



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Suzanne Barrett

Applicant

-and-

Willis Canada Inc. and Rick Hynes

Respondents

INTERIM DECISION

Adjudicator: David Muir
Date: June 9, 2014
File Number: 2014-15987-I
Citation: 2014 HRTO 834
Indexed as: **Barrett v. Willis Canada Inc.**

Written Submission

Suzanne Barrett, Applicant)
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)

Malcolm J. McKillop, Counsel

Willis Canada Inc. and)
Rick Hynes, Respondents)
)

Connie Reeve, Counsel

[1] This is an Applications filed pursuant to section 34 of *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”) alleging discrimination in employment on the basis of disability.

[2] This Interim Decisions deals with two issues raised by the parties.

Abuse of Process

[3] In their Response (Form 2) to the Application the respondents argued that this Application should be dismissed as an abuse of process on the basis of a final settlement and release. This applicant has responded to this issue and argues that there was no final settlement – that is there was no acceptance by the applicant of the essential elements of the agreement. Although raised in the Response the respondents had not pursued this issue by filing a Request for Order During Proceeding (“Request”). In order to ensure the orderly adjudication of the Application the Respondents were directed to confirm that they had abandoned that issue or deliver and file a Request with full submissions.

[4] The respondents confirmed that they were not abandoning the issue and filed a Request for Order During Proceedings (“Request”) seeking the dismissal of the Application because it is an abuse of process there being a binding settlement between the parties. The applicant has responded to the Request.

[5] The Request is denied. The resolution of this issue boils down to the question of whether or not there was a binding agreement between the parties. If there was then the Application should be dismissed as an abuse of process. If there was no agreement between the parties then it should proceed to the next stage in the Tribunal process.

[6] In my view having reviewed the material provided by the parties which includes all of the correspondence between counsel for the parties concerning the proposed settlement I am not satisfied that there was a clear acceptance by counsel for the

applicant of all of the essential terms of the proposed settlement and therefore no agreement which can be said to be binding on them.

[7] It is clear from the material that the negotiations between counsel were protracted and that much progress was made in resolving their differences. The parties came very close to agreement on most of the issues between them but as indicated I find that there was not acceptance by the applicant of at least one essential term of the proposed agreement. In my view the issue comes down to whether I can accept the respondents' argument that counsel for the applicant accepted their positions on the outstanding issues in an October 21, 2013 email. In my view, viewed objectively, this email does not communicate acceptance of the respondent's position on the outstanding issues.

[8] I note that the email begins with the advice that counsel has had difficulty in getting instructions from the applicant and no where does the email state that the applicant accepts the respondents' position on any of the outstanding issues or the proposed agreement as a whole although it is reasonably clear that there was likely substantial agreement on most of the issues between the parties.

[9] In any event in the email the applicant does ask for confirmation/clarification of two issues which may have been all that was outstanding at that stage. One related to a requested Direction for Funds which would allow the applicant to direct that the respondents pay a portion of the agreed severance payment as a retiring allowance which would have significant tax advantages for her. The issue is described as follows in this correspondence:

The Direction for Funds is a document provided to Willis by Ms Barrett indicating how to apportion the final severance payment of \$XXXXX in a tax effective manner. There are rules under the Income Tax Act that allow some /or all of these funds to be directed into a Registered Retirement Savings Plan (RRSP) and allocated to legal fees as well as a Retiring Allowance which make the tax treatment at this time more effective for Ms. Barrett (enclosed you will find details regarding this). Ms. Barrett will provide the CRA Notice of Assessment which will confirm the available headroom in her RRSP.

[10] On October 24, 2013 counsel for the respondents addressed the issues raised in the applicant's correspondence of October 21, 2013. The respondent refused to accept the proposed Direction of Funds made by the applicant.

[11] The applicant argues that the potential tax treatment of the agreed severance payment, amongst other issues, was an essential term of the proposed agreement. I agree and find that the tax treatment of the severance amounts is not a mere detail or implementation matter as argued by the respondents. The severance payment contemplated by the proposed agreement was substantial and its tax treatment would reasonably have been a matter of some importance for the applicant.

[12] I also find that there is no reasonable basis to conclude that the applicant accepted the respondents' position on this point. Indeed counsel for the applicant at the time did not respond to the respondents' October 24, 2013 email refusing to consider a Direction for Funds and the following day the applicant's current counsel communicated with the respondent about other issues.

[13] For these reasons the Request is denied.

Request for Production

[14] The applicant has filed a Request for Order During Proceeding seeking the production of a number of documents. The Request was initially premature. The respondents have made their productions required pursuant to section 16.1. In correspondence dated April 25, 2014 the applicant has renewed her Request and has indicated with some specificity documents that she believes may exist but which have not been produced.

[15] The respondents advised that they have produced all arguably relevant documents, except those that are privileged. The respondents sought direction with respect to whether the Tribunal requires a detailed response to the applicant's Request.

In a Case Assessment Direction issued on April 30, 2014 the Tribunal directed that the respondents clarify their position.

[16] The respondents have complied with this Direction and indicate that they have produced all of the arguably relevant documents in their possession and with respect to the applicant's Request will produce other documents requested notwithstanding their position that the documents in question are not arguably relevant to the issues in dispute.

[17] In the circumstances no further Direction appears to be required.

[18] I am not seized of this case.

Dated at Toronto, this 9th day of June, 2014.

"Signed By"

David Muir
Vice-chair