

‘Ghetto’ comment discriminatory, created toxic work environment

Effect of comments on employee were more important than intent

BACKGROUND

More hurtful than sticks and stones

EMPLOYERS, must be careful about comments and actions by supervisors and employees that could be deemed offensive by a group with characteristics protected under human rights legislation. Even if there is no intent to hurt and it’s all meant in good fun, if someone doesn’t take it that way it can make being in the workplace difficult.

An Ontario employer was faced with accusations of fostering a poisoned work environment after a supervisor made joking comments that were racially charged that an employee found unwelcome. Things got worse when other employees picked up the joke and subjected the employee to months of ridicule.

Employment lawyer Ronald Minken takes us through the case and the warning it presents to employers.

| BY RONALD MINKEN |

THE ONTARIO Human Rights Tribunal has determined comments made to an employee regarding his attire on a “casual Friday” were not only discriminatory on the basis of race and colour, but created a toxic work environment in breach of the Ontario Human Rights Code.

On April 30, 2010, Harold Brooks — who is an African Canadian male from the East Coast of Canada — came to work dressed in a soccer jersey bearing a Kenyan team crest, black loose fitted jeans and Nike running shoes. Later that morning, Brooks was observed by the Director of Operations, Ted Jaipaul, who is black and originally from Guyana. Jaipaul commented to Brooks’ supervisor, who is also African Canadian, that Brooks looked “ghetto” based on his appearance that day. Brooks overheard the comment and responded by saying “watch your tongue.” Despite the

warning, Jaipaul turned to Brooks and said, “Look at you. You’re ghetto.” Again Brooks told Jaipaul to “watch his tongue.” However Jaipaul continued in his commentary, stating to another employee Brooks “looks like he’s from ghettoville.”

Brooks became upset and asked Jaipaul to apologize and accompany him to HR to discuss the matter. Jaipaul refused and instructed Brooks’ supervisor to send him home for the day. Brooks left the building and sat in his car, later returning to the building to meet with HR along with Jaipaul and the Vice-President, Compliance.

Co-workers picked up on the joke

Jaipaul apologized to Brooks twice in an effort to diffuse the situation. After the meeting ended, Brooks

returned to work. Unfortunately, after the incident, Brooks’ co-workers who had overheard the “ghetto” comments and his reaction, began to tease and joke around with him, saying things like “Hey Brooks, that’s ghetto.” The comments continued for a few months and made Brooks feel disrespected, as he felt they were related to his race and colour. On Sept.7, 2010, Brooks filed an Application to the Ontario Human Rights Tribunal against Jaipaul and his employer, Total Credit Recovery (TCR), seeking damages for injury to dignity, feelings and self-respect in the amount of \$20,000 and loss of income.

The tribunal considered the evidence, including that of an expert witness, Dr. Heather Lotherington, a Professor of Multilingual Education in the Faculty of Education at York University. Dr. Lotherington provided evidence regarding the origins of the word “ghetto” and the meaning of the term “ghetto clothing.” Dr. Lotherington’s evidence showed although the term “ghetto” has now become a common adjective to describe urban style and viewed as trendy or positive, it has its origins in

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the “usually impoverished inner city areas of major American cities that are populated by African Americans” and relates directly to African American culture and the black community. The adjudicator noted, “this usage of the term ‘ghetto’ is negative and derogatory.”

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CASE IN POINT: HUMAN RIGHTS

Words can change in meaning and impact for some groups

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tory and is used to denote a place that is run-down, undesirable or shabby.”

On this basis, the adjudicator found Jaipaul’s comments were derogatory and relating to Brooks’ race and colour, thereby being discriminatory. The adjudicator also determined Jaipaul knew or ought to have known that his comments would be unwelcome by Brooks based on Brook’s request that Jaipaul “hold his tongue” when he made the first comment to the supervisor. Although Jaipaul knew Brooks had been offended by the first comment, he continued to repeat the same sentiments to Brooks directly. Regarding Jaipaul’s two apologies to Brooks, the adjudicator determined they were not true apologies as Jaipaul did not recognize the inappropriateness of his comments or their impact on Brooks.

The adjudicator also found the comments were sufficient to create a poisoned work environment due to Brooks’ race and colour based on the following:

- The comments were made in a public setting where they were overheard by Brooks’ co-workers
- Jaipaul repeated the offending comments at least twice after he realized they were offensive and unwelcome to Brooks
- Jaipaul was a senior manager which increased the impact and effect of the comments on Brooks
- The comments resulted in Brooks

becoming the subject of jokes and other commentary by his co-workers, which negatively impacted how he felt about being at work and spending time with his co-workers.

As a result of the breach of the Human Rights Code, the tribunal awarded Brooks damages of \$2,500 for injury to dignity, feelings and self-respect plus post-judgment interest, with TCR being vicariously liable for Jaipaul’s actions.

Although the term ‘ghetto’ has now become common to describe urban style and is viewed as trendy or positive, this usage of the term was negative and derogatory and used to denote a place that is rundown, undesirable or shabby.

Impact of decision on employers

This case demonstrates the importance of implementing sensitivity training as well as promoting cultural and historical awareness in the workplace. Often words rooted in cultural and historic tradition become part of everyday vocabulary with an updated meaning. Although the words may not be spoken with inappropriate intent, if the impact or effect of these words is discriminatory, then a breach of human rights legislation may occur, resulting in liability for the employer.

It is imperative employers implement proper policies and procedures to address harassment and discrimination in the workplace and ensure sufficient training is provided to all employees, including senior management, who should be expected to set a positive example in the workplace.

Impact of decision on employees

Employees who are offended by comments directed at them or overheard in the workplace should inform employers of their concern so sufficient steps can be taken by the employer to resolve any issues before they escalate. A toxic work environment may result if the offending comments are made in a public setting where they are overheard by others, and if these comments become the source of jokes or other unwanted commentary by co-workers. Senior employees will likely be held to a higher standard as they are expected to set a positive example for others and employers may be held liable for the inappropriate actions of their employees.

For more information see:

■ *Brooks v. Total Credit Recovery Ltd.*, 2012 HRTO 1232 (Ont. Human Rights Trib.).

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