



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Oscar Perez-Moreno

Applicant

-and-

Danielle Kulczycki

Respondent

DECISION

Adjudicator: Dawn J. Kershaw
Date: June 18, 2013
File Number: 2012-12204-I
Citation: 2013 HRTO 1074
Indexed as: **Perez-Moreno v. Kulczycki**

WRITTEN SUBMISSIONS

Oscar Perez-Moreno, Applicant)))	Self-represented
Danielle Kulczycki, Respondent)))	No one appearing

INTRODUCTION

[1] This is an Application filed under s. 34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”), alleging discrimination with respect to employment because of race, ancestry, place of origin, citizenship and ethnic origin. While the Application is made in respect of employment the applicant’s employer was not named as a respondent. The respondent is the applicant’s co-worker.

[2] In Interim Decisions, 2012 HRTO 2216 and 2013 HRTO 29, the Tribunal directed the respondent to file a Response and, when she failed to do so, deemed the respondent to have waived all rights to notice or participation in the proceedings, and to have accepted all the allegations in the Application.

[3] The applicant was invited to provide further written submissions, which were filed March 12, 2013.

EVIDENCE

[4] The applicant is a manager at The Cranberry Golf Resort and the respondent was his co-worker at the time.

[5] On August 1, 2012, the applicant intervened in an argument at work between the respondent and another individual with whom the applicant was in a relationship.

[6] On August 3, 2012, the respondent posted on Facebook that she had been written up at work for calling the applicant “a dirty Mexican”.

[7] The respondent also stated to other employees: “now that mexican is not going to give me anything”.

[8] The applicant found the public posting and the applicant’s derogatory comments humiliating and damaging to his character, work and personal life, and stated that they created a negative emotional, social, mental and possibly financial effect on him. The

applicant stated that his son's classmate asked his son if the respondent's post referred to the applicant. He stated he should not have to feel ashamed of his roots.

[9] The applicant stated that the respondent said how rewarding it was to make the racial and other derogatory comments about the applicant. The applicant felt humiliated and ashamed as a result of the respondent's comments.

ANALYSIS

[10] Subsection 5(2) of the *Code* prohibits harassment in the workplace on the basis of race, origin, ancestry and citizenship. Section 10(1) defines harassment as "a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".

[11] The respondent is deemed to have accepted the applicant's allegations.

[12] In *Taylor-Baptiste v. Ontario Public Service Employees Union*, 2012 HRTO 1392 that the *Code* "may apply to workplace-related postings on the internet". I agree. I find the respondent's statements and actions in communicating them on Facebook amount to harassment in employment contrary to the *Code*. The comments clearly were vexatious and related to an incident that occurred in the workplace. The respondent knew or ought reasonably to have known her comments were unwelcome to the applicant.

REMEDIES

[13] The applicant does not seek monetary compensation for the injury to his dignity. However he is concerned by how the respondent treats people of different nationalities and cultures. He asks the Tribunal to order the respondent removed from their shared workplace.

[14] Pursuant to subsection 45.2(1) of the *Code*, the Tribunal has the power to make an order directing any party to the application to do anything that, in the opinion of the Tribunal, would promote compliance with the *Code*.

[15] While the Tribunal's remedial authority is very broad, in this case it does not extend to the kind of order sought by the applicant, which would affect the interests of the employer as well as the respondent, because the employer was not a party to this Application.

[16] Given the seriousness of the respondent's conduct, and the applicant's humiliation and his real concern about how the respondent treats people of different nationalities and cultures, I find it appropriate to order the respondent to complete the Ontario Human Rights Commission's on-line training "Human Rights 101" (available at www.ohrc.on.ca/hr101) within 30 days of this Decision. The respondent will provide the applicant with written confirmation that she has done so upon completion of the course.

[17] The Registrar also shall provide a copy of this decision to the employer who may wish to consider whether human rights training might be of benefit for all its employees.

Dated at Toronto, this 18th day of June, 2013.

"signed by"

Dawn J. Kershaw
Vice-chair