

HUMAN RIGHTS PROGRAM

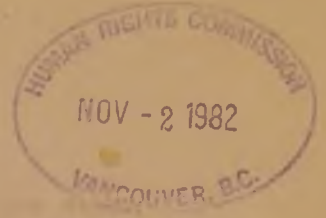
PARLIAMENT BUILDINGS
VICTORIA, B.C.
V8V 1Z8

TO
Ms. Renate Shearer
FROM
Flo Lavallee
SUBJECT
Trudy Ann Holloway DATE
Oct. 29/82
ACTION REQUESTED

HUMAN RIGHTS
ENQUIRY

- REPLY DIRECTLY
- DRAFT REPLY FOR _____
- FOR YOUR INFORMATION
- DISCUSS DIRECTLY WITH _____
- FOR YOUR APPROVAL AND OR SIGNATURE
- APPOINT FOR INVESTIGATION _____
- YOUR COMMENTS ARE REQUESTED
- OTHER (SPECIFY) _____

HEARING



Holloway

Trudy Ann Holloway, Owner
Apartment #31 owned and
Clairco Foods Ltd.

Human Rights Code
pursuant to Section 16(3) of the
Code of British Columbia

THAT pursuant to Section 16
of the Code of British Columbia, a Board of
Inquiry was held on December 8 - 10,
1982, at 10:30 a.m., on December 8 - 10,
Faculty of Law, University of
British Columbia, Vancouver, B.C., hear
ings of the Human Rights Code of
British Columbia against Clair MacDonal,
Holloway against Clair MacDonal,

owned and operated by Clairco
Foods Ltd., which allegation was filed February 4, 1982.
Copies of the allegation and the Report to the Minister of
Labour are attached hereto.

The Board may, at the request of any
party to the proceedings or on its own motion, direct that
a transcript be made of the proceedings. Such request in
writing is to be received by the undersigned not later than
five days prior to the date set for the Hearing.

DATED at the City of Victoria in the
Province of British Columbia this 27th day of October, 1982.

Hanne Jensen
Hanne Jensen
Director
Human Rights Code

Attachments

HUMAN RIGHTS
BOARD OF INQUIRY

NOTICE OF HEARING

Trudy Ann Holloway
Complainant

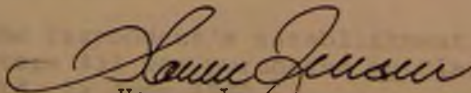
Clair MacDonald, Owner
Shop Easy, Store #31 owned and
operated by Clairco Foods Ltd.
Respondents

Director, Human Rights Code
A party pursuant to Section 16(3) of the
Human Rights Code of British Columbia

TAKE NOTICE THAT pursuant to Section 16 of the Human Rights Code of British Columbia, a Board of Inquiry will, commencing at 10:30 a.m., on December 8 - 10, 1982, at the Moot Court Room, Faculty of Law, University of British Columbia, 1075 Wesbrook Mall, Vancouver, B.C., hear the allegation under Section 8 of the Human Rights Code of British Columbia of Trudy Ann Holloway against Clair MacDonald, Owner, Shop Easy, Store #31, owned and operated by Clairco Foods Ltd., which allegation was filed February 4, 1982. Copies of the allegation and the Report to the Minister of Labour are attached hereto.

The Board may, at the request of any party to the proceedings or on its own motion, direct that a transcript be made of the proceedings. Such request in writing is to be received by the undersigned not later than five days prior to the date set for the Hearing.

DATED at the City of Victoria in the Province of British Columbia this 27th day of October, 1982.


Hanne Jensen
Director
Human Rights Code

Attachments

April 23, 1982

Report to the Minister of Labour

BOARD ON INQUIRY

Complaint: Pursuant to Section 8 of the Human Rights Code of British Columbia.

Conduct: Termination of employment

Prohibited Grounds: Sex and without reasonable cause (pregnancy)

Complainant: Trudy Ann Holloway

Respondent: Shop Easy, Store #31 owned and operated by Clairco Foods Ltd.

Date of Alleged Contravention: January 10, 1981

Exhibits:

1. Copy of Complaint Form I signed by the complainant and dated February 4, 1981.
2. Copy of a memorandum To Whom It May Concern from H. McPhie, M.D. dated November 3, 1981.
3. Copy of letter to Diana McFarlane, Human Rights Officer, from Eugene Lesyk dated April 13, 1981.
4. Copy of a letter to Diana McFarlane, Human Rights Officer, from Eugene Lesyk dated May 12, 1981.

Summary of Investigative Findings:

1. The Complainant worked as a cashier with the respondent for a period of approximately five years.
2. The respondent's establishment, Shop Easy Store #31 was purchased by Clairco Foods Ltd. in June 1980.
3. In August 1980 the complainant became pregnant.
4. The complainant asked for and received a five week leave of absence on the recommendation of her doctor.

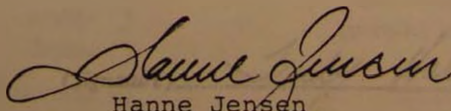
5. The complainant returned to her employment after her leave of absence and planned to work until March 31, 1981.
6. The respondent was subject to a new Sunday shopping by-law, effective January 1, 1981.
7. The respondent had a new employee, Yvonne Cavanaugh, start on January 3, 1981.
8. The complainant was terminated on January 10, 1981. The reason stated on the employment record was "lay-off - shortage of work".
9. The complainant was senior in experience to two employees who remained employed by the respondent after the complainant's employment was terminated.
10. The complainant was responsible for ordering, retail accounting, closing out and deposits in addition to cashiering. In the absence of the complainant, these duties were carried out by the manager.

Attempts at Settlement:

Attempts at settlement were made by correspondence from March 20, 1981 until December 1981 without success. Solicitors for the respondent advise that there is no possibility of resolving the complaint.

Issues Raised:

1. Was the complainant terminated without reasonable cause because of her pregnancy?
2. Was the termination of the complainant's employment a contravention of Section 8 of the Human Rights Code?


Hanne Jensen
Director
Human Rights Code

Attachments



HUMAN RIGHTS CODE OF BRITISH COLUMBIA

Director,
Human Rights Code,
Parliament Buildings,
Victoria, B.C. V8V 1X4

I, Trudy Ann Holloway
(Name in full)

416 Garrett Street New Westminster
(Street address) (City)

(Home telephone) (Business telephone)

complain under section 8 of the *Human Rights Code of British Columbia* that I was discriminated against by

Clair MacDonald
(Name in full)

Owner Shop Easy, Store #31
(Position or title) owned and operated by
(Company name) Clairco Foods Ltd.

450 East Columbia Street New Westminster
(Street address) (City)

(Home telephone) 522-4546 (Business telephone)

on January 10, 1981 1981
(Date of offence)

NOTE—Complaint must be filed within six months—of the alleged incident.

Jan 4, 1981 (Date) Trudy Holloway (Signature)

Please fill in details on back.

Discrimination on the basis of

- race religion colour age marital status
 ancestry place of origin political belief criminal conviction
 other Sex and without reasonable cause (pregnancy)

Details

I allege I was terminated from my employment
because of my sex and without reasonable
cause (pregnancy), contrary to Section 8 of
the Human Rights Code.

OFFICE USE ONLY

- proceeding
 under investigation
 waiting for reply
 informal follow-up
 refer to
 send material

- Result*
 information
 dismiss
 withdrawn
 settled
 Board of Inquiry

Officer

Recd Mar 12

Exhibit 2

TELEPHONE 526-1665

IF NO ANSWER PHONE
524-4931

H. MCPHIE, M.D., C.C.F.P.
306 BRAID STREET, NEW WESTMINSTER, B.C. V3L 3R1

NAME Ref: Ruby Holloway

DATE 11/3/81

R_x
to show it may
concern

The above named
was fit to work thru
the January 1981 and
will remain fit to work
until March 31st 81
Holloway
MD
11/3/81



EUGENE LESYK, B.Sc., LL.B

BARRISTER & SOLICITOR

Exhibit 3

TELEPHONE 941-4055

SUITE 1
2628 SHAUGHNESSY ST.
PORT COQUITLAM, B.C.
V3C 3V1

April 13th, 1981

REPLY ATTENTION OF

Attention: Diana McFarlane

Ministry of Labour
Human Rights Branch
4946 Canada Way
Burnaby, B.C.
V5G 4J6



Dear Madam:

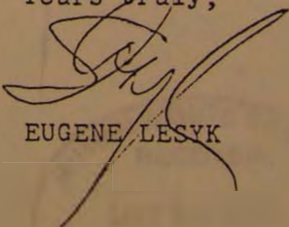
Re: Shop Easy Store and Trudy Holloway

Your letter of March 20th, 1981 has been referred to me for attention.

I discussed the matter with my client and he is at loss as why you are asking for those items as set out in your letter of March 20th, 1981. I believe Mr. McDonald showed either you or another Human Rights Officer the statement regarding the reasons for Ms. Holloway's separation, enclosed is a copy for your records.

My client was by operation of law forced to close his store on Sundays and consequently lost revenue because of this. He then had to make a staff adjustment to reduce overhead. Ms. Holloway was released because of a shortage of work and for no other reason.

Yours truly,


EUGENE LESYK

Called April 20

/b
encl.

EUGENE LESYK, B.Sc., LL.B

TELEPHONE: 941-4055

BARRISTER & SOLICITOR

SUITE 1
2628 SHAUGHNESSY ST.
PORT COQUITLAM, B.C.
V3C 3V1

May 12th, 1981

REPLY ATTENTION OF

Attention: Diana McFarlane

Ministry of Labour
Human Rights Branch
c/o 1441 - 200th Street
Langley, B.C.
V3A 4P4

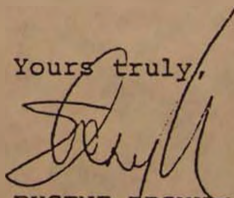
Dear Madam:

Re: Shop Easy Store and Trudy Holloway

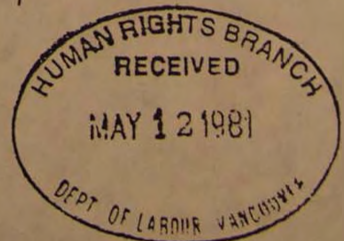
Further to our telephone conversation of May 12th, 1981 this is to advise that Mr. McDonald is taking the stand that he justifiably laid off Mrs. Holloway and will not enter into any settlement agreement with her.

Thanking you for your cooperation in this matter.

Yours truly,


EUGENE LESYK

/b



H-5(b)-L Case Summaries
- Minister's copies



file.



To: The Hon. Jack Heinrich
Minister of Labour

Date: March 17, 1982

Re: Trudy Ann Holloway
- and -
Shop Easy, Store #31
owned and operated by
Clairco Foods Ltd.
- and -
Human Rights Code of British Columbia

Section:	8
Conduct:	Termination
Prohibited Ground:	Sex and without reasonable cause (pregnancy)
D.A.C.:	January 10, 1981
Disposition:	Unable to settle

ALLEGATION:

The complainant alleges that her employment as a cashier was terminated on January 10, 1981 because she was pregnant.

INVESTIGATIVE FINDINGS:

Ms. Holloway had worked as a cashier with the respondent company for five years. In June 1980, Clairco Foods Ltd. purchased Shop Easy Store #31. At that time the complainant was pregnant, but subsequently miscarried.

When she again became pregnant in August 1980 she requested and was granted five weeks' leave, returning to work in mid-November, on her doctor's certification that she was in good health and fully able to work.

When a new Sunday shopping by-law came into effect on January 1, 1981, the respondent decided to cut back staff.

Although two cashiers had less seniority than the complainant, the respondent decided to terminate the complainant because "she would be leaving anyway" and "she didn't look good being pregnant." (statements made to Human Rights officer).

... 2

Source: British Columbia Archives

Call Number: 6-95-168

Box: BOX 4

File: H-5 (b)-L

For research or private study
use only.

In addition to cashiering, the complainant was responsible for ordering, retail accounting, closing out, and deposits, responsibilities otherwise carried out only by the Manager.

No problem with respect to her job performance has been identified, although the respondent expressed some non-specific concern with respect to the complainant's ability to do bagging and lifting. The complainant firmly denies this.

On January 3, the respondent hired a new full time cashier. On January 10, the complainant was terminated. The reason stated on the separation certificate stated "lay-off - shortage of work."

SETTLEMENT ATTEMPTS:

The complainant is seeking a letter of recommendation, an apology and compensation for wages lost and for loss of maternity benefits as a result of her dismissal half way through her pregnancy.

Settlement was attempted from March 20, 1981 until December 1981 without success.

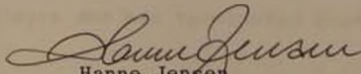
The respondent denies that she was terminated because of pregnancy, contrary to the Code.

The solicitor acting for the company had advised that his client has no intention of settling this complaint.

DISCUSSION:

This is one of the last complaints handled by the Human Rights Branch prior to the proclamation of the Employment Standards Act, under which Ms. Holloway would have been able to file a complaint. However, the practise of an employer terminating a pregnant employee with more seniority over others with less seniority remains an important woman's issue.

The unwillingness of the respondent to deal with settlement of this complaint demonstrates the need for a strong statement of intent to protect the pregnant woman in the work force from termination for discriminatory reasons.


Hanne Jensen
Director

HJ/fl

cc: D. Cameron, S. Stackhouse, A.D. Katz

To Alan Andison
A/Chief of Compliance

Date August 7, 1981

FINAL REPORT

RE: TRUDY ANN HOLLOWAY
- and -
SHOP EASY STORE #31
OWNED AND OPERATED BY
CLAIRCO FOODS LTD.
- and -
HUMAN RIGHTS CODE OF B. C.

SECTION: 8
AREA: Terminated
NATURE: Without reasonable cause
(Pregnancy)
D.A.C.: January 10, 1981
DISPOSITION: Unsettled (substantiated)

ALLEGATION:

Ms. Holloway worked as a cashier for the above named company for 5 years. In June of 1980, Shop Easy (Clairco Foods Ltd.) bought out the store. The new owner was Mr. Claire McDonald and the store manager, Mr. Rob Johnson. At the time of the takeover, Ms. Holloway was pregnant. Shortly after the takeover, Ms. Holloway miscarried. In August 1980, she became pregnant again and in order to ensure the baby's safety, her doctor recommended she take off five weeks. She returned to work mid-November as her doctor said she was in good health and fully able to work.

She went to see Mr. McDonald about receiving a raise on January 2, 1981 as she (and Mr. Johnson) believed everyone except Ms. Holloway had received a raise. Mr. McDonald informed her there was no point in giving her a raise since she would likely be leaving soon and wouldn't be able to keep up with her work anyway.

On January 10, 1981, Mr. McDonald called Ms. Holloway to his office and fired her.

Ms. Holloway alleges she was terminated because of pregnancy.

... /2

INVESTIGATION:

On January 29, 1981, I was appointed to investigate Ms. Holloway's complaint. I met with the Complainant on February 13, 1981, and with Messrs. Claire McDonald (owner) and Rob Johnson (manager) on February 18, 1981, accompanied by Officer Jane McBea. On March 18, 1981, I spoke with Ms. Maureen Stenbridge, a cashier at Shop Easy. I received a letter from Dr. H. McPhie on March 12, 1981.

UNDISPUTED FACTS:

1. Ms. Holloway was 4.5 months pregnant when fired.
2. Mr. McDonald stated Ms. Holloway was fired because she was pregnant and she would probably be leaving in a month anyway and because of the new Sunday shopping by-law he had to cut back on help.
3. Mr. McDonald stated he did not know what he would have done if Ms. Holloway had not been pregnant. Mr. Johnson stated it would have been Maureen or Shelley (two other cashiers) who would have been terminated if Ms. Holloway hadn't been pregnant.
4. Ms. Holloway was high on the seniority list. Both Maureen and Shelley were below her.
5. Mr. McDonald and Mr. Johnson said that Ms. Holloway didn't look good being pregnant and that her pregnant appearance in the store wasn't good for customers to see.
6. Both Mr. McDonald and Mr. Johnson stated that no complaints were even received from customers with respect to Ms. Holloway's appearance.
7. The following comments were made to the Investigating Officers by Mr. Claire McDonald:
 - a) "Trudy (Holloway) was the logical one to let go because she is pregnant".
 - b) "She (Ms. Holloway) could not wear her uniform. She wore unsightly pants". (elasticized pants)
 - c) "I didn't know how long she (Ms. Holloway) would hang on".

... /3

- d) "It didn't look to me like she'd be around much longer".
 - e) "Most women who have had children don't come back to work unless after 3 - 4 years. Most want to leave".
 - f) "Trudy (Holloway) was unreliable because of her health". (her pregnancy)
8. Mr. Johnson made the following comments to the Investigating Officers:
- a) "I wouldn't let my own wife work while pregnant".
 - b) "She (Ms. Holloway) didn't look too good. She couldn't wear her uniform and wore an over-sized shirt".
 - c) "She (Ms. Holloway) was getting large and had a hard time bending. It was best to lay off and let her collect U.I.C."

DISPUTED FACTS:

- 1. Mr. McDonald and Mr. Johnson stated Ms. Holloway experienced difficulty bagging and lifting groceries. Ms. Holloway disputed this.

DISCUSSION:

Besides cashiering and stocking shelves, Ms. Holloway's duties included: ordering, retail accounting, closing out and deposits. The only other person who had those same responsibilities was the manager. Ms. Holloway, therefore, had more job responsibilities than the other cashier. Both Mr. McDonald and Mr. Johnson expressed satisfaction with Ms. Holloway's work.

Although Messrs. McDonald and Johnson stated that Ms. Holloway had difficulty bagging and lifting groceries while pregnant. Ms. Holloway disputed this. A doctor's certificate was never requested while Ms. Holloway was at Shop Easy. Dr. McPhie wrote: "The above named (Ms. Holloway) was fit to work through January 1981 and will remain fit to work until March 31, 1981". Ms. Holloway had informed Mr. McDonald while at Shop Easy that she wanted to work until March 31, 1981.

... /4

Mr. McDonald confirmed this. Mr. Johnson stated that the store was not high volume and that a large proportion of the surrounding community is on welfare and there are a great deal of older people who shop there. Ms. Holloway verified this, adding that bagging is never a problem as the orders are generally small (as the elderly can not carry heavy parcels) and the cashiers are encouraged to have the men lift anything heavy. When Ms. Stenbridge, another cashier was spoken with, she confirmed that lifting was never a problem for cashiers. Mr. Johnson stated that he or one of the other men do the heavy lifting and carry the groceries out to the customer's cars.

Mr. McDonald stated that Ms. Holloway was often off sick. When asked to elaborate on this he made reference to Ms. Holloway's five week leave of absence which she took at the beginning of her pregnancy, on her doctor's recommendation to ensure the baby's safety. However, even during this time, which Mr. McDonald referred to Ms. Holloway as being "bed-ridden", Ms. Holloway worked eleven hours in two days when called in during a busy period. After examination of the time sheets, there is no indication Ms. Holloway was often absent. Mr. McDonald stated that Ms. Holloway worked an average of 25 hours per week but cut back on her hours after she became pregnant. Even after Mr. McDonald cut back on Ms. Holloway's hours, the average weekly hours worked out to 27 per week. Ms. Holloway, therefore, could not have been off sick very often.

Mr. McDonald said he felt more loyalty to long time employees and that Ms. Holloway had been at Shop Easy longer than many other employees. Mr. Johnson stated that Maureen or Shelley would have been terminated if Ms. Holloway hadn't been pregnant. Mr. McDonald stated he didn't know what he would have done if Ms. Holloway hadn't been pregnant. He also stated that he would consider rehiring Ms. Holloway after her pregnancy.

Mr. McDonald's daughter was eight months pregnant in February 1981 and worked two hours every Monday in the office (as a bookkeeper). She had no customer contact. Mr. McDonald described his daughter as pregnant again.

Ms. Maureen Stenbridge was four months pregnant in January but miscarried later that same month. Ms. Stenbridge stated she felt her job threatened while pregnant as a result of what happened to Ms. Holloway. Ms. Stenbridge purposely did not tell Mr. McDonald that she was pregnant.

Mr. McDonald stated that the new Sunday shopping by-law was one reason for terminating Ms. Holloway as he lost 25% of his business. This by-law was instituted on January 1, 1981. Ms. Holloway was terminated January 10, 1981. There was only

... /5

one Sunday in between that time, January 4, 1981. Also, Ms. Yvonne Cavinaugh started work full time on January 3, 1981, (replacing Brenda Emery) which was after the Sunday by-law was in effect.

CONCLUSION:

It was my opinion that Ms. Holloway was terminated from continued employment because of her pregnancy for the following reasons:

1. Mr. McDonald stated pregnancy as the first of two reasons and Mr. Johnson stated pregnancy as the major reason.
2. Both the owner and manager expressed satisfaction with Ms. Holloway's work and neither indicated wanting to let her go before she became pregnant. Mr. McDonald stated he would reconsider employing Ms. Holloway after the maternity leave.
3. Although both Messrs. McDonald and Johnson said Ms. Holloway experienced difficulty bagging and lifting, no doctor's certificate was asked for. The certificate clearly states Ms. Holloway was fit to work until March 31, 1981.
4. Statements by both owner and manager clearly indicate a negative attitude towards the appearance of a pregnant woman; also indicated is the traditional attitude that woman should not work before or after pregnancy.
5. The manager stated that two other women with less seniority than Ms. Holloway, would have been terminated if Ms. Holloway hadn't been pregnant.

REMEDY SOUGHT:

1. - Letter of apology to Ms. Holloway;
2. - Letter of recommendation to Ms. Holloway;
3. - A written change in store policy with respect to maternity rights, respecting the Human Rights Code; and
4. - A total of \$2,066.69, for lost wages and U.I. maternity benefits lost.

... /6

SETTLEMENT ATTEMPTS:

- Following settlement discussions with Mr. McDonald a letter reiterating the settlement proposal, including a paragraph stating the Branch was in a position to consider any reasonable proposal. (dated March 20, 1981).
- Two follow-up phone calls after the March 20, 1981 letter sent.
- Another letter sent April 6, 1981, after a phone call asking for a response before April 21, 1981.
- After receiving Mr. Lesyk's letter (Mr. McDonald's lawyer) a phone conversation with Mr. Lesyk on April 20, 1981.
- On May 11, 1981 another phone conversation with Mr. Lesyk.
- On May 12, 1981 I received a letter from Mr. Lesyk stating Mr. McDonald was unwilling to enter into any settlement agreement.

OFFICER'S RECOMMENDATION:

This case is a clear example of how a pregnant employee has been denied her rightful choice of working while pregnant. This denial of equal opportunity is a contravention of Section 8 of the B. C. Human Rights Code. Continuation of such practices will detrimentally affect womens' rights and needs to carry children and continue working.

DMcF/lg

Diana McFarlane
Human Rights Officer