

SEPT. 1979

HUMAN RIGHTS BOARDS OF INQUIRY

REFUSAL TO HIRE

Jane Gawne, Complainant

- and -

Richard Chapman, Richard Chapman and Associates Ltd. and Similkameen Survey Services Ltd., Respondents

- and -

Director, Human Rights Branch

Board:

Beverly M. McLachlin

Date:

December 8, 1978

Date of Hearing:

December 8, 1978, Penticton

Effective Date of Decision:

February 12, 1979

A Human Rights Board of Inquiry was appointed to hear the complaint of Jane Gawne that the Respondents, Richard Chapman, Richard Chapman and Associates Ltd. refused to employ her as a chainperson for survey work on the grounds of her sex, without reasonable cause, contrary to Section 8 of the Human Rights Code.

Similkameen Survey Services Ltd., as the employer of all persons working for the several businesses in which Mr. Chapman had an interest, was included as a Respondent by the Board. No objection was raised that the complaint was cited against Richard Chapman and Associates Ltd.

It was admitted by the Respondent that at the time of the Complainant's application and interview for employment with the Respondent, she was qualified for the position which she sought. It was also admitted that Canada Manpower prior to November 30, 1976, received a request for employment from someone, ostensibly calling on behalf of Richard Chapman and Associates Ltd., and that in response to this request, the Complainant was sent for an interview.

Refusal to employ was admitted by all parties. Mr. Chapman's defence to the allegation that the refusal was wrongful was that he did not hire Jane Gawne because there was no job as chainperson for anyone — male or female — on November 30th when she was interviewed. However, the decision of the Board records that Mr. Chapman made no attempt to cancel the notice at Canada Manpower showing a position for a chainperson, after learning of it on November 30, and that "he took time on an admittedly busy day to interview Mr. and Mrs. Gawne."

The Board concluded that Mr. Chapman himself treated the position posted at Canada Manpower

as open; as a result the Board would proceed on that assumption.

With respect to the refusal of Jane Gawne for the position, the Board states that no other reasons beyond availability of the position were given for the refusal, other than the Complainant's sex.

However, the Board's decision states "it is also of significance that Mr. Chapman found it necessary in the course of the interview to go into detail as to why he did not wish to hire a woman for the position of chainperson... Mr. Chapman stated that his observations about the suitability of women for the position were really only 'fictitious reservations'. He had no answer for why he raised the factor of the additional cost involved in employing a woman in this position, but states, 'It just came out.'... He maintained that while these things were in his mind at the time, they weren't factors in his decision."

The Board determined that the Respondents discriminated against Jane Gawne in respect of employment, contrary to Section 8(1) of the Code. The Board also determined that "the evidence established no basis for a finding of reasonable cause in this case."

The Board noted that "throughout the proceedings Mr. Chapman maintained that he acted with the best of personal intentions and as a fair-minded person. ...This however does not provide a defence." In support of this, the Board quoted *Bremer vs. Board of School Trustees, School District #62 (Sooke)* (BC Human Rights Board of Inquiry, June 10, 1977) p. 12, a "person may have the best of personal intentions and nevertheless contravene the Code."

The Board ordered the Respondent to cease such contravention and to refrain from commit-

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ting the same or a similiar contravention. In addition, the Complainant was awarded \$280.00, equivalent to 10 days earnings.

The Board noted that costs may be appropriate where the Board concludes that settlement was precluded by the intransigence of one of the parties, citing previous decisions. In this case, the Board states that much time passed between the violation and the hearing, and that repeated attempts were made by the officers of the Human Rights Branch to effect a settlement. The personal Respondent admitted that he did not take these attempts very seriously. As a result the award of costs was determined appropriate. But the Board noted that previous decisions of Boards appointed under the Human Rights Code demonstrate a conservative approach to awarding damages. As a result, the amount sought by Counsel for the Human Rights Branch for costs and disbursements was reduced to an award of \$500.00 for costs.

BOARD OF INQUIRY

TO THE HUMAN RIGHTS COMMISSION
1000 UNIVERSITY AVENUE
TORONTO, ONTARIO
M5G 1K3
February 21, 20, March 4, 10, 1978
April 27, 1978
September 22, 1978

A Human Rights Board of Inquiry was appointed by the Minister of Labour to hear the complaint of [Name] against [Company Name], [Company Address]. [Name] alleged an employment ban as he was a [Name] of [Company Name] because of his height and weight. It was argued that his employment ban was not a contravention of the Human Rights Code and was a disciplinary matter.

The factual background is described by the Board as follows:

[Name] was a [Name] and was hired by the company in [Month] 1972. She subsequently worked for the company until [Month] 1977. She was dismissed from her position on [Month] 1977. She had worked previously as a [Name] for another company.

The company's policy on hiring and employment of people with physical disabilities is to hire and employ people based on a person's ability to do the job and place the burden on a person to show that they can do the job.

Between the date of [Name]'s application for work in November 1972 and February 1977, when the Human Rights Branch became involved in the case, 22 new employees were hired for entry positions. Between February 1978 and April 1978, only three new employees were hired.

The company argued that it had not refused to hire the complainant because she had not shown that she was qualified to do the job.

of the Human Rights Code.

The company argued that the complainant's ban was only one of the factors contributing to its decision not to hire her. Other factors were mentioned by the company, however the Board found that these were not supported by evidence.

Representatives of the company accepted that personnel with an impairment in job performance should only be hired for less critical and less demanding jobs and stated that the company was not hiring [Name] because of her height and weight.

The Board determined that the job performance required by the company was a high level of physical strength and endurance, and that the complainant's height and weight were a significant factor in the company's decision not to hire her.

The Company's general rules in hiring persons and the Company's hiring policy apply these rules as threshold requirements, thereby limiting and restricting applications for employment. The Company, however, will not hire and apply these rules if they have a high capacity, if they are allowed for the job to be performed. General rules based on minimum standards and not necessarily related to the specific work necessary to do the job are applied to the applicant's job requirements because of the Code's intent.

The Board, in view of the height and weight measurements, found that although it is not possible to determine the exact weight and height of the complainant at the time of the hearing, the Board is satisfied that the complainant's height and weight were not a significant factor in the company's decision not to hire her.