

When Do Racial Jokes Create a Toxic Work Environment?



Racially offensive language is discriminatory even if it's meant to be good natured joking.

It seems like there's at least one jerk at every workplace. Some jerks like to make racially insensitive jokes and slurs. It might be intended as nothing more than good natured teasing. The victim might even join in. But it's a liability nightmare. That's because it's often difficult to tell when racial jokes cross the line from friendly teasing to racial harassment and the creation of a toxic work environment. Here are a couple of classic case rulings to give you a feel for the factors that determine when the line is crossed.

No Toxic Work Environment

Situation

A manager at a Nova Scotia sports store has a "greet" his employees manages as "kemosabe." A salesclerk asks the manager what the term means. "Trusted friend," he replies. The clerk tells the manager that she's of Mi'kmaq origin and asks him to address her as "nitap"—the Mi'kmaq term for friend—instead of "kemosabe." The manager later asks the clerk to get him some bootleg alcohol. She agrees. But she takes offence and feels that the request implies that the manager thinks that all people of aboriginal descent know bootleggers. There's another incident, this time involving the manager's father who greets a gas supply attendant of aboriginal descent as "kemosabe." A few days later, the clerk gets into an argument with the manager over the treatment of a customer. She quits and files a complaint. The Nova Scotia Human Rights Board throws out the complaint and the salesclerk appeals.

Ruling

The Nova Scotia Court of Appeal rules that the comments didn't create a toxic work environment.

Reasoning

In reaching this conclusion, the highest court in Nova Scotia cites the following factors:

The Comments Weren't Pervasive or Racially Motivated. According to the Court, the bootlegger comment had nothing to do with the clerk's race. The manager asked the clerk to get the alcohol because she had previously mentioned that she knew bootleggers. As for the use of the word "kemosabe," the manager and his father honestly believed it wasn't derogatory and meant "trusted friend." Plus, they used the term for all store employees, regardless of their race.

The Comments Weren't Obviously Offensive. The Board said that the term "kemosabe" wasn't derogatory. Members of the local aboriginal community testified at the hearing about whether they thought "kemosabe" was offensive and the results were mixed.

The Clerk Didn't Tell Anyone She Was Offended. If an employee takes offence at seemingly neutral terms like "kemosabe," they must let their employers know, the Court said. The salesclerk never told anyone that the term "kemosabe" offended her.

[*Nova Scotia \(Human Rights Commission\) v. Play It Again Sports Ltd.*](#), 2004 NSCA 132 (CanLII)

Toxic Work Environment

Situation

A social development officer with a Canadian government agency files a grievance after overhearing her supervisor describe native Indians as "savages." In addition, office workers frequently use terms such as "Indian time" and "pow wow" and make jokes about getting scalped. At first, the officer herself partakes in the joking. But when the jokes get worse, she complains. The agency takes no action to curb the racial jokes and slurs after the officer complains. Her performance declines and she's ultimately fired for incompetence. She sues claiming that her termination was racially motivated and the product of a toxic work environment.

Ruling

The Canadian Human Rights Commission rules that the racially-motivated remarks poisoned the workplace and orders the agency to pay the officer the maximum 24 months' salary, apologize in writing and provide sensitivity training to staff members.

REASONS

The Commission cited the following factors in finding the existence of a toxic work environment:

Derogatory Remarks Were Pervasive. Racial slurs, jokes and stereotyping were common at the agency. Employees stopped making the jokes in the officer's presence once she complained. But the remarks continued behind her back and the officer was fully aware of this.

The Comments Were Obviously Offensive. Unlike the "kemosabe" remarks in the Nova Scotia case, the remarks in question here were clearly offensive. And, unlike the clerk in the Nova Scotia case, the officer told her employer that she was offended.

The Agency Didn't Follow Up on the Officer's Grievance. The agency allowed the derogatory comments to continue without disciplining anybody. It exacerbated the problem by failing to take her grievance seriously.

[*Pitawanakwat v. Secretary of State*](#), 1992 CanLII 7190 (CHRT)

Takeaway: 3 Ways to Prevent Workplace Racism & Toxic Work Environments

Insensitive jokes, comments and remarks are enough to constitute racial discrimination and create a toxic work environment, particularly when victims speak up and state that they're offended. Things you can do to prevent the problems at your own workplace include:

- Creating and implementing a [legally sound racial discrimination and harassment policy](#);
- [Making employees aware of the origins of racism](#) and the stereotypes and myths that can lead to it; and
- Identifying and eliminating subtle [institutional employment practices that may appear neutral on their but which have the impact of perpetuating organizational racism](#).

and stereotypes that suppress people from speaking out and impede informed dialog and the quest for meaningful solutions. One of the things you can do as an employer to promote understanding and racial equality is to post this infographic debunking 7 of the most common myth about racism and racial discrimination in your workplace in a conspicuous location where it can be seen by all employees.