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CURRENT NEWS AND PRACTICAL ADVICE FOR EMPLOYERS

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Largest ever award for Ontario human rights breach

Nearly $100,000 on compensatory damages reflect extreme level of humilation causing employee to become suicidal

BY RONALD MINKEN

THE DISCRIMINATION, harassment, poisoned workplace and lack of accommodation caused enough damage to the employee's life and well-being that the employee is entitled to almost $100,000 plus four years of lost wages, the Grievance Settlement Board of Ontario has ruled.

On July 24, 2013, the board released a decision in *Ontario (Ministry of Community Safety and Correctional Services) and OPSEU (Ranger), Re* with respect to whether further compensation is owed. The board awarded $45,000 in compensatory damages for discrimination, harassment and poisoned workplace, which was the largest amount ever awarded by the board. Another $53,000 in compensatory damages was awarded for failure to accommodate over four years, and the employer was also ordered to add vacation credits to Ranger's vacation bank and include overtime and other premium pay as long as he remains in his current position.

HUMAN RIGHTS

The board previously upheld Robert Ranger's grievances that he had suffered discrimination, harassment and a poisoned workplace at the Ottawa Carleton Detention Centre, the employer had failed in its duty to accommodate him when he became ill as a result of the harassment and discrimination and ordered the employer to pay $245,242 for lost wages.

Some of the reasons for the $45,000 award were as follows:

- Uncontroverted medical evidence that Ranger suffered anxiety and deep depression, at times being suicidal.
- The harassment was profoundly humiliating.
- Ranger felt victimized and lost self-respect.
- He transformed to a bitter, distrustful person.
- The harm suffered was foreseeable.
- He lost the work he wanted to do as a

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No previous case where employee suffered such extensive harm

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correctional officer and can never return to work in a correctional institution.

•He lost opportunities to advance his career.

•The employer's breach affected every aspect of both his professional and personal life.

•The impact of delay in investigating the complaint affected Ranger adversely and made him sicker.

•There was almost no evidence to justify the delay.

•The delay to investigate was a breach of the employer's duty.

•There has been no case before the arbitrator where a complainant has suffered such extensive harm.

This case demonstrates the principle that damage awards attempt, so far as possible, to restore the dignity interest of the employee and, given this is the largest sum ordered yet, there will be no hesitation in doing so.

In summary, the breach was egregious, did great harm and was foreseeable. The combination of the harassment, discrimination and not being accommodated for so many years left Ranger emotionally crippled, distrustful of everyone and completely crushed.

Lessons for employers

Employers should ensure under all circumstances the Human Rights Code is complied with, in the event of any reported breach an investigation is promptly done and the duty to accommodate is treated very seriously. Advance training of all staff on the Human Rights Code and harassment prevention should be regularly performed.

Management should be reminded periodically that any breach of the Human Rights Code is unlawful and, if a breach is reported, this should be taken seriously and promptly investigated. Further reminders that the duty to accommodate must not be delayed for any reason is essential. As well, accommodation is up to the point of undue hardship, so the employer may be expected to suffer some hardship in accommodation, but not undue hardship.

Lessons for employees

Employees should be aware employers must respect human rights as prescribed in the Human Rights Code and the employers' duty to investigate and accommodate are taken very seriously. A poisoned workplace may foreseeably result in injury to dignity, feelings and self-respect for which an employer may be ordered to provide compensation.

For more information see:

- *Ontario (Ministry of Community Safety and Correctional Services) and OPSEU (Ranger), Re*, 2013 CarswellOnt 10358 (Ont. Grievance S. Bd.).

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employees from coming forward with discrimination complaints, and in most cases it will be inappropriate to reprimand or otherwise penalize an employee whose discrimination complaint is found to be unsubstantiated.

There is an important difference, however, between the initiation of a discrimination complaint that ends up being unsuccessful, and the filing of a complaint that is frivolous, vexatious or vindictive in nature. The latter is a significant employment offence, and in most cases will be grounds for disciplinary action.

The fact that an employee's discrimination complaint has been dismissed — even if the complaint was found to be frivolous in nature — does not necessarily mean future complaints made by the same employee are invalid and can be ignored by the employer. An employer who is faced with this situation should conduct at least a preliminary investigation to determine whether there may be some basis for the employee's allegations. Otherwise, the employer may find itself facing liability for failure to investigate.

Employers should have effective policies in place for the filing and disposition of human rights-based discrimination complaints. Such policies should include language indicating the filing of frivolous or vexatious complaints will not be tolerated and may lead to disciplinary action. Where a policy of this nature is supported by appropriate training, it will be less likely the employer will be burdened by complaints that are clearly false.

For more information see:

- *Boivin c. Orchestre Symphonique de Laval 1984 Inc.*, 1992 CarswellQue 111 (Que. S.C.).
- *Zaraweh v. Hermon, Bunbury & Oke*, 2001 CarswellBC 2195 (B.C. C.A.).
- *Giza v. Sechelt School Bus Service Ltd.*, 2012 CarswellBC 22 (B.C. C.A.).

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