

IN THE MATTER OF THE HUMAN RIGHTS CODE
OF BRITISH COLUMBIA

AND

IN THE MATTER OF A COMPLAINT BY DIANE
G. DAVIES, EILEEN L. HICKFORD and
HILDEGARD TOEWS

*Defendants
didn't
appear
personally
see p. 9
"12"*

REASONS FOR DECISION

DATE OF HEARING: January 18 and 19, 1977

PLACE OF HEARING: Burnaby, B. C.

BOARD OF INQUIRY: Marguerite Jackson
Valerie Meredith
Sholto Heberton (Chairman)

EFFECTIVE DATE
OF DECISION: February 18, 1977

APPEARANCES: S.F.D. Kelleher for the Complainants
and for the Director, Human Rights
Code

Re MP

M.A. Parsons for the District of
Abbotsford

This is a complaint by three women, Diane G. Davies, Eileen L. Hickford and Hildegard Toews (the complainants) against the District of Abbotsford (the respondent) alleging that the District of Abbotsford, during the period January 15, 1975 to December 1, 1975 contravened section 6 of the Human Rights Code, S.B.C. 1973, chapter 67, as amended, by employing them at a rate of pay less than the rate of pay at which men were employed to do similar or substantially similar work. We find that the complainants' case has been justified and that they should be awarded back pay. An alternative claim was made under section 8. We need not consider this issue in view of our decision concerning section 6.

The employees in question are members of the General Truck Drivers & Helpers Union, Local 31 and are covered by a collective agreement executed on November 26, 1975 and having retroactive effect to January 15, 1975. Counsel for the District of Abbotsford argued there was some significance in this fact in that the categories of guard/dispatcher and police clerk were not created until the collective agreement was signed in November of 1975. However, we reject this argument since Article XXVI of the collective agreement states that it has full force and effect from January 15, 1975. We shall treat the categories of guard/dispatcher and police clerk as existing from January 15, 1975.

The first witnesses were two guard/dispatchers, Gerald John McLennan and Ronald Brown. They testified that the guard/dispatchers worked at the premises in question, the R.C.M.P. Detachment in Abbotsford, from 4:00 p.m. to 8:00 a.m. Afternoon shift ran from 4:00 p.m. to midnight. The night shift ran from midnight until 8:00 a.m. All persons hired as guard/dispatcher were male. Every three weeks the guard/dispatcher worked one day shift on Sundays. Their duties were mostly dispatching. By "dispatching" was meant receiving phone calls from the public and radio calls from police cars and relaying those messages, or rather the response which should be taken to those messages, to the other police cars or to other agencies such as fire departments, whose function it was to respond. The Detachment received fire and ambulance calls originating in the district

as well as police calls. "Dispatching" also included receiving members of the public who came to the counter at the Detachment and doing some operating of a computer terminal linked to the Canadian Police Information Centre in eastern Canada in order to check stolen vehicles and persons wanted by the police. To some extent the guard/dispatchers handled routine inquiries such as those concerning road conditions. However, the most essential part of the job was the dispatching function and this clearly requires an ability to deal with the public and particularly with members of the public who are in crisis. So the dispatcher must have an ability to stay calm and react sensibly and accurately to the information coming in. In a typical situation, a member of the public phones to report a car accident. The dispatcher must find out particulars such as the location and the existence and severity of any injuries. Depending on what he has learned, he knows whether to dispatch an ambulance, a fire truck or a police car, or all three. Similarly, if there is a fire, the fire station telephone rings in the police station. The guard/dispatcher tries to find out the location, type and severity of the fire and then dispatches police and fire trucks to it, using a paging system to reach the firemen. Speed and accuracy are essential if lives are to be saved.

The guard dispatchers testified that ninety percent of their time was spent performing this dispatching function. The guard/dispatchers must give priority to the dispatching function since

they are the sole communications link between the police and the community which they serve.

The other chief feature of the guard/dispatchers' job was guarding. Virtually all of the time the guard dispatcher is alone in the Detachment during the evenings. During that time he is responsible for the prisoners who may be kept there. Sometimes there are no prisoners. Sometimes there are as many as eight. The guards testified that on the average there would be about ten prisoners a week. The guard/dispatchers had contact with the prisoners in two ways. First, they made routine checks at staggered intervals to check on the health of the prisoners (to avoid suicides and other erratic behaviour). The second was to take the prisoners their supper.

In order to perform these functions the guard/dispatchers had to enter the cell block but did not have to enter the cells themselves. Food trays could be pushed through a hole in the door. During graveyard shift, the task of checking the prisoners took a minute or two on each check. There were 16 checks per shift. On afternoon shift, during which there also 16 checks, the check might take three minutes or more if the prisoner asked for a magazine or a cigarette. The checking job was always done quickly because of the importance of being back in the radio room to attend to the dispatching work.

The guard/dispatchers had no responsibility for the prisoners until the prisoners were in their cells. The basic rule was that the guards were not to enter the cells. However, if there were a fire or if a prisoner were attempting to commit suicide, then it was the duty of the guard/dispatchers to attempt to preserve the life of the prisoners and in doing so they were allowed to enter the cells. So notwithstanding the lack of physical involvement on a daily basis, there was a responsibility for the prisoners which in some ways can be considered as awesome if one imagines what could go wrong. Staff Sgt. Hope of the RCMP testified that the Detachment, as far as the RCMP is concerned, operates on what might be termed a captain of the ship theory, namely that Staff. Sgt. Hope himself was responsible to the RCMP for whatever happened at the Detachment, day or night, irrespective of whether he was physically present. In fact, there has never been an escape from the Abbotsford Detachment. If a prisoner did escape, the guard/dispatcher would have no authority or responsibility to pursue him. His responsibility would be to inform the police on duty in their cars who would then commence the physical work of recovering the escapee.

The evidence was that the work performed by the guard/dispatchers was not difficult from a physical point of view. Though there were quiet nights when the job could be boring, there was a considerable amount of mental stress. The job could be very

hectic. The feeling of responsibility was heightened by the fact that the guard/dispatchers worked alone 80% of the time. During the other 20% of the time a member of the RCMP would be in the Detachment doing some work such as completing a report.

Eileen Hickford and Hildegard Toews also gave evidence. They worked as police clerks on day shift together at the Detachment. Their duties were described in detail on two summaries which were presented to the Board of Inquiry. Those lists demonstrate (and their accuracy was verified by the complainants) that much of the work performed by the complainants was what would be called dispatching work for the guards. The guard/dispatchers testified that their guard/dispatching duties corresponded to a number of the items on the two summaries. In addition the complainants were required to do a great many other functions, including clerical functions such as typing and filing. Two days a week the complainant Diane Davies worked in the Detachment and did most of the dispatching. On those two days the other two police clerks were able to catch up on their clerical duties.

The guarding duties performed by the police clerks were explored in great detail in the evidence. Sometimes the police clerks were alone in the physical presence of the prisoners, conducting searches or taking them their meals in the cell. However, the number of occasions when this occurred was minimal.

In a typical year there would be 500 to 600 male prisoners in the Detachment. There would be only 14 females. The RCMP had a rule that female prisoners had to be searched by females. There were two types of search. One was a routine search prior to booking, during which clothing and effects were searched. Often a policeman would be present for such searches. However, if a female were arrested for committing an offence such as shoplifting or possession of drugs, then the police might require what was known as a "skin search". In that event the police clerk would conduct the search in a private place such as the cell for females or in a washroom alone with the prisoner. Occasionally the police clerks escorted female prisoners outside of the Detachment but in the company of a member of the RCMP. Sometimes that meant that the police clerks were physically alone with the prisoners either in the back seat of a police car or perhaps in a Court waiting for a case to be called. If a police clerk took food to a female prisoner she had to enter the cell itself since there was no hole in the door of the cell for females. Though the foregoing indicates that the police clerks had a wide range of experience in guarding female prisoners, that activity was on an infrequent basis and it is on their work as dispatchers that the case of the complainants depends. Direct comparative evidence of the work of the two categories was available from two sources. The guard/dispatchers normally arrived at the Detachment approximately an hour before the

police clerks left. So they were able to observe the work which the police clerks were doing and relate it to their own. Secondly, Diane Davies worked on the afternoon shift for one week during the period in question performing the work normally performed by a guard/dispatcher.

No one has spent a week with a stop watch in the Detachment measuring how much time was spent on the dispatching work by the guard/dispatchers and police clerks. On behalf of the respondent, Mr. Parsons argued that the complainants Hickford and Toews did dispatching only fifty percent of the time, since they did all the dispatching between the two of them. On the other hand, Mr. Kelleher argued that since the evidence showed that the office was much busier during the day, as much or more dispatching was done by one person doing half the work during the day as was done by one person doing all the work during the night.

We conclude from our view of the events that the complainants have established that they were doing work which was similar or substantially similar to that of the guard/dispatchers.

Though the guarding function was lacking to a significant degree, essentially the police clerks performed the job of dispatching, which job performed 90% of the time spent by the guard/dispatchers. In addition, the police clerks performed a great

range of clerical functions. We do not conclude that the performance of this clerical work should count against them since, as we evaluate the activity of the Abbotsford Detachment, the police clerks were in effect performing the job of the guard/dispatchers and more, in view of the significantly higher level of activity during the shift in which they worked.

In seeking to differentiate the work of the two positions, Mr. Parsons, counsel for the respondent, urged us to focus on four factors: that the guard/dispatcher worked alone; that he was solely in charge; that he was responsible for all the male prisoners; and that he worked at night. There is strength in each of his points. However, there is also something to be said in reply to each. Though he was alone he was as near as his radio or telephone to the other emergency agencies with which he dealt, namely ambulance, fire department and policemen. Though he had the sole charge and responsibility for the male prisoners, these were more factors affecting the conscience of a good employee than technical legal ones, since in law the responsibility for the Detachment was with the Staff Sergeant. Though he worked at night, he was compensated for this by a shift differential which is provided by the collective bargaining agreement.

We understand that this is the first case to be considered by a Board of Inquiry under section 6 of the Human Rights Code.* Section 6(1) of the Code provides:

* There is a prior decision involving wage discrimination, Gwendolyn R. Nechiporenko v. Hickman Tye Hardware Co. Ltd., Sept. 12, 1975. However, the relevant section has been changed since the time of the Nechiporenko decision and established a higher standard for the employer.

"No employer shall discriminate between his male and female employees by employing an employee of one sex for any work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work."

Perhaps the leading case in Canada on wage discrimination is the Gares decision in Alberta.* The Alberta statute also employs the expressions "similar or substantially similar work." In the Gares case the issue was whether the (female) nursing aides should be paid as much as the (male) nursing orderlies. It was found that the two classes performed a great number of similar functions but that nursing orderlies were not assigned female patients for care and did not perform certain functions with respect to females or to the delivery and care of newborn babies. Nursing aides were assigned both male and female patients but did not perform catheterizations of male patients. The Board of Inquiry found that the work was substantially similar and this finding was affirmed by Mr. Justice McDonald. The difference in work in the case before us is significantly greater than the difference described in the Gares decision.

* The initial decision dated Sept. 27, 1974 was made by a Board of Inquiry appointed pursuant to the Individual's Rights Protection Act. The appeal to the Trial Division of the Alberta Supreme Court has been reported: Re Attorney-General for Alberta and Gares, et al, 67 D.L.R. (3d) 635 (D. C. McDonald, J., 1976).

Another "similar work" statute is the Labour Standards Act of Saskatchewan. A case involving the University of Regina provides assistance to us.* In that case the issue was between two types of cleaners and again, the males were paid more and that differential was justified by the respondent on the grounds that the work was both different and heavier. It was found that the statutory requirement of similarity was met and the claimants were successful.

In the Gares case the Board of Inquiry adopted a dictionary definition of "similar" as meaning "bearing resemblance to one another or to something else; like, but not completely identical; of like characteristics, nature or degree; of the same scope, order or purpose".**The B.C. Human Rights Code does not require the work to be identical but only "similar or substantially similar". In determining that the work in this case was similar or substantially similar, we have found it instructive to consider the analysis of similarity contained in the Alberta and Saskatchewan cases.

* The initial decision was given by the Saskatchewan Human Rights Commission. That decision was upheld in an appeal heard by Chief Justice Bence of the Court of Queen's Bench, decision dated October 28, 1975.

** Decision of the Board of Inquiry, page 32.

Section 6(2) of the B.C. Human Rights Code states that the concept of skill, effort and responsibility shall be used to determine what is similar or substantially similar work, subject to such factors as seniority systems, merit systems and systems that measure earnings by quantity or quality of production.

Mr. Kelleher directed us to a number of explanations of the terms skill, effort and responsibility. In the University of Regina case, "skill" was defined as "learned ability, involving consideration of such factors as experience, training, education and ability." * Mr. Kelleher drew to our attention guidelines issued in the United States pursuant to the Equal Pay amendments to the Fair Labor Standards Act.** In Section 800.125 on page 2416 the following definition appears:

"Skill includes consideration of such factors as experience, training, education and ability. It must be measured in terms of the performance requirements of the job. If an employee must have essentially the same skill in order to perform either of two jobs, the jobs will qualify under the Act as jobs the performance of which requires equal skill, even though the employee in one of the jobs may not exercise the required skill as frequently or during as much of his working time as the employee in the other job."

* Decision of the Saskatchewan Human Rights Commission, page 4.

** The guidelines were published in the Federal Register, April 25, 1964 (29 F.R. 5548). The guidelines are codified in Title 29, Part 800 of the Code of Federal Regulations. We were provided with the text as it appears in the Commerce Clearing House Inc. publication entitled "Employment Practices", commencing at p. 2399 and references will be made to this source.

The foregoing definition is not binding on American Courts, nor, of course, on our Board of Inquiry. However, we find this to be a useful explanation of the word "skill". Judging by the definition in the University of Regina case and in the American guidelines just quoted, we conclude that the skill required of police clerks is the same as that required of guard/dispatchers.

In the University of Regina case, "effort" was defined as including the "measurement of the quality and quantity of physical or mental exertion needed for the performance of a job."* A similar definition appears in Section 800.127 of the American guidelines.** All witnesses in our case testified that little physical exertion was required for either classification. The mental exertion required was significant and we conclude that it was the same for both the guard/dispatchers and the police clerks.

In the University of Regina case, "responsibility" was defined as "the measurement of the importance of the assigned duties and the degree of accountability required in the performance of the job, with emphasis on the importance of the job obligation, and includes activities such as supervision of other employees, handling sums of money, responsibilities for safety of persons, premises, health, etc." *** As stated above, we think that there was some additional responsibility for the guard/dispatchers but

* Decision of the Saskatchewan Human Rights Commission, page 4.

** See Commerce Clearing House Inc., "Employment Practices", p. 2416.

*** Decision of the Saskatchewan Human Rights Commission, page 4.

that such responsibility was not significant, particularly when it is considered against the yardsticks by which the job as a whole is measured.

In summary, we conclude that the classifications require the same skill and effort and that some greater responsibility is required of the guard/dispatchers. However, we do not view this difference as being significant enough to remove the police clerks from the category of doing similar or substantially similar work.

We conclude that the complainants have made out their case that in the period in question the respondent, the District of Abbotsford, contravened section 6 of the Human Rights Code by paying the female complainants at a lower rate of pay than the respondent paid males for doing similar or substantially similar work. Counsel for the two parties were able to agree that the difference in pay for Diane Davies is \$442.00, the difference for Eileen Hickford is \$926.03, and the difference for Hildegard Toews is \$845.46.

We wish to thank the counsel for the respective parties for the expeditious and efficient way in which evidence was presented.

Mr. Parsons is to be commended for making some concessions on some technical matters which, while not in any way weakening the case of his client, spared us from investing unnecessary amounts of time in some of the technicalities.

Board of Inquiry

By:

3 Sholto Heberton
Chairman

By:

Marguerite Jackson
Marguerite Jackson

By:

Valerie Meredith
Valerie Meredith

O R D E R

IN THE MATTER OF THE HUMAN RIGHTS CODE
OF BRITISH COLUMBIA

AND

IN THE MATTER OF A COMPLAINT BY DIANE
G. DAVIES, EILEEN L. HICKFORD and
HILDEGARD TOEWS

IT IS HEREBY ORDERED THAT:

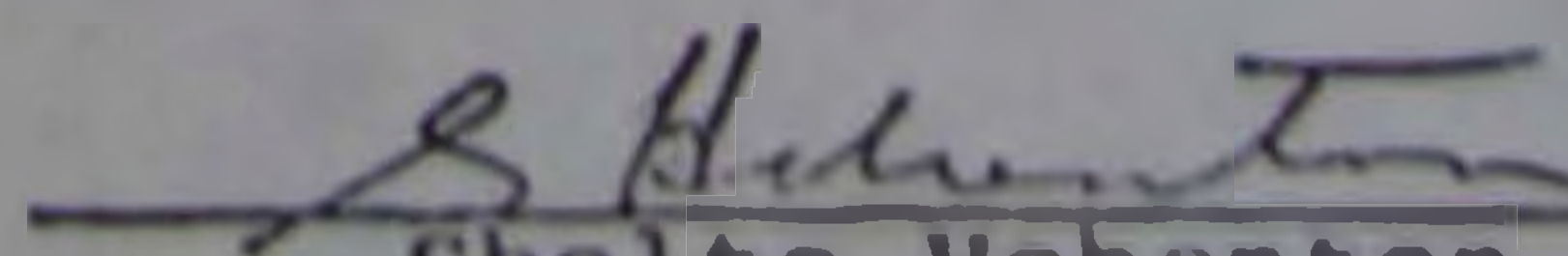
- (a) The District of Abbotsford cease to contravene section 6 of the Human Rights Code and refrain from committing the same or a similar contravention to that which has been established, namely employing female police clerks in the Abbotsford Detachment of the R.C.M.P. at a rate of pay less than the rate of pay at which males are employed to do similar or substantially similar work; and
- (b) The respondent, District of Abbotsford, pay to the complainants the sums set out in the table below:

Diane Davies	\$442.00
Eileen Hickford	926.03
Hildegard Toews	845.46

There will be no order as to costs.

Board of Inquiry

By:


Sholto Heberton
Chairman