
CANADA / JUDGMENT

Connolly v. Canada Post Corp.

2002 FCT 185

COURT

Federal Court

DECIDED

20 February 2002

Source: decisions.fct-cf.gc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Connolly v. Canada Post Corp.

Court (s) Database

Federal Court Decisions

Date

2002-02-20

Neutral citation

2002 FCT 185

File numbers

T-2093-99

Decision Content

Date: 20020220

Docket: T-2093-99

Neutral citation: 2002 FCT 185

BETWEEN:

JOHN E. CONNOLLY

Applicant

and

CANADA POST CORPORATION

Respondent

REASONS FOR ORDER

MacKAY J.

- [1] In this application for judicial review, pursuant to s. 18.1 of the Federal Court Act, R.S.C. 1985, c. F-7 as amended (the "Act"), the applicant John E. Connolly, seeks an order quashing a decision of the Canadian Human Rights Commission (the "CHRC" or the "Commission"), dated April 16, 1999. That decision, made on recommendation of the Commission's investigator, dismissed the complaint of Mr. Connolly against his employer, Canada Post Corporation, which complaint, filed August 1, 1995, alleged discriminatory treatment on the basis of Mr. Connolly's physical disability, and further alleged acts of harassment by the employer.
- [2] Mr. Connolly who is not a lawyer, represented himself in the preparation of his application and at the hearing of this matter, as he had done in representations to the Commission over some years.
- [3] In his application Mr. Connolly seeks an order quashing the decision of the Commission, seeking appropriate compensation for permanent partial disability arising from injury on the job and compensation for loss of employment, as well as for frustration, pain and suffering that he experienced through several years. He also seeks costs of out-of-pocket disbursements or expenses incurred for telephone, postal costs, photocopying and office supplies in his dealings with the Commission, as well as with the Court. When the matter was heard I sought to make clear to Mr. Connolly that on judicial review, if he were successful, the Court could only set aside the decision in question, and refer the matter back to the Commission for reconsideration. The issue of costs that may have been incurred in relation to these proceedings in the Court could also be dealt with, but compensation for loss of any sort, and consideration of other kinds of costs, for example in dealing with the Commission, are not within the Court's authority under s. 18.1 of the Act.

Background

- [4] Before dealing with the principal concerns raised by Mr. Connolly, a brief overview of the background may put this matter in context.
- [5] Mr. Connolly was employed since 1986 by Canada Post as a full-time letter carrier in the Halifax Region. While delivering mail on December 31, 1992 he injured his back, affecting his ability to perform his duties at full capacity. For a time he was off work on disability leave. When he returned to work he found he was not able to perform without difficulty all of the tasks of his job, despite withdrawal of support from the Workers' Compensation Board of Nova Scotia because of his general improvement, and a letter from his doctor in February 1994 indicating that he was ready to return to work, without any specified restrictions. He injured his back again while at work in January 1995, and he continued thereafter to have difficulties in performing his work.

- [6] He believes that management of Canada Post demonstrated a lack of sympathy, understanding and willingness to accommodate his work in light of his continuing disability. He believes that he was harassed in the workplace and his concerns about his injuries were belittled. His perception is that one of the managers of Canada Post, a superintendent, was particularly concerned to make life difficult for him. Ultimately, after his union declined to continue to support his concerns in internal procedures he consulted with staff of the Commission and after some five months he signed a complaint on August 1, 1995, alleging discrimination on the basis of his physical disability, in his employment by Canada Post.
- [7] Apparently in original discussions with Commission staff he had sought to include as a named respondent, his superintendent, Ms. Dale Walker, who in his view was making life difficult for him. In its final form his complaint to the CHRC was directed only against his employer, Canada Post. His continuing concern that Ms. Walker be a party to his complaint is not a matter of significance in this proceeding since there is no doubt that she was acting at all times within the scope of her duties with Canada Post.
- [8] Mr. Connolly's experience with the Commission was discouraging. Having first contacted the Commission on March 31, 1995, it was not until August 1, 1995 that his complaint was finally signed and accepted by the Commission. It may have been in that period or shortly thereafter that CHRC operations in Halifax were terminated, except for continuing service to the region by long distance telephone and other systems from Ottawa.
- [9] The complaint was apparently not formally conveyed to Canada Post until that was done by letter dated March 5, 1996. Apparently aware informally of the complaint, Canada Post initiated an internal investigation in the late fall of 1995, which was completed by a report dated May 30, 1996 ("the Leblanc Report"). Mr. Connolly was aware of this investigation but his requests for a copy of the report were refused, despite his requests under the Privacy Act, until after the CHRC decision here in question was released in April 1999, when he was provided with a copy, apparently by Canada Post.
- [10] After filing his complaint, Mr. Connolly heard nothing from the CHRC about its investigation until one was initiated in February 1997 by a Halifax law firm acting on behalf of the Commission. The report of the Halifax law firm concerning its investigation was not made available to Mr. Connolly at any time.
- [11] In the meantime after his complaint was filed, the applicant believes retaliatory acts were carried out against him because of the complaint. Having kept a record of what he perceived were acts of retaliation, as Commission staff suggested he do, he reported these matters to the Commission. The Commission then arranged for the Royal Canadian Mounted Police (the "RCMP") to conduct an investigation of the complaints. The investigating RCMP officer interviewed Mr. Connolly at length, carried out an investigation of some 19 situations perceived by the applicant to be retaliation, and he reported on January 28, 1998. He found no evidence that any management personnel, including Ms. Dale Walker, had harassed,

discriminated or retaliated against Mr. Connolly for making his initial complaint to the Commission. He found that there was no violation of s. 59 of the Canadian Human Rights Act, R.S.C. 1985, c. H-6, as amended, which prohibits retaliation against one who files a complaint with the Commission.

- [12] Over the period from 1995 to 1998 Mr. Connolly dealt with three investigating officers successively appointed by the Commission, in addition to the law firm in Halifax and the RCMP investigator. Various investigators left their work, reporting to the Commission but without any word to him, and he was left to inquire from time to time about the status of matters. From the beginning of his dealings with the Commission, Mr. Connolly submitted many documents, including a significant number of hand printed memoranda and other records, and copies of correspondence. He believes that, on the basis of documents he submitted, there was substantial evidence to support his complaints, both about the original discriminatory action and the retaliatory acts by staff of Canada Post.
- [13] After receiving the complaint from the Commission, Canada Post responded in writing on July 12, 1996, denying Mr. Connolly's allegations. Thereafter, the investigation by the Halifax law firm was initiated, and the RCMP investigation for the Commission was completed in January 1998. The Commission's investigation of the complaints proceeded, slowly. Finally on February 22, 1999, the Commission's investigator then responsible for the case issued an investigation report with a recommendation that the complaint be dismissed as unfounded. That report was made available to both parties, i.e. to Mr. Connolly and Canada Post, and both of them used the opportunity then provided, and each made further written submissions about the report of the investigator.
- [14] By letter dated April 16, 1999, the Commission, having considered the investigation report and the submissions of the parties, dismissed the complaint. Its letter advised Mr. Connolly that

... the evidence does not support the complainant's allegations that the respondent failed to accommodate his disability and that the Superintendent harassed him because of his disability.

The complainant was provided with a reduced schedule and modified duties upon his return to work and in keeping with his physician's reports to the respondent until he was declared medically fit to return to his full duties.

The allegations of harassment by the Superintendent are not supported by the evidence. ...

Issues

- [15] In his application for judicial review, the applicant set out a number of grounds upon which he claimed relief. When the matter was heard, some of these were referred to incidentally, and written submissions entitled "Argument and Statement, Hearing, July 18, 2001", then provided by Mr. Connolly, and his oral argument, dealt in the main with other issues. I deal first with the issues raised at the hearing, and towards the end of these Reasons I briefly set

out why, in my view, most of the grounds set out in the original application for judicial review are not relevant in this proceeding.

- [16] When this matter was heard Mr. Connolly raised concerns about delay in the Commission's process of dealing with his complaints and concerns about the difficulties and frustration he experienced as a result of the perceived discriminatory action and retaliation by Canada Post. He was also concerned that, in his opinion, there was a lack of thorough investigation of his complaints, both by the Commission staff, and by the RCMP in its separate but interrelated investigation, for in his view neither sought appropriate evidence.
- [17] Only the last of these concerns, the lack of thorough investigation by staff of the Commission, if established to lead to patently unreasonable findings of fact by the Commission's decision, is relevant in this proceeding. This application concerns the decision made by the Commission to dismiss Mr. Connolly's complaints after investigation, without referring the matter for a hearing by a tribunal. That decision is one of a discretionary nature with which a court does not readily interfere.

Analysis

- [18] The delay by the Commission in reaching any decision was most unfortunate. I expect the Commission itself would acknowledge that it was virtually inexcusable. Nevertheless, this judicial review is to consider the decision ultimately made, not why it took some four years to make a decision. The perceived failure by the RCMP investigator, in the separate investigation of Mr. Connolly's complaints of retaliation, to thoroughly investigate his complaints and find further evidence and support for his position is a matter of continuing concern to him. That is despite the fact that he filed a complaint to the RCMP Division Commanding Officer and to the RCMP Public Complaints Commission about that investigation but he then agreed that his purpose in so doing was to bring his dissatisfaction to the attention of the investigating officer and his superiors. He did not request investigation of the matter by that Commission. In written submissions Mr. Connolly acknowledges that his concern about the RCMP investigation is not the subject of this proceeding for judicial review, an acknowledgement I appreciated and confirmed when this matter was heard.
- [19] The issues of concern in this proceeding for judicial review are the appropriate standard of review of the decision of the Commission here in question, and whether Mr. Connolly has met that standard by establishing that the Commission erred in a manner that warrants intervention of the Court. That can only be established by demonstrating that the Commission erred in law in a matter going to its jurisdiction, or that its process was procedurally unfair, or that its conclusions were perverse and not supportable on the evidence before the CHRC. As Mr. Justice Estey said, writing for the Supreme Court of Canada in *Maple Lodge Farms Ltd. v. Government of Canada*, [1982] 2 S.C.R. 2 at pp. 7-8:

It is...a clearly established rule that the courts should not interfere with the exercise of a discretion by a statutory authority merely because the court might have exercised the discretion in a different manner had it been charged with that responsibility. Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

[20] That principle has been endorsed as the appropriate basis for judicial review of discretionary decisions of the Commission to dismiss a complaint, without referring the matter to an inquiry tribunal, after it has considered its investigator's report and submissions of the parties made in response to that report (see: *Slattery v. Canada (Human Rights Commission)*, [1994]

2 F.C. 544 (T.D.), *aff'd.* (1996) 205 N.R. 383 (F.C.A.); *Bell Canada v. Communications Energy and Paperworkers Union of Canada*, [1999] 1 F.C. 113 (F.C.A.), appeal dismissed [1999] S.C.C.A. No. 1; *Walker v. Randall*, (1999) 173 F.T.R. 161.

[21] There is no suggestion that the CHRC was not acting within its jurisdiction in considering the complaints. The jurisdiction is found in the Canadian Human Rights Act. Sections 7 and 14 define a discriminatory practice in the course of employment, as an act differentiating adversely against, or harassing, an individual on a prohibited ground of discrimination, in this case based on Mr. Connolly's disability (under s.3). Section 43 authorizes the Commission to designate an investigator, who by s. 44 is to report after conclusion of the investigation of a complaint to the Commission, which may, by s-s. 44(3), dismiss the complaint if it is satisfied that having regard to all the circumstances, an inquiry into the complaint is not warranted. Precisely that decision was here made by the CHRC, after considering the report of its investigator and the written submissions in regard to it made by Mr. Connolly and Canada Post.

[22] That decision is not to be set aside by this Court because Mr. Connolly believes it was wrong or even because the Court considering the same evidence might have weighed it differently and reached a different conclusion. It can only be set aside if it is established that the decision of the Commission violated a principle of fairness owed to Mr. Connolly or that the decision was not based on evidence before the Commission, or that the Commission otherwise erred in law.

[23] Mr. Connolly contends there was procedural unfairness in the process of the CHRC, from delay, because witnesses were not heard in an open forum, and finally because the investigatory process was not complete. Delay here is not explained, but it is not a basis to set aside a decision once it is made. The Commission's process, and its discretion in dealing with complaints, is mandated by Parliament in the Canadian Human Rights Act. Only complaints referred to an inquiry by the Commission will ultimately be heard with oral evidence in open proceedings, but it is within the Commission's discretion under the Act to decline, as it did in this case, to refer a complaint to an inquiry.

- [24] Mr. Connolly's concern that the investigation by the CHRC was inadequate appears to arise from several factors, including the delay and the lack of communication with him about any progress for most of the 4 years from his initial contact with the Commission to the date of its decision. Another factor is the lack of any information to him resulting from the investigation commenced by the Halifax law firm on behalf of the Commission in 1997 and his uncertainty whether copies of witnesses' statements he had provided, and of a tape of his telephone messages, which had been provided to that investigator, were ultimately received by the Commission. Finally, his view of the inadequacy of the investigation arises, in part because neither the CHRC's investigatory report nor that of the RCMP, refer to witnesses whose evidence he expected would support his allegations. Rather, the witnesses named or referred to are almost entirely administrative or supervisory staff of Canada Post and both reports make numerous references to the respondent's (Canada Post's) explanations which are then accepted. Mr. Connolly perceives this as a bias in favour of Canada Post.
- [25] Strongly as he may feel about this perception, I am not persuaded that the investigator's report, was in error in law, or that it demonstrated a breach of procedural fairness or that facts it found were not supportable on the evidence before the Commission. Where two parties differ, as Mr. Connolly was aware they did in this case, for Canada Post refuted his allegation from the beginning, the decision maker whose task it is to determine whether a complaint should be referred to a tribunal, cannot satisfy both parties. Here the CHRC's decision was obviously based on evidence provided to the Commission's investigator and on the written submissions of the parties in relation to the investigator's report and recommendation. There is no evidence on the face of the record before me, despite Mr. Connolly's beliefs and perceptions, that the Commission's decision overlooked significant evidence, or that it took into account any irrelevant matters.
- [26] In the result, it is not surprising that this Court finds no basis to set aside the decision of the Commission. In *Walker v. Randall*, [1999] F.C.J. No. 1338 (T.D.), Mr. Justice Teitelbaum commented in part:
41. If in fact the complaint is the thoroughness of the Investigation Report, then the present judicial review application must be dismissed. Judicial review is the wrong procedure to attack the "thoroughness of an investigator's investigation of a complaint.
- and further:
53. ... I am satisfied it is now established that, "at the scrutiny stage" of the investigation, after receiving a complaint of discrimination, the Commission has a "remarkable degree of latitude" as to what kind of an investigation must be made before it can conclude that the complaint should not be sent to a tribunal for a hearing.
- [27] In *Slattery v. Canada (Human Rights Commission)* [1994] F.C.J. 181 (T.D.), affirmed [1996] F.C.J. 385 (C.A.), Mr. Justice Nadon commented:

Deference must be given to administrative decision-makers to assess the probative value of evidence and to further investigate accordingly. It should only be where unreasonable omissions are made, for example where an investigator failed to investigate obviously crucial evidence, that judicial review is warranted. Such an approach is consistent with the deference allotted to fact-finding activities of the Canadian Human Rights Tribunal by the Supreme Court in the case of *Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 544.

- [28] In my opinion, with deference owed to the exercise of its discretion by the CHRC, and in the absence of evidence of error in law or of patent unreasonableness in fact-finding, or of breach of procedural fairness, in its decision by the Commission, the Court has no basis to set aside the decision of the Commission.
- [29] Before concluding, I turn to two other aspects of the case presented by Mr. Connolly. The first concerns the inference to be drawn from the Leblanc internal report to Canada Post dated May 30, 1996, which the applicant reads as favourable to his case. In the investigation for that report, Ms. Leblanc, the investigator, notes that she interviewed 16 witnesses including 7 other letter carriers, 3 supervisors, the superintendent, and various officers of Canada Post.
- [30] Not all of the applicant's complaints were accepted in her report but the evidence was said to support the conclusion that several of Mr. Connolly's requests for action to accommodate his disability were refused, though ultimately a number of these requests were met, particularly in 1995 after his second injury. Further, it concluded that Mr. Connolly took remarks by his superintendent as being intentionally offensive, although if they had been delivered in a more appropriate manner and concern had been shown for the applicant's condition, the comments would not have been offensive. In Ms. Leblanc's opinion there was confusion, there was a breakdown in communications, and letters of apology for any misunderstanding, from the superintendent and Canada Post would be justifiable. That report urged counselling for both parties to the misunderstanding, and a meeting to resolve issues and start the relationship anew.
- [31] That report appears to have been in the record of materials before the Commission. To the extent it was favourable to the position of Mr. Connolly in its findings or recommendations, in the absence of evidence otherwise, it must be assumed this was considered by the Commission's investigator in concluding her report to the Commission. Of course, its conclusions the Leblanc report was not binding on the Commission, and obviously the purposes of the internal investigation and that report to Canada Post were different from that of the Commission. The CHRC was concerned with its statutory responsibility to assess whether on all the evidence the complaint of breach of rights protected by the Canadian Human Rights Act warranted referral to a tribunal for a hearing.
- [32] The other aspect of the case argued by the applicant concerns some 12 or more grounds set out by the applicant's application for judicial review as bases for the relief claimed. None of the grounds there set out provides a basis for the Court to intervene for the following

reasons. It is urged that the evidence before the Commission supports Mr. Connolly's complaints of discrimination, and that the Commission's investigator's report was beyond his understanding. In essence, these two arguments are that Mr. Connolly's view of the evidence differs from that of the Commission, but that is not a ground for the Court's intervention. In part those arguments are based on his perception that the investigation by the Commission was less than thorough, a manner which I have already indicated is not supported by evidence and in this case provides no basis to intervene.

- [33] Four other grounds stated relate to the Canada Post internal Leblanc report, that it was withheld from Mr. Connolly until May 21, 1999, after the report of the Commission, despite his requests pursuant to the Privacy Act, that its recommendations supported his complaints but it was not adopted by Canada Post. Those grounds, concerning the Leblanc report are not matters directly affecting the decision of the CHRC, the subject of this proceeding for judicial review. One other ground set out concern about delay in the commencement of the RCMP investigation, but as noted earlier that investigation is not a matter for review in this proceeding.
- [34] A number of other grounds in the originating application refer to the Commission's investigation. It is urged that Canada Post interfered with Mr. Connolly's attempt to meet with the Halifax lawyer acting for the CHRC in February 1997, that this original investigator told him, first, that Canada Post had not done enough to support Mr. Connolly, and second, after the Commission's dismissal of the complaint, that this was not his recommendation, and finally that this investigator could not locate a tape recording left with him by the applicant in 1997. Four other grounds merely set out the names of Commission staff investigators, and concerns that the first had only interviewed witnesses by telephone, that the second was no longer employed by CHRC in Ottawa, and the third, initially considered as thorough and competent, had ultimately reported to Mr. Connolly that she was recommending his complaint be dismissed and said to him "maybe your doctor made a mistake". None of these concerns provides a ground for intervention by the Court.
- [35] Failure of CHRC, in its investigation and report, to observe the principles of the collective agreement between Canada Post and the Canadian Union of Postal Workers, which prohibit discrimination and harassment on the basis of physical and emotional handicap, was said to be a ground supporting review but this is not a manner for this proceeding. The CHRC report was concerned with applying the law as set out in the Canadian Human Rights Act, not with that of the collective agreement.
- [36] Finally, Mr. Connolly urges that the CHRC investigator's report did not reasonably represent the statements he made to Commission investigators, and many of his statements "were presented in error and many omissions were made". No examples of error are given. The opportunity to criticize the report and to make written submissions about it was provided to Mr. Connolly. He used that opportunity, but I find in the record no copy of his submissions then made. Even if it were before me, the mere fact that his written submissions sought to set out his evidence more accurately than he believes was done by the investigator in her

report that would not be grounds for setting aside the Commission's decision, unless it were clear that the investigator's report was patently unreasonable. That is not here established.

Conclusion

[37] In sum, many of the grounds set out in Mr. Connolly's application are not relevant, and those that are relevant provide no basis for intervention by the Court. Further, I find no basis established for the Court to set aside the Commission's report in the argument put forth by Mr. Connolly in his extensive written submissions presented at the hearing on July 18, 2001, and the oral argument based upon it.

[38] For these reasons, the application for judicial review is dismissed.

[39] Both parties asked for costs. Ordinarily they follow the outcome and I see no reason why costs should not be awarded to the respondent, Canada Post, in this case. The file indicates that in this matter there were two interlocutory applications as well as the application for judicial review, so that for both parties there was more than one appearance in relation to this proceeding before this application was heard. Nevertheless, I propose that costs in favour of Canada Post be fixed in a reasonable amount that the parties may agree upon, or if they cannot agree, as may be determined by this Court after consideration of any written submissions from Mr. Connolly and

the respondent on an appropriate amount for costs. Those submissions shall be made to the Registry of the Court on or before March 22, 2002.

W. Andrew MacKay

JUDGE

OTTAWA, Ontario

February 20, 2002

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/44302/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/connolly-v-canada-post-corp-2002-fct-185>

Prepared on 26 October 2026 · Esheria