

SEPT. 1976

HUMAN RIGHTS
BOARDS OF INQUIRY

The following has been abstracted from a decision filed in August 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.

Jacqueline Frances Culley & The Canadian Air Line Flight Attendants' Association on behalf of all female Flight Attendants
Complainants

versus

Canadian Pacific Airlines Limited;
Mr. G. Manning, Vice-President, Customer Service; and
Mr. E. Stones, Manager, Flight Attendants
Respondents

Board : Josiah Wood
Penny Bain
Mohan Jawl

Date : January 17, 1976

For Complainants: John E. Hall

For Respondents: Allan Graham

The Board, ruling on the latter argument firstly, found that the subject matter of the complaint, the right to equal opportunity in employment, was not in substance a matter relating to the employer/employee relationship. The Human Rights Code creates a statutory right to equality of opportunity which only incidentally affects the employer/employee relationship in that it creates the right to non-discriminatory standards in hiring and advancement, just as the Workers Compensation Act creates a statutory right to compensation when the worker is injured on the job.

On the initial argument the Board ruled that, despite a lack of previous decisions to guide it, the statutory right to equal opportunity was not a matter of vital importance to a federal business. The right to equal opportunity did not interfere with the employer's right to make hiring and promotion decisions based on reasonable criteria, nor did it interfere with the day-to-day operations of the business or basic personnel decisions.

The Board also ruled that the legislative field had not been previously occupied by the Canada Labour Code. If the federal government should legislate as to equal opportunity in employment or, more particularly as to the period at which pregnant flight attendants must leave employment, then the Human Rights Code would be ultra vires. As the federal government had not yet regulated specifically in that field, the Human Rights Code was deemed to apply to the subject matter of the original complaint and the Board of Inquiry was deemed to have jurisdiction to hear the complaint. Mohan Jawl submitted a minority dissenting opinion.

The Board of Inquiry met to hear a preliminary objection in this case. The Complainants alleged that the airline and two company officers had discriminated contrary to the Human Rights Code of British Columbia in that the company had established a policy of not allowing flight attendants to continue to fly after the thirteenth week of pregnancy. Objecting to the jurisdiction of the B.C. Human Rights Code, counsel for the Respondents submitted that the Province could not legislate so as to indirectly affect the operation of a company which is a federal undertaking, specifically one engaged in the field of aeronautics. The question facing the Board was whether all provincial legislation is ultra vires to the extent that it indirectly affects the operation of a business engaged in the field of aeronautics or federal works. In addition, the Respondents argued that a complaint of discrimination on the basis of sex was essentially a matter of employer/employee relations.

J/D