

Date Issued: May 14, 2024

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Indexed as: Warren v. San Group Inc. (No. 2), 2024 BCHRT 146

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:

Eric Warren

COMPLAINANT

AND:

San Group Inc.

RESPONDENT

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

Tribunal Member:

Andrew Robb

On his own behalf:

Eric Warren

No submissions from the Respondent

I INTRODUCTION

[1] Eric Warren filed a human rights complaint against his employer, San Group Inc. [San] San gave him a promotion, but then cancelled the promotion and returned him to his previous position. He says this was discrimination on the ground of his mental disability.

[2] San applied to dismiss the complaint. It argued that Mr. Warren had no reasonable prospect of proving the cancellation of his promotion was connected to a disability.

[3] In an earlier decision, I allowed San's application and dismissed the complaint: *Warren v. San Group Inc.*, 2024 BCHRT 74 [the **Original Decision**].

[4] Mr. Warren filed an application for reconsideration of the Original Decision, under Rule 36 of the Tribunal's *Rules of Practice and Procedure*. He says the Original Decision overlooked relevant evidence, and he provided new evidence that was not included in his response to the application to dismiss.

[5] For the following reasons, I deny the application for reconsideration. I am not persuaded that the Original Decision overlooked any relevant evidence, or that the new evidence provided by Mr. Warren could have affected the result of the Original Decision. I have not found it necessary to seek submissions from San.

II BACKGROUND

[6] The background to the complaint is set out in the Original Decision. In summary, Mr. Warren worked at a lumber mill operated by San, and he was promoted to a heavy equipment operator position in the mill's log yard, but his promotion was cancelled before he completed his training for the new position, and San returned him to his previous position. San says its mill manager decided to cancel the promotion due to safety infractions committed by Mr. Warren. Mr. Warren denies he was responsible for any safety infractions.

[7] In his response to the application to dismiss, Mr. Warren argued that his promotion was cancelled for reasons related to his mental disability. In the Original Decision I dismissed the

complaint because I found there was no reasonable prospect that Mr. Warren could prove a connection between the cancellation of his promotion and his disability.

[8] In his application for reconsideration, Mr. Warren makes a different argument: he says the cancellation of his promotion was not due to his mental disability, but it caused him to experience a mental disability. He suggests the real reason San cancelled his promotion was because he had an argument with the mill manager about what shifts he would work during his training for the new position, and because other workers did not like him.

[9] Mr. Warren also says the Original Decision should be reconsidered because it did not consider all the evidence he provided to the Tribunal, and he says there is new evidence that supports his argument that the cancellation of his promotion caused him to experience a mental disability. But he does not specify what evidence was not considered in the Original Decision, and he does not explain how the new evidence could have changed the result of the Original Decision.

III DECISION

[10] The Tribunal has a limited jurisdiction to reconsider its own decisions. 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 it.

[11] 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. When a party simply disagrees with a Tribunal decision, the appropriate recourse is judicial review by the BC Supreme Court.

[12] The Tribunal may reconsider a decision where there has been a denial of procedural fairness: *Fraser Health Authority* at para. 161. The Tribunal may also 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 considering the evidence would result in prejudice to the respondent.

[13] Mr. Warren says the Original Decision did not consider all the evidence. I recognize that if I overlooked relevant evidence that Mr. Warren provided in support of his response to the application to dismiss, that could make the Original Decision unfair to him. However, Mr. Warren does not specify which evidence I overlooked. In this situation, I am not persuaded that I failed to consider any relevant evidence that was before me.

[14] Mr. Warren's application for reconsideration includes new evidence, including a medical report prepared after he filed his response to the application to dismiss. Mr. Warren says the medical report shows that San's decision to cancel his promotion caused his mental disability. But this does not establish the type of connection that is required to prove discrimination under the *Human Rights Code*. The Tribunal has found that causing or contributing to a disability, on its own, is not discrimination: *Vandale v. Town of Golden and others*, 2009 BCHRT 219 at para. 43. Mr. Warren does not suggest that San failed to accommodate his disability, or that San had any reason to perceive he had a disability at the time his promotion was cancelled. Nor is there anything in the medical report that could suggest San perceived that he had a disability and decided to cancel the promotion because of this perception.

[15] Some of the new evidence that Mr. Warren provided in support of his application for reconsideration appears to have been available before he filed his response to the application to dismiss. This includes a handwritten note, apparently prepared by a representative of Mr.

Warren's union, dated May 13, 2020, about 10 months after his promotion was cancelled. The note says the mill manager was prepared to return Mr. Warren to the heavy equipment operator position once Mr. Warren returned to work from a leave of absence due to an injury.

[16] The handwritten note was not included in Mr. Warren's response to the application to dismiss, which was filed in 2021. Mr. Warren's application for reconsideration does not say the note was unavailable when he filed his response, or explain why it was not included in his response. In the absence of any explanation for why it was not included in the response, I am concerned that considering the note now would be unfair to San.

[17] In any event, it is not clear how the handwritten note could have affected the result of the Original Decision. Mr. Warren says the note is relevant because it shows the mill manager agreed to reinstate him to the heavy equipment operator position, but did not follow through on the agreement. But Mr. Warren does not say if or when he returned to work after his injury, or whether there were any further discussions about reinstating him to the position. Without more information, I do not see how the mill manager's agreement to reinstate Mr. Warren could support a connection between Mr. Warren's disability and the decision to cancel his promotion.

[18] Mr. Warren's application for reconsideration also includes his text message correspondence with a representative of his union, which appears to be from 2022, after the parties completed their submissions in the application to dismiss. Mr. Warren says the text messages show his union supported him, after his promotion was cancelled, contrary to San's submissions in the application to dismiss. But even if Mr. Warren had the support of his union, that would not be relevant to the question of whether San's decision to cancel Mr. Warren's promotion was connected to a disability. This means the text messages would not have affected the result of the Original Decision.

[19] In summary, I find it would be unfair to San if I considered the handwritten note dated May 13, 2020, because Mr. Warren has not explained why it was not included in his response to the application to dismiss. But even if I considered all the new evidence, including the

handwritten note, the medical report, and the text messages, it would not change the result of the Original Decision.

[20] Mr. Warren maintains that he was the victim of false accusations about safety infractions. Even if this is true, it would not be discrimination unless his disability was a factor in the impact the false accusations had on him. My decision to dismiss his complaint, in the Original Decision, was based on a finding that he had no reasonable prospect of proving a connection between his disability and the cancellation of his promotion. I understand that he believes San treated him unfairly, but there is nothing in his application for reconsideration that suggests the unfairness was connected to a disability.

[21] For these reasons, I am not persuaded it would be in the interests of fairness and justice to reconsider the Original Decision.

IV CONCLUSION

[22] I dismiss the application for reconsideration.

Andrew Robb
Tribunal Member