



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Oleksandr Lyakhovetsky

Applicant

-and-

Inkas Security Services Ltd. and 2000007 Ontario Inc.

Respondents

DECISION

Adjudicator: Cyndee Todgham Cherniak

Date: January 11, 2024

File Number: 2018-33348-I

Citation: 2024 HRTO 27

Indexed as: **Lyakhovetsky v. Inkas Security Services Ltd.**

APPEARANCES

Oleksandr Lyakhovetsky, Applicant)))	No one appearing
Inkas Security Services Ltd., and 2000007 Ontario. Inc., Respondents))))	Nikolay Chsherbinin, Counsel

INTRODUCTION

[1] The Application alleges discrimination in the area of employment because of ethnic origin and age contrary to the *Human Rights Code*, R.S.O. 1990 c. H. 19, as amended. The applicant is a self-represented party.

[2] The respondent filed a Form 2 Response in which it argued that the Application should be dismissed because the applicant signed a release, and the Tribunal lacks jurisdiction because the respondent is a federally regulated interprovincial transportation company.

[3] The applicant filed a Form 3 Response in which they made cogent legal arguments concerning the Tribunal's jurisdiction over the Application and extenuating circumstances relating to the signing of the release. As a result of the applicant's arguments, the Tribunal issued a Case Assessment Direction on December 14, 2018, in which it informed the parties that the jurisdictional and abuse of process issues would be reviewed at a full merits hearing.

[4] A Case Management Conference Call ("CMCC") was scheduled to take place on July 24, 2020, and a merits hearing was scheduled to take place on August 19, 2020. The CMCC and merits hearing were cancelled due to the COVID-19 pandemic. The applicant has not followed up with the Tribunal since August 2020 concerning the rescheduling of the CMCC and merits hearing.

[5] In order to move the Application forward in the Tribunal's process, on November 14, 2023, the Tribunal issued a new Notice of Videoconference Case Management Conference Call (the "Notice") to the parties confirming that a CMCC would take place on January 8, 2024, at 1:30 p.m.

[6] The Notice advised the applicant as follows:

FAILURE TO ATTEND THE CMCC

If you do not attend the CMCC after receiving proper notice, the HRT0 may proceed in your absence (if you are a respondent or intervener) or dismiss the Application as abandoned (if you are the applicant). (Emphasis Original)

[7] The Notice was sent to the applicant's alternate contact's email address. I am satisfied that the applicant's alternate contact received the Notice because on January 7, 2024, at 5:03 pm., they wrote to the Tribunal requesting a last-minute adjournment of the CMCC. The reason given for the requested adjournment was that the applicant had COVID-19. The request for an adjournment did not attach any medical documentation and did not explain why the applicant was unable to participate in the CMCC or why the alternate contact could not attend on the applicant's behalf.

[8] On January 8, 2024, the Tribunal responded to the applicant's last minute adjournment request and stated in an email sent to the applicant's alternate contact:

The Tribunal will not be able to grant an adjournment at this time as the Practice Direction on seeking a last-minute adjournment has not been followed. Please inform [the applicant] that he will need to attend the event to speak to the adjournment request.

[9] The Tribunal held a CMCC on January 8, 2024. The applicant and the applicant's alternate contact were not in attendance at the CMCC start time. The respondent's counsel and a representative from the respondent were in attendance.

[10] In accordance with its usual practice, the Tribunal waited 30 minutes before proceeding. At 2:00 p.m., the applicant and the applicant's alternate contact were still not in attendance at the CMCC.

[11] The respondent's counsel asked the Tribunal to dismiss the Application as abandoned and made oral submissions.

ANALYSIS

[12] As the Ontario Superior Court has recently recognized in *Papouchine v. Touram LP d.b.a. Air Canada Vacations*, 2022 ONSC 7010 at paragraphs 4 – 5 that the Tribunal has scarce resources and must manage its processes.

[13] The Tribunal has routinely taken the position that a CMCC is an integral part of the hearing process and that failure to attend a CMCC is a serious matter and prevents the parties from moving the Application forward to a merits hearing. See *Kau v. Harbourfront Corporation (1990)*, 2023 HRTO 905; *Meador v. Papaioannou*, 2023 HRTO 1256; *J.B. v. St. Aloysius Catholic School/Waterloo Catholic District School Board*, 2023 HRTO 596; and *Miles v. Pure Metal Galvanizing ULC*, 2023 HRTO 59.

[14] Due to the serious and integral nature of CMCCs in the Tribunal's hearing management process and the Tribunal's scarce resources, the Tribunal warned the applicant in the Notice that the Application may be dismissed as abandoned if they failed to attend the CMCC.

[15] While the applicant sought an adjournment, they did not comply with the instructions contained in the Notice when seeking their adjournment. Further, the applicant did not comply with the Tribunal's Practice Direction on Scheduling of Hearings and Mediations, Rescheduling Requests, and Requests for Adjournments, which also states that "[a]bsent exceptional circumstances, the Tribunal will not grant adjournments" at the last minute. At this time, a temporary illness, such as COVID-19, is not automatically considered to be an exceptional circumstance. The applicant did not provide any medical documentation to demonstrate that they could not participate in a video-conference call.

[16] The Tribunal clearly informed the applicant via their alternate contact that they were required to attend the CMCC to discuss the adjournment request. The applicant ignored these instructions.

[17] Recently, the Divisional Court held in *Abdalla et al. v. Koirala*, 2023 ONSC 7106 at paragraph 15 held that if a party is not feeling well enough to participate in a scheduled hearing, they have an obligation to attend the hearing and request an adjournment. They cannot simply not show up.

[18] Recently, the Tribunal dismissed an application as abandoned in *Sprague v. Rogers Blue Jays Baseball Partnership dba Toronto Blue Jays Club*, 2023 HRT0 1797 (“Sprague”) when an applicant did not attend a summary hearing. The applicant’s spouse attended the summary hearing to seek a last-minute adjournment on the basis that the applicant had the flu. No medical note was provided to support the adjournment request.

[19] I find the current circumstances are similar to the above cases. In the present case, the applicant’s alternate contact sought a last-minute adjournment and did not attend the CMCC.

[20] In *Sprague*, the Tribunal stated at paragraph 40:

This should not be a surprise to the applicant, who is a practicing lawyer and who has had and continues to have numerous Applications before this Tribunal. In spite of that, he chose not to attend the scheduled hearing or seek an adjournment of the hearing.

[21] In the present case, even though the applicant is not a practicing lawyer, the applicant chose not to attend the CMCC knowing that the Notice indicated that the Application may be dismissed as abandoned if the applicant failed to attend the CMCC. Further, in the present case, the applicant’s alternate contact was informed that the adjournment had not been granted and that the applicant was to attend the CMCC to speak to the adjournment request.

[22] In my view, the applicant’s decision to ignore the Tribunal’s directions, Notice and Practice Direction and not attend the CMCC demonstrates that the applicant has decided to abandon the Application.

ORDER

[23] For the reasons set out above, the Application is dismissed.

Dated at Toronto, this 11th day of January, 2024.



Cyndee Todgham Cherniak
Vice-chair