

HUMAN RIGHTS BOARDS OF INQUIRY

The following has been abstracted from a decision filed in September 1976 under the Human Rights Code of British Columbia. Copies of decisions may be seen at the office of the Director of Human Rights which is located at 880 Douglas Street, or copies of decisions will be forwarded by mail upon written request.

David Richard Jefferson
Complainant

versus

George Baldwin & The British Columbia
Ferry Service
Respondents

Board : John Gebbie
 William Giesbrecht
 Sholto Heberton

Date: September 29, 1976

For Complainants: S.F.D. Kelleher

For Respondents: L.F. Lindholm
 Fleming J. Hansen

The Board of Inquiry met to hear a case of employment discrimination. The Complainant alleged that his name was not placed on an employment eligibility list by the Respondents because he is a double amputee. The result was not only a ruling upon the initial legal question but also an attempt to clarify a number of issues related to the Human Rights Code.

The Board expressed an obligation not only to provide justice in individual cases but also to produce reasoned decisions which can guide the future conduct of employers and other members of the public. By this decision they added physically handicapped persons to the list of those categories protected by Section 8 of the Code, but did not provide a formula to assist anyone in deciding which other categories should be included or which excluded. The Board concluded that such a decision was in accordance with the scheme created by the Legislature which necessarily requires that rules be made on a case to case basis to some degree.

After hearing testimony from the Complainant and witnesses called on his behalf, the Board concluded that Mr. Jefferson was a better than average worker in that his physical

ability was at least equal to the average person's, and his mental attitude and mechanical aptitude were superior. Evidence was also presented that demonstrated that there were some differences in working conditions and in the nature of the jobs to be performed, but the Board concluded that the working conditions were substantially equivalent to the Complainant's previous position.

Mr. George Baldwin testified that B.C. Ferries has a policy that if other aspects are equal, B.C. Ferries will hire a physically handicapped person in preference to another person, and that the decision not to place the Complainant's name on the eligibility list was in some measure a comparative one. That is, there were a number of persons with qualifications equal to those of the Complainant, many of whom were already on the staff.

The Board ruled that the Complainant would be physically capable of doing the work required of him, but that the factors that the Respondent considered in his decision not to include the Complainant's name on the eligibility list were proper factors under the law, the law including the Human Rights Code. Further, the Board ruled that the decision was based upon an individual case and not merely one based upon the categorization that no physically handicapped person should be employed for such duty.

In view of the importance and novelty of the issues raised by the case, the Board summarized its position. Physically handicapped persons constitute a protected category under Section 8(1) of the Human Rights Code and the case was a proper one to be investigated by the Human Rights Branch and referred to a Board of Inquiry. They found that the Complainant was capable of performing the duties required of persons applying for the eligibility list, his rejection by the Respondents not violating the law. The Respondents did not exclude him by unjustifiable categorization and the conclusion that he was less qualified than other applicants was a rational exercise of permitted managerial discretion in compliance with the law of the province, including the Human Rights Code.