies. The letter concluded by stating that Western could no longer tolerate such behaviour, and that, "in the interests of public safety," it had to relieve Mr. Rosianu of his responsibilities with the company.

[5] Despite the explanations in Western's termination letter, Mr. Rosianu insists that the true reason for his termination is that he had a disability that Western was not willing to

accommodate. In particular, he has had two prior hernia operations (in 1998 and 2011) that preclude him from lifting objects weighing in excess of approximately 23 kilograms .

II. Procedural History

[6] Before filing his complaint with the CHRC, Mr. Rosianu filed a complaint under Part III of the *Canada Labour Code*, R.S.C., 1985, c. L-2 (the *Code*) for unpaid severance/termination pay "[g]reater than $3,000", unjust dismissal, and abuse, harassment, and discrimination by his new line haul manager at Western, Mr. Ryan Decker. Upon investigating the complaint, an inspector with Employment and Social Development Canada (the ESDC) issued a notice of unfounded complaint on March 11, 2014.

[7] Mr. Rosianu appealed that decision, but the Referee appointed by the Minister of Labour confirmed it. She found, among other things, that "there was 'sufficient evidence that the appellant engaged in unsafe behaviour on November 20, 2013 that warranted immediate dismissal'" (as cited in the Federal Court's reasons at para. 10). Although there is no mention of the Referee's decision in the Investigation Report before the CHRC, I mention it here to provide context about some of the arguments that Mr. Rosianu raised in his written submissions to the CHRC and before this Court.

[8] On November 12, 2014, Mr. Rosianu filed a complaint with the CHRC under section 40 of the *Act* (although the official version in the record is dated January 21, 2015). He alleged that, between February of 2012 and November of 2013, he suffered adverse differential treatment and was terminated directly or indirectly due to his disability. In this complaint, Mr. Rosianu

reported that Mr. Decker abused, harassed, bullied, and discriminated against him. He submitted that Mr. Decker failed to provide him with a new truck, required him to work on some weekends (thereby threatening his part-time employment outside of Western), and reduced his workload for several weeks in 2012 and 2013. Further, Mr. Rosianu complained that, although his previous manager (Mr. Laith Al Said, who left Western in February of 2012) did not give him a raise, Mr. Decker should have done so. Finally, Mr. Rosianu reported that he was required to unload trailers in some locations, despite being unable to do so due to a previous hernia that required surgery in October of 2011. Mr. Rosianu claimed that Western fired him without just cause and because of his disability.

[9] In her report, the Investigator of the CHRC stated that Mr. Rosianu's first three allegations did not appear to be linked to the ground of disability cited in the complaint. She also observed that Mr. Rosianu had not offered any evidence to support that these allegations were linked to a disability. For this reason, she decided not to examine them further (Investigation Report at para. 19, p. 4). It appears that Mr. Rosianu did not contest this finding before the Federal Court, which stated at paragraph 17 of its reasons that it appeared to be common ground between the parties that, in the absence of such a link, those allegations were not within the CHRC's jurisdiction. Accordingly, the Federal Court did not further address these allegations in its reasons either.

[10] The Investigator then concentrated on the allegation that Mr. Rosianu was required to unload trailers despite his disability. In that respect, she summarized the parties' positions and the documentary evidence as submitted by Western in a letter dated June 25, 2016 by Ms. Mary

Waring, Western's Chief Executive Officer. This included written statements by Mr. Marc Fernandes, Mr. Decker, Mr. Gord Dier, Ms. Kelly Kuncewicz, and Ms. Michelle Foncette. The Investigator also interviewed Kelly Gaine, the controller and human resources person for Western, Mr. Decker, the complainant's direct supervisor, and Mr. Jody Prichard, manager of the Kelowna Terminal. She noted that Mr. Rick Miller, Mr. Decker's former supervisor, was no longer with the company and could not be reached. Further, given that Ms. Waring was on holiday during the interview period, the Investigator chose to interview Kelly Gaine, who was Western's HR officer. Western's written submissions were sent for comments to Mr. Rosianu. It appears that, in his 49-page correspondence dated July 15, 2016, Mr. Rosianu provided a detailed response and added further details and documentation to support his complaint.

[11] The Investigator stated that, based on the evidence gathered, the complainant was not required to load or unload trucks in the performance of his duties. She also observed that:

A. The termination of Mr. Rosianu's employment occurred a full 24 months following his hernia surgery. Mr. Rosianu required a total of four (4) to six (6) weeks of recovery following his operation in October of 2011. There was no evidence submitted to indicate that he had any ongoing accommodation needs related to the effects of the operation or to any disability.

B. In March of 2014, a Labour Program Inspector with the ESDC concluded that Western had just cause to dismiss Mr. Rosianu under the *Code*. The evidence did not link the termination of Mr. Rosianu's employment to a disability.

[12] Thus, based on the evidence gathered, the Investigator reported that Western did not treat Mr. Rosianu in an adverse differential manner due to a disability, nor did it terminate his employment on that ground. Accordingly, the Investigator recommended that the CHRC dismiss Mr. Rosianu's complaint pursuant to subparagraph 44(3)(b)(i) of the *Act*.

[13] Mr. Rosianu — who represented himself before this Court but received some legal support in preparing his application for judicial review before the Federal Court — focused his efforts on demonstrating that he was not terminated for a just cause, and that both the ESDC Inspector and the Referee appointed by the Minister of Labour (Sylvia Skratek) were incompetent. He even went so far as to argue that the Referee provided a fraudulent copy of her report to the CHRC. He alleged that the copy that he received was different. In his view, somebody broke into his home and replaced the old version with a new one (appellant's memorandum of fact and law at paras. 11, 13, and 14).

[14] Yet, as explained to Mr. Rosianu during the hearing before us, it is not the role of this Court, nor was it the role of the CHRC, to determine whether or not the decision makers dealing with his *Code* complaint arrived at the proper conclusions. Neither this Court nor the CHRC sit on appeal of those decisions.

III. Standard of Review

[15] Our Court's role is only to determine whether the Federal Court applied the appropriate standard of review to the questions before it, and whether it applied the applicable standard correctly (*Agraira v. Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36 at

paras. 45-46, [2013] 2 S.C.R. 559, as recently confirmed in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 12, [2021] 12 W.W.R. 1).

[16] In this matter, it is undisputable that the Federal Court applied the appropriate standard of review to the two main issues before it. That is, the standard of reasonableness applies to the determination of whether Mr. Rosianu's complaint warranted further inquiry, and the standard of correctness applies to the various alleged violations of procedural fairness.

[17] This means that this Court's focus is on the CHRC's decision, as we must essentially step into the shoes of the Federal Court, except for the two issues raised in relation to the Federal Court's preliminary decision on Western's objection to certain affidavit evidence filed by Mr. Rosianu. This portion of the decision is reviewable on the standards set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. Specifically, this Court must review questions of law using the standard of correctness, and questions of fact and mixed fact and law using the standard of palpable and overriding error.

IV. Issues

[18] From the notice of appeal and the appellant's four-page memorandum of fact and law, it appears that the main issues in this appeal can be described as follows:

A. i. Did the Federal Court err in deciding to strike part of the affidavit evidence filed by Mr. Rosianu?

ii. Did the Federal Court breach Mr. Rosianu's right to procedural fairness when it heard Western's submission on this preliminary issue before hearing from Mr. Rosianu?

B. Did the CHRC violate Mr. Rosianu's right to procedural fairness?

C. Was it unreasonable for the CHRC to conclude that, in the light of all of the circumstances, further inquiry into Mr. Rosianu's complaint was not warranted?

V. Analysis

[19] I begin by assessing whether the Federal Court breached Mr. Rosianu's rights to procedural fairness and erroneously decided to strike part of Mr. Rosianu's affidavit evidence, before turning to the reasonableness of the CHRC's decision.

[20] Although Mr. Rosianu alleged that the CHRC acted in bad faith at paragraphs 10-13 of his notice of appeal, he has failed to provide cogent evidence to support these very serious allegations. I do not intend to say more in that respect, for these allegations are simply without merit. Further, Mr. Rosianu's allegation that he had an earlier issue filing his complaint, which was initially lost, and other similar allegations (found in the appellant's memorandum of fact and law at para. 16) are also insufficient to support his argument.

A. *Did the Federal Court Err in Deciding to Strike Part of the Affidavit Evidence Filed by Mr. Rosianu? In Doing so, did it Violate Mr. Rosianu's Right to Procedural Fairness?*

[21] I will deal first under this heading with Mr. Rosianu's one-sentence allegation that the Federal Court breached his rights of procedural fairness by hearing from Western before hearing from him.

[22] There is absolutely no doubt that the Federal Court could ask the parties to deal first with Western's objection with respect to the admissibility of the affidavit evidence before it. This was a procedural issue to be determined before hearing the matter on its merits.

[23] Given that Western raised this preliminary issue in its written representations before the Federal Court, the Federal Court had to hear the respondent first on the matter. Further, Mr. Rosianu indisputably had the opportunity to respond fully to Western's representations on that preliminary matter. As soon as this was done, Mr. Rosianu was asked to present his case on the merits.

[24] Although it is not clear whether Mr. Rosianu was the one to raise the point, I note that the Federal Court went a step further than what was sought by Western and decided to also strike the documents filed by Western because they were not previously provided to the CHRC. By doing so, the Federal Court applied the general rule that evidence on judicial review is generally limited to what was before the administrative decision-maker.

[25] There is therefore no merit to Mr. Rosianu's allegation that the Federal Court violated his procedural rights. Rather, it appears that he did not fully appreciate the distinction between a preliminary objection and the hearing on the merits of his application for judicial review. This is

understandable, for, even though Mr. Rosianu has a Masters in Electronics, he has no legal background.

[26] I now turn to the decision to strike the affidavit evidence referred to in paragraphs 32, 33, and 34 of the Federal Court's reasons.

[27] Before this Court, Mr. Rosianu argues that the Federal Court violated his right to present the evidence of his choice. In his view, the Federal Court disregarded the evidence of Mr. Norm Young, his part-time employer of 10 years (as a concierge), and Mr. Tibor Kovacs, a truck driver who worked for a sister trucking company. Mr. Rosianu had presented their affidavits to bolster his credibility and his position that his termination were not for just cause. Its purpose was establish that he was a good and trustworthy employee.

[28] There is no absolute right to produce evidence on an application for judicial review. As mentioned by the Federal Court, the evidentiary record is usually limited to what was before the administrative decision-maker (Federal Court's reasons at para. 28, citing *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para. 19, [2012] F.C.J. No. 93 (QL) [*Canadian Copyright Licensing Agency*]). There are only a few exceptions to this rule, such as providing background information or providing material information necessary to determine whether there has been a breach of procedural fairness. These exceptions are explained in detail in *Canadian Copyright Licensing Agency* at paragraph 20.

[29] Moreover, as explained by the Federal Court, there are general principles applicable to affidavit evidence (specifically, in this context, Rule 81(1) of the *Federal Courts Rules*, SOR/98-106), for example, it cannot consist of arguments, opinions, or hearsay. Finally, the evidence must be relevant to an issue properly before the Court. As mentioned earlier, it is not the Court's role to determine on the basis of new evidence whether Western had just cause under the *Code* to terminate Mr. Rosianu, nor was there any real issue of credibility properly before it. I also note that before the Federal Court, neither Western nor Mr. Rosianu argued that the part-time job was a factor in his termination or connected in any way to the alleged discriminatory treatment based on its disability (Federal Court's reasons at para. 34). Mr. Rosianu cannot do so now.

[30] Having reviewed all of the evidence struck, I find that the Federal Court did not err in applying the appropriate principles of law to the facts of this case. It made no reviewable errors of law or any palpable and overriding errors in its assessment that would justify this Court's intervention.

B. *Did the CHRC Breach Mr. Rosianu's Rights to Procedural Fairness?*

[31] It is not clear whether Mr. Rosianu still argues that the CHRC could not give any weight to hearsay evidence like that of the motorist who complained about his allegedly dangerous driving on November 20, 2013. Be it as it may, I agree with the Federal Court that this argument has no merit for the reasons set out in paragraphs 38-39 of its reasons for judgment.

[32] Although Mr. Rosianu simply stated in his memorandum of fact and law at paragraph 16 (6) that the CHRC did not take into consideration the evidence of other witnesses that he had

proposed, I understand him to argue that he was treated unfairly because of the Investigator's lack of thoroughness, including her failure to "interview" him in writing (appellant's memorandum of fact and law at para. 16(7)). Mr. Rosianu's only comment on the Federal Court's analysis in that respect was that it was also not thorough enough. Before us, Mr. Rosianu insisted that the Investigator lied when she said that he had refused to be interviewed, and that in fact, they had agreed that such an interview would proceed in writing. I note that this goes further than what was mentioned in his submissions to the CHRC dated May 31, 2017. At page 2 of those submissions (at paragraph 1.4), Mr. Rosianu submitted the following: "I told to Sheriden Barnett I'll answer to her questions only in writing and do not accept any transcripts from an audio record." I will say more about this point later on in this analysis.

[33] I begin by reiterating the applicable legal principles. First, it is well-settled law that the investigative process is not akin to a hearing and that parties are thus not entitled as of right to insist that a CHRC Investigator will interview every witness that they put forward. An investigation will not be found to be lacking in thoroughness and result in a breach of procedural fairness merely because the Investigator did not interview all of the witnesses proposed by a party (*Slattery v. Canada (Human Rights Commission)*, [1994] 2 FC 574 at para. 70, 73 F.T.R. 161). To conclude that there was a breach of procedural fairness, we have to be persuaded that the Investigator failed to interview "obvious players" that had important information in support of his complaint (*Wong v. Canada (Public Works and Government Services)*, 2018 FCA 101 at para. 14, 293 A.C.W.S. (3d) 129 [*Wong*]).

[34] Moreover, the Commission and the Investigator are entitled to control their own process subject only to the requirement of fairness (*Wong* at paras. 13, 14, and 23). They are masters of their own procedure. This is especially true in respect of allegations that do not fall within the CHRC's jurisdiction, such as the question of whether Western as an organization respected the Workers' Compensation Board's regulations or that certain safer equipment should be made available to their employees in general. Mr. Rosianu made such comments in relation to the need for further inquiry, yet this subject is not linked to the ground of discrimination identified in his complaint, nor are these issues within the CHRC's mandate.

[35] In this case, it is clear from the record before the CHRC that Mr. Rosianu provided his views as to all of the witnesses that could or should have been interviewed. It is also clear that he believed that the vast majority of these witnesses could not provide frank responses because they were still employed by Western. Thus, Mr. Rosianu asserted that the proper way to obtain complete evidence was to allow him (and presumably Western) to provide the questions to be answered by these witnesses. Furthermore, he noted that if two of these witnesses no longer in Western's employ could not be found, such as Mr. Al Said or Mr. Miller, he should be informed so that he could hire a lawyer to locate them. From these comments, it appears that Mr. Rosianu felt that he could properly direct the investigation himself.

[36] Regardless, Mr. Rosianu failed to include any detail as to what important information Mr. Al Said or Mr. Miller would have provided in respect of his ground of complaint in his affidavit evidence filed in his application for judicial review. Despite his representations to the CHRC, he does not appear to have found it necessary to locate these individuals and provide

their evidence to support his application for judicial review. Mr. Al Said left Western before the pertinent period of alleged discrimination, and I surmise that he could only speak to his alleged previous conversation with Mr. Rosianu about a potential raise (which he had himself not granted to Mr. Rosianu before he left the company) and/or his part-time job. Mr. Al Said certainly would not have been able to comment on whether Mr. Rosianu deserved such a raise on the basis of his employment record in 2012 and 2013. Mr. Rosianu never mentioned that he had to unload heavy cargo before his hernia surgery.

[37] As to Mr. Miller, I understand from Mr. Rosianu's complaint and subsequent submissions that, at best, he could have confirmed that Mr. Rosianu did ask about a new truck and that he personally had no issue with Mr. Rosianu's part-time employment outside of Western. As indicated by Mr. Rosianu on page 5 of his July 15, 2016 letter to the Investigator, he had always had an old truck. After his old truck was scrapped in June of 2013, Mr. Decker had initially agreed that he could go to Toronto to get a new truck; however, a new plan came into effect at Western mandating that all new trucks be used for Eastern Canada operations. Thus, as Mr. Rosianu noted, "[s]o, all the time the Coquitlam terminal was serviced with the oldest trucks with mechanical problems and less comfortable." Finally, with respect to his part-time employment, the terms agreed to in this respect could be properly addressed with Western's current management. I see no issue that could required further investigation here.

[38] Again, there was no evidence that linked these points to the grounds of discrimination raised in his complaint. This properly explains why the Investigator did not regard these witnesses as "key players" that had important information to support the complaint. More

generally, whether they could bolster Mr. Rosianu's credibility on peripheral issues is not particularly relevant, for, as will be discussed under the next heading, Mr. Rosianu's credibility was not at play at the screening stage.

[39] I now turn to the Investigator's decision to interview the person in charge of human resources, instead of Ms. Waring. One must recall that Ms. Waring, who was on holiday during the interview period, was the person at Western who provided a written response, dated June 25, 2016, to Ms. Rittersporn's inquiries in relation to the key issues arising from Mr. Rosianu's complaint. Ms. Waring also signed the affidavit that was before the Federal Court, and there is no indication that she had any information that could support the complaint. Had Mr. Rosianu wished to establish that she did indeed have such information to support his arguments before the Federal Court, he could have cross-examined her.

[40] Thus, I am not persuaded that the investigation was clearly deficient because the Investigator left out key players or failed to pursue any crucial documentary information identified by Mr. Rosianu to support his complaint.

[41] I now turn to the serious allegation that the Investigator lied in her report when she stated that Mr. Rosianu did not agree to be "interviewed". First, I observe that this term used by investigators is normally understood to refer to an in-person or remote conversation. In his written representations to the CHRC dated May 31, 2017, Mr. Rosianu confirmed that he did not wish to have such a conversation. As mentioned at paragraph 32 above, in the telephone conversation referred to by Mr. Rosianu, he told the Investigator to send him her questions, if

any, in writing, so that he could provide written responses. According to Mr. Rosianu, this call took place in March of 2017; however, this timeline was well after his 49-page reply to Ms. Rittersporn of the Investigation Division on July 15, 2016 (after she presumably had asked him to comment on Western's submissions and to add any other relevant details and documentation in support of his complaint; her letter is not in the record before us). Like the Federal Court, I cannot conclude that the failure to send him additional questions at that stage constitutes a breach of his procedural fairness rights. I further note, like the Federal Court, that Mr. Rosianu's affidavit does not mention this important subject at all. Mr. Rosianu conceded that there was no evidence to support this allegation at the hearing before us. There is thus no basis for this Court to intervene on this ground.

[42] I will only comment briefly on Mr. Rosianu's argument that the Investigator should have consulted a medical expert or his doctor if the medical certificate and documentation he submitted in July of 2016 did not satisfy her that he required accommodation after the period expressly set out in the said documents. I do not agree. Mr. Rosianu presented all of the evidence that was given to him by his doctor, and that he provided to his employer. It is on this basis that he received disability benefits in October and November of 2011. The Investigator was entitled to rely on this unambiguous documentary evidence, given that Mr. Rosianu did not indicate that he had received any additional information from his doctor. I note that, in such circumstances, he could not have conveyed more to Western.

[43] If Mr. Rosianu believed that there was other material expert evidence for the Investigator to consider, the burden was his to provide it to the CHRC. This is especially so when one

considers that Mr. Rosianu was invited to comment on the Investigation Report. This was the time to produce this evidence if it indeed supported his complaint.

[44] I am also satisfied that the CHRC met its duty to inform Mr. Rosianu of the substance of the evidence obtained by the Investigator, and that Mr. Rosianu had the opportunity to fully understand the essence of the case and provide his views. He was given a fair opportunity to respond both to Western's representations and the Investigation Report.

[45] I conclude that the Federal Court did not err in determining that the CHRC did not violate Mr. Rosianu's rights.

VI. The Reasonableness of the CHRC Decision

[46] I divide this analysis into three main parts: (A) context as to the CHRC's screening role; (B) Mr. Rosianu's position in comparison to the Investigator and the CHRC's position; and, (C) an assessment of the main arguments at play.

A. *The CHRC's Screening Role*

[47] First, I reiterate that the CHRC has a screening and gatekeeping role, as opposed to an adjudicative role like that of the Canadian Human Rights Tribunal's (CHRT). This means that the CHRC is not tasked with assessing the credibility of the evidence gathered (except, perhaps, in extreme cases where it is obvious). Rather, it only assesses its sufficiency to provide a reasonable basis in support of the complaint. Under subparagraph 44(3)(b)(i), the legislator

granted the CHRC a broad discretion and significant latitude to dismiss cases at the screening stage.

[48] In this respect, one should recall, as noted by our Court recently in *Canada (Attorney General) v. Ennis*, 2021 FCA 95 at para. 66, 2021 CarswellNat 1428 (WL Can) [*Ennis*], that without proper screening, there would be undue strain on the limited adjudicative resources (CHRT) available, effectively limiting access to justice (i.e., cause delays) for the many complainants with valid claims (i.e., well supported by evidence). The screening decision is thus policy-laden and inherently factual.

[49] As also noted in *Ennis*, the mere possibility of discrimination is not enough to warrant further inquiry before the CHRT. Otherwise, the CHRC's screening role would be substantially undermined, for it can almost always be argued that further inquiry may bring up some relevant evidence. Additionally, a complainant like Mr. Rosianu would have to marshal evidence to support his complaint before the CHRT. His ability to do so is informed by what he did before the CHRC, given that the CHRC does not have the resources to always intervene to assist complainants in doing so.

B. *Mr. Rosianu's Core Position Versus the Investigator and the CHRC's Position*

[50] With this in mind, I now briefly compare what I understand to be the essence of Mr. Rosianu's position with that of the Investigator and the CHRC.

[51] Mr. Rosianu believes that his employment record did not justify his termination. Therefore, he infers or deduces that there could only be one reason for his dismissal and the other bullying issues that he raised: his refusal to unload heavy cargo because he was afraid to damage his hernia again after his surgery of October of 2011.

[52] I say this because Mr. Rosianu does not dispute the fact that he received a speeding ticket from the Vancouver Police on March 13, 2012, after Mr. Erick Haines, the Manager of Safety/Compliance at Western, warned him verbally on March 7, 2012 that he had been speeding and that his truck would be governed if this behaviour continued (though Mr. Rosianu nonetheless states at paragraph 10 of his affidavit in support of his application for judicial review that the police officer pretended that he exceeded the speed limit in a construction zone). Nor does Mr. Rosianu dispute that, following this, Western did limit the speed on his truck to 105 kilometres per hour using a governor. Rather than viewing this as a further warning from his employer, he still believes that this measure was ridiculous because it would not have prevented him from speeding in the zones concerned.

[53] Further, Mr. Rosianu does not dispute that, on November 20, 2013, he had a locked up axle and two flat tires and continued to drive to Grande Prairie (the customer premises) instead of travelling to the Edmonton terminal as instructed. Nor does Mr. Rosianu dispute the fact that the motorist who complained to Western on that date did stop him to advise him of the issue. Rather, Mr. Rosianu argues that these are insufficient reasons to terminate his employment because he was a good truck driver, never lost his licence, and had a “road star” insurance

record. This also explains why it is so important to him to discredit the findings relating to his complaint under Part III of the *Code*.

[54] But the Investigator did not find that the evidence gathered provided a reasonable basis to support the inference made by Mr. Rosianu. She first noted that there was sufficient evidence, particularly the finding of the ESDC Inspector dated March 11, 2014, supporting the fact that Mr. Rosianu's record and the events listed in the termination letter constituted just cause for termination. She also noted the timing of the termination, which militated against such an inference: specifically, Western terminated Mr. Rosianu's employment a full 24 months after his hernia surgery.

[55] These facts form part of the overall context of a case where the need for accommodation was not properly supported by the evidence produced by Mr. Rosianu. I note that in Mr. Rosianu's doctor's assessment of his potential functional limitation following his surgery, he was declared "ok" to return to work on November 28, 2011. Mr. Rosianu does not dispute this evidence. What Mr. Rosianu claims is that the Investigator should have gone further by consulting a medical expert or his doctor.

[56] Further, there was no evidence before the Investigator that Mr. Rosianu was ever forced to unload heavy cargo.

[57] In this respect, I observe that Mr. Rosianu acknowledged in his final submissions to the CHRC that none of the key witnesses that he had identified, such as Mr. Fernandes and Mr.

Prichard, could say that he loaded or unloaded trailers at the Kelowna terminal because he simply refused to do so. This, in a file where the major element of Mr. Rosianu's complaint that could be linked to his disability was that "[d]espite my warnings [Mr. Decker] continued to force me to unload trailers and not to try to accommodate my disability."

[58] I note that Mr. Rosianu cannot rely on the last paragraph of the first page of his termination letter to establish that his job at Western required him to unload cargo. The events of November 20, 2013 were not regular. Mr. Rosianu took it upon himself to proceed to the customer's warehouse in Grande Prairie. The customer did not expect this trailer, which was not scheduled for unloading. On this basis, the customer could have simply refused the delivery. Instead, he only accepted to take the trailer on the condition that Mr. Rosianu assist his staff in unloading the trailer. According to the customer who complained to Western, he did not do so properly (only 5 minutes).

[59] This is not an event attributable to Western. Mr. Rosianu was not required by his employer to unload his trailer that day. In fact, he went against his employer's instructions that day. This situation only occurred because of Mr. Rosianu's own decision to proceed as he did. These basic facts are not in dispute. Rather, Mr. Rosianu explains that he had good reason for his actions, and that he did, in fact, help the customer.

C. *The Main Arguments*

[60] I now turn to the arguments before us. Mr. Rosianu argues that the Federal Court erred in looking at the Investigation Report as part of the reasons of the CHRC decision, and that, in any

event, the decision is not sufficiently justified. In his view, the CHRC did not properly address "why" his complaint was dismissed. He submits that the CHRC should have discussed all of his arguments and explained why they were rejected, and that it should have also explained why it lent more credibility to Western's evidence than his own submissions.

[61] Mr. Rosianu only referred to three (3) paragraphs of the Investigation Report in his Notice of Appeal and memorandum of fact and law: paragraphs 5, 9, and 10. With regard to paragraphs 5 and 10, he argued that the written statements provided to the Investigator, as well as his employment application dated January 26, 2011, could not be considered because they were not part of the certified record. In his view, this meant that the CHRC rejected this evidence.

[62] With respect to paragraph 9, in which the Investigator properly stated the facts as put forth by Mr. Rosianu himself, Mr. Rosianu argued that the Inspector erred. In fact, he contended that he was able to accommodate his part-time schedule with his work schedule at Western before Mr. Decker made new changes. According to Mr. Rosianu, the Investigator could have avoided this error by interviewing Mr. Al Said. Given that I find nothing wrong with the contents of paragraph 9 of the Investigation Report, I will not say more about this paragraph. Whether the Investigator could have included more detail about his previous work with Mr. Al Said and the impact of being asked to do trips on Sundays are neither here nor there. This is not a significant issue and does not impact the reasonableness of the CHRC's decision.

[63] The only other particulars provided by Mr. Rosianu were that the Investigator should have mentioned that Mr. Decker had asked him to replace Mr. Prichard during the latter's

holiday (Notice of Appeal at para. 8). First, it is clear that this would not have been part of Mr. Rosianu's regular duties as a long haul driver, and, regardless, he refused to do so. Second, he only alluded to this point in a somewhat ambiguous manner on page 3 of his July 15, 2016 submissions. This, too, is not a significant issue.

[64] Finally, Mr. Rosianu states that it was incumbent on Western to have him pass a medical assessment (a "fit to work test") when he signed his new employment form on April 26, 2012 (Notice of Appeal at para. 14). This argument does not appear to have been raised in any of his prior submissions. This Court, in determining the reasonableness of the CHRC's decision, cannot consider new arguments presented after the fact and which were not before the decision-maker when it dismissed his complaint.

[65] How can Mr. Rosianu expect specific and thorough reasons from this Court when he does not indicate which part of his submissions or documentary evidence he considered to be so significant and cogent as to warrant a detailed analysis in the Investigator's Report? Certainly, none of those described in paragraphs 61 to 64 above can be considered as such. As mentioned by this Court many years ago in *Remo Imports Ltd. v. Jaguar Cars Ltd.*, 2007 FCA 258 at para. 20, [2008] 2 F.C.R. 132, appellate judges are not ferrets: we cannot be expected to scour the record to particularize broad allegations made by parties on appeal.

[66] In these reasons, I have gone beyond what can be expected in such a review to assure Mr. Rosianu that this Court has considered his case very seriously. But, there is a limit. I have read

and considered everything he wrote and said; however, I will only address the main issues before us.

D. *The Investigation Report Constitutes the CHRC's Reasoning*

[67] I begin with the allegation that the Federal Court erred in considering the Investigator's Report as part of the CHRC's reasoning.

[68] In this case, the decision of the CHRC simply read as follows:

[69] Before rendering the decision, the Commission reviewed the report disclosed to you previously and any submission(s) filed in response to the report. After examining this information, the Commission decided, pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, to dismiss the complaint because having regard to all the circumstances of the complaint, further inquiry is not warranted.

[70] It is well-settled law that courts can consider the Investigator's Report to constitute the main reasoning of the CHRC. As I explain below, this principle was established many years before the CHRC followed the Investigator's recommendation in issuing the impugned decision.

[71] The seminal authority on this issue is *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C.R. 392, in which this Court stated at paragraph 37:

[72] In my view, the appellant's argument on this issue must fail. While it is true that the investigator and Commission do have “mostly separate identities”(*Canada (Human Rights Commission) v. Pathak* (1995), 180 N.R. 152, [1995] 2 F.C. 455 at para. 21, *per* MacGuigan J.A., (Décary J.A. concurring)), it is also well-established that, for the purpose of a screening decision by the Commission pursuant to section 44(3) of the *Act*, the Investigator cannot be regarded as a mere independent witness before the Commission (*Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879 at para. 25 [*SEPQA*]). The Investigator's Report is prepared *for* the Commission, and hence for the purposes of the investigation, the Investigator is considered to be an extension of the Commission (*SEPQA, supra* at para. 25). When the Commission adopts an Investigator's recommendations and provides no reasons or only brief reasons, the Courts have rightly treated the Investigator's Report as constituting the Commission's reasoning for the purpose of the screening decision under section 44(3) of the *Act* (*SEPQA, supra* at para. 35; *Bell Canada v. Communications, Energy and Paperworkers Union of Canada* (1999) 167 D.L.R. (4th) 432, [1999] 1 F.C. 113 at para. 30 (C.A.) [*Bell Canada*]; *Canadian Broadcasting Corp. v. Paul* (2001), 274 N.R. 47, 2001 FCA 93 at para. 43 (C.A.)).

[73] This principle has been uniformly applied since then, including by this Court (see, for example, *Love v. Canada (Privacy Commissioner)*, 2015 FCA 198 at para. 10, 2015 CarswellNat 4560 (WL Can); *Harvey v. Via Rail Canada Inc.*, 2020 FCA 95 at para. 4, 2020 CarswellNat 1671 (WL Can)).

[74] Evidently, the situation differs when the CHRC decides not to follow the Investigator's recommendation (see *Ennis* at para. 72). In such cases, it must explain why it decided not to do so. This is not such a case.

[75] I have considered the essence of this complaint, the few material facts in dispute, and the overall context, which only requires the CHRC to determine whether there is sufficient evidence (a reasonable basis) supporting the complaint after a reasonably thorough investigation. I am satisfied that, although somewhat succinct and not perfect, the CHRC's decision is sufficiently justified, transparent, and intelligible to meet the standard of reasonableness. Perfection is not the yardstick here.

[76] I understand very well why the CHRC felt that the complaint's key elements lacked sufficient support.

[77] In the circumstances of this case, I cannot conclude that the CHRC's failure to discuss all of Mr. Rosianu's submissions in detail renders the decision unreasonable. I discern no significant issue or evidence that needed to be addressed more specifically to reach the decision in question.

[78] The conclusion that further inquiry was not warranted was one of the possible outcomes open to the CHRC on the record before it. As such, I am satisfied that the Federal Court correctly applied the reasonableness standard in this matter.

VII. Conclusion

[79] I would dismiss this appeal with costs in the amount of $500.00.

"Johanne Gauthier"
J.A.

“I agree
Judith Woods J.A.”

“I agree
Eleanor R. Dawson D.J.C.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM A JUDGMENT OF CHIEF JUSTICE PAUL S. CRAMPTON DATED JULY 30, 2019, DOCKET NO. T-1376-17

DOCKET:	A-300-19
STYLE OF CAUSE:	VIOREL MARIAN ROSIANU v. WESTERN LOGISTICS INC.
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	NOVEMBER 16, 2021
REASONS FOR JUDGMENT BY:	GAUTHIER J.A.
CONCURRED IN BY:	WOODS J.A. DAWSON D.J.C.A.
DATED:	DECEMBER 17, 2021

APPEARANCES:

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