

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)**

**Citation:** *Chiasson v. Happy Valley-Goose Bay (Town)*, 2011 NLTD(G) 156

**Date:** 20111110

**Docket:** 201108G0033

**BETWEEN:**

**JOHN CHIASSON**

**APPLICANT**

**AND:**

**TOWN OF HAPPY VALLEY-GOOSE BAY**

**FIRST RESPONDENT**

**AND:**

**CANADIAN UNION OF PUBLIC EMPLOYEES**

**SECOND RESPONDENT**

**AND:**

**DR. JOHN SCOTT, MEDIATOR DEVELOPMENT CO. LTD.**

**THIRD RESPONDENT**

**AND:**

**CAREY MAJID, HUMAN RIGHTS COMMISSION**

**FOURTH RESPONDENT**

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**Before:** The Honourable Mr. Justice Robert P. Stack

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**On Appeal From:**

A decision of the executive director of the Newfoundland and Labrador Human Rights Commission dated February 16, 2011.

**Place of Hearing:**

Happy Valley-Goose Bay, Newfoundland and Labrador

**Date(s) of Hearing:**

November 7, 2011

**Summary:**

Pursuant to section 32(1)(c) of the *Human Rights Act, 2010*, the executive director of the Newfoundland and Labrador Human Rights Commission dismissed the Applicant's complaint because the subject matter of the complaint had been appropriately dealt with in a labour arbitration. The Applicant appealed pursuant to section 33 of the *Act*. It was held that the executive director exercised her discretion reasonably and the appeal was dismissed.

**Appearances:**

Mr. John Chiasson	Self Represented
Ms. Ruth Trask	First Respondent
Ms. Susan Coen	Second Respondent
Dr. John Scott	Self Represented
Ms. Kimberley Pochini	Fourth Respondent

**Authorities Cited:**

**CASES CONSIDERED:** *Worker's Compensation Board of British Columbia v. Figliola et al*, 2011 SCC 52; *Dunsmuire v. New Brunswick* [2008] S.C.J. No. 9, Carswell NB 124; *City of St. John's v. Human Rights Commission et al*, 2011 NLTD(G) 83; *Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees Union, Local 324 (OPSEU)*, 2003 SCC 42.

**STATUTES CONSIDERED:** *Human Rights Code*, R.S.N.L. 1990, c. H-14, section 9; *Human Rights Act*, 2010, S.N.L. 2010, c. H-13.1, sections 30, 32, 32(1)(c), 32(2), 33 and 51; *Interpretation Act*, R.S.N.L. 1990, c. I-19, section 29(2)(c); *Labour Relations Act*, R.S.N.L. 1990, c. L-1, section 130.

**REASONS FOR JUDGMENT**

**STACK, J.:**

**INTRODUCTION**

[1] Mr. Chiasson is employed by the Town of Happy Valley-Goose Bay (the Town) as a heavy equipment operator. Mr. Chiasson's employment was terminated on October 31, 2006 and his union, Canadian Union of Public Employees (CUPE), brought a grievance on his behalf under the applicable collective agreement. Prior to the arbitration award being delivered, Mr. Chiasson brought a complaint (the Complaint) to the Newfoundland and Labrador Human Rights Commission (the HRC) in respect of the same subject matter. Ms. Carey Majid, the executive director of the HRC, dismissed the Complaint because in her view it had been appropriately dealt with in the arbitration. Did she act reasonably in so doing?

### **THE ARBITRATION AWARD**

[2] The substance of Mr. Chiasson's grievance against the Town was that while suffering from depression, he was discriminated against when it terminated his employment on October 31, 2006.

[3] Dr. John Scott acted as arbitrator and conducted a two day hearing into the grievance on June 10 and 11, 2008. Testimony was heard from 13 witnesses, including Mr. Chiasson. Mr. Chiasson was represented at the Arbitration Hearing by CUPE National Representative Donna Ryan.

[4] The 62 page arbitration award was released on October 17, 2008. In it, Dr. Scott found that the Town had established cause for disciplinary action against Mr. Chiasson but dismissal was an excessive punishment. Dr. Scott overturned Mr. Chiasson's termination and replaced it with a suspension without pay for the period October 31, 2006 to October 17, 2008. Mr. Chiasson was reinstated in his position.

[5] In the arbitration award, Dr. Scott specifically addressed the issue of Mr. Chiasson's mental disability and the allegation of discrimination on the basis of that condition contrary to the terms of the collective agreement.

[6] At the request of the parties to the grievance, and following written submissions, on January 22, 2009, Dr. Scott filed a three-page “Supplemental Clarification” stating that the intended result of his October 17, 2008 arbitration award was that Mr. Chiasson would not accumulate seniority during the period of suspension.

[7] Judicial review of the arbitration award was available but was not sought.

## **THE HRC COMPLAINT**

[8] The HRC received the Complaint from Mr. Chiasson on July 31, 2008. In it, Mr. Chiasson complained that he had been discriminated against by the Town, as well as by two of its employees, on the basis of mental disability contrary to section 9 of the *Human Rights Code*, R.S.N.L. 1990, c. H-14 (the *Code*).

[9] In November 2008, the Respondents to the Complaint collectively filed their Replies with the HRC. Their position was that the arbitration award had addressed the issues raised by the Complaint and it should be dismissed. Copies of the Replies were provided to Mr. Chiasson by the HRC, together with an opportunity to respond to same.

[10] Mr. Chiasson responded to the Replies by a letter dated February 12, 2009. In it, he outlined the basis for his grievance against the Town and stated that he wished to have his seniority reinstated.

## ***HUMAN RIGHTS ACT, 2010***

[11] The *Code* is no longer the prevailing legislation. On June 24, 2010, the *Human Rights Act, 2010*, S.N.L. 2010, c. H-13.1, (the *Act*) was enacted. Section 51 of the *Act* repealed the *Code* in its entirety.

[12] Section 32 of the *Act* provides in relevant part:

32(1) The executive director may, at any time before a complaint is referred to a board of inquiry under section 34, dismiss ... the complaint where the executive director is satisfied that ...

(c) the substance of the complaint ...has been appropriately dealt with in another proceeding.

(2) Where the executive director dismisses ... a complaint, the executive director shall serve the parties to the complaint with a written notice of and the reasons for the dismissal.

[13] By section 30 of the *Act*, a “proceeding” for the purposes of section 32 includes a grievance proceeding under a collective agreement.

## **DECISION OF THE EXECUTIVE DIRECTOR**

[14] By a letter dated January 13, 2011, Ms. Majid wrote to Mr. Chiasson explaining that the Complaint was being considered for dismissal pursuant to section 32 of the *Act*. Mr. Chiasson was given 30 days to provide reasons or new information as to why the Complaint should not be dismissed. The Respondents to the Complaint were also notified on the same date.

[15] By a letter dated January 25, 2011, Mr. Chiasson responded to the executive director’s letter of January 13, 2011. He reiterated his dissatisfaction with the arbitration award and, in particular, his loss of seniority.

[16] By letter February 16, 2011, the executive director wrote to Mr. Chiasson. The letter addressed in detail the arbitration award and Mr. Chiasson’s dissatisfaction with its result. It concluded, however, that the issues considered in the arbitration were the same as presented in the Complaint. As a result, the Complaint was dismissed in accordance with section 32 of the *Act*. The letter went on to advise Mr. Chiasson that he had the right to appeal the executive director’s decision pursuant to section 33 of the *Act*.

## APPLICATION TO THIS COURT

[17] In his appeal document Mr. Chiasson named the Town, CUPE, Dr. Scott<sup>1</sup>, and Ms. Majid as Respondents. The grounds of appeal are:

Unjustly suspended and got job back never got my seniority back according to section 13:04 and 14:04 (attached copy) o [sic] our collective agreement and the two other employees that were terminated all got seniority and everything back one prior and one after me.

[18] The appeal document does not set forth the relief sought by Mr. Chiasson but it can be inferred that he wishes to have the decision of Ms. Majid dismissing the Complaint overturned and the matter sent back for consideration by the HRC. At the Court hearing Mr. Chiasson was more direct – he wants the Court to reinstate his seniority.

[19] In a document filed with the Court dated November 1, 2011, Mr. Chiasson set forth his position. There were 10 factors raised dealing with the substance of his dissatisfaction with the arbitration award and one which states that section 32 of the *Act* only became law in 2010 (an issue raised in his January 25, 2011 letter as well). I infer from the last factor that in Mr. Chiasson's view the *Act* should not apply because the Complaint was filed prior to its enactment.

## THE LAW

[20] The applicable law was recently reconsidered by the Supreme Court of Canada in the **Worker's Compensation Board of British Columbia v. Figliola et**

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<sup>1</sup> I note that Dr. Scott's corporation is Mediation Development Co. Ltd.; the name is misspelled in the style of cause.

al, 2011 SCC 52. Abella J., for the majority, set the context for this type of situation:

Litigants hope to have their legal issues resolved as equitably and as expeditiously as possible by an authoritative adjudicator. Subject only to rights of review or appeal, they expect, in the interests of fairness, to be able to rely on the outcome as final and binding. What they do not expect is to have those same issues relitigated by a different adjudicator in a different forum at the request of a losing party seeking a different result. On the other hand, it may sometimes be the case that justice demands fresh litigation. [paragraph 1]

[21] In evaluating the exercise of discretion by Ms. Majid in dismissing the Complaint, I must determine whether her decision was reasonable (**Dunsmuire v. New Brunswick** [2008] S.C.J. No. 9, Carswell NB 124; **City of St. John's v. Human Rights Commission et al**, 2011 NLTD(G) 83).

## ISSUE

[22] Was Ms. Majid's decision to dismiss the Complaint reasonable? Before I decide that I must determine whether she was correct in applying the 2010 *Act* to Mr. Chiasson's 2008 Complaint.

## DOES THE ACT APPLY?

[23] Does the 2010 *Act* apply to Mr. Chiasson's 2008 Complaint? The standard of review on an issue of law, such as the application of the *Act* to the Complaint, is one of correctness (**City of St. John's**). When the Complaint was made the *Code* prevailed. Section 51 of the *Act*, however, repealed the *Code*. By section 29(2)(c) of the *Interpretation Act*, R.S.N.L. 1990, c. I-19, a proceeding taken under a provision that has been repealed shall be "taken up and continued under and in conformity with" the provisions that have been substituted for it. Consequently, with the repeal of the *Code*, the Complaint was to be continued in conformity with the provisions of the *Act*. Ms. Majid was therefore correct in conducting the inquiry called for by section 32 of the *Act*.

## WAS MS. MAJID'S DECISION DISMISSING THE COMPLAINT REASONABLE?

[24] Upon the *Act* coming into force, the Commission undertook a review of all its outstanding files to determine whether any of them should be subject to dismissal pursuant to section 32. I note, however, that even without that section, the Complaint could have been challenged by the Respondents pursuant to various common law remedies guarding against multiplicity of proceedings, including issue estoppel and rules precluding abuses of process and collateral attacks against matters that have already been decided. The principles underlying the prevention of multiplicity of proceedings at common law include: the reliance by parties on matters once decided being finally decided; the fairness requirement that matters be decided in an appropriate forum; the requirement that challenges to arbitrators' decisions be taken in the courts; the prevention of parties circumventing the appropriate review mechanism by choosing another forum; and the avoidance of wasted resources (time and money) through unnecessary re-litigation (**Figliola** at paragraph 34). Re-litigation can also lead to conflicting decisions on the same facts which can undermine the credibility of the entire judicial process (**Toronto (City) v. C.U.P.E., Local 79**, 2003 SCC 63), cited in **Figliola** at paragraph 33).

[25] The enactment of section 32 eliminates the requirement for such common law challenges in the context of the *Act*. It does not codify the common law doctrines or their underlying technical requirements; it does, however, embrace "their underlying principles in pursuit of finality, fairness, and the integrity of the justice system by preventing unnecessary inconsistency, multiplicity and delay" (**Figliola** at paragraph 36).

[26] Relying upon the principles outlined at paragraph 24 above, Ms. Majid would have to ask three questions regarding the Complaint. First, was there concurrent jurisdiction to decide human rights issues? Second, was the previously decided legal issue essentially the same as what was being complained of to the HRC? And third, was there an opportunity for the complainant to know the case to be met and have a chance to meet it? "... [I]t is really a question of whether it makes sense to expend public and private resources on the re-litigation of what is essentially the same dispute" (**Figliola** at paragraph 37).

[27] First, it is well established that an arbitrator deciding a grievance under a collective agreement may consider matters of discrimination (**Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees Union, Local 324 (OPSEU)**, 2003 SCC 42).

[28] Second, Ms. Majid had ample grounds to conclude that the previously decided legal issues were essentially the same as being complained of to the HRC. A review of the arbitration award indicates that the arbitrator considered very carefully the question of discrimination on the basis of mental disability brought by Mr. Chiasson in the Complaint. Additionally, the arbitrator dealt both with whether the actions of the employer were discriminatory resulting in an unjust termination (he found that the termination was unjust) and, in his supplemental reasons, as to whether Mr. Chiasson should accrue seniority through his period of suspension (he found that Mr. Chiasson should not).

[29] Third and finally, given that Dr. Scott heard from 13 witnesses (including Mr. Chiasson) and the arbitration award was 62 pages, and given that the supplemental clarification regarding seniority was rendered in writing with reasons following written submissions by CUPE and the Town, there is no doubt that there was an opportunity for Mr. Chiasson to know the case to be met before the arbitrator and to have the chance to meet it. Furthermore, Mr. Chiasson had the assistance of the union in advancing his grievance; he was represented at the hearing by CUPE National Representative, Donna Ryan, and CUPE legal counsel, Susan Coen, submitted a written argument on the issue of seniority.

[30] According to Abella J., the answers to the three questions go to determining whether the substance of a complaint has been “appropriately dealt with”, which is the language used in section 32 of the *Act* (**Figliola** at paragraph 37). Ms. Majid considered all three questions in exercising her discretion in dismissing the Complaint. She also adhered to the principles of procedural fairness. The named Respondents were given the opportunity to file their Replies and Mr. Chiasson provided a written response to them. Before dismissing the Complaint, she wrote to Mr. Chiasson and the Respondents setting forth section 32 of the *Act* and indicating that the arbitration award had been reviewed and the Complaint was being considered for dismissal. As mentioned above, on January 25, 2011, Mr.

Chiasson responded to the executive director's letter and reiterated his complaint regarding his loss of seniority.

[31] After considering Mr. Chiasson's letter of January 25, 2011, Ms. Majid wrote him again on February 16, 2011 advising that the Complaint was dismissed in accordance with section 32(1)(c) of the *Act*. The letter included detailed reasons for the dismissal. These were that the issues raised in the Complaint were the same as were addressed in the arbitration, the matter had been appropriately before the arbitrator and an appropriate hearing had been held. Finally, Ms. Majid set forth Mr. Chiasson's appeal rights pursuant to section 33 of the *Act*.

[32] In dismissing Mr. Chiasson's complaint, did the executive director act reasonably? Yes she did. She reviewed the arbitration award in detail. Then, she advised all of the parties, including Mr. Chiasson, that they could respond to her indication that the Complaint was being considered for dismissal pursuant to section 32 of the *Act*. Mr. Chiasson did so by his letter dated January 25, 2011. Ms. Majid reviewed Mr. Chiasson's letter and determined that it provided no new information. Consequently, Ms. Majid concluded that the subject matter of the Complaint had been appropriately dealt with in the arbitration award, including the supplemental clarification, and dismissed the Complaint. She provided reasons for the dismissal as outlined above.

[33] Mr. Chiasson seeks to have the issue of seniority that was dealt with in the arbitration re-litigated by the HRC. "Forum shopping for a different and better result can be dressed up in many attractive adjectives, but fairness is not among them" (**Figliola** at paragraph 36). Among the purposes of section 32 of the *Act* is to prevent such unfairness from occurring.

[34] Mr. Chiasson appealed the executive director's decision. Review of Dr. Scott's arbitration award was not sought by CUPE because it felt that there was no reasonable prospect of success. The Complaint and the appeal from its dismissal are attempts by Mr. Chiasson to take "an institutional detour to attack the validity of [the arbitration award] by seeking a different result from a different forum, rather than through the designated appellate or judicial review route" (**Figliola** at paragraph 28). If Mr. Chiasson had a complaint against CUPE for not seeking

review of the arbitration award (and nothing before me suggests that he did), then his remedy was pursuant to section 130 of the *Labour Relations Act*, R.S.N.L. 1990, c. L-1, not the human rights legislation.

[35] Before concluding, I note that among the issues that Mr. Chiasson raised during the Court hearing was that according to the arbitration award he was supposed to have recommenced work on October 18, 2010, but he was not reinstated until December 1, 2010. I understand that he has since been paid and has received credit for seniority for that period. That is a matter that arose following both the filing of the grievance and the filing of the Complaint. There is nothing before me to suggest that it is a matter for which Mr. Chiasson has not been compensated in full and that would give rise to any further grievance or complaint, be it under the collective agreement or the *Act*.

[36] Mr. Chiasson's appeal from the decision of the executive director of the Human Rights Commission dismissing the Complaint is dismissed. The Respondents have stated that they do not desire an order as to costs and so none is made.

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**ROBERT P. STACK**

Justice