

Supervisors Not Liable for Discrimination



What Happened: Worker claimed discrimination based on disability and included claims against not only the employer but two individuals working for the employer. The worker alleged his medical condition prevented him from working night shifts and that the employer failed to accommodate this condition. The worker alleged the following acts supported his discrimination claims:

- Being singled out for a “public scolding” about his shift restrictions during an employee meeting;
- Being scheduled for a night shift despite his restrictions;
- A supervisor’s response to co-workers’ complaints about his shift restrictions made it appear to be preferential treatment rather than a disability accommodation;
- Requests for a doctor’s note and more detailed medical information regarding an absence;
- The company didn’t protect him from alleged harassment from a co-worker;
- He was forced to sign a shift work agreement that included night shifts despite his medical condition; and
- He claimed he was told he could either take a job for lower pay in a different department or be terminated.

The employer countered that an erroneous schedule was posted, it accommodated his disability, and that it investigated his harassment complaint and instructed the co-worker at issue to improve communication skills. Most importantly, it argued that a more comprehensive examination of the worker yielded a report that the worker would “function well if placed on a consistent day, night or afternoon schedule.” Thus, the employer negotiated with the worker and his union a rotating schedule where the worker would work one month each on day, afternoon and night shifts, on a trial basis. The worker tried one day on the night shift and said he wasn’t feeling well and left but doctors notes didn’t “support an inability to work night shifts” especially in light of the clinic evaluation report. So the company offered him another job that involved only day and afternoon shifts, at a lower pay rate. But the worker declined the offer and didn’t return to work.

What the Tribunal Decided: The tribunal dismissed the claims against the individuals, leaving only the complaint against the company.

How the Tribunal Justified the Decision: The tribunal determined the worker never alleged the individuals named in the complaint were not acting within the scope of their employment. In fact, the tribunal said the worker had agreed the individuals

were acting within the scope of their employment. The tribunal noted that the employer was able to provide redress for any discrimination found, so the worker's claims against the individuals were dismissed. Because the allegations "all form part of the context of the ongoing accommodation process and should be considered as a whole" the tribunal didn't dismiss the complaint against the company [[Nadeau v. Sleeman Brewery](#), [2013] BCHRT 208 (CanLII), Aug. 20, 2013].

ANALYSIS

An Ontario human rights tribunal decision last year, in *Farris v. Staubach Ontario*, [2012] HRT0 1826, Sept. 25, 2012, held individual managers/owners personally liable for gender discrimination claims relating to sexual harassment. That decision may have left many supervisors and managers fearing that they could be on the hook for damages for a discrimination claim brought against their company. However, this case demonstrates that is not always the case. If supervisors are acting in the course of their employment, they may escape personal liability in discrimination lawsuits. The *Farris* case involved supervisors who were also owners. Additionally, the tribunal found that the individuals in *Farris* had created a "poisoned work environment," didn't adequately respond to an employee's concerns, and decided to terminate her because of the poisoned work environment. The individuals' personal conduct was at issue, not just their conduct on behalf of the company. So there are distinctions that with this latest ruling, offer some comfort to supervisors and managerial staff.

Here, there were no significant allegations about the supervisor's personal conduct alone being discriminatory but more general allegations the company discriminated against the employee by failing to accommodate his disability. This court found at least some merit to the discrimination claims and allowing those claims against the company to stand. However, it dismissed the claims against the individuals, essentially finding they were just doing their job.

Bottom Line: Thus, this case offers some comfort to managers and supervisors that "just doing your job" won't land you personally in hot water if your company is sued for discrimination. The caveat is, if your individual actions fall outside the scope of your employment, all bets are off. So supervisors must make sure their conduct is in keeping with their employment and they properly respond to any allegations of discrimination within the company.