



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

CAW-Canada on behalf of a Group of 16 Employees and 26 Employees

Applicants

-and-

Presteve Foods Ltd. and Jose Pratas

Respondents

- and -

Justicia For Migrant Workers

Intervenor

INTERIM DECISION

Adjudicator: David A. Wright

Date: August 24, 2011

File Number: 2009-02443-I and 2010-06274-I to 2010-06299-I

Citation: 2011 HRT0 1581

Indexed as: **CAW-Canada v. Presteve Foods Ltd.**

WRITTEN SUBMISSIONS BY

Justicia For Migrant Workers,
Intervenor

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Grace Vaccarelli, Counsel

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Presteve Foods Ltd. and Jose Pratas,
Respondents

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Claudio Martini, Counsel

INTRODUCTION

[1] Justicia for Migrant Workers (“J4MW”) seeks leave to intervene and present evidence in these Applications that allege sexual harassment and differential pay of migrant workers at the respondent fish processing facility. It asks to provide the Tribunal with context for the Application through expert evidence about the Temporary Foreign Workers’ Programs and the experience of migrant workers in Ontario and to make argument on appropriate systemic remedies. The respondents argue that leave should be denied.

THE APPLICATIONS

[2] This matter originated as an Application filed by the CAW–Canada (“CAW”) under s. 34(5) of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended, (the “Code”) on behalf of a group of employees who are or were employed by the respondent, Presteve Foods Ltd., a fish processing facility in Wheatley, Ontario. Following an Interim Decision, 2010 HRTO 796, the parties agreed that in the s. 34(5) Application, the CAW represents 16 individuals and that 26 other individuals are represented by counsel for the CAW in s. 34(1) applications.

[3] The applicants are all citizens of Thailand or Mexico, employed or formerly employed under the federal Temporary Foreign Worker program. The Applications allege discrimination on the basis of race, colour, ancestry, place of origin, citizenship, ethnic origin, and sex, and also sexual solicitation or advances.

[4] First, the Applications allege that Thai and Mexican employees were discriminated against as compared with Canadian workers in the compensation and benefits they received. Second, the Applications allege sexual harassment in the workplace of some of the claimants by the individual respondent.

REQUEST TO INTERVENE

[5] J4MW is a non-profit, grassroots collective based in Toronto and founded in

2002. It states that its purpose is to work towards the fair and just treatment of migrant workers in the Province of Ontario and throughout Canada. J4MW states that it works with migrant workers outside the organizational structure of the Canadian labour movement.

[6] J4MW wishes to call Dr. Kerry Preibisch, Associate Professor in the Department of Sociology and Anthropology at the University of Guelph, to give expert evidence. Its Request to Intervene sets out the proposed evidence as follows:

Dr. Preibisch will give evidence in her area of expertise. She will give evidence of the temporary foreign workers programs in Canada, the vulnerability of migrant workers, and the gender-specific concerns that migrant women face. She will reference cases from her research that illustrate the circumstances that motivate women to migrate for work in Canada, the reasons why women migrants choose to acquiesce to degrading working and living conditions, and different types of exploitation experienced by migrant workers.

[7] The respondents rely upon various cases in opposition to the Request. It notes that in *Locke v. Ontario (Community and Social Services)*, 2004 HRTO 12, the Tribunal held that it did not have authority to permit an intervenor full participatory rights. They cite *Jeppesen v. Ancaster (Town)*, 2001 CanLII 26209 (Ont. Bd. Inq.) for the following relevant considerations on a request for intervenor status:

- (a) whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding;
- (b) whether the applicant has a significant interest in the issue on which intervention is sought; and
- (c) whether the applicant is likely to provide assistance to the Board that will not otherwise be provided.

Finally, they rely upon the Board of Inquiry's decision in *Odell v. Toronto Transit Comm.* (No. 2), (2001), 40 C.H.R.R. D/254 (Ont. Bd. Inq.) at para. 43:

[A]n applicant for intervenor status must have a demonstrated record of involvement in the issues in dispute that enable it to bring to the Board a factual and analytical underpinning not otherwise available. Furthermore, it

must have a different perspective from that of any of the other parties, a perspective that will be of assistance to the Board in understanding and determining the issues.

[8] The respondents note that J4MW has been involved with the workers in this case since 2008. It submits that granting the Request to Intervene at this stage would undoubtedly add to the length, cost and complexity of the proceedings. They argue that this Application involves specific factual issues between the parties, not issues of general importance. They state that the CAW will likely present similar arguments and could present the same evidence that J4MW intends to call.

ANALYSIS

[9] It is important to focus the analysis in the context of the new *Code*, which was amended in 2008 and in which applications are now made directly to the Tribunal. Section 36 of the *Code* permits the Tribunal to add “[a]ny other person or the Commission, if they are added as a party by the Tribunal”. Rule 11.1 allows the Tribunal to allow “a person or organization to intervene in any case at any time on such terms as the Tribunal may determine”. Moreover, the Tribunal has extensive powers under the new *Code* and Rules to focus the hearing on the evidence and argument necessary to a fair, just and expeditious resolution of the case.

[10] In my view, the new *Code* and Rules give the Tribunal the power to grant an intervenor full participatory rights in a hearing. Moreover, in the new system in which individuals have direct access to the Tribunal and where the Ontario Human Rights Commission is not a party to every case, the Tribunal should be more liberal in granting intervenor status to groups and individuals who wish to bring forward their perspectives on the quasi-constitutional issues it hears, particularly where the issues have significant public importance. The Tribunal can apply its active adjudication approach to ensure that, once intervention status is granted, the intervenor’s evidence focuses on the issues of assistance to the Tribunal in the case and minimizes any resulting costs to the parties.

[11] I turn now to this Request. With regard to the allegations of delay in filing the Request to Intervene, I note that the respondents only filed a full Response on April 21, 2011, with leave of the Tribunal, because of pending criminal charges against the individual respondent. Moreover, the two pages of Response that were filed are extremely sparse, with little detail about the respondents' position on the facts and allegations. The Request to Intervene was made on July 7, 2011. In these circumstances, I cannot agree that the timing of the Request is "late" or that the timing will unduly delay the hearing

[12] This is, to my knowledge, the first case before this Tribunal involving alleged discrimination against migrant workers. The relevant social context is useful and helpful to the evaluation and understanding of the issues raised in the Applications and J4MW has relevant expertise and perspective to add to an understanding of those issues. Such evidence may be particularly important on the issue of remedy. Moreover, I note that the respondents make arguments that would affect the *Code* rights of migrant workers more generally. They take the position that "[i]n calculating likable compensation, consideration and credit must be given to other benefits provided to the foreign workers such as accommodation, airfare, etc."

[13] Finally, it is my view that J4MW, as an organization that works generally exclusively with migrant workers outside the labour movement, has a particular perspective to add that will assist the Tribunal with the issues in the Application.

[14] Accordingly, leave to intervene and to call Dr. Preibisch as an expert witness is granted to Justicia for Migrant Workers. J4MW will call its evidence after that of the applicants.

[15] Finally, the Tribunal draws to the attention of all parties its decision in *C.D. v. Wal-Mart Canada Corp.*, 2010 HRTO 426 regarding its expectations for witness statements in advance of the hearing.

Dated at Toronto, this 24th day of August, 2011.

“Signed by”

David A. Wright
Associate Chair