S.C.C. Finds Union Has Duty to Accommodate Religious Beliefs

Central Okanagan School Dist. No. 23 v. Renaud (1992), 16 C.H.R.R. D/425 (S.C.C.)

In a unanimous decision, the Supreme Court of Canada restores the decision of the B.C. Council of Human Rights, which found that Larry Renaud was discriminated against by both his employer and his union because of his religious beliefs.

Mr. Renaud, a school custodian, is a Seventh Day Adventist. His religious beliefs prevented him from working from sundown Friday to sundown Saturday. The work schedule, which required him to work a Friday shift from 3 p.m. to 11 p.m. was set out in the collective agreement between the Okanagan School Board and C.U.P.E., Local 523. Accommodating Mr. Renaud's religious beliefs would have required allowing him to work hours different than those specified. The respondent school board and union could not agree on a means of accommodating Mr. Renaud and as a result he was dismissed from his job. The B.C. Council of Human Rights found that though it was a *bona fide* requirement that a custodian be present in the schools, it was not a *bona fide* requirement that a custodian in Mr. Renaud's school work the 3 p.m. to 11 p.m. shift on Fridays. The Council concluded that Mr. Renaud should have been accommodated and that both the employer and the union were liable for the failure to do so.

Relying on the Supreme Court of Canada's decision in *Central Alberta Dairy Pool v. Alberta (Human Rights Comm.)* (1990), 12 C.H.R.R. D/417, the B.C. Supreme Court overturned the B.C. Council of Human Rights decision. It ruled that once a *bona fide* occupational requirement is established no accommodation is necessary. The B.C. Court of Appeal upheld the B.C. Supreme Court's judgment.

There are two grounds of appeal in this case:

1. whether regular attendance which is in accordance with a schedule established by an employer is a *bona fide* occupational requirement providing a complete defence to a complaint of discrimination on the grounds of religious belief; and
2. whether an employer or a trade union is under any obligation to accommodate an employee who, because of his religious beliefs, is unable to work a particular shift.

The Supreme Court of Canada, with Sopinka J. writing for the Court, finds that even where a*bona fide* occupational requirement is established an employer has an obligation to accommodate. The Court cites its earlier decision in *Central Alberta Dairy Pool v. Alberta (Human Rights Comm.)* (1990), 12 C.H.R.R. D/417 (S.C.C.). There Sopinka J. writing for the minority of the Court and Wilson J. writing for the majority agreed that when adverse effect discrimination is at issue an employer can uphold a general rule but must consider whether the employee can be accommodated without undue hardship. The employer must show that no reasonable alternative to the discriminatory rule was possible.

On the first issue, therefore, the Supreme Court finds that the B.C. Council of Human Rights did not err when it found that there was a duty on the respondents to accommodate Mr. Renaud.

The Court then considers the nature of the duty to accommodate and what obligations that duty imposes on a trade union.

The Court rejects the respondents' argument that the duty to accommodate is a *de minimus*one. This standard is one derived from American jurisprudence, and the legal context is very different. The case of *Trans World Airlines Inc. v. Hardison*, in which the *de minimus* rule was articulated, was argued on the basis of the establishment clause in the American constitution which prohibits the establishment of religion. The *de minimus* rule is inappropriate for the Canadian social context.

The employer argued that it refused to accommodate Mr. Renaud because it feared that a grievance would be filed if it violated the terms of the collective agreement by allowing him to work different hours. The Court finds that the existence of a collective agreement and the possibility of a grievance cannot be allowed to absolve parties to it of a duty to accommodate. Further, an employer's need to defend itself from a grievance, which will be unsuccessful in any case because employers and unions cannot contract out of human rights law, will not constitute an undue hardship. However, it will be relevant to assess a collective agreement to determine the degree of hardship involved for an employer or a union in interfering with its terms. Also the objections of other employees to an accommodation can be taken into account when assessing hardship but not where those objections are based on attitudes inconsistent with human rights. The Court finds no evidence in the record to suggest that the rights of other employees would have been affected by an accommodation of Mr. Renaud.

The Court finds that the union, like the employer, has a duty to accommodate. It rejects the argument that a union cannot be required to adopt measures which conflict with the collective agreement until an employer has exhausted reasonable accommodations that do not affect the collective rights of employees. It is not incumbent on the employer to exhaust all other possibilities first; the most reasonable accommodation may be one for which union approval is

required, as it was in Mr. Renaud’s case.

In Mr. Renaud’s case, the Court finds that accommodation attempts failed because the union refused consent to allow Mr. Renaud to work a Sunday to a Thursday shift instead of Monday to Friday, and the employer refused to act unilaterally. The Court concludes that the Council was correct in finding both parties liable for discrimination against Mr. Renaud.