

CITATION: *Parikh v. Walmart Canada Corporation*, 2025 ONSC 469
DIVISIONAL COURT FILE NO.: 409/24
DATE: 20250122

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: JITESH PARIKH, Applicant

AND:

WALMART CANADA CORPORATION, ONTARIO LABOUR RELATIONS BOARD, and A DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT, Respondents

BEFORE: Sachs, Backhouse, S.T. Bale JJ.

COUNSEL: *Jitesh Parikh*, self-represented

Edward O’Dwyer and Kelly Brennan, for the Respondent, Walmart Canada Corporation

Andrea Bowker, for the Respondent, Ontario Labour Relations Board

William Robinson for the Respondent, A Director Under the Occupational Health and Safety Act

HEARD at Toronto: January 21, 2025

AMENDED ENDORSEMENT BY THE COURT (Delivered Orally)

[1] The Respondent Director has requested an amendment of the title of proceeding which is granted. The “Ministry of Labour Skills and Training-Occupational Health and Safety” will be amended to “A Director under the Occupational Health and Safety Act.”

[2] This dispute arises out of a harassment complaint filed by the Applicant against his former employer, Walmart Canada Corporation (“Walmart”). The Applicant filed a complaint with the Ministry of Labour. On November 30, 2022, the Field Visit Report was issued concluding that there was no course of conduct by Walmart constituting harassment under the *Occupation Health and Safety Act*, R.S.O. 1990, c. O.1.

[3] On May 21, 2024, nearly eighteen months after the Field Visit Report was released, the Applicant sought to appeal the conclusion reached in that Report. The governing statute contains a 30 day deadline for the filing of appeals. The Director asserted that the Applicant's appeal should be dismissed for delay. On June 3, 2024, the Board dismissed the Applicant's appeal on the basis that it was filed approximately seventeen months beyond the 30 day time limit for doing so ("the Decision"). The Applicant sought reconsideration of the Decision which request was denied on June 17, 2024 ("the Reconsideration Decision"). This is an application to judicially review both the Decision and the Reconsideration Decision.

[4] The Applicant seeks to file fresh evidence on this application. This request is denied. First, the evidence sought to be submitted is not in the proper form. This concern was highlighted to the Applicant by Justice Myers in his Endorsement of December 11, 2024. Second, the evidence does not meet the test for the admission of fresh evidence set out in *Keeprite Workers Independent Union v. Keeprite Products Ltd.*, (1980) 29 O.R. (2d) 513.

[5] The Applicant submits that the Board's Decisions were procedurally unfair. We disagree. The Board granted the Applicant an adequate opportunity to make submissions as to why his appeal should not be dismissed for delay at both the Decision and the Reconsideration stages. They directed him as to the issues he had to address, chief among them being that he had to provide the Board with an explanation as to why he delayed filing his appeal for seventeen months beyond the statutory time limit. To the extent that the Applicant submits that it was a breach of procedural fairness for the Board not to consider the merits of his claim, this is essentially a challenge to the outcome of the Board's Decisions to dismiss the Applicant's appeal.

[6] There is no issue that in assessing the merits of the Board's Decisions, the standard of review that we must apply is reasonableness.

[7] The Applicant asserts that the Board failed to adequately consider the explanation he gave for the delay in filing his appeal.

[8] At paragraphs 6 to 8 of the Decision, the Board makes the following findings with respect to the Applicant's explanation for the delay:

6. In response to the Board's direction, the applicant filed submissions along with a number of correspondences between himself and Walmart, Ontario Human Rights Tribunal (relating to a complaint filed against a corporate entity other than Walmart), and the Inspector who authored the Field Visit Report along with two audio recordings, each purporting to capture with representatives of the Ministry of Labour, Immigration, Training and Skills Development (Occupational Health and Safety Branch) ("Ministry"). Notably, in an email to the Inspector dated May 10, 2023, the applicant complains about the Ministry's investigation and the termination of his employment. His submissions outline set out further complaints about the conduct of Walmart and the Inspector.

7. The applicant asserts, without any details or further explanation, that it is Walmart's conduct that caused the delay in this case. Beyond this bald statement,

he provides no reason for the delay in filing this application. Even if the allegations he makes are true, and I specifically make no finding about the matter, there is no reason why the applicant could not have filed a timely appeal. As already noted, he expressed his concerns about the Inspector's investigation and refusal to issue an Order in an email dated May 10, 2023. He provides no explanation for why he did not file an application even at that late date.

8. In the absence of any cogent reason for the delay in this case, the Board has no basis upon which to exercise its discretion to extend the time to file this application. Accordingly, this application is hereby dismissed.

[9] It is clear from these paragraphs that the Board considered the Applicant's explanation (which was similar to the explanation he submitted to us) and found that even if the allegations he was making were true about which the Board made no finding this did not explain why the Applicant could not have filed his appeal. The Board highlighted that the Applicant had taken steps to challenge the Inspector's investigation by way of an email on May 10, 2023. Yet he did not file his appeal until over a year later. In our view, the Board's conclusion that the Applicant had not provided a reasonable explanation for the delay was reasonable. It was also reasonable for the Board to find that in the absence of a reasonable explanation for the delay, the Applicant's appeal should be dismissed for delay.

[10] In its Reconsideration Decision, the Board again addressed the Applicant's explanation for the delay at para.6:

6. Mr. Parikh now says that the reason for the delay is the alleged retaliation by Walmart and a number of other unrelated corporate entities. He does not say what retaliatory steps they have taken that would cause the delay in filing the appeal, rather he makes reference to the merits of his appeal. Perhaps Mr. Parikh perceived some sort of danger in filing his appeal, however, the evidence of the numerous times he has attempted to address his underlying concerns with various law enforcement agencies indicates that he was actively engaged in the of reporting the very matters at issue in the appeal. There is no reason why he did not file a timely appeal with the Board.

[11] Again, the Board considered the Applicant's explanation and found that in view of the fact that he was actively engaged in reporting the very matters at issue to law enforcement agencies, there was no reason why he could not have filed a timely appeal with the Board. There is nothing unreasonable about this conclusion or about the reasoning process used to arrive at this conclusion. Therefore, it was reasonable for the Board to dismiss the Applicant's request for Reconsideration.

[12] For these reasons, this application for judicial review is dismissed.

[13] Walmart is the only party seeking costs. As the successful party, Walmart is entitled to costs. In view of the Applicant's financial circumstances, the costs are fixed in the amount of \$500 all inclusive.

“Sachs J.”

“Backhouse J.”

“S. T. Bale J.”

Date: January 22, 2025

CORRECTION NOTICE

The Endorsement was corrected on June 24, 2025 as follows:

1. The Applicant was added to the Heading to show that he was self-represented.
2. The spelling of Andrea Bowker's surname in the Heading was corrected.
3. The date of the Decision referred to in paragraph 3 was corrected to June 3, 2024 (not June 2, 2024).
4. The word "Perhaps" was added in paragraph 10 in the quotation from the Reconsideration Decision before the words "Mr, Parikh perceived..."

The Amended Endorsement is appended.