

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Kurke, O’Brien and Brownstone, JJ.

BETWEEN:)	
)	
ERNESTO DIAREZ)	
)	Self Represented
Applicant)	
)	
– and –)	
)	
STAFF PLUS and D.J. GOSSELIN)	<i>Joseph Morrison and Shreya Patel, for the</i>
PERSONNEL INC. and HUMAN RIGHTS)	Respondent, Staff Plus and D.J. Gosselin
TRIBUNAL OF ONTARIO)	Personnel Inc.
)	
Respondent)	<i>Morgana Kellythorne, for the Respondent,</i>
)	Human Rights Tribunal of Ontario
)	
)	
)	HEARD at Toronto: April 8, 2026

L. Brownstone J.

Overview

- [1] In this application for judicial review, the applicant Ernesto Diarez asks the court to quash two decisions of the Human Rights Tribunal of Ontario because, he submits, they are unreasonable. The first decision, dated September 9, 2022, found that Mr. Diarez’s allegations of discrimination against the respondents Staff Plus and D.J. Gosselin Personnel Inc. (“the employer”) had no reasonable prospect of success. The reconsideration decision, dated November 4, 2022, dismissed Mr. Diarez’s request for reconsideration.

- [2] Mr. Diarez had worked for the employer, a temporary staffing agency, for about nine months when he had a workplace accident and injured his right knee. After a brief period of modified duties, the employer requested medical evidence in support of Mr. Diarez’s request for further accommodation. The employer stated that Mr. Diarez did not provide medical evidence, did not advise the employer that he was available for work, as he was required to do, and therefore was deemed to have abandoned his employment.

- [3] Mr. Diarez applied to the HRTO under the *Human Rights Code*, R.S.O. 1990, c. H.19, alleging he had been subjected to discrimination in his employment.
- [4] The HRTO found Mr. Diarez’s application had no prospect of success and that there was nothing to support Mr. Diarez’s allegation that the employer breached his Code protected rights on the ground of disability or that he was subject to reprisal by the employer.
- [5] In its reconsideration decision, the HRTO found that Mr. Diarez had not established that any of the required bases for reconsideration were met, and dismissed his reconsideration request.
- [6] Mr Diarez submits the decisions are unreasonable in finding there was no reasonable prospect of success in his allegations of discrimination in employment. Mr. Diarez did not pursue the reprisal application in this court.
- [7] For the reasons that follow, I find the HRTO decisions are reasonable and would dismiss the appeal.

Standard of review

- [8] The standard of review of a decision of the HRTO is reasonableness. The HRTO’s decisions that fall within its specialised expertise are entitled to a high degree of deference: *Ontario (Health) v. Association of Ontario Midwives*, 2022 ONCA 458 at paras. 66, 77, and 83.
- [9] In applying the reasonableness standard, the court is not to determine what decision it would have made were it the administrative decision-maker. Rather, the court begins with the tribunal’s decision: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653, at para. 83.
- [10] To be reasonable, a tribunal’s decision is required to exhibit justification, intelligibility, and transparency. However, the reviewing court does not engage in a “treasure hunt for error” and decisions are not to be assessed against a standard of perfection. Decisions are to be read holistically and contextually: *Vavilov*, at paras. 90, 97, 100, and 102.

Preliminary issue

- [11] Mr. Diarez submitted a lengthy application record that contains an affidavit and many exhibits, some of which were not before the HRTO.
- [12] An application for judicial review is generally decided on the basis of the record that was before the initial decision-maker. In exceptional circumstances, supplementary evidence may be permitted. The three recognized exceptions are set out in *Keeprite Workers’ Independent Union v. Keeprite Products Ltd.* (1980), 29 O.R.(2d) 513 (C.A.). They are:
- i) where the evidence seeks to provide general background information, which does not include information that goes to the merits of the matter;

- ii) where the affidavit is designed to demonstrate that there was a complete absence of evidence before the tribunal below on a certain issue; and
- iii) where the evidence goes to the issue of natural justice, procedural fairness, improper purpose or fraud that could not have been put before the original decision-maker.
- [13] Mr. Diarez explained that his supplementary evidence was meant to explain the impact of the Code violation. Neither this purpose nor the proposed evidence meets any of the exceptions set out in *Keeprite*. I would not admit the supplementary evidence.

The decisions are reasonable

i) Chronology of events

- [14] Mr. Diarez's application to the tribunal sets out that a chronology of events that includes the following.
- [15] After his knee was injured at work on December 4, 2017, Mr. Diarez was absent for two days and then continued to perform his regular duties, with help from co-workers, from December 7, 2017, until December 21, 2017.
- [16] Mr. Diarez attended a walk-in clinic on December 21, 2017, and saw his family doctor on December 30, 2017. The family doctor provided a functional abilities form that recommended Mr. Diarez be placed on modified duties for 8-14 days. The employer provided Mr. Diarez with modified duties until about January 20, 2018.
- [17] On about January 20, 2018, after the expiry of the two-week period¹, the employer discontinued Mr. Diarez's modified duties. On January 23, 2018, Mr. Diarez saw another physician who advised they would not sign a functional assessment form to support modified duties but who said more tests were needed. As the employer had requested, Mr. Diarez advised the employer of this development at the time it occurred.
- [18] Mr. Diarez's application acknowledges that he did not return to work or advise the employer of his medical or availability status for months after January 2018, and that he did not provide medical evidence to the employer over the next several months.
- [19] The employer, who required its staff to advise them when they were available for work, concluded that Mr. Diaz had abandoned his employment. In April 2018, the employer

¹ Mr. Diarez submits that the two-week period did not end until the end of January 2018. He says the two-week period should be calculated by counting the number of shifts he was scheduled to work, not by the passage of time. It is not clear whether he made this submission before the HRTO. In any event, Mr. Diarez has not pointed to any reason his doctor's note should be read as referring to the number of shifts he was scheduled to work as opposed to regular calendar time. It was reasonable for the HRTO to treat the medical note as extending his leave only to January 20, 2018.

terminated Mr. Diarez's employment, and issued a record of employment, which Mr. Diarez appears not to have received until he requested it in the summer of 2018.

- [20] Mr. Diarez's application reveals that in May 2018 he provided some medical information to the employer. In August 2018, Mr. Diarez provided a medical note indicating he had sustained a knee injury and was not fit to resume general labour work.

ii) The decisions

- [21] The first decision set out Mr. Diarez's allegation that the employer refused to accommodate his disability and terminated his employment as a result of the workplace injury. The decision determined that, even if all of the facts alleged by Mr. Diarez were accepted as true, Mr. Diarez has not been able to point to any evidence beyond his own suspicions that he was discriminated against because of disability.

- [22] The decision set out the applicable test for determining if there was "no reasonable prospect of success". The tribunal noted that under the test, in some cases the tribunal was required to determine whether what the applicant alleges, assuming it to be true, may be reasonably considered to amount to a Code violation. Further, the tribunal may consider whether the applicant will be able to prove that there was a link between an event and the grounds of discrimination on which he bases his claim.

- [23] The tribunal noted that accepting the applicant's facts does not mean accepting the applicant's assumptions about why he was treated unfairly.

- [24] The tribunal found that the applicant's disability did not appear to be a factor in the termination of his employment. The tribunal noted that during the two weeks where there was medical evidence supporting accommodation, Mr. Diarez was accommodated with modified duties. The applicant did not point to any evidence in support of his allegation that the respondents breached his Code rights.

- [25] In its reconsideration decision, the tribunal noted that reconsideration is a discretionary remedy and set out its rules that govern reconsideration and the limited circumstances in which it may be granted

- [26] The tribunal indicated that it considered Mr. Diarez's extensive submissions and found that none of the criteria for reconsideration applied to this case. The tribunal found that Mr. Diarez, rather than submitting that his case fit within any reconsideration criterion, was simply re-arguing his case. Given that there was no basis on which to grant reconsideration, Mr. Diarez's request was denied.

iii) Analysis

- [27] Mr. Diarez submits the decisions are unreasonable as they do not account for the employer's failure to accommodate his injury and wrongly find that Mr. Diarez quit his job. Mr. Diaz strenuously denies that he quit his job. Mr. Diarez submits that the employer should have asked him for more documentation about his disability.

- [28] The question before the court is whether the tribunal's decision that there was no prospect of success in proving discrimination in employment based on the information and documents before it was reasonable. Mr. Diarez has pointed to no information that was before the tribunal at first instance that the tribunal ignored or treated in an unreasonable manner.
- [29] Mr. Diarez points to paragraph 23 of the first decision as demonstrating a failure of logic and rationality in the decision sufficient to amount to unreasonableness. Paragraph 23 provides as follows:
- [23] The applicant's acknowledgement that he did not quit his job, and the allegation that he had reasons to voluntarily leave his employment under the Employment Insurance Act, supports the claim of the respondent that the applicant's termination of employment was not based on Code grounds.
- [30] While I agree that this paragraph is far from clear, I find that in reviewing the decision as a whole, as the court is required to do, this paragraph does not render the decision unreasonable. The tribunal went on after this paragraph to point to the absence of any evidence available to support Mr. Diarez's position.
- [31] The tribunal's conclusion that Mr. Diarez stopped coming to work was available to it on the record before it. Based on his own allegations, Mr. Diarez failed to contact his employer about either his injury status or his availability to work between at least February and April 2018. According to Mr. Diarez's allegations, the employer expressly asked him to obtain a signed functional abilities form from his doctor. Although the doctor was not able to provide it immediately because he needed more imaging, Mr. Diarez did not explain why he did not provide any medical documentation to the employer until May 2018. There was no information before the tribunal that showed that Mr. Diarez requested accommodation or submitted documentation to justify his continued absence during this time. On these facts, it was open to the tribunal to find that there was no prospect that Mr. Diarez could establish that he had been terminated because of his disability and therefore had suffered discrimination in employment.
- [32] To the degree Mr. Diarez is alleging that the HRTO failed to conduct a thorough investigation, I note that the HRTO is not an investigative body: *Shirley v. Staples Canada Inc.*, 2018 ONSC 1698 at para. 28.
- [33] Further, Mr. Diarez did not submit to this court that he met any of the criteria for reconsideration. He did not point to any portion of the reconsideration decision that was unreasonable.
- [34] There was information before the tribunal that supported its findings. The reasons, read as a whole, are intelligible, rational, and transparent. I therefore find the decisions to be reasonable.

Disposition

[35] I would dismiss the appeal.

[36] The employer is entitled to costs from Mr. Diarez in the amount of \$6,000 all-inclusive. The HRTO does not seek any costs and none are ordered..

Brownstone J.

I agree

Kurke J.

I agree

O'Brien J.

Released: April 27, 2026

CITATION: Diarez v. Staff Plus et al, 2026 ONSC 2084
DIVISIONAL COURT FILE NO.: DC-22-00000665-00JR
DATE: 20260427

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SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Kurke, O'Brien and Brownstone, JJ.

BETWEEN:

ERNESTO DIAREZ

Applicant

– and –

STAFF PLUS and D.J. GOSSELIN PERSONNEL INC.
and HUMAN RIGHTS TRIBUNAL OF ONTARIO

Respondent

JUDGMENT

L. BROWNSTONE, J.

Released: April 27, 2026