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IN THE MATTER OF THE *HUMAN RIGHTS CODE*,  
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before  
the British Columbia Human Rights Tribunal

BETWEEN:

Paul Hans Loos

**COMPLAINANT**

AND:

Shannon Lumber Ltd. and Stan Shannon and David Shannon and Tania Blain

**RESPONDENTS**

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**REASONS FOR DECISION  
APPLICATION TO RECONSIDER A DECISION  
RULE 36**

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Tribunal Member:

Andrew Robb

Agent for the Respondents:

Tania Blain

No submissions from the Complainant

## I INTRODUCTION

[1] Hans Loos filed a human rights complaint against his former employer, Shannon Lumber Ltd. [SLL], and three of its managers [together, the **Respondents**].

[2] The Respondents applied to dismiss Mr. Loos's complaint. They argued that even if proved, Mr. Loos's allegations would not establish a contravention of the *Human Rights Code*; that proceeding with the complaint would not further the purposes of the *Code* in light of a release of liability that Mr. Loos had signed; that Mr. Loos filed his complaint for an improper purpose; that the substance of the complaint was appropriately dealt within in previous proceedings under the *Workers Compensation Act*; and that the complaint was filed too late.

[3] In an earlier decision, I denied the Respondents' application to dismiss: *Loos v. Shannon Lumber Ltd. and others*, 2024 BCHRT 37 [**Original Decision**].

[4] The Respondents filed an application for reconsideration of the Original Decision, under Rule 36 of the Tribunal's *Rules of Practice and Procedure* [**Rules**].

[5] For the following reasons, I deny the application for reconsideration. I have not found it necessary to seek submissions from Mr. Loos.

## II BACKGROUND

[6] The background to the complaint is set out in the Original Decision. In summary, Mr. Loos was employed by SLL, he was injured at work, and he says the Respondents retaliated against him for getting injured, reporting the injury to WorkSafeBC, and going on medical leave. The alleged retaliation included changing Mr. Loos's job status from full-time to part-time, and eventually terminating his employment. It also included providing false information to WorkSafeBC. According to Mr. Loos, this resulted in WorkSafeBC terminating his benefit payments.

[7] The Respondents say the Original Decision should be reconsidered because they obtained new and relevant evidence. The new evidence is a decision by the Workers'

Compensation Appeal Tribunal [WCAT], dismissing Mr. Loos's application for reconsideration of a previous decision by the WCAT. The Respondents say it shows there is no evidence to prove some of Mr. Loos's allegations in his human rights complaint, and demonstrates the prejudice to the Respondents caused by the Tribunal's decision to accept Mr. Loos's complaint, even though it was filed late.

[8] The Respondents also say there is a mistake in the Original Decision. The Original Decision says the Respondents did not provide any evidence to corroborate their claim that Mr. Loos was assigned fewer shifts after he returned from medical leave, in late 2017, because there was less work available at SLL at that time. The Respondents say they did provide information to the Tribunal about this issue, namely a table listing the number of scheduled shifts at SLL, which showed a decrease between 2016 and 2018. They say my failure to consider this information made the process unfair to them.

### **III ANALYSIS AND DECISION**

#### **A. Whether to Reconsider the Decision**

[9] The Tribunal has a limited jurisdiction to reconsider its own decisions: Rule 36. Specifically, the Tribunal may reconsider a decision if it is in the interests of justice and fairness to do so: *Routkovskaia v. British Columbia (Human Rights Tribunal)*, 2012 BCCA 141 at para. 23. The Tribunal exercises this power sparingly, giving due consideration to the principle of finality in administrative proceedings: *Grant v. City of Vancouver and others (No. 4)*, 2007 BCHRT 206 at para 10. The burden is on the person seeking to have a matter re-opened to show that the interests of fairness and justice demand such an order: *Grant* at para. 10.

[10] The Tribunal does not have authority to reconsider a decision based on an argument that the decision was wrong or unreasonable or because there has been a change of circumstances: *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499 at paras. 135 and 160. The Tribunal will not reconsider a decision to address arguments that could have been made in the first instance but were not, or to hear a party reargue its

case: *Ramadan v. Kwantlen Polytechnic University and another (No. 2)*, 2018 BCHRT 56 at para. 13.

## **B. Comparison of scheduled shifts**

[11] Paragraph 19 of the Original Decision says the Respondents did not provide any evidence to corroborate their claim that the reason for the reduction in Mr. Loos's shifts was because there was less work available at SLL in late 2017. The Respondents say this is incorrect: they say that on July 31, 2021, they sent the Tribunal a table listing the number of scheduled shifts at SLL from 2016 to 2018. The table is included in their application for reconsideration, and it shows a reduction in scheduled shifts during that period.

[12] The Respondents did not include or refer to the table in their application to dismiss Mr. Loos's complaint, which was filed July 29, 2019, or in their reply submission, filed January 6, 2022. I reviewed the Tribunal's records and found that the Respondents copied the Tribunal on an email addressed to Mr. Loos, dated July 31, 2021, which included the table. This was apparently the response to a disclosure order made by the Tribunal, which directed the Respondents to give Mr. Loos a list of shifts scheduled at SLL between October 25, 2017, and February 15, 2018. The Tribunal's order only required the Respondents to provide this information to Mr. Loos, not to the Tribunal. It is the responsibility of each party to include in its submissions on an application to dismiss any and all evidence it wants the Tribunal to consider.

[13] The Tribunal may reconsider a decision where there has not been procedural fairness: *Fraser Health Authority* at para. 161. The Respondents say it was a mistake for me to say they had not provided any evidence to corroborate their claim that there was less work available at SLL in 2017, and this mistake made the process unfair to them. They do not explain how it made the process unfair. In addition to the fact that the Respondents did not put the table before me in their application to dismiss, nothing in the Original Decision turned on the information in the table. The statement about a lack of corroborating evidence was merely background information.

[14] Even if the Respondents could establish that it was a mistake for me to say they had not provided any evidence to corroborate their claim that there was less work available at SLL in 2017, I am not persuaded that this mistake made the process unfair. The table was not included or referred to in their application to dismiss, and in any case it was not relevant to the result of the Original Decision. I dismiss the Respondents' application to reconsider the Original Decision on this basis.

### **C. WCAT reconsideration decision**

[15] The Tribunal may reconsider a decision where there is new evidence that was not available at the time the party made its submission: *Gichuru v. Vancouver Swing Society and others*, 2018 BCHRT 18 at para. 22. Relevant factors include whether the new evidence could affect the result, and whether reconsideration would result in prejudice: *Gichuru* at paras. 22, 43.

[16] At paragraph 41 of the Original Decision, I observed that Mr. Loos had applied to the WCAT for reconsideration of its decision dated November 9, 2018, which found that his workplace injury had resolved by October 22, 2017, but there was no evidence before me about the outcome of this application.

[17] The Respondents' application for reconsideration of the Original Decision includes the WCAT's reconsideration decision. They say it was not available until after they received the Original Decision. The WCAT's reconsideration decision is dated October 18, 2019, a few months after the Respondents filed their application to dismiss Mr. Loos's human rights complaint but well before they filed their reply submission. The Respondents say they contacted the WCAT after they received the Original Decision, and the WCAT told them the reconsideration decision was mailed to them at the time it was made. But they say they have no record of receiving it.

[18] The Respondents also filed the previous WCAT decision, dated November 9, 2018, in support of their application for reconsideration of the Original Decision. But the previous WCAT

decision is not new evidence: it was included in the Respondents' application to dismiss the complaint. Therefore, I have not considered in it this decision.

[19] The Respondents say the WCAT's reconsideration decision is relevant to the Original Decision because it shows the prejudice to the Respondents caused by the Tribunal's decision to accept Mr. Loos's complaint, even though it was filed late.

[20] I reviewed the WCAT's reconsideration decision. It says the WCAT's original decision dated November 9, 2018, was not procedurally unfair to Mr. Loos, even though he did not participate in the WCAT's original process. It says he had notice of the process and it rejects his argument that he had a disability affecting his ability to understand the consequences of not participating. The WCAT's reconsideration decision also shows Mr. Loos argued that the WCAT should consider new evidence, namely the fact that Mr. Loos filed this human rights complaint and a separate complaint against SLL, under the *Workers Compensation Act*. The WCAT dismissed this argument, finding that even if Mr. Loos's complaints constituted new evidence, they were not material to the WCAT's earlier decision.

[21] The Respondents say the WCAT's reconsideration decision shows there is no evidence to support parts of Mr. Loos's human rights complaint. But there are no new facts or findings referred to in the WCAT's reconsideration decision, which could be relevant to the Respondents' application to dismiss Mr. Loos's human rights complaint. The Original Decision did not make or rely on any finding about the evidence in support of Mr. Loos's complaint, because none of the Respondents' arguments required the Tribunal to evaluate the evidence in support of Mr. Loos's complaint. The Tribunal evaluates the evidence in support of a complaint in applications to dismiss under s. 27(1)(c) of the *Code*, but the Respondents did not apply under s. 27(1)(c).

[22] The Respondents say the WCAT's reconsideration decision is new evidence of the prejudice to the Respondents caused by the Tribunal's decision to accept Mr. Loos's late-filed complaint. They argue the WCAT's reconsideration decision shows there is a pattern of Mr.

Loos creating delays in legal processes, and these delays have impaired the Respondents' ability to defend themselves from allegations about events that happened many years ago.

[23] The Respondents applied to dismiss Mr. Loos's complaint under s. 27(1)(g) of the *Code*, based on Mr. Loos's delay in filing the complaint, and in the Original Decision I exercised my authority under s. 22(3) of the *Code* to accept the complaint, despite the delay in filing. The Original Decision did not consider delays in the Tribunal's process, or any other legal processes, because such delays are not relevant in an application under s. 27(1)(g). The delay that is relevant to determining whether to accept a late-filed complaint is the time between the one-year statutory deadline and the date the complaint was filed. I found Mr. Loos's delay in filing was relatively short (23 days past the one-year statutory deadline) and the Respondents did not suggest they would face prejudice because of that delay: Original Decision at paras. 102 and 107. There is nothing in the WCAT's reconsideration decision that is relevant to my decision to accept the complaint under s. 22(3).

[24] Even if I accepted that the WCAT's reconsideration decision was not available to the Respondents when they filed their reply submission, I would still find it could not have affected the result of the Original Decision. Fairness does not require me to reconsider the Original Decision when the new evidence the Respondents rely on could not have affected the outcome. I dismiss the application to reconsider the Original Decision based on the WCAT's reconsideration decision.

#### **IV CONCLUSION**

[25] I deny the Respondents' application for reconsideration of the Original Decision.

Andrew Robb  
Tribunal Member