

**Canadian Human Rights  
Tribunal**



**Tribunal canadien des droits de  
la personne**

**Citation:** 2015 CHRT 11

**Date:** May 13, 2015

**File No.:** T1961/4113

**Between:**

**Claudette Wilson**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Canada Border Services Agency**

**Respondent**

**Decision**

**Member:** Ronald S. Williams

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## I. Introduction

[1] Claudette Wilson, a Black woman, alleges that Canada Border Services Agency (“CBSA”) subjected her to employment discrimination on the grounds of race and sex when it transferred her from the location where she had worked for many years to another location in the same city.

## II. Facts

[2] Ms. Wilson had for 21 years been employed at the same Immigration Holding Detention Centre (“IHDC”) in Toronto. For most of this time she worked as a security officer, but for two years leading to 2010 she was employed as a security supervisor.

[3] It is important to note that Ms. Wilson was not directly employed by CBSA; rather, CBSA contracted out the security services. At the time in question, G4S Security Services (Canada) Ltd. (“G4S”) held the contract for providing security personnel at the IHDC and it was Ms. Wilson’s employer. CBSA provided supervisory, management and operations personnel. Ms. Wilson believed that she was an exemplary employee, valued by both the respondent, CBSA, and her employer, G4S.

[4] June 2010 saw a new operations manager employed by CBSA, namely a Mr. Sajjad Bhatti. In July 2010, a workplace incident occurred in which she was involved, which resulted in the transfer of Ms. Wilson from her current location to another IHDC in Toronto. Mr. Bhatti was the author of the letter advising her that she was being transferred to the other site in Toronto.

[5] Ms. Wilson objected to the transfer, which led to the matter of her transfer being adjudicated by way of grievance arbitration before the *Canadian Industrial Relations Board*. Ultimately minutes of settlement were signed.

[6] Ms. Wilson claimed that she was removed because Mr. Bhatti did not want a Black woman at the site where he was working. In support of her claim, she testified that Mr. Bhatti had refused to interact with her on at least two occasions. On one occasion he did not respond to her greeting of “Good Morning Sir”. On a second occurrence, while

passing on a stairwell, Mr. Bhatti did not respond to her greeting, and proceeded past her. Her evidence was that he did not have “eye contact” with her and proceeded past her. She stated he said something “under his breath”, but could not advise as to what if anything was stated. Ms. Wilson further testified that Mr. Bhatti had a discriminatory attitude. She was convinced that his treatment of her was motivated by her race and gender stating, “What else could it be, I am a woman and Black”.

[7] Ms. Wilson could not recall when the two aforementioned incidents occurred. She had no other witnesses. She did provide the Tribunal with copies of two letters – one, hand printed and signed “Justice Seekers”, and the second, typed and also signed “Justice Seekers” with 4 illegible signatures – both being offered as evidence in support of her complaint. I find that the letters have little probative value, for reasons that the signatures are indecipherable and the authors were not subject to cross examination. Moreover, the content of the letters provides no information dealing with Ms. Wilson’s discrimination claim and is therefore unhelpful. She did not present any evidence as to damages, if any, that she suffered as a result of the alleged discrimination.

[8] Mr. Bhatti was the only witness for the Respondent. Mr. Bhatti stated that he was born in Canada and of Pakistani heritage. He stated that as a child he was often the target of derogatory comments and abusive names, because of his skin colour. He stated that he had no recollection of the instances of which Ms. Wilson complains.

[9] Mr. Bhatti stated that it is not his nature to be rude and if greeted as suggested by the Complainant, he believed that he would have responded in a respectful manner. Notwithstanding his evidence as to his general practice, he could not recall the two aforementioned incidents and was therefore unable to deny they occurred. Thus, Ms. Wilson’s evidence as to the two incidents remains essentially uncontradicted. Mr. Bhatti did admit to having provided Ms. Wilson with a letter transferring her to another site.

### **III. The Legal Considerations**

[10] Ms. Wilson’s complaint is brought under section 7 of the *Canadian Human Rights Act* R.S.C. 1985, c. H-6 (the “Act”). Subsection 7(b) makes it a discriminatory practice to

differentiate adversely in relation to an employee in the course of their employment on a prohibited ground of discrimination. Section 3 of the *Act* includes sex, race and colour as prohibited grounds of discrimination.

[11] I believe it is well settled that the burden is on Ms. Wilson to establish a *prima facie* case of discrimination. A *prima facie* case is "...one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the Complainant's favour, in the absence of an answer from the Respondent-employer" (*Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 S.C.R. 536 at p. 558; *Canada v. Johnstone*, 2014 FCA 110 at para.82).

[12] Upon Ms. Wilson establishing on a *prima facie* basis that she was the subject of discrimination, the burden shifts to the Respondent to provide a reasonable explanation for the conduct in issue (*Baptiste v. Canada (Correctional Service)*, 2001 CanLII 5801 (CHRT), para. 6.).

[13] There is no direct evidence in this case; rather, Ms. Wilson relies on circumstantial evidence. But this will be sufficient if the evidence offered in support of an inference of discrimination renders such an inference more probable than the other possible inferences or hypotheses (*Baptiste, supra*, para. 60; *Khiamal v. Canada (Human Rights Commission)*, 2009 FC 495, para.60).

[14] It is not necessary that discriminatory considerations be the sole reason for the actions in issue for a complaint to succeed. It is sufficient that the discrimination be a basis for the employer's actions or decisions (*Holden v. Canadian National Railway* (1990), 14 C.H.R.R. D/12 (F.C.A.); *Baptiste, supra*, para.11; *Khiamal, supra*, para 61).

[15] Finally, the standard of proof in discrimination cases is the ordinary civil standard (*Baptiste, supra* para 10; *Khiamal, supra*, para. 60). He or she who alleges, bears the burden of proving on a balance of probabilities (*Canada (Social Development) v. Canada Human Rights Commission*), 2011 FCA 202, para. 16).

#### IV. Issues

[16] The Respondent raised two basic issues to be considered, namely:

(1) Was CBSA, Ms. Wilson's employer, i.e. was there an employer-employee relationship within the meaning of section 7 (b) of the CHRA?; and

(2) Has the Complainant presented evidence of adverse differentiation on a prohibited ground within the meaning of section 7 (b) of the CHRA?

[17] Because I find against the Complainant on the second issue, I do not believe it is necessary to address the first issue (whether the requisite employment relationship existed).

#### V. Analysis

[18] Ms. Wilson believes that her re-assignment to the "new" location occurred as a result of Mr. Bhatti's adverse treatment of her, which was connected to her being a Black woman. Did the evidence she presented establish a *prima facie* case of adverse differentiation on a prohibited ground?

[19] Ms. Wilson's evidence did not illustrate any *prima facie* connection between the adverse treatment she experienced and the prohibited grounds of discrimination invoked in this case. In other words, even assuming that Ms. Wilson's evidence is believed, I cannot see from her testimony how Mr. Bhatti's refusal to interact with her, viewed together with the decision to transfer her to another IDHC, were in any way related to her race, her gender, both grounds, or the effect of a combination thereof (see section 3.1 of the Act). Mr. Bhatti's conduct, as described in her testimony, could be the result of any number of circumstances. Ms. Wilson's *belief* that because she is a Black woman, Mr. Bhatti wanted her transferred; and Mr. Bhatti's non communication to her on the two undated occasions, is not sufficient to make out a *prima facie* case giving rise to the need for a rebuttal. Mere belief, without supporting evidence is not sufficient to support a claim

of discrimination (*Filgueira v. Garfield Container Transport Inc.* 2006 FC 785, paras, 30 - 31).

[20] The evidentiary requirement for establishing *prima facie* discrimination is generally comprised of three elements. Complainants are required to show:

(1) that they have a characteristic protected from discrimination under the CHRA.

(2) that they experienced an adverse impact with respect to employment; and

(3) that the protected characteristic was a factor in the adverse impact. (See *Moore v. British Columbia (Education)* 2012 SCC 61, para.33; *Johnstone supra*, para. 76).

[21] In the current matter, Ms. Wilson has presented evidence in support of the first and second elements (her race and gender, as well as her adverse work experience). But she has presented no evidence in support of the third element, apart from her own personal belief. In the words of section 7(b) she has presented no evidence, apart from her *belief* indicating that the adverse differentiation she experienced was on a prohibited ground. This is not complete and sufficient to justify a verdict in the Complainant's favour, in the absence of an answer from the Respondent.

[22] That said, even if I were to find that a *prima facie* had been made out, I am not convinced on a balance of probabilities that Ms. Wilson's gender, race or the effect of a combination thereof played a role in CBSA's decision to transfer her. Having regard to Mr. Bhatti's evidence, a reasonable non-discriminatory explanation has been presented for the transfer, namely the July 2010 workplace incident. The burden of proof requires that Ms. Wilson convince the Tribunal, on a balance of probabilities that the explanatory evidence presented by Mr. Bhatti on behalf of CBSA is false or a pretext (*Peel Law Association v. Pieters*, 2013 ONCA 396, para.74, 83). This she has been unable to do.

[23] I make the above finding having due regard to the principle that in the absence of direct evidence, discrimination may be inferred from other evidence presented. However, on the facts of this case, a non-discriminatory inference is more probable; the transfer

resulted entirely from the workplace incident. Similarly, I cannot draw a probable inference from the evidence that Ms. Wilson's race and or gender played a role in Mr. Bhatti's uncommunicative behaviour toward her.

[24] For all of the above reasons, and pursuant to section 53 (1) of the Act, I find that the complaint has not been substantiated and therefore, I dismiss the complaint.

*Signed by*

Ronald Sydney Williams  
Tribunal Member

Ottawa, Ontario  
May 13, 2015



## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal File:** T1961/4113

**Style of Cause:** Claudette Wilson v. Canada Border Services Agency

**Decision of the Tribunal Dated:** May 13, 2015

**Date and Place of Hearing:** November 19 and 20, 2014

Toronto, Ontario

#### **Appearances:**

Claudette Wilson, for herself

No one appearing, for the Canadian Human Rights Commission

Victoria Yankou, for the Respondent