

JAN. 1977

HUMAN RIGHTS BOARDS OF INQUIRY

The following has been abstracted from a decision filed in November of 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.

Mae Loraine Warren
Complainant

versus

D. Becket, R. Nadon & Creditel of
Canada Limited
Respondents

Board: Frank Hunter
Marge Storm
Mohan Jawl, Chairperson

Date: September 1, 1976

For Complainants: Steve Kelleher

For Respondents: Roger Parkyn

This Board of Inquiry was appointed pursuant to Section 16 of the Human Rights Code of British Columbia to inquire into a Complaint filed by Mae Loraine Warren alleging that she was discriminated against in respect of her employment because of her sex, contrary to Section 6 of the Code, and further that she was dismissed from her employment without reasonable cause, contrary to Section 8 of the Code. A hearing into these allegations was held on September 1st, 1976 after several postponements.

Four witnesses were called on behalf of the Complainant, and two Creditel officers gave evidence on behalf of the Respondent.

Creditel is a non-profit credit reporting association offering its services primarily to its member companies across Canada. Prior to 1974, Creditel's Vancouver Office offered collection services to its member companies, but no effort was made to actively solicit accounts for collection. The expansion into collection sales occurred early in 1974. A sales department was established and Mae Warren was one of three persons hired to staff the department.

Ms. Warren's monthly sales figures (which seemed to be the accepted measure

of performance) were consistently at or near the top during her first few months of employment. Her pattern of achievement was interrupted in February 1975 when she was hospitalized and underwent a hysterectomy. She was unable to resume her normal work routine until mid-April and was not fully recovered until at least the end of May 1975. Her sales volume fell dramatically in February and remained depressed during the period of her recovery. During this same period, the Vancouver office came under heavy pressure to increase the volume of collection sales to a level more in accord with projections made by Creditel's head office. This pressure, and the lack of an adequate response from the existing staff, ultimately resulted in a number of changes and turnovers in the sales department. Mae Warren was fired on May 30th.

Ms. Warren's complaint focused on two of the decisions made during this period of turmoil. Firstly, she alleged that Creditel discriminated against her by agreeing to pay two male employees more than she was receiving even though all of them were employed to do essentially the same work, for which she relied on Section 6 of the Human Rights Code.

These facts were not in dispute so that the issue was then whether the exemption applied, namely, whether the admitted difference in the rate of pay between the complainant and her two male counterparts was based on any factor other than sex, and whether that factor reasonably justified the difference.

The second branch of Ms. Warren's complaint involved Creditel's decision to terminate her employment. She alleged that there was no reasonable cause for her dismissal, relying on Section 8 of the Code. Creditel took the position that there were legitimate reasons to support the salary differential and the Complainant's dismissal. The decisions were prompted by a number of factors, none of which were discriminatory, and all of which, in combination, justified the action taken. While acknowledging that there were anomalies in their pay structure the Respondent contended that there was nothing to suggest a policy of sex discrimination.

It was also argued that the suggestion that Creditel discriminated against Mae Warren was inconsistent with the fact that Creditel continued her salary during

her hospitalization and recovery while under no legal obligation to do so.

The Board found the Management of Creditel that Ms. Warren dealt with led her to believe that the policy of Creditel was of a discriminatory nature towards women, and was unsettling to the complainant. It was also found that the complainant was terminated by Creditel for no reasonable cause. It was therefore ordered that the complainant receive a rate of pay equal to that of a fellow male employee for the ten days in May prior to her leaving the company, and that she be given the rate of pay of that same employee for the month of June in lieu of notice, less any monies received from Creditel during the month of June.

In view of the experience Ms. Warren had had in similar work, she was awarded \$1000.00 damages to compensate for loss of personal reputation and self-esteem. The Board noted that the past management of Creditel had done nothing to cooperate and assist the Human Rights Branch in bringing the matter to an earlier conclusion, and the company was ordered to pay the costs of the inquiry.

Chairperson Mohan Jawl submitted a dissenting opinion.

For Respondent: Morley Short

The Board of Inquiry was constituted to hear a complaint filed by A. J. Short alleging that he was discriminated against by being denied registration as an apprentice by the Plumbing Industry Association of Ontario (P.I.A.O.), under Section 2 of the Act. A hearing was held in Toronto on March 10, 1977.

The complainant began employment as an apprentice plumber in Central River with S. Farrell Co., Ltd. in August 1975. His employment with the company was covered by the collective agreement in force with Local 170 of the United Association of Plumbers and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. Under the terms of this agreement, all apprentices, whether indentured or probationary, must be registered with the P.I.A.O. The following qualifications for apprenticeship applicants were set out.

"Applicants for apprenticeship not previously connected with the trade must be between the age of eighteen (18) and twenty-five (25) years and shall be high school graduates or the equivalent. Exceptions may be made for those beyond the age limit who have been engaged in the trade or who have special qualifications. Applicants shall be residents of Canada. Each

applicant will appear personally before the Hearing Industry Association and must be registered.

After the complainant had been in the job for several weeks, it came to the attention of a union field officer that the apprenticeship provisions of the collective agreement had not been complied with. The field officer for the complainant advised of assisting the complainant in preparing an application for registration with the P.I.A.O. A year or so after the complainant had been employed, the complainant stated that there might be difficulties with his application because of his age and that if the time he started the job, his application was subsequently refused on November 17, 1975, and this decision was communicated to the employer who discharged the complainant later that year.

There was no direct evidence before the Board of Inquiry as to why the applicant had been refused other than on the basis of age. The Board rejected suggestions made during the hearing that the complainant did not meet the required educational standard for apprenticeship, or that there were a number of qualified applicants for the complainant. It was noted that, in fact, completed pre-apprenticeship training in contrast to a number of other applicants. As a result, the Board concluded that the complainant's request for keeping the application was that he was not between the ages of 18 and 25.

The Board first dealt with the alleged violation by the union under clause 11(1)(d) which prohibits registration of collective agreements, which contain discriminatory provisions since the agreement in question was dated June 11, 1971, and the Board was unable to accept the argument that it had been negotiated on behalf of the complainant who had nothing to do with the union until late 1975. It was noted that Section 2 of the Act was not proclaimed until October 15, 1974 subsequent to the signing of the agreement. However, the complainant's age discrimination against the union was not in June 1975, almost two years later, whereas subsection 11(1)(d) directs that this should be done as later than six months after the alleged contravention takes place. The Board also did not consider that a signed agreement could be a "continuing" contravention since the meaning of this section.

The Board then went on to consider whether the rejection of the complainant