

## Case In Point

# Tribunal Confirms Human Rights Issues Need not be “Explicitly Decided” to Have Been Appropriately Dealt With in Another Proceeding

**Date:** January 11, 2019

In [Hewitt v. HTS Engineering Ltd.](#), the Human Rights Tribunal of Ontario (Tribunal) addressed the issue of whether the Ontario Labour Relations Board (Board or OLRB) had appropriately dealt with the substance of an Application. The decision confirms that human rights issues do not need to be explicitly at issue in another proceeding in order to find that the matter has been appropriately dealt with.

The Tribunal dismissed the Application pursuant to section 45.1 of the *Human Rights Code* after finding that the substance of the Application was appropriately dealt with by the Board.

## Background

The Applicant had been employed as a truck driver with the Respondent. Throughout his employment, the Respondent employer granted the Applicant a number of accommodations for his medical conditions, such as early start times and limitations on hours of work, without requiring medical documentation.

During the events giving rise to the Application, the Applicant claimed that he could not perform “strenuous physical activity” such that, when the Respondent advised him that he would have to drive a heavy truck for an assignment, the Applicant claimed that this work exceeded his restrictions and that the Respondent failed to accommodate him. The Applicant further alleged that the Respondent told him if he refused this assignment, it no longer had work for him. The Applicant did not show up to work following this dispute.

Following this incident, the Applicant filed a complaint under the *Employment Standards Act, 2000* (ESA) alleging that the Respondent had constructively dismissed him. This claim, which was originally upheld by the Employment Standards Officer, led to an appeal to the Board. The Board confirmed the finding of the Employment Standards Officer that the Applicant had been constructively dismissed, but also found that the dismissal was not related to the Applicant’s disability.

In coming to this conclusion, the Board considered the extent to which the Respondent was aware of the Applicant’s relevant restrictions. In particular, it found that the Applicant did not make it clear that he was asking to be exempted from driving the truck as an accommodation for his medical condition. The Applicant had in fact driven the heavy truck on a number of occasions, and at the time of the dispute, made no inquiries about whether the assignment would be physically strenuous. Therefore, the Board could not find that the Respondent terminated the Applicant’s employment because he refused the assignment for medical reasons. The Board instead noted that refusing a request for accommodation would have been entirely inconsistent with the Respondent’s history of accommodating the Applicant without requiring medical documentation.

## The Tribunal Decision

The sole issue before the Tribunal was whether the Board had appropriately addressed the substance of the Application.

First considering whether the legal issues in the two proceedings were the same, the Tribunal stated that the focus of each proceeding need not be identical, writing:

**15** While the focus of the proceeding before the OLRB was on whether or not the applicant quit or was terminated, and the focus of a hearing before the Tribunal would have been whether the respondent’s conduct was discriminatory, the factual

underpinnings are the same. In either forum, the motivation and intent of the parties as they relate to the events of early November would be at issue in determining the reason for the end of the employment relationship.

**16** In this case, the issue of whether the respondent failed to accommodate the applicant's disability-related needs on November 2, 2016, and whether his disability was a factor in the end of the employment relationship was squarely before the OLRB.

The Tribunal also found that this was not a situation where the Applicant did not know the case to meet. The Applicant submitted that he did not know he was required to raise the issue of discrimination before the Board because the Board did not raise discrimination in its correspondence. However, given that the Applicant provided testimony regarding his expectation for accommodation, and believed he informed his employer about his medical condition, it was clear he knew his disability was at issue. Whether the Applicant understood that his reliance on these facts would impact the issue of discrimination did not matter: the Applicant had the opportunity to present the relevant arguments before the Board and in fact did so.

The Tribunal also concluded that while it was not appropriate to apply the doctrine of issue estoppel in this case, to proceed with the matter would undermine the principle of finality and would result in re-litigation of an issue that another adjudicator had decided.

### **Takeaways for Employers**

The decision makes clear that the legal issues in separate proceedings do not need to be identical in order to find that a matter has been appropriately handled. In this case, while the central issues before the Board and Tribunal were different, the underlying facts in both proceedings were the same, namely, whether disability was a factor in the end of the employment relationship. Notably, this case reinforces established Tribunal case law that provides human rights issues raised in another proceeding need not be "explicitly decided" in order to find that a matter was appropriately dealt with.