

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

BETWEEN:

MING ZHOU

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

NATIONAL RESEARCH COUNCIL

- and -

CHANDER P. GROVER

Respondents

RULING

MEMBER: Karen A. Jensen

2009 CHRT 7
2009/02/20

[1] In October 2004, Dr. Ming Zhou filed a complaint with the Canadian Human Rights Commission (the Commission) against the National Research Council (the NRC). In March 2005, Dr. Zhou filed a second complaint with the Commission against Dr. Chander P. Grover. The Commission referred both complaints to the Tribunal. The Tribunal joined the two complaints.

[2] Dr. Zhou was a scientist at the NRC. His immediate supervisor was Dr. Grover. Dr. Grover has filed a number of human rights complaints against the NRC dating back to 1987.

[3] On September 12, 2008, Dr. Zhou filed a Statement of Particulars. In his Statement of Particulars, Dr. Zhou alleges that Dr. Grover hired Chinese newcomers to work with him in his research group at the NRC because Dr. Grover considered this group to be more tolerant of his abusive conduct and reluctant to speak out about their unhappiness. According to the Statement of Particulars, Dr. Grover took negative action against these employees, including Dr. Zhou, based on their race or ethnic or national origin. With respect to the NRC, Dr. Zhou alleges that the NRC was aware of, but tolerated, Dr. Grover's abusive conduct and the race-motivated hiring practice.

[4] The NRC filed its responding Statement of Particulars on October 2, 2008.

[5] Dr. Grover filed his Statement of Particulars on October 31, 2008. In his Particulars, Dr. Grover makes allegations of discrimination against his co-Respondent, the NRC. His central allegation is that the NRC encouraged Dr. Zhou to file a human rights complaint against Dr. Grover as a means of retaliating against Dr. Grover for the human rights complaints that he had filed over the years. Dr. Grover asks the Tribunal to make findings against the NRC and award him compensation and costs.

[6] The NRC has brought a motion requesting that Dr. Grover's claims against the NRC be struck. The NRC argues that Dr. Grover has effectively cross-claimed the NRC in his Statement of Particulars. The Tribunal has no jurisdiction to hear or award damages in a cross-claim or a complaint within a defence, according to the NRC.

[7] With some qualifications, Dr. Zhou supports the NRC's motion.

[8] Dr. Grover responds to the motion by asserting that in his defence, he must lead evidence that demonstrates that the NRC invited the Complainant to bring complaints against him solely as a means to win its long-lasting litigation with him. This same evidence will likely show, according to Dr. Grover, that the Complainant was correct when he claimed that the NRC was using his racial background to win the fight with Dr. Grover. Consequently, as a by-product of the Complainant's allegations against the NRC being made out, the Tribunal will also have heard evidence that effectively proves that the NRC was discriminating or retaliating against Dr. Grover as well.

[9] Dr. Grover argues that although it is novel for a respondent to assert a claim for remedies against a co-respondent, a determination on that issue should not be made until the end of the hearing when all of the evidence has been heard. I disagree.

[10] Dr. Grover is essentially attempting to file a human rights complaint against his co-respondent, the NRC, within the body of his Statement of Particulars. The Tribunal has no jurisdiction to inquire into this complaint. The Tribunal's statutory authority to inquire into a complaint is based on receiving a request from the Commission pursuant to s. 49(1) of the *Canadian Human Rights Act*. Without a referral and a request to institute an inquiry into the complaint from the Commission, the Tribunal lacks the statutory authority to hear the complaint. No such referral and request have been made by the Commission with respect to the allegations set out in Dr. Grover's Statement of Particulars.

[11] For that reason, the following paragraphs of Dr. Grover's Statement of Particulars will be struck: paragraphs 12 – 18 inclusive; paragraphs 20 and 21; subparagraphs 47(c) and (d); subparagraphs 48 (b), (c) and (d).

[12] However, the other allegations that the NRC seeks to strike relate to Dr. Grover's defence against the complaint. Specifically, paragraphs 19, 24, 25, 26, 45, and 46 form part of

Dr. Grover's defence that the NRC put Dr. Zhou up to filing a complaint against him. Dr. Grover may still rely on those allegations in his defence.

[13] It may be necessary for Dr. Grover to make other modifications to his Statement of Particulars in order to maintain the logic and flow of the document. Leave is therefore granted to Dr. Grover to amend his Statement of Particulars by March 6, 2009. However, care should be taken to ensure that only those allegations that relate to his defence are included.

"Signed by"

Karen A. Jensen

OTTAWA, Ontario
February 20, 2009

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE: T1291/2108 and T1292/2208

STYLE OF CAUSE: Ming Zhou v. National Research Council and
Chander P. Grover

RULING OF THE TRIBUNAL DATED: February 20, 2009

APPEARANCES:

Ming Zhou For himself

No one appearing For the Canadian Human Rights Commission

Laura Stewart For the Respondent (National Research
Council)

Paul Champ For the Respondent (Chander P. Grover)