

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

BETWEEN:

MAUREEN TANZOLA

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

AZ BUS TOURS INC.

Respondent

REASONS FOR DECISION

MEMBER: Michel Doucet

2007 CHRT 38
2007/08/22

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I. INTRODUCTION

[1] On May 17, 2002, Maureen Tanzola (the “complainant”) filed a complaint under sections 7 and 10 of *the Canadian Human Rights Act* (the “Act”) against AZ Bus Tours Inc. (the “respondent”). The complainant alleges that the respondent engaged in a discriminatory practice on the ground of sex in a matter related to employment. More specifically, she alleges that the respondent treated her in an adverse differential manner as compared to her male colleagues. She further claims that there were several incidents where Mr. Ron Roffey, the respondent’s Operations Manager, harassed her because she was a woman. The complainant further asserts that the respondent transferred her to its Toronto division, a three hours commute from her home, and reduced her work hours, forcing her to resign.

[2] The respondent denies the complainant’s allegations.

A. THE FACTS

[3] The respondent is a charter bus company. It started its operation in 1998. Originally its main purpose was to transport passengers from Toronto to the Casino Rama, in Orillia, Ontario. Subsequently, it started to operate charter services to all points in Canada and the United States.

[4] The respondent has two operating divisions for its charter service to the Casino Rama. The main office is in Toronto, where the majority of the respondent’s bus fleet is parked. The respondent also has a small division in Orillia. Both divisions provide the same services to the same clients going to the same destination, the Casino Rama. The charter services that goes beyond Toronto and Orillia operates exclusively out of Toronto. Mr. Terry Barnett, the General Manager of the respondent at the time, testified that the scheduling of drivers in Toronto was done by dispatch, while the scheduling of drivers in Orillia was done by the supervisor of that division with the assistance of the Toronto dispatcher.

[5] The complainant’s husband, Tim Tanzola, was until 1999 the supervisor of the Orillia division. He was then replaced by John Westwood. John Westwood occupied the position of

supervisor until 2003, when he was dismissed by the respondent. The Orillia supervisor reported to Mr. Ron Roffey, who answered to Mr. Terry Barnett, the General Manager. Mr. Barnett testified that neither Mr. Westwood, nor Mr. Roffey, would have had any authority over the decision to terminate the employment of an employee. That decision was his.

[6] The complainant worked for the respondent as a bus driver from October 1997 to November 2001. Until 2001, she worked out of Orillia.

[7] The complainant testified that things started to go badly for her at work during the year of 1999. I note that this corresponds with the period when her husband resigned his position as supervisor of the Orillia division.

[8] During that year, the respondent instituted a safe driving bonus which was to be awarded to drivers who had an accident-free year. The amount of this bonus was \$1,000.00. The complainant testified that she did not receive the bonus because, according to the respondent, she had been involved in an accident. She further testified that several male drivers, although they had also submitted accident reports, received the bonus. She identified three drivers, Jean-Guy Desmarais, John Westwood and her husband, Tim Tanzola, all of whom had received or been offered the bonus although they had been involved in accidents. In her documents, she referred to several other drivers who had also received the bonus in similar situations, but none were called as witnesses.

[9] Although, the complainant may be convinced that she should have received her safe driving bonus, she has failed to establish how the respondent's decision not to award her the bonus is a discriminatory practice under the *Act*. Mr. Barnett testified that this bonus was discretionary and he was adamant that the reason why the complainant did not receive it was because she had been involved in a preventable accident and nothing else. The complainant has not been able to establish that this decision was made on the basis of sex and that other female drivers, for example, had also been denied the bonus.

[10] Next, the complainant testified to an incident which occurred on July 3, 2000, when a bus she was driving broke down on its way to Orillia. She called the Toronto office and spoke to the dispatcher giving him directions to where the change-off bus should be brought. Ron Roffey brought the change-off bus. When he arrived at the location where the complainant was stranded with her bus, she testified that he started yelling at her and making disparaging remarks in front of the passengers. According to her, there had been some confusion in the direction the dispatcher had given Mr. Roffey and Mr. Roffey was blaming her for this. She testified that he told her: “Your directions suck” in front of the passengers. She further added that his rude behaviour brought her to tears and that she had had a difficult time regaining her composure and felt humiliated.

[11] A week after this incident, a letter, which stated that she had been insubordinate to a superior, was placed in her personal file. No explanation of her insubordination was given at the hearing. She testified that after this incident, she told Mr. Barnett that in the future she would deal directly with him rather than going through Mr. Roffey.

[12] The complainant testified that several former employees of the respondent could support her allegations that Mr. Roffey had made derogatory remarks about women, but none were called as witnesses. She testified that she personally had never heard Mr. Roffey make these remarks. Mr. Tanzola, the complainant’s husband, told the Canadian Human Rights Commission’s investigator during an interview held on March 29, 2005, that “he couldn’t honestly say” that he heard Mr. Roffey say anything derogatory towards the complainant or other women. He added that he knew that his wife had had “run ins” with Mr. Roffey but added that “lots of drivers had run ins with Ron – male or female. He was hard nose and had a disrespectful way of treating people.”(The underlining is mine.) At the hearing, Mr. Tanzola again confirmed that he had not personally been witness to Mr. Roffey making these kinds of remarks.

[13] The only evidence on this point was that of John Westwood, who testified that he had overheard Mr. Roffey making remarks of this kind during a phone conversation or when he was at the respondent’s head office in Toronto. He did not elaborate on when these incidents had occurred or about their frequency, but added “well, I just took it with a grain of salt from the

person who is saying it, because I thought it was just terrible the way he handled himself in regards to men and women, not just women, you know, and I thought it's—to me it was degrading to hear a person in that position talk about employees like that.” (The underlining is mine.)

[14] It is impossible to draw any definite conclusion from this very scanty evidence. The fact that Mr. Roffey may have been a difficult manager to work with and that he may have been discourteous and rude in his dealings with his employees, male or female, is not sufficient to conclude that the respondent discriminated towards the complainant or other women employees on the basis of sex.

[15] The complainant was on sick leave from December 2000 to March 2001. In March 2001, having no intention to return to work for the respondent, she submitted her resignation. However, she testified that Terry Barnett told her that she could return to work whenever she felt ready. She eventually returned to work in June 2001, as a part-time driver. According to Mr. Barnett, Mr. Westwood, the Orillia supervisor, would have been responsible for her rehiring.

[16] The complainant testified to another incident which occurred on July 14, 2001, when she was required, by an Inspector of the Ministry of Transportation of Ontario, to have the bus she was driving inspected. The Inspector found a problem with the rear tires and ordered the bus out of service. She said that she then called the respondent's offices to inform her employer about the situation. She spoke with Terry Barnett who told her what to do. She testified to a conversation she had later with a certain Greg Larson, who at the time was a dispatcher with the respondent. She said that he had told her that Ron Roffey had made some remarks concerning this incident. Greg Larson having not been called as a witness, his alleged comments regarding remarks made by Ron Roffey constitutes hearsay and are not admissible in this particular case.

[17] The complainant also commented on another incident which occurred on July 26, 2001. On that day Mr. Roffey asked her why she had crossed without coming to a complete stop, what she described as “a dead railway track” on Weston Road. She replied that the tracks were no longer in service and that the bus was empty. Mr. Roffey told her that all buses are required to stop at unguarded railway crossings and told her that she should consider the conversation as a

verbal warning. The complainant's husband and Mr. Westwood testified that they never stopped at that crossing. Be that as it may, I cannot draw a conclusion of discrimination from this incident.

[18] She testified that in August 2001, her supervisor, John Westwood, came to her home and told her that Mr. Roffey was not happy about him rehiring the complainant. According to her testimony, he told her that he had been directed by management to terminate her employment. When she asked him why, he told her that he did not know the reason. John Westwood testified that he personally did not want to fire the complainant but being 64 years old and his wife being very ill, he felt he had no choice but to go along with management.

[19] At the time of the hearing the complainant's relationship with Mr. Westwood seemed to be excellent. Their relationship did not look so harmonious in 2001. During the fall of 2001, Mr. Westwood's rapport with the complainant seemed to deteriorate fast. At the hearing, the complainant and Mr. Westwood suggested that Mr. Westwood had been forced to take an antagonistic approach towards the complainant.

[20] An example of the bad relationship between the two is demonstrated by a note dated October 18, 2001. On October 16, 2001, the complainant was required to participate in a driver's training course. According to the note, Mr. Westwood was "very disappointed" with the complainant's behaviour during this course. He indicated that she had acted in a very unprofessional manner and that he had received numerous comments about her attitude. Mr. Westwood told the complainant that he wanted to see improvement in her behaviour. Copies of this note were sent to Mr. Barnett and to Mr. Roffey. During the hearing, Mr. Westwood tried to soften his interpretation of this event. He basically explained that the complainant's attitude during this course had more to do with her "sense of humour" than with what he had characterised as "unprofessional" conduct in his notes.

[21] He also alleged that the note of October 24, 2001, and other notes pertaining to the complainant, had been written by the Toronto office and had been imposed on him. He supported this allegation by stating that it was not his practice to typewrite letters; he would normally write his notes by hand. Although this might be possible, it remains that Mr. Westwood signed the

notes. Also, the nature of the information contained in them is not conducive to a conclusion that Mr. Westwood had no involvement whatsoever in drafting them. In his evidence, Mr. Barnett admitted that it could be that Mr. Westwood sent some handwritten notes to Toronto so that they could be typewritten, since the Orillia division did not have the necessary secretarial support.

[22] The complainant testified that on October 21, 2001, she was told by the respondent's dispatcher that Terry Barnett had told him that her employment had been terminated. She said that she then phoned her supervisor, Mr. Westwood, to see if she had been fired. According to her evidence Mr. Westwood "took such a fit". He told her to get on the bus and drive. She added that he was yelling and screaming at her. This reaction of Mr. Westwood is certainly not indicative of a good working relationship between the complainant and him.

[23] Two days later, Terry Barnett told the complainant that there had been a mistake in identity between her and Barbara Tanzos, a co-worker, whose employment with the respondent had just been terminated. On October 24, 2001, Mr. Westwood wrote a memo to the complainant in which he apologised for the "anger" he had displayed on October 21, 2001. He also wrote: "Maureen, you are a good driver and have helped the Orillia Division out in an emergency many times, for which I am grateful. But, you have a problem controlling your anger, which I have witnessed, and been the recipient of many times." In his note, he also referred to other incidents in which the complainant had been involved and asked for a written response from her.

[24] The complainant never responded. She explained at the hearing that she did not answer because she felt that there was "really nothing to answer. They were making this up and I figured to dignify that with an answer would give them some more of my supposed bad temper on paper so that they would include it in their paper trail."

[25] On November 6, 2001, Mr. Westwood wrote back: "due to the lack of a response from you...I have decided to take the following action." To this note was attached a memo to Mr. Roffey, with a copy sent to Mr. Barnett. In this memo, Mr. Westwood made the following statement: "For approximately two years, I have had numerous conflicts with Maureen due to her anger and resentment of management personnel. Until recently, her driving career was

untarnished. After serious consideration and a continued respectful relationship between the Orillia drivers and myself, I recommend a transfer for Maureen to Weston Road [Toronto], effective November 9th, 2001.” The complainant testified that because of her transfer to the Toronto division, she now had a daily commute of three hours from her residence to her new place of work.

[26] Regarding the complainant’s transfer to the Toronto division, during her examination of Mr. Westwood, the complainant tried to have him admit that the reason for this decision was to give Ron Roffey the opportunity to terminate her employment. Mr. Westwood’s first answer was “at the time they thought they can give you full time at Weston Road.” When pressed by the complainant who asked him: “But in your belief you don’t believe that Ron Roffey was legit in saying that he was going to give me full-time hours in Toronto; it was a way to get me away from you so that he could deal with it. Is that correct?”, he answered hesitantly and not very convincingly I might add: “That’s quite possible. At the time it did seem...if that was the intention—I think his intention was what you just said, but I didn’t believe that at the time”.

[27] At the hearing, Mr. Westwood testified that the “numerous conflicts” he was referring to in this note, were those with the management in Toronto and not necessarily “conflicts” that he had personally with the complainant. Throughout his testimony, Mr. Westwood’s recollections of the events were for the most part vague and unclear. He also seemed to be very timid in his assessment of the complainant’s attitude during the time when he was supervisor of the Orillia division, to the point of being apologetic. He put the blame for this situation solely on management, by which he meant Ron Roffey and Terry Barnett. It is important though to remember that Mr. Westwood had had his own problems with the respondent; problems which led to him losing his job. He had even started a legal action for wrongful dismissal against the respondent and had eventually signed a settlement agreement with them. He certainly had what we could characterise as an axe to grind with AZ Bus Tour since he felt that it had treated him unjustly. This certainly had an effect on his appreciation of the facts.

[28] Although it might be true that Mr. Westwood might have been unenthusiastic in respect of certain decisions taken by management in regards to the complainant, he nevertheless signed the

memos directed to her, which memos were written, as we have seen, with uncompromising words. He did not convince me that, at the time, he did not agree with the assessment these notes made of the complainant. I believe that he agreed that the complainant had an anger problem and that she was being resentful of management. He did testify that when he took over the role of supervisor of the Orillia division from Tim Tanzola this “made things a bit awkward” for the complainant. He added that at that particular time she was “hoping that Tim would stay as supervisor” and that she “was hurt with her husband resigning from that position.” He again stated that her relationship with Mr. Westwood, at the time, was “rather awkward”, but he testified that they eventually worked it out. It is possible that they have now worked things out, but that did not seem to be the case in 2001.

[29] The complainant made reference to a memo written by Mr. Westwood which was circulated to the Orillia division drivers on November 2, 2001, regarding part time drivers going on rotating shifts. She testified that when her husband was the supervisor of the Orillia division there was never any rotating shift. She added that during that time “[w]e worked out our specific shifts according to kind of mutual wants and likes and dislikes. Some liked to work afternoons, some liked to work days, and, as I stated, my husband and I split shifts, one worked days, one worked nights.” She testified that John Westwood was well aware that by implementing this rotation, he was forcing her out of work. She explained “they knew with my husband working days that I had to work nights or with him working nights I had to work days and if they rotated these shifts I wouldn’t be able to any longer be employed at that company.” Although, it is possible that this new organisation of the work rotation caused the complainant and her husband some inconvenience, I fail to see how it relates to the allegations of discrimination on the basis of sex. It is true that, as she testified, while her husband was supervisor, they had been able to establish a work routine which satisfied their family needs and that the changes which were being introduced jeopardised this but she has not convinced me that these changes were made solely for the purpose of discriminating against her.

[30] The complainant’s employment with the respondent ended on November 9, 2001.

B. Legal Analysis

[31] The present procedure is not a wrongful dismissal action. What I am concerned with is the allegation by the complainant that she was discriminated against on the ground of sex in a matter related to employment. I must answer that question by inquiring whether or not the respondent treated the complainant in an adverse differential manner as compared to her male colleagues or whether she has been harassed because of her sex.

[32] It is clear that the complainant felt a lot of frustration during her employment with the respondent, at least from 1999 to November 9, 2001. It is also clear that she is convinced that she was treated unjustly by the respondent. But this is not sufficient to support the allegations that she is making that she has been discriminated against on the ground of sex contrary to sections 7 and 10 of the *Act*.

[33] Section 7 makes it a discriminatory practice to refuse to employ, or to continue to employ, an individual, on a prohibited ground of discrimination. Sex is included amongst the prohibited grounds of discrimination enumerated in section 3 of the *Act*. Section 10 makes it a discriminatory practice for an employer to establish or pursue a policy that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination. In contrast to complaints under section 7 of the *Act*, which relate to employer actions affecting specific, named individuals, section 10 of the *Act* addresses the discriminatory effect that employer policies or practices may have on an individual or a class of individuals. There is no evidence that would allow me to conclude that the respondent violated section 10 of the *Act*.

[34] As regards to the section 7 complaint, the complainant alleges that in the course of her employment, the respondent engaged in a discriminatory practice, within the meaning of that section, by directly or indirectly differentiating adversely in relation to her, on a prohibited ground of discrimination, namely sex.

[35] To be successful, complainants in human rights cases must first establish a *prima facie* case of discrimination. A *prima facie* case is one that covers allegations made and which, if the allegations are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent. (*Ontario Human Rights Commission v. Simpson's Sears*, [1985] 2 S.C.R. 536, at para. 28.)

[36] The complainant has not met this burden. It was never established that the respondent engaged in any form of discriminatory practice towards the complainant during the course of her employment. The evidence failed to establish that there existed at the respondent's place of business an inequality stemming from employment policies and practices and that the complainant herself had been discriminated upon on the basis of sex.

[37] Nothing in the evidence establishes that the respondent's policies and practices stereotyped or prejudiced against female drivers. On the contrary, the evidence showed that both male and female employees were required to meet the same requirements and qualifications. The evidence did not establish that male drivers were treated more favourably than female drivers. The policies and practices of the respondent did not create any barriers for female employees to obtain and maintain the standard of work that male employees performed.

[38] The complainant's allegations do not establish a link between the way she claims that she was treated and the fact that she was a woman. In order to proceed to further analysis, I would have to be satisfied that the complainant had met her first hurdle and that she had established a *prima facie* case of discrimination. The complainant has not met this burden.

[39] The purpose of the *Act* is not to punish what a complainant might feel is wrongdoing on the part of his or her employer, but to prevent discrimination. There is no evidence of discrimination in this case.

II. CONCLUSION

[40] The complaint is therefore dismissed.

OTTAWA, Ontario
August 22, 2007

“Signed by”

Michel Doucet

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE: T1107/8805

STYLE OF CAUSE: Maureen Tanzola v. AZ Bus Tours Inc.

DATE AND PLACE OF HEARING: March 5 to 7, 2007 and
May 3, 2007
Barrie, Ontario

DECISION OF THE TRIBUNAL DATED: August 22, 2007

APPEARANCES:

Maureen Tanzola	For herself
(No one appearing)	For the Canadian Human Rights Commission
Natalia Chang	For the Respondent