

Date Issued: April 16, 2024

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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:

Rosalyn Salanguit

COMPLAINANT

AND:

Parq Vancouver and Shanna Abonitalla

RESPONDENTS

REASONS FOR DECISION
APPLICATION TO DISMISS A COMPLAINT
Section 27(1)(d)(ii)

Tribunal Member:

Jonathan Chapnick

On her own behalf:

Rosalyn Salanguit

On her own behalf:

Shanna Abonitalla

Counsel for Parq Vancouver:

Ryan A. Anderson and Mark Bout

I INTRODUCTION

[1] On July 10, 2020, Rosalyn Salanguit filed a discrimination complaint against her employer, Parq Vancouver, and against a Parq employee, Shanna Abonitalla [collectively, **Respondents**]. Parq operates a casino. Ms. Salanguit has been employed at Parq or its predecessor casino for over a decade. Parq describes Ms. Salanguit as a valued and long service employee. During the time period relevant to her complaint, Ms. Salanguit was employed in the position of Cage Shift Manager at Parq. The “Cage” is essentially the casino’s cash storage and cashier station. Ms. Salanguit was responsible for managing all aspects and operations of the Cage, including overseeing a team of unionized employees, which included Ms. Abonitalla, who is a member of Unifor Local 3000 [**Union**], a Union steward under the applicable collective agreement, and a member of the Union’s executive.

[2] Ms. Salanguit is a survivor of a serious health condition and related surgery, which left her with what she describes as a speech impediment. Ms. Salanguit’s discrimination complaint to the Human Rights Tribunal arises from Parq’s investigation into an allegation that Ms. Abonitalla mocked and mimicked Ms. Salanguit’s speech in front of other employees. Ms. Salanguit says that her dignity, self-respect, and confidence have been severely impacted by Ms. Abonitalla’s conduct. She questions her relationships with co-workers who she once considered friends, fearing they too will mock her. She feels ashamed of how she looks and sounds. Shortly after reporting Ms. Abonitalla’s conduct to Parq on July 14, 2019, Ms. Salanguit went on medical leave for mental health reasons. She says she has been unable to heal and move on.

[3] Parq investigated Ms. Salanguit’s claim over a two-month period during the summer of 2019, interviewing several witnesses, including at least one eyewitness who corroborated Ms. Salanguit’s allegation. Parq found that the allegation against Ms. Abonitalla was substantiated, and concluded that Ms. Abonitalla had violated the casino’s policy against bullying and harassment. Parq says it subsequently took various other steps to address what had happened and prevent it from happening again. Based on its investigation of Ms. Salanguit’s allegation and the subsequent steps taken, Parq says Ms. Salanguit’s complaint to the Tribunal should be

dismissed. It says it has remedied the underlying discrimination and it would not further the purposes of the *Code* to proceed with the complaint against either of the Respondents: *Code*, s. 27(1)(d)(ii). Parq also says that it has made a reasonable settlement offer to Ms. Salanguit, which remains open for her acceptance. On this basis, too, Parq argues that proceeding with the complaint would not further the purposes of the *Code* and so it should be dismissed against both Respondents: *Code*, s. 27(1)(d)(ii).

[4] Ms. Abonitalla did not file a response to Ms. Salanguit's complaint. She did, however, file a brief application to dismiss the complaint on the basis that proceeding against her would not further the *Code's* purposes because she is an individual respondent: *Code*, s. 27(1)(d)(ii). She says she has no influence over Ms. Salanguit's employment. In my view, the evidence in this case suggests otherwise. Ms. Abonitalla appears to have engaged in cruel and childish behaviour that, at least in the immediate term, has influenced the course of Ms. Salanguit's employment in a very negative way.

[5] Nevertheless, for the reasons set out below, I am persuaded that it would not further the purposes of the *Code* to proceed any further with Ms. Salanguit's complaint against the Respondents. In the circumstances of this case, I find that Parq's actions in response to Ms. Abonitalla's discriminatory conduct were reasonable and appropriate, and justify my dismissal of the complaint against it under s. 27(1)(d)(ii) of the *Code*. I also find that Parq's settlement offer to Ms. Salanguit – which remains open following the issuance of this decision – is reasonable, and proceeding with the complaint against Ms. Abonitalla would not further the purposes of the *Code*. As a result, despite my regret regarding Ms. Salanguit's circumstances and my appreciation for the adversity she has overcome, her complaint is dismissed.

II BACKGROUND

[6] The following background is drawn from the materials filed by the parties and is not in dispute unless otherwise specified. To make my decision on the Respondents' dismissal applications, I have considered all of the information provided by the parties. In this decision,

however, I only refer to what is necessary to explain what I have decided. I make no findings of fact.

A. Original bullying complaint

[7] Ms. Salanguit says she originally discussed a bullying complaint against Ms. Abonitalla with her supervisor, the Cage Director, on May 21, 2019. The details of their discussion are summarized by Ms. Salanguit in a May 22, 2019 email to the Cage Director. The email states that Ms. Abonitalla was “singling out” Ms. Salanguit and publicly criticizing her work errors out of retaliation for past discipline imposed on Ms. Abonitalla [**Bullying Complaint**].

[8] Ms. Salanguit says that on June 17, 2019, she interviewed for a gaming compliance position at Parq.

[9] On July 3, 2019, Ms. Salanguit met with Parq’s director of human resources [**HR Director**] to discuss the Bullying Complaint. Ms. Salanguit says she escalated the Bullying Complaint to the HR Director because it had not been handled by the Cage Director. That evening, the HR Director emailed the Cage Director as follows:

Just wanted to let you know that Roz [i.e., Ms. Salanguit] came by my office ... this afternoon and raised some concerns about bullying in the [Cage] department. She mentioned Shanna has been making her uncomfortable and referenced an email that Shanna sent to everyone in the department about a mistake Roz had made. She said she wasn’t sure if this had already been addressed with Shanna but feels all the supervisors now feel they can be disrespectful towards her.

I asked her to send me an email with all of the details ... and we can look into it. I also mentioned we can post a general respectful workplace reminder memo for the Cage ... to make it clear what behaviour is acceptable.

She said she doesn’t feel very supported from the other managers and is considering going on a medical leave because she’s struggling to come into work

since Shanna has been bothering her. I gave her EFAP [Employee and Family Assistance Program] and told her we will address her concerns.

[10] In a response email later that night, the Cage Director said she had been unable to meet with Ms. Abonitalla due to scheduling conflicts. She said she would update the HR Director once they had met.

[11] Ms. Salanguit and the Cage Director corresponded via text message the next day. Ms. Salanguit said that Ms. Abonitalla's behaviour had snowballed to others in the Cage department. She said she was having difficulties working with several Cage supervisors. She said they were bullying her behind her back, which was making it hard to do her job. She said she only wanted the gaming compliance position in order to "get out of [the Cage] and not see them."

[12] On July 8, Ms. Salanguit emailed the HR Director with further information regarding the issues she had been experiencing in the workplace. She provided text messages from August 2018, in which she had told the Cage Director about misunderstandings related to her speech impediment, involving employees in Parq's slots and surveillance departments. She said the subject matter of her more recent Bullying Complaint had not been addressed and other supervisors were piling on – "seeking out [her] errors and gossiping about it to everyone."

B. Discrimination allegation

[13] Ms. Salanguit emailed the HR Director again on July 14, stating that she had been told the Cage supervisors were making fun of her speech impediment – "my disability." She said she felt belittled and harassed by her team, and said it had gotten to a point where she had no choice "but to lodge an official complaint." In text messages to the Cage Director the next day, Ms. Salanguit stated that the "bullying and picking and broadcasting my errors were one thing," but "impersonating and mimicking my speech maliciously is another." She said she felt the same as when she "first had to step out of the house after surgery" – unable to face people.

[14] The HR director emailed Ms. Salanguit on July 15 to apologize for the delay. She said her team had been short staffed and she would follow up soon. The HR Director emailed again on July 17, advising that Parq was commencing an investigation. In a response email later that day, Ms. Salanguit thanked the HR Director and said the Cage Director had “explained the process ... and [was] being very supportive.”

[15] On July 18, 2019, Ms. Salanguit accepted the gaming compliance position. The next day, she went on medical leave, during the course of which she has received wage-loss benefits from WorkSafeBC. Parq concluded its investigation in mid-September 2019.

III DECISION

[16] Ms. Salanguit’s complaint to the Tribunal is about Ms. Abonitalla’s conduct and Parq’s subsequent investigation and corrective and remedial actions. Ms. Salanguit originally raised allegations of bullying behaviour with Parq in the Bullying Complaint. While seeking action on that front, she learned, in July 2019, that Ms. Abonitalla had been mocking and mimicking her speech impediment.

[17] In her complaint to the Tribunal, Ms. Salanguit alleges that Ms. Abonitalla “was impersonating [her] speech in front of other employees for laughs.” She acknowledges that Parq investigated this conduct, but expresses dissatisfaction with the investigation process and its outcome. She also feels that some of the harms she has experienced could have been prevented if Parq had taken swift action in response to her original Bullying Complaint.

[18] The two Respondents did not reply to Ms. Salanguit’s complaint together, and they filed their dismissal applications separately. However, Parq’s application seeks the dismissal of Ms. Salanguit’s complaint against not only Parq itself, but also Ms. Abonitalla. I find I can most efficiently decide the matter before me based on Parq’s dismissal application alone, without needing to consider Ms. Abonitalla’s. Parq’s application raises two issues under s. 27(1)(d)(ii) of the *Code*:

- a. Will proceeding with the complaint not further the *Code's* purposes because Parq addressed the alleged discrimination?
- b. Will proceeding with the complaint not further the *Code's* purposes because Parq made a reasonable settlement offer?

[19] In an application to dismiss, the onus is on the applicants to establish the basis for dismissal: *Braden v. Howe Sound Pulp and Paper and others*, 2023 BCHRT 225 at para. 14; *Morris v. BC Public Service Agency*, 2017 BCHRT 27 at para. 39. The onus is therefore on Parq to show me that the answers to the above questions favour the dismissal of Ms. Salanguit's complaint. I will address each question in turn.

A. Will proceeding with the complaint not further the *Code's* purposes because Parq address the alleged discrimination?

[20] Ms. Salanguit alleges that Ms. Abonitalla mocked and mimicked her disability-related speech in the workplace. This is the underlying allegation of discrimination in Ms. Salanguit's complaint to the Tribunal, which, for convenience, I will refer to as the "Discrimination Allegation." There is no evidence indicating that the impugned conduct in the Bullying Complaint related to a personal characteristic that is protected by the *Code*.

[21] Parq admits that Ms. Salanguit experienced "discriminatory teasing and mocking at work." It admits that this was "not justifiable" and "should not have occurred." Parq says it regrets Ms. Abonitalla's actions. However, it argues that it has addressed them in a fulsome and good faith manner, acting reasonably and in accordance with its legal duties. As a result, it says the complaint should be dismissed against both Respondents under s. 27(1)(d)(ii) of the *Code*.

[22] Section 27(1)(d)(ii) allows the Tribunal to dismiss a complaint where proceeding with it would not further the purposes of the *Code*. Deciding to dismiss a complaint on this basis is a discretionary, case-by-case determination: *Stengert obo others v. Strata Plan BCS2427*, 2018 BCHRT 70 at para. 13. A variety of circumstances may justify the Tribunal's exercise of this discretion, including where the underlying dispute has been resolved or the respondent has

already taken reasonable and effective steps to remedy or otherwise address the alleged discrimination: see *Williamson v. Mount Seymour Park Housing Co-operative and others*, 2005 BCHRT 334. For the Tribunal to dismiss a complaint under s. 27(1)(d)(ii) on the basis that the respondent has appropriately addressed the alleged discrimination, the respondent must persuade the Tribunal that:

- a. The respondent took the complainant's discrimination claim seriously;
- b. The respondent appropriately addressed the impact on the complainant; and
- c. Where necessary, the respondent took appropriate steps to ensure the discrimination would not happen again: *Tambour v. Teamsters Union Local 155*, 2024 BCHRT 20 at para. 23, and cases cited therein.

[23] The Tribunal's analysis under s. 27(1)(d)(ii) is contextual and case-specific. Alongside the above requirements for dismissing a complaint on the basis that the alleged discrimination has been addressed, the Tribunal may also consider relevant contextual factors, such as: the seriousness of the alleged discrimination; the timeliness of the respondent's response to the allegation; the nature of its response (e.g., whether the respondent investigated the allegation); whether the respondent acknowledged the discrimination; whether the complainant was compensated for their losses; whether the respondent has a discrimination policy; and the importance of encouraging parties to address allegations of discrimination in a timely and constructive manner: *Tambour* at para. 24; see *Baker v. Brentwood College School and another*, 2011 BCHRT 170 at para. 47. Applying the above analysis to the evidence before me, I am satisfied that Ms. Salanguit's complaint should be dismissed against Parq, but not against Ms. Abonitalla.

1. *Parq took Ms. Salanguit's discrimination claim seriously*

[24] Parq says it acted entirely appropriately upon receiving Ms. Salanguit's complaint regarding the Discrimination Allegation, including conducting a thorough investigation, making findings and conclusions regarding Ms. Abonitalla's conduct, and taking various corrective and

remedial measures. It says it “takes allegations of discriminatory harassment seriously, and did so in this case.” Ms. Salanguit, on the other hand, says Parq does not take harassment and discrimination sufficiently seriously, and she is critical of Parq’s investigation process.

[25] Ms. Salanguit says the evidence “shows discrimination had been occurring from other employees in other departments.” She points to the August 2018 text messages in which she told the Cage Director about misunderstandings related to her speech impediment, and argues that Ms. Abonitalla’s behaviour was not an isolated incident, but rather was similar to “situations that the [Cage Director] was made aware of.” Ms. Salanguit says Parq failed to protect her, and should have taken swift action in response to her original Bullying Complaint. She argues that Parq’s response to her situation was inadequate, pointing to the Cage Director’s inability to discuss the Bullying Complaint with Ms. Abonitalla due to scheduling conflicts, and the HR Director’s July 15 admission regarding delay due to staffing issues. Ms. Salanguit claims there was “no sense of urgency to deal with matters that are in regards to employee welfare when discrimination is involved.” She says she was told on July 17 that Parq was commencing an investigation, but asserts that the investigation did not start until July 26 and then stretched over a seven-week period, despite Parq being a “24-hour operation.” Ms. Salanguit also points to a July 16 text message, in which she tells the Cage Director that an eyewitness to Ms. Abonitalla’s behaviour was unwilling to come forward.

[26] I appreciate Ms. Salanguit’s concerns regarding Parq’s response to her situation; however, I do not accept her arguments. For instance, I do not accept her assertion that the evidence before me “shows discrimination had been occurring from other employees in other departments.” In her August 2018 text messages to the Cage Director, Ms. Salanguit refers to employees who had stated they could not understand what she was saying to them, and describes “a misunderstanding” with an employee in the slots department, involving Ms. Salanguit speaking loudly in order to be understood, and the employee being uncooperative after saying Ms. Salanguit was yelling. I do not doubt Ms. Salanguit’s statement, in her text messages, that those types of interactions with her colleagues were “really affecting [her] and ... putting [her] in a bad headspace.” However, without more, I do not accept that the August

2018 text messages amount to evidence of discrimination, nor do I find that they are evidence of conduct similar to Ms. Abonitalla's direct, derogatory behaviour regarding Ms. Salanguit's disability, which is before me in this complaint.

[27] In addition, while the materials in this case suggest that Parq's handling of the Bullying Complaint may have been lacking, there is no evidence that the Bullying Complaint engaged the *Code*, and so Parq's handling of it is not before me. Focussing instead on how Parq handled the Discrimination Allegation, I do not accept Ms. Salanguit's assertion that Parq's response was inadequate. I find that the Discrimination Allegation was serious, and the following undisputed evidence indicates Parq treated it as such:

- a. Emails show that, within a few days of receiving Ms. Salanguit's Discrimination Allegation, the HR Director confirmed that Parq was commencing an investigation.
- b. Along with its dismissal application, Parq provided a sworn statement from its HR Director, in which she describes the investigation process as follows. On July 26, Parq interviewed three potential witnesses identified by Ms. Salanguit. On July 29, Parq interviewed two potential witnesses identified by Ms. Salanguit. On August 16, Parq interviewed two additional witnesses. Some of these witnesses had second-hand knowledge the alleged discrimination, but none provided direct, corroborating evidence. On August 27, Parq interviewed Ms. Abonitalla, who claimed she had no memory of the alleged misconduct. On August 29 and September 3, Parq interviewed two more potential witnesses, one of whom provided direct evidence regarding an incident of the alleged discrimination. Given this new evidence, Parq conducted a second interview with Ms. Abonitalla on September 12. Ms. Abonitalla denied any recollection of the specific incident, but "she recognized her behaviour may be reasonably perceived or interpreted in the manner alleged."

- c. The HR Director says that, following the September 12 interview, Parq concluded its investigation, finding that the Discrimination Allegation was substantiated and concluding that Ms. Abonitalla had violated its policy against bullying and harassment.
- d. In a September 18, 2019 letter to Ms. Abonitalla, Parq outlined its investigation findings and conclusions, confirmed that Ms. Abonitalla's behaviour was unacceptable, and issued a "Final Written Warning" that any future conduct of a similar nature would result in Ms. Abonitalla's termination. The HR Director says that the Union did not grieve this disciplinary letter. She says Parq "worked closely with the Union in issuing this discipline to ensure that all parties understood the seriousness with which Parq viewed this behaviour and to ensure that no grievance would be filed."
- e. The HR Director says that, as a condition of Ms. Abonitalla's continued employment, Parq required her to apologize to Ms. Salanguit. A copy of Ms. Abonitalla's September 20, 2019 apology letter was provided to the Tribunal, and email correspondence shows that Parq provided the letter to Ms. Salanguit on September 23.

[28] In my view, the above is evidence of a fair, thorough, and timely workplace investigation, which was proportionate to the nature of the discrimination alleged, was conducted with a reasonable level of urgency, and was followed by appropriate corrective action. On this evidence, I am persuaded Parq took Ms. Salanguit's discrimination claim seriously.

2. Parq appropriately addressed the impact on Ms. Salanguit

[29] Ms. Salanguit says that Parq was not transparent in its communications with her following the investigation. Specifically, she says Parq did not tell her about its post-investigation corrective and remedial measures until the date of the Tribunal-assisted mediation in June 2021. She states that telling her earlier "could [have] avoided all of the

trauma caused” to her. She also notes that Ms. Abonitalla remains at Parq, and observes that in *Asad v. Kinexus Bioinformatics*, 2008 BCHRT 293, the Tribunal found that the complainant’s situation improved when a co-worker who had discriminated left the workplace. She says that while the gaming compliance position “is physically not in [the Cage] department,” she will remain vulnerable to further hardship working at the casino.

[30] Even accepting these submissions, for the following reasons I am satisfied that Parq appropriately addressed the impact of Ms. Abonitalla’s discrimination.

[31] First, the evidence shows that, upon learning of the Discrimination Allegation, the HR Director connected Ms. Salanguit with Parq’s employee assistance program, where Ms. Salanguit was able to access counselling. Second, the materials before me indicate that Parq accommodated Ms. Salanguit’s need for medical leave in the wake of Ms. Abonitalla’s conduct, and has continued to do so. In a June 23, 2021 letter to Ms. Salanguit, in which Parq offers to settle Ms. Salanguit’s complaint [**Settlement Offer**], Parq expressly acknowledged its duty to reasonably accommodate Ms. Salanguit in her absence and return to work, and committed to ensuring that her return to work arrangements were tailored to her specific circumstances. Third, Parq’s evidence is that it not only disciplined Ms. Abonitalla, but also required her to apologize to Ms. Salanguit for her harmful and offensive conduct. In this way, Ms. Abonitalla was made to be accountable not only to her employer, but also to Ms. Salanguit herself. Moreover, in addition to delivering Ms. Abonitalla’s apology letter, the evidence shows Parq offered to arrange a meeting between Ms. Salanguit and Ms. Abonitalla, to allow them to discuss what happened. The Settlement Offer states that this offer remains open for as long as Ms. Salanguit and Ms. Abonitalla remain Parq employees. Fourth, as I discuss below, Parq offered Ms. Salanguit a settlement payment that is reasonably within the range of injury to dignity awards she might expect to receive from the Tribunal if her complaint succeeds.

[32] In the dismissal analysis under s. 27(1)(d)(ii), the standard the Tribunal applies to a respondent claiming to have addressed the alleged discrimination is not perfection; it is more in the nature of “reasonableness” in the circumstances: *Baker* at para. 56. I am persuaded that

Parq met this standard in its efforts to address the impact, on Ms. Salanguit, of Ms. Abonitalla's discrimination.

3. *Parq took appropriate steps to ensure the discrimination would not happen again*

[33] Ms. Salanguit's submissions to the Tribunal indicate a lack of confidence in Parq's ability to prevent similar discrimination from happening in the future. She says Parq lacks "sufficient and efficient systems ... to not only prevent but appropriately remedy discriminatory actions of employees who are unionized and hold a union position." She acknowledges Parq's policy against bullying and harassment, but says Parq "lacks in execution" of the policy, pointing again to delays in Parq's investigation process related to scheduling and staffing issues. For its part, Parq says that it "undertook a process of resolution" following its investigation, and its remedial actions "were reasonable and complete." The undisputed evidence of those actions includes the letters of discipline and apology discussed above, as well as the following:

- a. In an October 8, 2019 memorandum to "All Cage Associates" (i.e., Cage employees), Parq reminded employees of the requirement to be respectful and professional with one another, specifically instructing staff to "**avoid making negative comments about other associates, teasing and excluding coworkers, and spreading rumours,**" stating that this "**type of conduct is a violation of our Harassment and Bullying Policy and will be investigated,**" and warning that violations of the policy "**may lead to discipline, up to and including termination**" (emphasis in original). The HR Director says this memorandum was posted in the workplace until November 8, 2019.
- b. The HR Director says that, in June 2021, Parq reviewed and updated its bullying and harassment policy to further highlight the prohibited grounds of discrimination under the *Code*, and to re-name it the "Bullying, Harassment & Unlawful Discrimination Prevention Policy."
- c. In the Settlement Offer, Parq confirmed that it was adopting "a strictly zero tolerance position concerning unlawful discrimination, bullying and harassment

in the workplace,” and that it intended “to remind all Associates of this important position upon the re-opening of the Casino,” which had been closed for an extended period due to the COVID-19 pandemic.

- d. In June 2021, in preparation for the casino’s reopening, the HR Director says that “all employees were required to attend in-person mandatory training,” which “included a review of Parq’s expectations regarding a respectful workplace and reminder about workplace bullying and harassment.”

[34] In addition, the HR Director says employees were required to acknowledge the updated bullying, harassment, and discrimination policy as part of their post-COVID-19 return to work. She also says that, after posting the memorandum to Cage staff in October 2019, “during regularly scheduled one-on-one meetings between Cage Shift Managers and the employees in the Cage department, Cage Shift Managers reminded employees about the Employer’s bullying and harassment policy and the importance of respectful workplace behaviour.” In her response to Parq’s dismissal application, Ms. Salanguit did not expressly deny that these meetings and acknowledgments happened; however, she did request disclosure of related “sign-off sheets,” which Parq did not provide or address in its reply submission.

[35] Even without the requested sign-off sheets, I find that Parq’s corrective and remedial actions, as evidenced in the materials before me, amounted to appropriate steps to ensure discriminatory conduct like Ms. Abonitalla’s would not happen again. I reach this finding despite the evidence that Ms. Abonitalla remained in her Cage supervisor position after the investigation, and that her written, disciplinary warning was subject to a collective agreement-mandated “sunset clause” cancelling the letter after 12 months as long as her conduct attracted no further discipline during that period. Again here, the standard I am applying to Parq’s actions is not perfection; it is reasonableness in the circumstances. Ms. Abonitalla appears to have been employed by Parq or its predecessor casino for over 14 years at the time of Parq’s investigation. Given her length of service and her expression of apology to Ms. Salanguit, on the evidence before me I am unable to conclude that Parq’s decision to continue to employ her as it did was unreasonable or inappropriate.

[36] At the end of the day, the evidence is that Parq had a policy to deal with the Discrimination Allegation and it did so in a direct and attentive manner. It is important for the Tribunal to encourage employers to conduct themselves in this way: *Horner v. Concord Security Corporation*, 2003 BCHRT 86 at para. 31. In my view, this is especially the case where an employer demonstrates respect and support for its employee, takes responsibility for its mistakes, and tries to do better. I find these qualities evident in the materials before me, including in the Settlement Offer, which states, in part, as follows:

Dear Rosalyn:

...

We hope this letter finds you well. We have thought very carefully about your Human Rights Complaint and the perspective you have shared with us in our mutual efforts to resolve this matter. ...

We understand the circumstances that led to your Complaint have been upsetting. It has always been our intention to be fully supportive of you throughout this process. We believed we were doing the right thing by respecting your privacy and not bothering you during your leave of absence. However, we appreciate now that if we had shared with you more of the details concerning our efforts to address the matter, some of the upset might have been avoided.

We hope you will see this letter as our genuine expression, on the record, of our good faith desire to bring this matter to a fair and reasonable conclusion. ...

We cannot change what has happened, but we have carefully designed the terms set out below to address each of the concerns raised in your Complaint.

[37] I appreciate that Ms. Salanguit remains impacted by Ms. Abonitalla's conduct and dissatisfied with Parq's response. However, for all of the above reasons, I am satisfied that Parq has taken reasonable and effective steps to address and remedy the alleged discrimination such that proceeding with Ms. Salanguit's complaint against Parq would not further the purposes of

the *Code*. I therefore grant Parq's application to dismiss Ms. Salanguit's complaint against it under s. 27(1)(d)(ii). I reach a different conclusion, however, in regard to Ms. Abonitalla.

[38] The evidence before me is that, in her first investigation interview with Parq, Ms. Abonitalla claimed she had no memory of having engaged in the alleged discrimination. Then, in her second interview, when witness evidence corroborating the Discrimination Allegation was put to her, Ms. Abonitalla expressed some "regret and responsibility," yet continued to deny any recollection of the specific incident alleged or any intention to mock Ms. Salanguit. I acknowledge that Ms. Abonitalla has apologized to Ms. Salanguit and expressed remorse; however, I find her apology letter to be lacking in terms of demonstrating ownership of what witnesses, including at least one eyewitness, say she did.

[39] In circumstances like those before me, I do not see how a respondent can be found to have appropriately remedied or otherwise addressed their direct discrimination if they claim to have no recollection of it. Therefore, on the first argument put forward in Parq's dismissal application, I decline to dismiss Ms. Salanguit's complaint against Ms. Abonitalla.

B. Will proceeding with the complaint not further the *Code's* purposes because Parq made a reasonable settlement offer?

[40] Parq's second argument for dismissal of the complaint relates to the Settlement Offer. Parq says the Settlement Offer is reasonable and so the Tribunal should dismiss the complaint against both Respondents under section 27(1)(d)(ii) because it would not further the *Code's* purposes to proceed: *Carter v. Travelex Canada and Travelex UK (No. 3)*, 2007 BCHRT 275 at para. 23-25, aff'd 2009 BCCA 180.

[41] There are two pre-requisites for the Tribunal to consider dismissing a complaint based on a reasonable settlement offer. First, the settlement offer must be made "with prejudice," meaning that it is properly admissible before the Tribunal: *Dar Santos v. University of British Columbia*, 2003 BCHRT 73 at para. 64; *Carter* at para. 25. In the present case, it is not disputed that the Settlement Offer was made on a with prejudice basis. Second, the offer must remain open for acceptance even if the complainant initially rejects it and even if the Tribunal

dismisses the complaint: *Spina v. City of Kamloops (No. 2)*, 2022 BCHRT 59 at para. 14. In the present case, the Settlement Offer closes on “the first day scheduled for the hearing” of Ms. Salanguit’s complaint. I find that this language means the Settlement Offer will remain open indefinitely following my dismissal of Ms. Salanguit’s complaint, because the first day of hearing will never come. The two pre-requisites are therefore met.

[42] I have already granted Parq’s application to dismiss the complaint **against Parq** for the reasons discussed above. As a result, the question now before me is whether to dismiss the complaint **against Ms. Abonitalla** based on the Settlement Offer. To answer this question, I must consider two things: (1) whether the Settlement Offer is reasonable, and (2) even if it is, whether it would serve the purposes of the *Code* to proceed anyway: *Iversen v. Gateway Casinos & Entertainment*, 2023 BCHRT 3 at para. 20; *Heitner v. BC Provincial Renal Agency and others (No. 3)*, 2020 BCHRT 134 at para. 46.

1. *Is the Settlement Offer reasonable?*

[43] The Tribunal’s remedial powers under s. 37(2) of the *Code* include making cease and refrain orders against the person who discriminated, declarations regarding the discriminatory conduct, orders to remedy the discrimination through ameliorative actions, and compensatory orders related to wage loss and injury to the complainant’s dignity, feelings, and self respect. In assessing whether a settlement offer is reasonable, the Tribunal assumes the complaint will succeed at a hearing and considers what remedial orders would likely follow: *Heitner* at para. 47. The settlement offer does not need to mirror exactly what the Tribunal would order and does not need to contain an admission of liability: *Carter* at para. 30 and *Frick v. University of British Columbia*, 2009 BCHRT 85 at para. 54. However, the offer must fully address both the complainant’s allegations and the available monetary and non-monetary remedies for the alleged discrimination: *Issa v. Loblaw*, 2009 BCHRT 264 at para. 35. Alongside these requirements, the Tribunal considers whether the respondent’s remedial actions adequately remedied the alleged discrimination and are consistent with the types of orders the Tribunal might make if the complaint were successful, and whether the monetary settlement offered is within the reasonable range of what the Tribunal might award the successful complainant: *Issa*

at para. 35. Measured against these requirements and considerations, Parq argues that the Settlement Offer is reasonable. Ms. Salanguit does not specifically address the reasonableness of the Settlement Offer in her submissions, but generally opposes Parq's dismissal application. For the following reasons, I am persuaded that the Settlement Offer is reasonable.

[44] On the whole of the evidence before me, I find that that the Settlement Offer, when combined with Parq's corrective and remedial actions, fully addresses the allegations in Ms. Salanguit's complaint to the Tribunal. As I discussed above, the complaint before me is about Ms. Abonitalla's discriminatory mocking of Ms. Salanguit's disability, and Parq's response to that discrimination. I have already found that Parq's response was appropriate, and that reasonable steps were taken to properly address and remedy Ms. Abonitalla's discrimination. Further to that finding, I am also satisfied that Parq's corrective and remedial actions, including the Settlement Offer, are consistent with, and fully address, the types of non-monetary orders the Tribunal might make under s. 37(2) of the *Code* if the complaint were successful. For instance, in the letter of discipline to Ms. Abonitalla, Parq confirmed that her mocking behaviour was unacceptable and warned her against further similar behaviour. In addition, the undisputed evidence indicates Parq took various concrete steps to make the casino work environment better, including reviewing and updating its policy, issuing a clear and specific memorandum to Cage staff, openly adopting a "zero tolerance" position regarding discrimination in the workplace, and requiring employees to attend respectful workplace training.

[45] I also find that the Settlement Offer fully addresses the monetary remedies available for the alleged discrimination. The undisputed evidence is that Ms. Abonitalla has received WorkSafeBC wage-loss benefits throughout the course of her medical leave. Parq acknowledges that there may be some discrepancy between the amount of these benefits and the wages Ms. Salanguit would have earned at work. However, Parq says this is adequately addressed by the \$4,000 payment offered in the Settlement Offer, which it argues is within the reasonable range of what the Tribunal might award as injury to dignity compensation in this case. I agree with this submission. Under the Settlement Offer, the \$4,000 is a net payment, to be paid as general

damages, without any deductions. The Settlement Offer notes that, according to the Tribunal's website, between 2009 and 2019, nearly 45% of injury to dignity awards were for \$5,000 or less. In its dismissal application, Parq characterizes Ms. Salanguit's complaint as involving discrete incidents of discriminatory mocking at work. I find this characterization to be fair on the evidence before me. Given the nature of Ms. Salanguit's complaint, Parq argues that the reasonable range of what the Tribunal might award Ms. Salanguit as injury to dignity compensation is between \$2,500 and \$5,000, providing citations to the following past decisions of the Tribunal: *MacDonald v. Najafi and another (No. 2)*, 2013 BCHRT 13 (several instances of discriminatory harassment found to be insensitive, demeaning, and persistent; \$4,000 injury to dignity award); *McKenna v. Atlas Anchor Systems (No. 2)*, 2011 BCHRT 60 (termination due in part to employer's frustration regarding employee's disability-related absence; \$2,000 award); *Price v. E.B. Horseman & Son and others*, 2013 BCHRT 100 (several instances of racist comments; complaint dismissed due to reasonable settlement offer including \$5,000 payment).

[46] In addition to the cases cited by Parq, I note the following Tribunal decisions: *Gardner and another v. Geldenhuys*, 2014, BCHRT 150 (supervisor singling out Filipina complainants and generally disparaging Filipino employees; \$2,000 award to one complainant, \$1,500 award to other complainant); *Q v. Wild Log Homes and another*, 2012 BCHRT 135 (repeated sexual touching and comments by employer; \$7,500 award, plus additional award for respondent's retaliation); *Issa* (disrespectful and dismissive behaviour in response to customer concerns related to religion; complaint dismissed due to reasonable settlement offer including \$5,000 payment and \$5,000 charitable donation); *Wutke v. Mageria Holdings*, 2006 BCHRT 340 (disability-related workplace harassment by co-workers, such as throwing food, harsh treatment, and disparaging remarks and gestures; \$6,000 award); *MacGarvie v. Friedmann (No. 4)*, 2009 BCHRT 47, aff'd 2012 BCCA 109 (multiple instances of sexual harassment by landlord resulting in loss of housing; \$10,000 award); *McIntosh v. Metro Aluminum Products and another*, 2011 BCHRT 34 (over three-month period, employer sent hundreds of vulgar and offensive text messages that were sexual in nature, resulting in job loss; \$12,500 award). Given these cases and those cited by Parq, I find that the "reasonable range" put forward in Parq's dismissal application is both too low and overly narrow. As the Tribunal has frequently noted in

recent decisions, the trend for injury to dignity awards is upward: see, e.g., *Heitner v. BC Provincial Regency and others (No. 2)*, 2020 BCHRT 81 at para. 50; *Lall v. Apidel Staffing Inc. operating as Apidel Technologies and another*, 2023 BCHRT 45 at para. 69. At the same time, the amounts of the awards ordered (and the settlement offers endorsed) in the case law vary significantly, depending on the complainant's vulnerability and the nature and impact of the discrimination. In the circumstances of Ms. Salanguit's complaint, and given my determination that Parq took reasonable and effective steps to address the Discrimination Allegation, I would estimate a reasonable range of injury to dignity compensation between \$2,000 and \$10,000 if the complaint succeeded at a hearing. The payment offered in the Settlement Offer is at the lower end of this range, particularly considering Parq's submission that the payment is also intended to cover Parq's liability, if any, for discrepancies between Ms. Salanguit's wage loss benefits and the wages she would have earned at work. Still, on the information and case law before me, I find that the Tribunal, exercising its broad discretion to determine compensatory remedies, could reasonably award Ms. Salanguit a damages award in the range of what Parq has already offered for Ms. Abonitalla's discrimination.

2. *Will it serve the purposes of the Code to proceed anyway?*

[47] The purposes set out in s. 3 of the *Code* include fostering an inclusive society in which there are no barriers to full participation, promoting a climate of understanding and mutual respect, preventing discrimination in contravention of the *Code*, identifying and eliminating persistent patterns of inequality, and providing a means of redress for persons who have experienced discrimination contrary to the *Code*. The purposes of the *Code* therefore go beyond individual rights and remedies in a given complaint. Determining whether proceeding with a complaint will further the *Code's* purposes not only involves an assessment of the complaint itself, but also encompasses consideration of broader public policy issues, including the efficiency and responsiveness of the human rights system, and the expense and time involved in processing a complaint to a hearing: *Dar Santos* at para. 59. Given these broader considerations, there is a strong public policy interest in encouraging parties to resolve their disputes in good faith and on a voluntary basis: *Spina* at para. 22. As a result, in general, it does

not further the purposes of the *Code* to proceed to a hearing where the respondent has made a reasonable settlement offer: *Iversen* at para. 45, citing *Spina* at para. 23.

[48] In the present case, based on my assessment of the whole of the evidence and argument before me, I find that there are no factors that favour proceeding with the complaint given Parq's reasonable settlement offer. Ms. Salanguit's complaint of discriminatory harassment, while very serious, is – regrettably – not unique or novel, and so I do not find that it engages broader public policy issues. Nor am I satisfied, under the circumstances, that it is in any party's interest to endure the stress and uncertainty of a hearing when one can reasonably be avoided. Indeed, Ms. Salanguit, herself, states in her response submission that she “would like to settle with what the tribunal sees as just and fair.” She also states that she wants “environmental changes in the workplace,” including a new “Workplace Human Rights & Culture” position. With respect to these statements, I note that I have found that the Settlement Offer is fair and reasonable, and will remain open for Ms. Salanguit's acceptance. And I find that the evidence shows that Parq has already taken steps to make positive changes in the workplace, and has expressed a commitment to make further improvements in its practices related to discrimination complaints and investigations.

[49] In sum then, I am satisfied that Parq made a reasonable settlement offer, which will remain open for Ms. Salanguit's acceptance following this decision, and so it would not further the purposes of the *Code* to proceed to a hearing of the complaint against Ms. Abonitalla. I therefore grant Parq's application to dismiss Ms. Salanguit's complaint against Ms. Abonitalla under s. 27(1)(d)(ii).

IV CONCLUSION

[50] Parq has taken reasonable and effective steps to address and remedy the alleged discrimination in this case. On this basis, Parq's application to dismiss the complaint against it under s. 27(1)(d)(ii) of the *Code* is granted.

[51] Parq has made a reasonable settlement offer to Ms. Salanguit. The Settlement Offer will remain open for Ms. Salanguit's acceptance following this decision. On this basis, Parq's application to dismiss the complaint against Ms. Abonitalla under s. 27(1)(d)(ii) of the *Code* is granted.

[52] The complaint is dismissed.

Jonathan Chapnick
Tribunal Member