

Date Issued: April 24, 2024

File: CS-002992

Indexed as: Young (by Pepper) v. Kudos Hospitality Inc. and another, 2024 BCHRT 130

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:

Gayle Young (by Pepper)

**COMPLAINANT**

AND:

Kudos Hospitality Inc. dba Riviera Village Green Hotel and Harry Pujara

**RESPONDENTS**

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

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Tribunal Member:

Kylie Buday

On Behalf of the Complainant:

Cynthia Pepper

Counsel for the Respondent Kudos  
Hospitality Inc. dba Riviera Village Green  
Hotel:

Arman Chak

## I INTRODUCTION

[1] Gayle Young worked at the Riviera Village Green Hotel from May 2011 until August 24, 2020. She alleges Kudos Hospitality Inc. dba Riviera Village Green Hotel [the **Hotel**] and Harry Pujara [together, the **Respondents**] discriminated against her based on race, religion, and marital status, contrary to s. 13(1) of the *Human Rights Code*, which prohibits discrimination regarding employment. The Hotel denies discriminating and applies to dismiss the complaint against it under ss. 27(1)(d)(ii) and (f) of the *Code*.

[2] Under s. 27(1)(d)(ii), the Hotel submits it would not further the purposes of the *Code* to proceed with the complaint because it took Ms. Young's allegations seriously, dealt with her allegations directly, and provided her with a remedy. Under s. 27(1)(f), the Hotel submits the subject of Ms. Young's complaint was appropriately dealt with in other proceedings, namely through grievances brought by UNITE HERE Local 40 [the **Union**], which resulted in two settlement agreements.

[3] Mr. Pujara did not respond to the complaint and did not make any submissions on this application, though I am satisfied he had notice of both.

[4] For the following reasons, I deny the application in full. The grievances, and resulting settlement agreements, may have addressed some of Ms. Young's concerns; however, I am not persuaded that they appropriately dealt with Ms. Young's allegations of discrimination. For similar reasons, I deny the application under s. 27(1)(d)(ii). There is no evidence before me that shows the Hotel considered Ms. Young's allegations of discrimination specifically, let alone remedied those allegations. I am therefore not persuaded that it would not further the purposes of the *Code* to proceed with the complaint.

[5] To make this decision, I have considered all the information filed by the parties. In these reasons, I only refer to what is necessary to explain my decision. I make no findings of fact.

## II BACKGROUND

[6] Ms. Young alleges that in 2020, after the Hotel changed owners, the Respondents started taking away her job duties and giving them to new employees. She says the employees who were given her job duties were predominantly “new hires of South Asian descent.” At the time, Ms. Young was the Hotel’s Housekeeper Supervisor. She says the Respondents posted her job on the Indeed Job Bank on August 20, 2020, demonstrating that they were planning to terminate her employment.

[7] Around the same time, on August 24, 2020, Ms. Young states she had a “Covid-19 scare” at work and needed to go home early. She says she had misplaced her keys and so she asked her husband, who was also an employee of the Hotel at that time, to bring her another set. After Mr. Young brought Ms. Young her keys, she left work and went home. There does not appear to be any dispute that she did not ask permission to do so. Meanwhile, it appears that after he gave Ms. Young her keys, Mr. Young went into the Hotel and got into an argument with Mr. Pujara.

[8] Ms. Young alleges that when she called Mr. Pujara the next day, he told her that he could not decide whether to allow her to return to work or not because he was very upset about the argument he had with her husband.

[9] A day later, Ms. Young says Mr. Pujara promoted a “Caucasian staff member” to Housekeeper Supervisor. She says the Hotel later fired that employee just before her 3-month probationary period ended. Ms. Young states this is evidence that the Hotel tried to get rid of two “Caucasian housekeeping supervisors.”

[10] Ms. Young submits that by the end of September, Mr. Pujara had not decided whether she could return to work or not. She says he sent her an email on September 25, 2020, in which he said she needed to bring him a written apology “from her husband for abusing me in front of all the staff” and that she “will no longer be a supervisor as she has shown that she is not reliable to be in the supervisor position by walking out on us.” Mr. Pujara stipulated that if Ms.

Young agreed to these terms, she could come to see him “Thursday morning at 8:30 am with the letter.”

[11] Ms. Young’s husband refused to write Mr. Pujara an apology letter. Ms. Young says this made it impossible for her to return to her job. She says the Respondents’ requirement that she bring in such an apology contravenes the *Code* because it is based on her marital status.

[12] As she did not return to work, the Respondents provided Ms. Young with a Record of Employment [ROE]. The ROE stated Ms. Young quit her job. Ms. Young’s Union brought a grievance on her behalf over her termination.

[13] On December 17, 2020, Ms. Young’s Union signed a settlement agreement with the Hotel. That agreement consists of four paragraphs. The two paragraphs relevant to this decision are:

1. The Employer shall amend the Code on Ms. Young’s Record of Employment from E to A indicating that she was laid off September 5, 2020.
2. Ms. Young shall retain her previous position as Housekeeper Supervisor upon recall from layoff.

[14] Ms. Young says that on January 26, 2021, while she was laid off, the Respondents posted a position for a “Housekeeping Supervisor.” She also says the Respondents’ claim that she was laid off due to a shortage of work was untrue because other staff, who were of “South Asian decent,” and who had less seniority, remained employed.

[15] It appears that the Union also brought a grievance on behalf of another Hotel employee, which resulted in a settlement agreement dated April 20, 2021. Under the terms of that agreement, the Hotel agreed to review its list of employees who had received severance to correct any errors in the severance amounts those employees received. The Hotel also relies on this settlement agreement in support of its application.

### III DECISION

[16] The Hotel asks the Tribunal to dismiss the complaint under either or both s. 27(1)(d)(ii) or (f) because Ms. Young’s complaint has been appropriately dealt with in another proceeding and it would not further the purposes of the *Code* to proceed with the complaint.

[17] Section 27(1)(f) of the *Code* grants the Tribunal discretion to dismiss a complaint where “the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding.” It is the “statutory reflection” of common law doctrines which aim to “deliver to the litigation process principles of finality, the avoidance of multiplicity of proceedings, and protection for the integrity of the administration of justice, all in the name of fairness”: *British Columbia (Workers’ Compensation Board) v. Figliola*, 2011 SCC 52 [**Figliola**] at para. 25.

[18] To decide whether the substance of a complaint has been appropriately dealt with in another proceeding, the Tribunal must ask itself three things:

- a. Did the other proceeding have jurisdiction to decide human rights issues under the *Code*?
- b. Was the previously decided legal issue essentially the same as what is being complained of to the Tribunal?
- c. Did the complainant have the opportunity to know the case to be met and have a chance to meet it, regardless of whether the previous process mirrored the Tribunal’s?

*Figliola* at para. 37

[19] Ultimately, the Tribunal must decide “whether it makes sense to expend public and private resources on the relitigation of what is essentially the same dispute”: *Figliola* at para. 37.

[20] The Hotel submits it appropriately addressed the issues raised in Ms. Young's complaint through grievances that resulted in the two above-mentioned settlement agreements. The Hotel argues the substance of the grievance and Ms. Young's complaint before this Tribunal are the same: "namely it has been around the way she was laid-off from Kudos Hospitality." I do not have copies of the grievances. The Hotel also submits the change in Ms. Young's ROE from "quit" to "laid off" was responsive to the alleged discrimination because it "allowed her the opportunity to return to Kudos Hospitality, if and when a supervisor is needed." The Hotel also submits it provided her with lost wages, pension, and health benefits, according to the terms of the second agreement.

[21] I note the Hotel also submits that Ms. Young's race or marital status had nothing to do with her demotion or its decision to end her employment, and that her complaint is baseless. I have not considered this argument, or the Hotel's submission that Ms. Young cannot claim that her "Caucasian" identity is a protected ground under the *Code*. Those submissions are not relevant to the analysis under either or both s. 27(1)(d)(ii) or (f). They are about the merits of the complaint and can be made at a hearing. I have also not considered the Hotel's submission that Ms. Young's decision to label employees and the owner of the Hotel as "Hindu, and later as South Asian," is discriminatory. The Hotel has not elaborated on, or argued why, this submission supports its application under either or both s. 27(1)(d)(ii) or (f).

[22] Turning to Ms. Young's response to the Hotel's application: Ms. Young submits the settlement agreements did not deal with her allegations of discrimination and asks that the Tribunal dismiss the application.

[23] I am not persuaded by the Hotel that the settlement agreements are evidence that another proceeding has adequately dealt with Ms. Young's allegations of discrimination under the *Code*. There is nothing in the wording of either settlement agreement that indicates the legal issues that gave rise to the grievances, on either Ms. Young's behalf or on behalf of other Hotel employees, were essentially the same as the legal issue before this Tribunal. For that reason, I deny the application under s. 27(1)(f).

[24] Having denied the application under s. 27(1)(f), I also deny the application under s. 27(1)(d)(ii). This provision of the *Code* allows the Tribunal to dismiss a complaint when proceeding with it would not further the purposes of the *Code*. The purposes of the *Code* include “to promote a climate of understanding and mutual respect where all are equal in dignity and rights”: *Code*, s.3(b). Determining whether proceeding with a complaint will further the purposes encompasses broader public policy issues, such as the efficiency and responsiveness of the human rights system, and the time and expense involved in a hearing: *Dar Santos v. UBC*, 2003 BCHRT 73 at para. 59. Relevant circumstances and considerations can include efficiency and avoiding duplication of resources, among other factors: *Dr. A v. Health Authority and another (No. 4)*, 2023 BCHRT 55 at para. 42.

[25] The Tribunal has found it to be inconsistent with the purposes of the *Code* to proceed in a case where a complaint has been settled: *Williamson v. Mount Seymour Housing Co-operative*, 2005 BCHRT 334 at paras. 10-11. This is not one of those cases. Because I am not convinced by the Hotel’s submission that Ms. Young’s complaint has been appropriately dealt with in another proceeding, I am not persuaded by this same argument when assessed under s. 27(1)(d)(ii).

#### **IV CONCLUSION**

[26] I deny the Hotel’s application to dismiss the complaint against it under both ss. 27(1)(d)(ii) and (f).

Kylie Buday  
Tribunal Member  
Human Rights Tribunal