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Indexed as: Blaihut v. Jiffy John Rentals, 2018 BCHRT 127

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:

Anthony Blaihut

COMPLAINANT

AND:

Jiffy John Rentals Ltd

RESPONDENT

REASONS FOR DECISION
APPLICATION TO DEFER A COMPLAINT
Section 25

Tribunal Member:

Devyn Cousineau

Counsel for the Complainant:

Ania Konikowski (Articled Student)

Counsel for the Respondent:

Timothy Watkins

I INTRODUCTION

[1] Anthony Blaihut was employed by Jiffy John Rentals Ltd. [**Jiffy John**]. He says that Jiffy John terminated his employment while he was in the hospital recovering from a surgery. Jiffy John says that the employment contract was frustrated because Mr. Blaihut was no longer able to perform the functions of his job. Mr. Blaihut alleges that this is discrimination on the basis of disability, in violation of s. 13 of the *Human Rights Code* [**Code**].

[2] In addition to this human rights complaint, Mr. Blaihut has commenced an action in BC Provincial Court for wrongful dismissal. Jiffy John applies to defer this complaint pending the resolution of the wrongful dismissal action, pursuant to s. 25 of the *Code*.

[3] For the reasons that follow, the application to defer is denied.

II BACKGROUND

[4] Mr. Blaihut filed this human rights complaint on August 22, 2017. His allegations are set out in full as follows:

On April 18, 2017, I was injured in the course of my employment with Jiffy John Rentals Ltd. and while driving a work truck provided by employer. My employer was at all times aware of the severity of my injury and that I was hospitalized to undergo surgery. Despite this knowledge of my vulnerable state, Jiffy John Rentals Ltd. terminated my employment without notice and without cause. My termination took place via a phone call and while I was in the hospital bed following my injury. There was no indication that my employment was in jeopardy prior to my injury, and my termination was the direct result of my physical disability.

As a remedy for discrimination, he seeks compensation for injury to dignity, feelings and self-respect under s. 37(2)(d)(iii) of the *Code*.

[5] Jiffy John filed a response to the complaint on March 2, 2018, saying simply that “[t]he contract of employment was frustrated by the Complainant’s inability to perform the necessary duties of his position, apparently as the result of a pre-existing degenerative condition”.

[6] On April 10, 2018, Mr. Blaihut filed a Notice of Claim in BC Provincial Court, seeking damages for wrongful dismissal. In that claim, he alleges that Jiffy John failed to provide him reasonable notice of termination and breached its duty of good faith and fair dealing by terminating him while he was in the hospital. In response, Jiffy John argues that the employment contract was frustrated because Mr. Blaihut was unable to continue to perform the necessary duties of his position.

III ANALYSIS AND DECISION

[7] Jiffy John asks this Tribunal to defer its proceedings pending the resolution of wrongful dismissal action. Section 25(2) of the *Code* provides:

Deferral of a complaint

25(2) If at any time after a complaint is filed a member or panel determines that another proceeding is capable of appropriately dealing with the substance of a complaint, the member or panel may defer further consideration of the complaint until the outcome of the other proceeding.

[8] Rule 16 of the Tribunal's *Rules of Practice and Procedure* provides that the Tribunal may defer a complaint if it determines that another proceeding is capable of appropriately dealing with the substance of the complaint, or it is fair and reasonable in all of the circumstances to do so.

[9] Jiffy John argues that both the wrongful dismissal complaint and human rights complaint address substantially the same issues: whether Mr. Blaihut's employment contract was frustrated and the consequences that flow from its decision to terminate Mr. Blaihut's employment in the manner which it did. It argues that the wrongful dismissal matter is capable of dealing with the substance of the human rights complaint, and that damages in each forum would essentially overlap. It says that "it is unnecessarily burdensome... to have to litigate the same issues twice in two different [forums], with the risk of inconsistent findings of fact".

[10] Mr. Blaihut opposes deferral. He argues that the two actions are founded in separate causes of action – discrimination and wrongful dismissal – and that only this Tribunal can determine whether Jiffy John discriminated against him contrary to the *Code*. He says that he seeks different damages in each forum and that deferral “would occasion delay which would disproportionately prejudice the Complainant, who remains unemployed and impecunious”.

[11] In *Young v. Coast Mountain Bus Company*, 2003 BCHRT 28, the Tribunal identified some of the factors that may be relevant to exercising its discretion to defer a complaint: the subject matter of the other proceeding, the adequacy of the remedies available in the other proceeding, the status of the other proceeding, whether it would be fair to the parties to defer the complaint, and the public interest in the resolution of human rights issues: para. 19.

[12] I begin with the subject matter of the other proceedings. Depending on the circumstances, the Tribunal may determine that a wrongful dismissal suit is capable of appropriately dealing with the subject of a human rights complaint: *Autzen v. British Columbia Regional Council of Carpenters*, 2014 BCHRT 121 at para. 21; *Simpkin v. Stl’at’imc Tribal Police Board (No. 2)*, 2015 BCHRT 129. In this case, Jiffy John stresses that both the human rights complaint and wrongful dismissal action will require findings of fact on the same issues. Chief amongst those issues is whether Mr. Blaihut was able to continue to perform the functions of his job notwithstanding his disability. However, in assessing this critical issue, the court and Tribunal will approach the issue from very different perspectives. In the court, the issue is whether the employment contract is frustrated. At this Tribunal, the focus would be on accommodation – whether Jiffy John satisfied its burden of showing that it took all reasonable and practical steps to accommodate Mr. Blaihut’s disability before terminating his employment: *Québec (Commission des normes, de l’équité, de la santé et de la sécurité du travail) v. Caron*, 2018 SCC 3 at para. 27. This distinction, in my view, is significant. Jiffy John has not explained how its obligations under human rights legislation would be assessed in the wrongful dismissal action. Those obligations underlie Mr. Blaihut’s quasi-constitutional right to a workplace free of discrimination. In the absence of such an explanation, I am not satisfied that the wrongful dismissal action is capable of addressing the substance of Mr. Blaihut’s human rights complaint.

[13] Next I consider the adequacy of the remedies. Mr. Blaihut deliberately seeks different remedies in each forum: lost wages in court and compensation for injury to his dignity at the Tribunal. Unlike in other cases, the parties have not suggested that Mr. Blaihut may be able to recover aggravated damages to compensate for mental distress in the manner of dismissal in court: *Keays v. Honda Canada Inc.*, 2008 SCC 39; *Autzen* at para. 30. He has not sought any such damages in the Notice of Claim. While Jiffy John says that the wrongful dismissal claim includes a claim for compensation for the manner of dismissal, that is not apparent to me on the face of the pleadings and is specifically denied by Mr. Blaihut. In the circumstances, it does not appear that the wrongful dismissal action is capable of compensating Mr. Blaihut for any discrimination that he faced. This factor weighs against deferral.

[14] The final factor I will consider is the status of the wrongful dismissal action. The timely resolution of human rights issues is in the public's, and the parties', interests, and is something that the Tribunal strives to achieve through its process: *Rules of Practice and Procedure*, Rule 1. Deferring the Tribunal's process to an alternative proceeding is fair where it avoids duplicative proceedings without unduly compromising the timely resolution of the dispute.

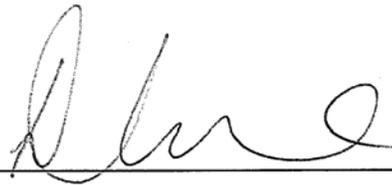
[15] Mr. Blaihut's human rights complaint was filed on August 22, 2017 and his wrongful dismissal claim was filed April 10, 2018. Both actions are at early stages. Jiffy John has not pointed to any particular efficiency in allowing the wrongful dismissal claim to proceed, or suggested that its process can move more quickly than the Tribunal's. On the other hand, with the cooperation of the parties, it is not unreasonable to expect that the Tribunal could reach a final resolution of the complaint within the next six months to a year. This factor weighs against deferral.

[16] In all of the circumstances, Jiffy John has not persuaded me that the wrongful dismissal action is capable of dealing with the issues in Mr. Blaihut's human rights complaint and it is fair and appropriate to defer this process.

IV CONCLUSION

[17] I decline to exercise my discretion to defer this complaint. The Tribunal's process will continue.

[18] Jiffy John has until **June 11, 2018** to file a Form 9.2 – Respondent Document Disclosure form and provide Mr. Blaihut with copies of all documents listed in that Form. They may also, by that same date, file an application to dismiss the complaint under s. 27 of the *Code*, if they choose to do so. If they choose to forego this step, the case manager and I will work with the parties to schedule a hearing at the earliest opportunity to resolve this complaint in a timely manner.

A handwritten signature in black ink, appearing to read 'Devyn Cousineau', written over a horizontal line.

Devyn Cousineau, Tribunal Member