

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 committing

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.

# BOARDS OF INQUIRY

TO HIRE

Canadian Human Rights Commission

Human Rights Code

February 27, 28 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], Canadian Thread Products Limited, [Address]. The Board was constituted on [Date] and held its first hearing on [Date]. The Board's findings and recommendations are set out in the attached report.

The facts of the case are described by the Board in its decision as follows:

[Name] was hired by [Company] on [Date] as a [Position]. She worked for [Company] until [Date]. During her employment, she was subjected to [Description of Harassment]. The Board found that [Company] violated the Human Rights Code by [Description of Violation].

The Board recommended that [Company] pay [Name] an award of [Amount] for [Reasons]. The Board also recommended that [Company] pay [Name] an award of [Amount] for [Reasons]. The Board further recommended that [Company] pay [Name] an award of [Amount] for [Reasons].

The company argued that it had not violated the Human Rights Code and that the complainant had not suffered any loss.

of the Human Rights Code.

The company argued that the complainant's loss 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 staff are instructed to give performance appraisals on a scale of 1 to 5, with 5 being the highest and 1 the lowest. The Board found that the company's appraisals were not based on merit but on personal bias.

The Board determined that the appraisals given by the company were not based on merit but on personal bias. The Board recommended that the company pay [Name] an award of [Amount] for [Reasons].

The company argued that its general rules in its hiring process had the Company can argue only apply those rules as threshold requirements, thereby excluding any other applicants for employment. The Company, however, can only hire those who apply those rules if they have a bona fide need. If they are allowed for the job to be performed. General rules based on unambiguous standards and not personally related to the applicant's qualifications to do the job are essential to the operation of the Human Rights Code.

The Board, in finding of no fault and costs, recommended that the complainant be awarded [Amount] for [Reasons]. The Board also recommended that the company pay [Name] an award of [Amount] for [Reasons].