NEWFOUNDLAND HUMAN RIGHTS COMMISSION

REPORTS OF DECISIONS MADE BY COMMISSIONS OF INQUIRY

1971 - 1977

(NO DECISIONS WERE PRINTED IN 1972, 1973, 1975)

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Wor
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↳ decisions contradict each other

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Jan 5, 1971 71-1

In the matter of The Newfoundland Human Rights Code, 1969,

And in the matter of the complaints of Linda Jones, Bernice Dunne, Peggy Snow, Isabel Brennan, Teresa Williams and Debbie Scurry in which they allege that Sanitary Cleaners Limited did not pay them equal pay for equal work as prescribed by Section 10-(1) of The Newfoundland Human Rights Code, 1969.

Board of Inquiry

Mrs. Gertrude Keough, Human Rights Commission, Chairman.

For the Newfoundland Human Rights Division

William Gillies, Q.C. Counsel.

F. R. Coates, Director.

For Sanitary Cleaners Limited, Respondent

Jack Hall, Managing Director.
St. John's, 30 December, 1971

To the Honourable Stephen A. Neary, Acting Minister of Labour.

I was directed by the Honourable Roy Legge, Minister of ~~Labour~~, on 1 November, 1971, to conduct a Board of Inquiry into an alleged complaint concerning the equal pay for equal work provisions of The Newfoundland Human Rights Code, 1969.

The alleged complaint pertains to the heavy janitorial services at the Paton College complex of Memorial University of Newfoundland where females perform the heavy janitorial services, usually performed by males, in the three female residences of the complex.

On the day appointed for the hearing, 17 December, 1971, the six complainants did not appear before the Commission as required by registered letters and after consultation with counsel, the Respondent and the Director of Human Rights, the hearing was adjourned to 30 December, 1971, and subpoenas were issued to three of the six complainants, Teresa Williams, Isabel Brennan and Debbie Scurry ordering them to appear before the Commission as representatives of each of the three residences in question.

At the hearing on 30 December, 1971, all evidence was carefully noted and after very careful consideration I find that while the complainants are doing substantially the same work they are not doing exactly the same work as their male counterparts.

It was learned during the cross-examination of the complainants by the Respondent that during the Christmas, Easter and Summer recesses at the Paton College complex the male janitorial staff are required to remove the old wax from the floors and to replace the cleaned light fixtures. The female employees are not required to do these heavier duties. Although these extra duties are performed by the male employees only three times each year and ~~for a duration of approximately~~ nine ~~days~~ each time for a total of twenty-seven days annually, the Respondent has proven there is a difference in work requirements between the male and female employee.

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Case No. 14-1

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24 October, 1974

Honourable Ed Maynard
Minister of Manpower and Industrial Relations

In the matter of the complaint of Mr. Michael Muench, Gallows Cove, Witless Bay, in which it is alleged that he, Mr. Muench, was denied the services of Williams Bus Lines contrary to the provisions of Section 7 of The Newfoundland Human Rights Code.

The Honourable Joseph G. Rousseau Jr., former Minister of Manpower and Industrial Relations appointed a Human Rights Commission under the provisions of Section 16 of The Newfoundland Human Rights Code to enquire into the above matter and to recommend to the Minister as provided for under Section 18 of the Code, the course that should be taken with respect to the matter.

Evidence was presented on behalf of the complainant by John Nink, Peter Pope, and by Robert Tipple and Wayne Pope of the Board of Commissioners of Public Utilities.

Evidence was presented on behalf of the respondent, Williams Bus Lines by Joseph Brendan Williams, owner, John Williams, driver and Mrs. Rita Mullowney.

The respondent was represented by legal council, Gerald O'Brien LLd.

C18
Coulbeck & Williams

From evidence presented it was established that the complainant began travelling on the bus line in July, 1972, and availed himself of the service through 7 August, 1973, during which time the complainant nor the respondent gave any indication the complainant was not a fit passenger.

Evidence did establish that the respondent did increase the rate of fare charged to passengers during July, 1973, contrary to Section 19-(2) of the Motor Carriers Act, Chapter 242, Revised Statutes of Newfoundland 1970 and that the complainant did lodge a formal complaint with the Board of Commissioners of Public Utilities protesting against the fare increase.

Evidence established the fact the complainant did continue to use the services provided by the respondent up until the respondent was advised of the complaint lodged against the increase in fare by the Board of Commissioners of Public Utilities on 7 August, 1973.

It was further established in evidence that the complainant did present himself as a passenger for the respondent and that the respondent would not stop the bus or that the respondent refused to allow the complainant to enter the bus if he did stop for other passengers waiting at the same bus stop.

Evidence also established the complainant was required to spend one night in St. John's on the night of 7 August, 1973, because of the respondents refusal to transport the complainant.

It was further established the complainant lodged further complaints against the respondent with the Board of Commissioners of Public Utilities for breaches of the Motor Carriers Act, Section 24(1). The Board did investigate the matter and found the complaint to be founded and on one occasion an inspector of the Board actually witnessed a violation of Section 24-(1) of the Motor Carriers Act, however the Board of Commissioners of Public Utilities did not pursue

the matter and the complainant was obliged to instigate legal action on his own behalf and at his own expense.

On 4 April, 1974, the matter was heard in Magistrates Court, John Williams the driver and son of the respondent was found guilty of violating Section 24-(1) of the Motor Carriers Act, however, the magistrate neglected to order the respondent to comply with the Act in future.

Evidence presented on behalf of the respondent indicated the complainant, on one occassion, manhandled a child, however, it was not indicated if this incident was intentional or if it was accidental, the evidence only established the fact the child had her leg extended out into the aisle of the bus and the leg was struck as the complainant was retrieving his parcel from under the seat directly in front of the child.

Statements relating to the appearance of the complainant made by the respondent were not corroborated.

The Commission is satisfied that the respondent did violate the provisions of Section 7 of The Newfoundland Human Rights Code and it is the recommendation of the Commission that the Minister, under the provisions of Section 21 of the Code, give effect to the following recommendations:

(1) It is recommended that the respondent be ordered to accept the complainant as a fare paying passenger as provided for under the provisions of Section 24-(1) of the Motor Carriers Act, Chapter 242, Revised Statutes of Newfoundland, 1970.

(2) It is recommended that the respondent be ordered to comply with the provisions of Section 7 of The Newfoundland Human Rights Code, Chapter 262, Revised Statutes of Newfoundland, 1970.

(3) It is recommended that the respondent be ordered to pay to this Commission the sum of one hundred twenty-five dollars which said amount shall be awarded to the complainant as compensation for undue mental anxiety and physical inconvenience and restitution for out of pocket expenses.

(4) It is recommended that the Board of Commissioners of Public Utilities be reprimanded for failing to fulfil the obligations of the Board towards the complainant as prescribed by Sections 13-(1); 19-(2); 24-(1) and 32-(1) of The Motor Carriers Act, Chapter 242, Revised Statutes of Newfoundland, 1970

Respectfully submitted,

Gertrude C. Keough

Gertrude C. Keough
Human Rights Commissioner

By the powers vested in me under the provisions of Section 21 of The Newfoundland Human Rights Code, Chapter 262, Revised Statutes of Newfoundland, 1970, it is so ordered that the recommendations contained in this document shall take effect from this the 29th day of October, 1974.

Minister

74-2

12 December, 1974

Honourable Ed Maynard
Minister of Manpower and Industrial Relations

In the matter of the complaint of Mr. Clarence Williams, Britannia, Trinity Bay in which it is alleged the Department of Transportation & Communications terminated him because of his religion.

I am pleased to report the Human Rights Commission appointed by the Honourable, The Minister of Manpower & Industrial Relations, Honourable Ed Maynard, under the provisions of Section 16 of The Newfoundland Human Rights Code, enquired into the above matter on Tuesday, 10 December, 1974. And, as required under the provisions of Section 18 of the Code, submit the following recommendations that should be taken with respect to the matter.

Evidence was presented on behalf of the complainant, Mr. Clarence Williams by Mr. Ralph Blundell, Department of Transportation and Communications, Mr. John Peddle, General Manager, N.A.P.E.

Evidence was presented on behalf of the Respondent, Department of Transportation and Communication by Mr. A.L. George, Maintenance Eng., Mr. A.E. Brinston, District Director, Mr. N. Sheppard, District Supervisor.

Representing the Human Rights Branch
Department of Manpower and Industrial Relations
Mr. Fred R. Coates.

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The Human Rights Commission was concerned with the allegation of the complainant which alleged the Department of Transportation and Communications terminated the complainant because of his religious beliefs in violation of Section 9 - (1) of The Newfoundland Human Rights Code, Chapter 262, Revised Statutes of Newfoundland, 1970.

Mr. Williams explained that he, as a member of the World Wide Church of God observed the Sabbath from sundown Friday through sundown, Saturday.

It was strongly emphasized by the complainant that he did not voluntarily terminate himself but that he was terminated by the Department of Transportation and Communication or a official thereof in that he was sent home and told that while he would not work on Saturdays there was no work for him.

An official of the Department of Transportation and Communication, Mr. A.L. George was equally as strong in emphasizing the Department of Transportation and Communication did not terminate the complainant but insisted the complainant voluntarily terminated himself.

From evidence presented it was learned the complainant, Mr. Williams and a co worker, Mr. Ralph Blundell, were assigned to the same piece of snow clearing/ ice control equipment and that they were designated to a particular section of gravel highway on Random Island.

Evidence also established the period of time winter road control was in effect was from the first of December through mid April annually, a maximum of seventeen weeks.

It was further established there were no difficulties concerning the employment of Mr. Williams at any other period of the year in that Saturdays and Sundays are the normal days off, so in fact, we are concerned basically with between eight and nine Saturdays out of a year.

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The Commission would point out at this particular time there was absolutely no evidence to indicate that Mr. Williams was not a competent and capable operator, on the contrary, there was evidence presented by the officials of the Department which indicated Mr. Williams was a capable and willing worker who, when designated a task, would work to the best of his ability.

During the presentation of Mr. Williams' evidence the Commission was informed that through mutual agreement with his co-worker, Mr. Blundell, Mr. Williams arranged to have Mr. Blundell work in his place on the Saturdays which the complainant was scheduled to work and in return the complainant would work Mr. Blundell's Sunday shifts. It was explained that this particular arrangement would give identical protection and service to the section of roadway assigned to the complainant and his co-worker.

During the presentation of evidence, Mr. Williams advised the Commission, that once he obtained the approval of his co-worker to re-arrange the weekly schedule, he brought the matter to the attention of his immediate supervisor, Mr. William Sheppard, who at first indicated he felt there was nothing wrong with the arrangement.

At a later date the complainant went on, in presenting his evidence, he was summoned to the office of the District Highway Director, Mr. A.E. Brinston, where he was informed he had to work the shifts as scheduled or not work at all. On the second visit to the Directors Office he was sent home as there was no work for him if he would not work on a Saturday.

It was established in evidence that the complainant would indeed work on a Saturday in the event of an emergency or in the event of the illness of his co-worker. Officials of the Department produced records which proved the complainant did indeed work on Saturdays because of what was indicated as possible unusual circumstances.

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Officials of the Department did not give any evidence ch would indicate that the termination of Mr. Williams anything other than an outright dismissal by the trict Highways Director, Mr. A.E. Brinston, on the ands of religion.

The photostatic copy of the termination notice submitted the General Manager of N.A.P.E. on behalf of the com- inant, stated:

" HIS REASON FOR BEING TERMINATED IS BECAUSE HE COULD NOT WORK A SHIFT FROM SUNDOWN ON FRIDAY UNTIL SUNDOWN ON SATURDAY DUE TO RELIGIOUS BELIEFS."

Argu nts put forth to justify the termination indicated Department of Transportation and Communications first nsibility was to the public and that it could not be rated for employees to arrange their own shifts as it a result in utter chaos.

After very careful consideration it was the decision he Commission that this matter could not be examined light whereby it was a matter that affected the entire rtment, but, it should be examined in the light of ity, an isolated and local matter.

The Commission was also obliged to consider the r of re-employment offered to the complainant by an cial of the Department, at a reduced rate of pay, in presence of the Commission.

It is therefor the recommendation of the Commission

(i) Mr. Clarence Williams, be reinstated into his

any wages earned through alternate or casual employment, subject to the required federal and provincial deductions and/or reimbursements;

(iii) Mr. Williams be reinstated without loss of seniority, pension or other employee benefits including any increases in wages which he would normally have received had he not been dismissed, and;

(iv) consideration be given to Mr. Williams, under normal cirsumstances, whereby during the period 1 December through 15 April, normal days off for Mr. Williams would include the period sundown Friday through sundown Saturday;

The Commission was dismayed by the total lack of flexability demonstrated by officials of the Department of Transportation and Communications in coping with this matter.

Respectfully submitted,

Gertrude C. Keough
Human Rights Commissioner

By the powers vested in me under the provision of section 21 of The Newfoundland Human Code, Chapter 262, Revised Statutes of Newfoundland, 1970, it is so ordered that the recommendations contained in this document shall take effect immediately.

NEWS RELEASE

The Honourable Ed Maynard, Minister of Manpower and Industrial Relations has approved the recommendations of the Human Rights Commission following its conduct of Hearings into a complaint from Mr. Clarence Williams, Britannia, Trinity Bay, in which he alleged the Department of Transportation and Communications terminated his employment because of his religion. Mrs. Gertrude Keough, the Human Rights Commissioner, held hearings into the matter on Tuesday, 10 December, 1974. The recommendations made by Mrs. Keough and subsequently approved by the Minister are as follows:

1. Mr. Clarence Williams be reinstated into his former position as an Operator III with the Department of Transportation and Communications;
2. Mr. Williams be reimbursed for any loss of salary incurred because of the dismissal less any wages earned through alternate or casual employment, subject to the required federal and provincial deductions and/or reimbursements;
3. Mr. Williams be reinstated without loss of seniority, pension, or other employee benefits including any increases in wages which he would normally have received had he not been dismissed, and
4. Consideration be given to Mr. Williams, under normal circumstances, whereby during the period 1 December through 15 April, normal days off for Mr. Williams would include the period sundown Friday through sundown Saturday.

The Honourable Ed Maynard said that prior to issuing an Order giving effect to the recommendations of the Commission he discussed the case with the Honourable Joseph G. Rousseau, Jr., who, in his former capacity as Minister of Manpower and Industrial Relations, had initiated the investigation into Mr. Williams' complaint.

17 December, 1974.

5th July 1976 '76-1

This Commission of Inquiry was established under Section A (1)(d) e Newfoundland Human Rights Code (Amendment) Act, Stats Newland 1974, Number 114, by the Honourable Ed Maynard, Minister npower and Industrial Relations, on the 7th day of April, 1976, quire into allegations against personnel of the Iron Ore Company nada, at Labrador City, Newfoundland, for discriminatory prac- in employment towards former employees.

The terms of reference of the Commission were to determine whether rovisions of the Newfoundland Human Rights Code had been violated spect to the allegations of discrimination, and as well, to pro- he overall purposes of the legislation.

he Commission composed of Michael J. Monaghan, Ll.B., acting as n, and Frederick R. Coates as a Member convened at Labrador City 27th day of April A.D., 1976, at 7:00 o'clock in the afternoon. t time the Commission heard representations from a number of employees of the Iron Ore Company of Canada, as well as repre- ives of the Iron Ore Company of Canada.

EL SEAWARD -

el Seaward was employed with the Iron Ore Company of Canada resided in Labrador City with his family since September 11th, Mr. Seaward was discharged from the Iron Ore Company for being he influence of alcohol. Mr. Seaward candidly admitted that pany at the time had the right to fire him and he makes no t of improper grievance procedure or anything of this nature. eing terminated with the Iron Ore Company, Mr. Seaward has ith contractors and the last contractor that he worked for dian Refractories and he was subsequently laid off from this

:ines of the Company property. Mr. Seaward went on to state that confronted an official of Canadian Refractories and the official icated to Mr. Seaward that his work was totally adequate, however, official had received word from the Montreal office of the Company take Mr. Seaward off the payroll as Canadian Refractories were ng substantial contract work for the Iron Ore Company of Canada the Company did not wish to jeopardize this contract. As well, Seaward was employed with a Company called Richard and B. A. Ryan he was apparently laid off from this position because of lack of k. As well, Mr. Seaward indicated that while on the Iron Ore any property, he was under close supervision by the personnel anadian Refractories.

WILLIAM ARMSTRONG

William Armstrong worked with the Iron Ore Company of Canada, has resided in the Labrador City area since 1960, and has in fact ed for the Iron Ore Company of Canada for all of that time. His tion was as a Labourer, as well as a loading pocket operator. as dismissed on the 12th day of July, 1975, for being involved in illegal work stoppage. The matter was submitted to arbitration and rbitrator ruled that Mr. Armstrong was dismissed with just cause.

Subsequent to his dismissal from the Iron Ore Company of Canada, Armstrong was employed with Richard and B.A. Ryan from the 14th of November, 1975, and worked on a project on the Iron Ore Company anada premises at the mines and at the mill. On or about the 8th anuary, 1976, Mr. Armstrong states that an official of Richard and

Ryan outside the Iron Ore Company of Canada premises and was subsequently laid off on or about the 2nd of March, 1976. He signed a recall slip, however, has not had any success in obtaining any subsequent employment, Mr. Armstrong also advised that he was residing in a home owned by the Iron Ore Company of Canada and has not paid his rent for some months. He indicated that he is having difficulty making payment and that it was his view that the Company was not accepting any payment from him. Mr. Armstrong also advised that while working with Richard and B.A. Ryan he was working at general contracting as well as a Labourer.

SAMUEL CODNER -

Samuel Codner is married and has five (5) children and has lived in Labrador City since the 26th of March, 1973. On or about the 22nd of August, 1974, he was an employee of the Quebec North Shore Labrador Railway, which is a subsiduary of the Iron Ore Company of Canada. On the above mentioned date he was involved in an accident in which an employee of the Iron Ore Company of Canada was killed. Due to this accident Mr. Codner was discharged by the Quebec North Shore Labrador Railway on the grounds that he, as a conductor, was responsible for the operation of the train and the train crew.

The matter was referred to arbitration and the arbitration award upheld the Company dismissal. Subsequently, Mr. Codner approached the Iron Ore Company of Canada for future employment, however, was advised by that Company that he was not to be rehired. Since his termination Mr. Codner has held several jobs with various outfits and for various reasons, usually due to lack of work, was laid off.

On or about the 12th day of January, 1976, Codner found employment with Canadian Refractories Limited, who had a contract to reline furnaces at the Iron Ore Company of Canada Carol Project. Mr. Codner further states that after working eight (8) days with this Company, he was informed by that Company that his services were no longer required due to a lack of work. Once again, Mr. Codner indicates that

he has an understanding from a reliable source that he received a lay-off due to pressure placed on Canadian Refractories Limited from the Iron Ore Company of Canada. As well, Mr. Codner indicated that he was working with a taxi company, however, in this capacity also was not allowed inside the Iron Ore Company of Canada property. Mr. Codner also indicated that all contractors in the Labrador City area do sub-contracting work for the Iron Ore Company of Canada. As well, it is understood that Mr. Codner is living in a property owned by the Iron Ore Company of Canada.

WILLIAM G. GALE -

William G. Gale moved to Labrador City on the 7th of April, 1963, and started work with the Iron Ore Company of Canada in the concentrate as an ore sampler. Mr. Gale was terminated from his employment for theft of Company property, in that he attempted to transport goods from the Iron Ore Company property. It is understood that the matter went to grievance and arbitration, however, once again, the Company's decision was upheld. Mr. Gale indicated that he was charged with theft under the Criminal Code of Canada, however, his case was dismissed for insufficient evidence. Mr. Gale is presently unemployed, however, is registered with Canada Manpower; he has been unsuccessful in seeking employment. Mr. Gale, as well, rents a house from the Iron Ore Company of Canada and has not paid any rent as he indicates the Company will not accept it. Mr. Gale was discharged from the Company on the 30th of November, 1975.

WADE BUTT -

Wade Butt was a probationary employee and had in fact only worked with the Iron Ore Company of Canada 55 days prior to his dismissal. Mr. Butt was alleged to have been involved in a fight with members of the Royal Canadian Mounted Police and he advises that upon his return to his employment after this incident he was advised by his immediate supervisor that whereas his work was completely acceptable, he was not

the type of person that the Company wanted in their employ.

Members of the Union attempted to intercede on Butt's behalf to try to get his job back, however, were unsuccessful. Butt apparently was acquitted of criminal charges in this particular matter.

KENNETH YATES

Kenneth Yates was also a probationary employee with the Iron Ore Company of Canada and was in the Company's employ for 45 days when he was alleged to have bee' involved in the same incident referred to above, involving the Royal Canadian Mounted Police. He was subsequently called into the Iron Ore Company office and was terminated from his employment due to the actions at the Shopping Centre. Once again, the members of the Union interceded on Mr. Yates behalf, however, the Company refused to accede to the Union's request to rehire him. Mr. Yates was convicted in Magistrate's Court for this particular incident.

FOR THE IRON ORE COMPANY OF CANADA -

EDWARD ADAMS -

Mr. Adams is Administrative Superintendent of the Iron Ore Company of Canada at Labrador City and has been in that capacity for fourteen (14) months. Mr. Adams went on to state that the Company policy concerning previously terminated individuals is that those individuals who have been involved in illegal work stoppages, theft of company property, or involved in drinking on the job, are not wanted on the Company property at any time under any circumstances, whether they are working with a sub-contractor, or not. Mr. Adams went on to state that in the case of Mr. Armstrong and Mr. Seaward, when it came to his Company's attention that these individuals were working for other contracotrs on the Iron Ore Company site, the message was passed along to the Contractors that the Company did not want these individuals on the project. Mr. Adams indicated, however, that in the case of Mr. Codner he was not aware that Mr. Codner was on the property and so far as he

was concerned, there was no reason why Mr. Codner should not continue to be employed within the Company gate. Mr. Adams submitted a Memo from Canadian Refractories Limited indicating that Mr. Codner was released from the employ of that company as his work was unsatisfactory.

Mr. Adams indicated that so far as Mr. Codner was concerned, he felt that Mr. Codner would be allowed back on Company property in the employ of some other contractor and that really the only type of person that the Company would not wish back on Company property working with some other contractor would be the person originally terminated from the Iron Ore Company of Canada for illegal work stoppages, theft of Company property, or drinking on the job.

In addition, Mr. Adams stated that he felt that it was well within the rights of the Iron Ore Company of Canada to determine who is to go on its property.

JACK GALLIGHAN -

Mr. Gallighan is Vice-President of Personnel Services for the Iron Ore Company of Canada. Mr. Gallighan stated that the overall policy of the Company is based on the facts of a particular incident and is not a hard and fast rule. In reference to Mr. Codner, Mr. Gallighan stated that in some cases, even though individuals had been terminated, and the Company was upheld on a subsequent arbitration, the Company on some occasions has made decisions to reinstate or rehire individuals terminated.

Mr. Gallighan considered the cases or incidents such as theft from the Company, drinking of alcohol while in the employ of the Company, or inciting to strike and that in these cases the Company does not want these type of individuals on the Company property under any circumstances. Mr. Gallighan felt that his Company has the perfect

right to manage and direct the Company and its operations as the officers of the Company see fit.

Mr. Gallighan indicated that he had no idea of Mr. Codner's case and was not aware of any action of the Iron Ore Company of Canada to prohibit Mr. Codner's presence on Company property. Mr. Gallighan was referred to a letter from Paul Penney, Newfoundland Representative of the Iron Ore Company of Canada, which was directed to the Honourable J. G. Rosseau, Jr. In that letter is was stated,

> "Discharge is the most serious action the Company can take against an employee. And to do so means that the Company no longer wants that employee in its employ - that employee's presence is no longer desired on Company property."

Mr. Gallighan once again stated that it was entirely up to the Company who should be allowed on the Company's property and who should not be. If the Company feels that they should not be there, they will not be there. Mr. Gallighan stated that the Company is responsible for the job.

Mr. Gallighan went on to take issue with the proper procedure as set out in the Newfoundland Human Rights Code and he was of the view that the investigation had not been handled the way it should have been.

Mr. Gallighan did refer back to the letter from Paul Penney of the Iron Ore Company of Canada. If an individual is discharged he is no longer to work on the Company's property. Mr. Gallighan further stated that in some cases some employees have been rehired. Mr. Gallighan further stated that if one of his people on the job saw someone who was discharged, then he would be expected to report this fact to the Company. The Company would then decide whether or not the individual should stay and if the individual was considered to be undesirable, the Iron Ore Company of Canada would convey its feelings to the contractor who had engaged the services of this former employee.

GENERAL COMMENTS AND RECOMMENDATIONS

As earlier stated, this Commission has to operate within its terms of reference as are set out in the letter of direction from the Minister, dated the 7th day of April, 1976.

In that letter the Minister stated as follows:

> "This Commission is being appointed in order to determine whether the provisions of the Newfoundland Human Rights Code have been violated, and, at the same time, promote the purposes of the legislation ....."

Accordingly, the Commission by its terms of reference has to confine itself within the purview of the Newfoundland Human Rights Code and the amendments thereto.

Section 9 of the Newfoundland Human Rights Code deals particularly with fair employment practices. Section 9(1) stated:

> "No employer or person acting on behalf of an employer shall refuse to employ or to continue to employ or otherwise discriminate against any person in regard to employment or any term or condition of employment because of:
>
> (a) That person's race, religion, religious creed, sex, marital status, policitcal opinion, colour or ethnic, national or social origin; ....."

The other sub-sections of that Section deal with discrimination for age, discrimination by trade unions and other provisos and exceptions. None of the other provisions, however, are relevant to the matter at hand. No other Section of the Legislation as it pertains to general principals or the provisions dealing with administration and enforcement cover the type of situation that exists in this particular case. The preamble to the Act of course being broad by its very nature might have some relevance which will be discussed hereafter.

The Commission must first consider the complaints as made by Wade Butt, and Kenneth Yates, both, who by their own admission, were probationary employees at the time of dismissal. It is the Commission's view that notwithstanding the work record of both of these individuals

it is clear from the record that both fell within the status of a probationary employee, which period of probation lasts from the first day of employment to the sixtieth day of employment and the Company within that period of time could dismiss these individuals or other individuals without any cause whatsoever. Accordingly, insofar as the allegations of Wade Butt and Kenneth Yates are concerned, the Commission concludes that at the time of their discharge neither employee had an locus standi and accordingly, no remedies are open to them.

It is the view of this Commission that the Iron Ore Company of Canada are not in breach of any of the operative provisions of the Newfoundland Human Rights Code as it presently exists. Even if Section 9(1) was broader and more expansive the Iron Ore Company of Canada would not fall within its purview. In the particular case at hand, the allegations made by the individuals in question allege that personnel of the Iron Ore Company of Canada, through its influence allegedly coerced or in some manner brought pressure to bear against the individual's employer to terminate that employee's employment within the Iron Ore Company of Canada gate. As earlier stated, even if Section 9(1) of the Newfoundland Human Rights Code was sufficiently broad in its coverage to prohibit the alleged discrimination as between employer and employee which is alleged in this particular case, the Iron Ore Company of Canada, would have to be considered a third party and would not be covered by any provision of the legislation.

It is this Commission's further view that discrimination alone without consideration of race, religion, religious creed, sex, political opinion, colour, or ethnic, national or social origin is not covered by the legislation and in the event that the allegations put forward by the individuals in question could be, lets say, substantiated as against Canadian Refractories Limited, or Richard and B.A. Ryan, or some other sub-contractor, then it is our view that these sub-contractors would not be in breach of the legislation.

The evidence put forward on behalf of the individuals in question concerning pressure being brought to bear by the Iron Ore Company of Canada against various contractors or sub-contractors was a little less then clear and certain. Most individuals referred to supervisory personnel working for the contractors or sub-contractor in question, however, would not identify the individual by name and of course as a result the Commission has to view such evidence as hearsay and not that convincing. However, the question was resolved and clarified considerably by both the evidence of Mr. Gallighan, as well as Mr. Adams, who set forth the Company policy dealing with previously discharged individuals. We think it is fair to say that these gentlemen in putting forward their evidence clearly indicated that where the Iron Ore Company of Canada was dealing with a contractor or sub-contractor doing work on the mine site and this contractor or sub-contractor had within its employ an individual undesirable to the Iron Ore Company of Canada, the Iron Ore Company of Canada would make representations to this particular Company and in which case the contractor or sub-contractor, as the case may be, would discharge or lay off the individual, unless work was available outside the Iron Ore Company of Canada gate.

We think that the officials of the Company were sufficiently candid with us to admit that this course of conduct would result in such a case. In any event, there is little doubt that, notwithstanding the fact that the contractors or sub-contractors would be considered to be independent contractors in the legal sense, they would be subject to the representations or suggestions of the Iron Ore Company of Canada in such a case.

The right of a Company to hire who it wishes and discharge for just cause is without question. Equally, it is suggested that the right of a Company to allow who it wishes on its property goes without saying. In the event that the individuals who are the subject of this inquiry were hired and discharged by some other Company at some other location, then there is very little doubt that any complaints would be made nor for that matter would this Commission of Inquiry be commissioned

In the normal case an individual who works with a Company and is discharged with just cause and the Company is subsequently supported by the follow-up grievance procedure and Board of Arbitration, there would be no further inquiry whatsoever. In the particular case at hand, however, we are dealing with individuals who formerly were employed by the main employer in a one-industry Town, which wields significant power and influence. It is fair to say that the Iron Ore Company of Canada in Labrador City is the main employer, and for that matter is the main provider of work for other Companies who carry on business in the area. In addition thereto, the Iron Ore Company of Canada was the virtual founder of Labrador City, building its facility, providing and establishing the Town site and to this day owns most of the homes in the Labrador City area. In actual fact a substantial number of employees and ex-employees of the Iron Ore Company of Canada reside in Company homes or homes financed by the Company and pay their rental or mortgage payments to the Company.

Labrador City, accordingly, would fall within the category of a "Company Town", and the Iron Ore Company of Canada exercises power, influence and control not only over its own employees but also the employees of other Companies in the area, as well as the general population.

The Commission is not unmindful of this type of situation as it has existed in the past and exists to this day in many similar towns in Northern Canada. The Company, which of course is the main stay of the Town's economy is vested with these powers by Government to enable the Company to facilitate the orderly development of its operation, as well as the development of the Town site, water and sewerage, street development, schools, hospital and just about every facet of social and cultural life in the Community. Usually, as the Town develops and diversifies and the economic basis of the Community is broadened the power and control of the Company becomes less encompassing and more power and control is vested in the Municipality.

The undesirable effect that such power and control have to manifest in the type of situation that we are confronted with in the particular case. We have individuals who have been long-standing citizens of Labrador City, who, upon being terminated from the Iron Ore Company of Canada, have found it difficult, if not virtually impossible, to find alternate employment without leaving the Labrador City area. In the event that they are able to secure employment with one of the other contractors or sub-contractors in the area, and we understand virtually all the contractors in the area do work at some time or other inside the Iron Ore Company of Canada gate, then these individuals are at the whim of the Iron Ore Company of Canada if the Company does not wish their presence inside the Gate. In addition, the Iron Ore Company of Canada exerts considerable control over the ex-employees insofar as their accommodation is concerned. We have heard the evidence of several of the witnesses who indicate that they are now unable to make their payments, be they mortgage payments or rental payments, to the Company, as the company is not desirous of accepting money from them. Conceivably after a period of time the Company could and probably will take the necessary legal recourse to obtain possession of the ex-employees accommodation.

It is also interesting to note that in considering the policy of the Company as outlined by the Company representatives, an individual would not only be limited in maintaining a job with a contractor, or sub-contractor, doing work for the Iron Ore Company of Canada, but would also be limited in holding a job of any kind and description wherein any of the duties of the job would include the necessity of being on Iron Ore Company of Canada property. One can easily follow the argument to its logical conclusion and conclude that if a former employee was driving a taxi, laundry truck, garbage truck, or any other form of conveyance that would from time to time require the presence of such a vehicle on the Iron Ore Company of Canada premises then in such a case the former employee would be unable to carry out the functions and duties of his employment.

And so where an individual has been terminated from the Iron Ore Company of Canada for whatever reason and where that ex-employee is desirous of continuing on to reside in Labrador City, it is a virtual impossibility for him to do so, given his employment changes and the uncertainty of accommodation.

The Iron Ore Company of Canada, as earlier stated, has enunciated its policy concerning former employees who were discharged. The general policy is that these former employees are not welcome on Company property. The Company went on to state that there had been exceptions to this where employees have been discharged for just cause and then rehired. However, the Commission notes that the general policy of the Company is to exclude the presence of former employees from the Iron Ore Company of Canada site.

The basic reason that the Iron Ore Company of Canada sets forth for such a policy is that they have the right to determine who comes on to Company property and the Company itself is discharged with the obligation of running the Company and directing its operations.

We have considered the position of the Iron Ore Company of Canada vis a vis the various contractors and sub-contractors that perform work on a contract basis inside the Company Gate. It is quite clear that these contractors or sub-contractors, as the case may be, are independent contractors who enter into a contract with the Iron Ore Company of Canada to perform certain work. The independent contractor in such a case is responsible for the activities of its employees and more particularly is responsible for the overall supervision of such employees where these employees are carrying out their duties on property belonging to somebody other than the contractor or sub-contractor. It is the futher view of this Commission that the Iron Ore Company of Canada, in contracting out work to these various independent contractors, can and should hold these contractors responsible for the satisfactory completion of the contract entered into. It is the view of this Commission that these various independent contractors are at all times totally and completely responsible for the actions or omissions of its employees and it is the total and

complete responsibility of the independent contractor to supervise and direct its employees.

In the event that such an independent contractor was to fail in some way in exercising the necessary supervision over its employees or in failing to ensure that the employees acted and worked in a reasonable and responsible way, then certainly, in our view, this independent contractor would be completely answerable and responsible for whatever acts or omissions by its employees to the Iron Ore Company of Canada.

Accordingly, in the case at hand, if property of the Iron Ore Company of Canada were stolen by a former employee in the employ of a contractor, or negligence resulted from the actions of a former employee in the employ of a contractor or sub-contractor, or if any act or omission was caused by a former employee presently in the employ of a contractor or sub-contractor inside the Iron Ore Company of Canada Gate, then surely the contractor or sub-contractor would have to indemnify and save harmless the Iron Ore Company of Canada for any loss resulting therefrom.

The Commission is fully cognizant of the legal and binding effect of the preamble to the Newfoundland Human Rights Code. The preamble by its very nature merely sets out in very general terms what the purposes of the legislation are for. The preamble refers to many items and amoung them are the recognition of the inherent dignity of individuals and of the equal and inalienable rights of all members of the human family as a corner stone of freedom, justice and peace. As well, the preamble refers to human beings being able to enjoy freedom of speech and belief and freedom from fear and want. The legislature, as well, reaffirms its faith in fundamental human rights and in the dignity and worth of the human person and in the equal rights of men and women and has determined to promote social progress and better standards of life.

However, the very language is so broad and so general as to have little, if any, effect, other than to spell out as stated the general

purposes of the legislation.

It is the finding of this Commission that the Iron Ore Company of Canada are not in any breach of the Newfoundland Human Rights Code and the Iron Ore Company of Canada cannot be said to be discriminating against former employees of that Company insofar as the word discrimination has been defined in the Act.

There is no question, however, that the Company is exerting its influence against these former employees in such a way as to discriminate against them in the broader sense of that word.

It is the view of this Commission that the individuals concerned did wrong and for this wrong they must pay the price. That price in our view is an unduly harsh and onerous one, given the circumstances of the cases. The price is unduly harsh and onerous in that these former employees will be affected in their employment for as long as they choose to remain in the Labrador City area.

It is the recommendation of this Commission that in this particular case the Iron Ore Company of Canada be prevailed upon to desist from any further involvement between contractors or sub-contractors performing work for it and former employees of the Iron Ore Company of Canada who are in the employ of the contractor or sub-contractor. In the event that the Company in this case were to fail to comply with such a recommendation, it is the further recommendation of this Commission that the whole area of interference by companies in a third party employer/employee relationship be given in-depth study with a view to amending the Legislation to protect the interests of the parties.

It would not, in our view, be appropriate to recommend changes or amendments in legislation at this point, because of the far-reaching implications that such changes would have on labour management relationships throughout the entire Province.

Respectfully submitted,

this 5th day of July A.D., 1976.

Michael J. Monaghan, Chairman

Frederick R. Coates, Member

Apr. 19, 1977

11-1

Honourable Joseph G. Rousseau, Jr.
Minister
Department of Labour and Manpower

In the matter of The Newfoundland Human Rights Code, Chapter 262, and The Newfoundland Human Rights Code (Amendment) Act,

and

In the matter of the complaint of Mr. Caleb Norman Anthony in which it is alleged that he, Mr. Anthony, was terminated from his employment at Dominion Distributors (1962) Limited because of his religious practices.

Commission of Inquiry

Gertrude C. Keough, Human Rights Commissioner, Chairman

Department of Labour and Manpower

F. R. Coates, Director Human Rights Division

For Dominion Distributors (1962) Limited

Mr. Frank John Howse, General Manager
Mr. Kevin Francis Walsh, Warehouse Supervisor

For the Complainant

Mr. Caleb Norman Anthony, 223 Bay Bulls Road, Kilbride
Mr. Harry James Noseworthy, 12 Seller's Cres., Mount Pearl
Mr. Chesley Maxwell Peirce, Thorburn Road
Mr. William Randolf Hussy, Portugal Cove Road

St. John's, April 19, 1977.

This Commission of Inquiry was established under the provisions of Section 16A of The Newfoundland Human Rights Code, Chapter 262, Revised Statutes of Newfoundland, by Honourable Joseph G. Rousseau, Jr., Minister of Labour and Manpower, to inquire into the matter of a complaint of Mr. Caleb Norman Anthony against Dominion Distributors (1962) Limited, and to recommend to the Minister, as provided under Section 18 of the Code, what course of action should be taken.

The Commission convened in the Board Room of the Department of Labour and Manpower at 10:00 o'clock in the morning on Thursday, the 10th day of March, 1977. At that time, the terms

of reference for the inquiry were outlined along with an interpretation of Section 9(1) of The Human Rights Code, violation of which was alleged by the complainant. Also cited was Section 32(1) to which both complainant and respondent had recourse if there should be dissatisfaction with an order of the Minister after the recommendations of the Commission were presented to him.

After oath or affirmation, the Commission heard representation from Employees of Dominion Distributors (1962) Ltd. as well as management representatives of the same company.

Mr. Anthony had worked for Dominion Distributors (1962) Limited, a subsidiary of Andrews Auto Supplies, from July 21, 1975, to December 10, 1976, at which time his job was terminated. As a member of the World Wide Church of God he observed the Sabbath from sundown on Friday to sundown on Saturday. It was clearly manifested during Mr. Anthony's evidence that he was adamant in his observance of the Sabbath and did not wish to perform any work during that period. At this specific time in 1975-1976, he was granted permission to leave early on Friday evenings. When he requested the same consideration in 1976-1977, he was told it could not be authorized. He offered, in compensation, to work overtime, at his lunch hour (which he had done on several occasions) or take a reduction in pay. He left the job before sunset on Friday, December 10, 1977.

Mr. Anthony presented, during evidence, an exhibit of the number of hours which would comprise the time off from November 5 to January 28 inclusive (exhibit attached). To leave before sunset during this period would amount to a total of 6 hours 2 minutes. He admitted in cross examination that he left the premises much earlier than the times implicated in the exhibit.

It was established from the evidence presented by the witnesses for the complainant that Mr. Anthony did leave early

4 o'clock. This was questioned by employees on a couple of occasions but no one objected to his doing so. There was confirmation during evidence that Mr. Dooley, the union representative, had stated that there was no disapproval of Mr. Anthony's action if the company was in agreement.

None of the witnesses for the complainant thought that Mr. Anthony's leaving early on Friday evening would be an inconvenience to the company.

The manager and warehouse supervisor (Mr. Anthony's immediate supervisor) representatives of the defendant, both strongly emphasized that Mr. Anthony was not asked to leave his job but had made his own decision to leave. The first year he worked with the company he was granted time off on personal grounds, but it was later realized that this was a mistake. There was no union involved at this time. When he requested the same time off the second year, a union had been formed within the company which stipulated work hours of 8 o'clock to 5 o'clock, 5 days a week. At this point, management resolved they could not continue to make this exception for one employee without accepting the consequences of having to grant the same right to other members of the staff. The issue was beginning to cause great inconvenience. There was usually a last minute rush on Friday evenings and it was beneficial for all employees to be available at this time.

On the evening that Mr. Anthony left, he walked off the job at 3 o'clock without giving notice. Before he left the premises, he was approached by Mr. Walsh, his supervisor, to reconsider the action he had taken or to seek advice from his Minister rather than quit his job.

It was confirmed that the company was very pleased with Mr. Anthony's work performance. His working during some lunch periods was his own decision and, in fact, he had been advised by his supervisor not to do so.

No one has been hired in Mr. Anthony's place. Two other employees who have left, one for retirement and one for another

job, have not been replaced because of slow down in business.

On the basis of the evidence adduced, the Commission reached the conclusion that Dominion Distributors (1962) Limited had not been found to have contravened Section 9(1) of The Newfoundland Human Rights Code and that the complaint of Mr. Caleb Anthony was not well-founded.

At the conclusion of the Inquiry and because of the nature of the circumstance, another endeavour was made to effect a conciliation. A brief discussion was held with Mr. Frank Howse, Manager, during which time he agreed to discuss the rehiring of Mr. Anthony with the Board of Directors and inform the Commission by letter of what the outcome would be. The matter was discussed with the president and vice-president of the company and it was agreed that in the event of an increase of staff, Caleb Anthony would be considered for rehiring. It was also agreed that the company work day of 8:00 a.m. to 5:00 p.m. would have to be adhered to.

I recommend Mr. Anthony be notified that the Commission found he was not terminated from his job with Dominion Distributors (1962) Limited because of his religious practices and in fact, evidence confirmed he left his job voluntarily because to work during the hours which he regarded as part of the Sabbath was contrary to his religious convictions. Through solicitation of the Commission, Dominion Distributors agreed to consider rehiring him in the event of increase of staff, but the company workday of 8:00 a.m. to 5:00 p.m. would have to be adhered to.

Respectfully submitted,

Gertrude C. Keough

Gertrude C. Keough
Chairman

C-18
Coulson & Williams

From evidence presented it was established that
omplainant began travelling on the bus line in July,
and availed himself of the service through 7
st, 1973, during which time the complainant nor the
ndent gave any indication the complainant was
fit passenger.

Evidence did establish that the respondent did
se the rate of fare charged to passengers during
1973, contrary to Section 19-(2) of the Motor
rs Act, Chapter 242, Revised Statutes of New-
and 1970 and that the complainant did lodge a
complaint with the Board of Commissioners of
Utilities protesting against the fare increase.

vidence established the fact the complainant
tinue to use the services provided by the
ent up until the respondent was advised of the
nt lodged against the increase in fare by the
f Commissioners of Public Utilities on 7 August,

was further established in evidence that the
ant did present himself as a passenger for the
nt and that the respondent would not stop the
nat the respondent refused to allow the complainant
the bus if he did stop for other passengers
t the same bus stop.

dence also established the complainant was
to spend one night in St. John's on the night
st, 1973, because of the respondents refusal
ort the complainant.

as further established the complainant
tner complaints against the respondent with
of Commissioners of Public Utilities for