



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Constantine Bassis

Applicant

-and-

Commissionaires Great Lakes

Respondent

INTERIM DECISION

Adjudicator: Jo-Anne Pickel
Date: January 19, 2016
File Number: 2015-22652-I
Citation: 2016 HRTO 78
Indexed as: **Bassis v. Commissionaires Great Lakes**

WRITTEN SUBMISSIONS

Constantine Bassis, Applicant)	Self-represented
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)	
Commissionaires Great Lakes, Respondent)	Landon Young, Counsel
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[1] This Interim Decision addresses whether this Application should be deferred pending the outcome of a related grievance arbitration proceeding. It also addresses the Request to Expedite Proceedings filed by the applicant.

[2] In his Application, the applicant alleged discrimination because of disability and sex contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”). Specifically, he alleged that the respondent discriminated against him because of disability in relation to his return to work after a medical leave. He also made general allegations of harassment, including sexual harassment, against co-workers which he claimed the respondent did not deal with appropriately when he brought the incidents to its attention.

[3] Prior to filing his Application, the applicant filed a grievance with his union. The grievance raises all of the same allegations as the Application.

DEFERRAL REQUEST

[4] By Request for Order During Proceedings, the respondent requested that the Tribunal defer consideration of the Application pending the conclusion of the grievance proceeding. The applicant opposed deferral. He asserted that a co-worker who witnessed the alleged harassment set out in the application has informed him that he plans to quit his job in March 2016 and move to the Philippines.

[5] The Tribunal may defer consideration of an Application on such terms as it may determine, on its own initiative or at the request of any party (Rule 14.1 of the Tribunal’s Rules of Procedure). Deferral of an Application seeks to ensure that proceedings dealing with the same facts or issues do not run concurrently, thereby raising the possibility of inconsistent decisions on facts or law.

[6] The Supreme Court of Canada has affirmed that grievance arbitrators have not only the power but also the responsibility to implement and enforce the substantive rights and obligations of human rights and other employment-related statutes as if they

were a part of the collective agreement. See *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42. Thus, the Tribunal will generally defer an Application where there is an ongoing grievance under a collective agreement based on the same facts and issues.

[7] The Application and the grievance raise the exact same issues and allegations of harassment and discrimination. Due to the substantial overlap between the Application and the grievance, proceeding with the Application could lead to inconsistent decisions on the facts and/or issues raised in the Application and the grievance. As a result, I find it appropriate to defer consideration of the Application pending the conclusion of the grievance arbitration proceeding.

[8] If the applicant believes that the grievance arbitration proceeding did not appropriately deal with the substance of his Application, he may seek to re-activate his deferred Application. The parties' attention is drawn to Rules 14.3 and 14.4 of the Tribunal's Rules of Procedure, which address how the Application may be brought back on before the Tribunal following conclusion of the grievance proceedings. It should be noted that, a party wishing to proceed with an Application must file a request to proceed no later than 60 days after the conclusion of the grievance arbitration proceeding.

REQUEST TO EXPEDITE

[9] On January 13, 2016, the applicant filed a Request to Expedite Proceedings ("Request"). By e-mail dated January 14, 2016, the Tribunal informed the applicant that he had failed to attach the declarations required in support of his Request under Rule 21 of the Tribunal's Rules of Procedure. The Tribunal informed the applicant that it would not be able to process his Request without the necessary declarations. The applicant did not file the required declarations.

[10] Even if the applicant were to file the necessary declarations, I would deny his Request. The basis for his Request is his concern that a potential witness will be moving to the Philippines in March 2016. In my view, these circumstances are

insufficient to justify an expedited hearing. There are ways in which the Tribunal can deal with the geographic distance of witnesses. For example, the Tribunal can arrange for the applicant's witness to testify by telephone or by video conference. In the circumstances of this case, it would not be necessary for the applicant's proposed witness to testify in person for the applicant to have a fair hearing. Therefore, I do not find that an expedited hearing is justified. In addition, for the reasons set out above, I find that it is appropriate to defer consideration of this Application pending the conclusion of the applicant's grievance.

ORDER

[11] The respondent's deferral request is granted and the applicant's Request to Expedite Proceedings is denied. The Tribunal will defer consideration of the Application pending the conclusion of the arbitration of the grievance filed on behalf of the applicant by his union.

Dated at Toronto, this 19th day of January, 2016.

"signed by"

Jo-Anne Pickel
Vice-chair