

A Funky Situation: Is Disciplining An Employee For Body Odour A Form Of Discrimination?



A random question occurred to me the other day, "Could disciplining an employee due to their body odour be a form of discrimination?" This question occurred to me when I did a double take reading the headline of the *Washington Post* article, "Lawsuit says American Airlines kicked 8 Black men off plane, citing body odor."¹ At first I thought it was a joke, but when I typed in, "Black men, sue, American Airlines, body odour," several different articles came up about the same incident. What was interesting about this case was the fact that the airline briefly removed every Black man (eight men who did not know each other) from the flight after a complaint about body odour. Three of the eight men filed a racial discrimination lawsuit against the airline. After researching this airline further, I noticed that the airline has policies against body odour. It turns out that some airlines have clauses where the airline can refuse to transport the person with an odour.

After going down the body odour rabbit hole, I was curious. To clarify, I was not interested in the different types of body odour, but as a workplace investigator, I was more curious to know more about human rights case law and considerations with employers dealing with body odour in the workplace. Specifically, the questions I wanted answers to were: could complaints about an employee's body odour amount to discrimination? And could employers be engaging in discrimination when disciplining an employee because of their body odour?

I found some guiding principles in *Von Bloedau v. Transcom Worldwide (North America) Incorporated*.² In this case, the complainant alleged that his termination from employment (due to frequent complaints about his body odour) was a form of discrimination. The Ontario Human Rights Tribunal (the "Tribunal") decided that the complainant's application should be dismissed as it had no reasonable prospect of success. The facts of the case are as follows.

Facts of the Case:

The complainant, a male, was one of 12 to 18 employees who worked for the respondent as a customer service agent from May 2010 until June 13, 2012, when his employment was terminated. The complainant's job was to respond to telephone and other enquiries from the public about the products of a consumer products company active in Canada. The complainant was one of only two males on the team of agents.

The Tribunal noted that during the complainant's employment, one or more of the women on his team "most likely" filed a complaint that "she or they" found his body odour offensive, an odour that the complainant maintained "men would not find offensive or would not have complained about." These complaints gave rise to the complainant being progressively disciplined. Specifically, the documents presented by the respondent showed that the respondent took the following disciplinary actions before terminating the complainant's employment:

- "Coached" the complainant on July 29, 2010;
- Verbally warned him on August 13, 2010;
- Issued a written warning on October 19, 2010;
- Gave a one-day suspension on December 15, 2010;
- Gave a 3-day suspension on January 20, 2011;
- Issued a final written warning on September 23, 2011 (for a different personal hygiene issue) and;
- Issued a further reminder of his final warning on February 2, 2012 (at which time the complainant was sent home for the day).

The complainant alleged that there was a further complaint about his body odour on June 11, 2012, which eventually led to his termination from employment on June 13, 2012. In this case, the complainant did not submit that any of his body odour may have resulted from a medical disability. Instead, the complainant was convinced that the complaints about his body odour were invalid, as he believed that he took care of his hygiene and was willing to take corrective actions as part of the disciplinary process. The complainant alleged that he was held, as a sweaty male, to a different standard for body odour and that firing someone for smelling bad may be a form of sex discrimination, as men might not have noticed his body odour or complained about it.

The Tribunal found that the respondent did not enforce a discriminatory standard about body odour. In fact, the Tribunal found that the respondent's response to complaints from employees about the complainant's body odour was not only appropriate but also a reasonable step to take. The Tribunal further noted that the respondent took a constructive framework, as the respondent communicated to the complainant in one of their disciplinary letters that they were aware that individuals have unique scents that may be caused by diet, hygiene, or medical issues. But the employer stated that all employees were required to practice proper hygiene, and if a medical condition was the cause of the odour, the complainant was required to provide documentation to support that the odour was related to a medical disability.

Unlike the American Airlines case, there was no reasonable prospect of success to show there was any form of discrimination as the complainant's allegation did not suggest there was a nexus between the respondent's conduct and any of the complainant's prohibited grounds (i.e., disability, sex, and/or gender). Whereas, in the American Airlines case, it appears, in my opinion, that race was a factor in their differential treatment. What are the chances that the eight Black men on this flight (who did not know each other) all experienced some form of body odour simultaneously? In my opinion, this is less than likely.

I've provided some guiding principles taken from the *Von Bloedau v. Transcom Worldwide* case below.

Key Takeaways:

- It is important to recognize that body odour is not a prohibited ground for discrimination, as it is not qualified as a disability on its own. However, body odour can be connected to a medical condition, which could bring it into the realm of disability.

- For employers experiencing complaints of body odour in the workplace, make sure to gently and appropriately inquire if that employee has a medical condition, as this is a sensitive and uncomfortable topic for everyone involved.
- This case highlighted the respondent's acknowledgement and sensitivity to cultural or personal norms when communicating their body odour expectations in the workplace. This is something that employers can take note of and include in their communication to employees about body odour in the workplace.
- It is important to avoid public discussions about an employee's body odour. Instead, ensure that these conversations are held in private, maintaining the employee's dignity and preventing them from feeling singled out.
- Finally, it's essential for employees to uphold a workplace that is free from toxicity, harassment, and discrimination. This responsibility becomes even more crucial after a complaint of body odour, as it ensures that no employee, including the one with the odour issue, is subjected to harassment or discrimination, especially by those who made the complaint.

Footnotes

1. Hannah Sampson, "Lawsuit says American Airlines kicked 8 Black men off plane, citing body odor" (May 2024), online: *Washington Post* < <https://www.washingtonpost.com/travel/2024/05/29/american-airlines-lawsuit-black-men-body-odor/> >.

2. 2014 HRTO 67.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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