

**Canadian Human Rights
Tribunal**



**Tribunal canadien des droits de
la personne**

Citation: 2015 CHRT 21
Date: September 15, 2015
File No.: T1952/3213

Between:

Mungleget Kaur Siddoo

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

International Longshoremen's and Warehousemen's Union, Local 502

Respondent

Decision

Member: David Thomas

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I. Background

[1] This is a decision regarding a complaint dated October 30, 2011 by Munglegeet “Penny” Kaur Siddoo, as Complainant (referred to herein at her request as “Miss Siddoo”), against International Longshoremen’s and Warehousemen’s Union, Local 502 (the “ILWU”), as Respondent, alleging the union discriminated against her on the basis of her race, national or ethnic origin, religion, sex, marital status and disability.

[2] In her complaint, Miss Siddoo alleges harassment, differential treatment, physical assault, intimidation and death threats by the ILWU. At the hearing, Miss Siddoo also made allegations of mobbing, gang stalking, psychological terrorism and overt harassment.

[3] On July 2, 2013, pursuant to s. 44(3)(a) of the *Canadian Human Rights Act* (the “CHRA”), the Canadian Human Rights Commission (the “Commission”) requested the Canadian Human Rights Tribunal to institute an inquiry into the complaint.

[4] Miss Siddoo appeared and gave evidence at the hearing. She was self-represented. Miss Siddoo advised the Tribunal that she was presenting evidence about only two incidents that occurred during training in 2010. Although reference was made to events at earlier times, they were significantly separated in time from the two training sessions and not the focus of the present complaint.

[5] The ILWU was represented by counsel, Mr. Bruce Laughton, Q.C. and one representative from the ILWU, Mr. Chris Verbeek, appeared as a witness. The Commission did not appear at the hearing.

II. Decision

[6] For the reasons set out below, I have determined that the complaint has not been substantiated and is therefore dismissed.

III. Facts

[7] For the most part, the facts in this case are not in dispute. However, the parties have a very different perception about the events giving rise to this complaint.

[8] Miss Siddoo self-identifies herself as a single, Indo-Canadian female with a disability. In December of 2004, she was issued an identity card by the British Columbia Maritime Employers' Association ("BCMEA") which allowed her to apply for casual work through the ILWU.

[9] The BCMEA is a multi-employer association pursuant to the *Canada Labour Code* that represents approximately 65 ship owners and agents, stevedores, container and terminal operators on Canada's West Coast. The BCMEA represents the employers with respect to their labour and employee relations. The ILWU is the bargaining agent for longshore workers working out of the New Westminster, B.C. dispatch hall (the "Hall"). The Hall is owned and operated by the ILWU and the BCMEA pays the ILWU a portion of the operating expenses of the Hall. Work assignments and decisions as to who will be placed into training sessions are governed by the collective agreement between the BCMEA and the ILWU. Miss Siddoo was a casual worker under the collective agreement and was represented by the ILWU in all labour relations matters. Longshore workers, such as Miss Siddoo, are only employed by employer members of the BCMEA on a daily shift basis after being dispatched by the ILWU from the Hall.

[10] Miss Siddoo began working out of the Hall as a labourer and in June of 2005, after receiving training, she sometimes worked as a Multi-Tractor Driver. According to Miss Siddoo, in 2006 she logged approximately 1,100 hours of employment through the Hall.

[11] On her way to work on or about January 10, 2007, Miss Siddoo became involved in a car accident. There was a heavy snowfall in Vancouver on that day, and Miss Siddoo's car slid off the road on two separate occasions on her way to work. After the final collision with a pole, Miss Siddoo abandoned her vehicle, and upon advice from the Hall, caught a taxi for the remainder of her journey to work. Upon arrival at work, Miss Siddoo attended

the first aid office, and then for some time that day she drove a stacker loading vehicle. Due to her injuries sustained in the car accident, Miss Siddoo did not work again for a long time after that date. According to her testimony, Miss Siddoo attempted to work again for one or two days per week starting in November or December of 2007 until February of 2008. However, her lower back pain prevented her from driving the Multi-Tractor for any length of time and her doctor advised her against continuing to work.

[12] In early 2010, Miss Siddoo worked as a volunteer at the 2010 Winter Olympics. It went well for her physically and she decided she felt well enough to contemplate a return to work through the ILWU. She contacted the ILWU by email on May 31, 2010 and discussed various options with Mr. Verbeek for a return to work suitable to her needs. Mr. Verbeek suggested training at the Delta Port so that Miss Siddoo could avoid demanding physical labour jobs. Miss Siddoo requested some upgrade training on the Multi-Tractor, one or two days she suggested, so that she could see how it impacted her physical injuries. About a week later, Mr. Verbeek scheduled Miss Siddoo for two days of upgrade training on the Multi-Tractor.

[13] After two days of upgrade training, Miss Siddoo found she could not endure the jarring motion of the vehicle and the impact it was having on her spine and hip. After seeing her doctor, Miss Siddoo wrote to Mr. Verbeek on June 14, 2010 and suggested training in a different job with less physical impact.

[14] Shortly thereafter, Miss Siddoo was set down for training as a "Checker" at the job site of Terminal Systems Inc. ("TSI"), one of the employers through the BCMEA. Miss Siddoo's training began on or about July 5, 2010. There were two trainers and Miss Siddoo was one of four employees brought in for the training. It was thought that the position of Checker was less physically demanding and therefore possibly more suitable to accommodate Miss Siddoo's needs. After completing the training, Miss Siddoo would be eligible in the future for assignments by the ILWU to work as a Checker.

[15] On the third day of her Checker training, the two trainers concluded that Miss Siddoo's experience was far less than the other three trainees. They decided it would be

better to replace Miss Siddoo with a more experienced trainee so the group would not be held back. Miss Siddoo was told that she would be rescheduled for the Checker training with a group more at her level of experience. She was rescheduled and did restart the training two months later.

[16] However, at the time she was taken out of the Checker training on July 7, 2010, Miss Siddoo was quite upset. That evening she wrote an email to Mr. Verbeek and several others alleging the action was discriminatory and that she had been subjected to harassment. In response, Mr. Verbeek spoke to both of the trainers and then wrote an email to Miss Siddoo the following day explaining the trainer's reasons. He concurred with their decision to put Miss Siddoo into a different training group with others more at her level. His email went on to explain:

This brings me to the accusations in your letter. Penny, one of the trainers is East-Indian. Two of the other trainees and your replacement are women. Yet you still claim in your letter that "someone told them (the trainers) to let you go". You ask whether you are being targeted because you are a woman.

[17] Mr. Verbeek went on to indicate that he felt the accusations were ludicrous, and that in fact, he felt as though he was being harassed by Miss Siddoo. The following day, Miss Siddoo sent Mr. Verbeek an email in which she referred to him as a "liar" and demanded retraining at a different location. Notwithstanding the acrimony displayed by Miss Siddoo towards Mr. Verbeek, he did arrange for her to be admitted into the next Checker training group starting on September 13, 2010.

[18] A week before she began her new Checker training, Miss Siddoo sent off an email to 10 different ILWU officials, including their top executives and Mr. Verbeek. The original purpose of the email seemed to be an inquiry for the recovery of transportation costs for disabled employees. However, the email was quite lengthy and went on to criticize the union about the termination of her training in July 2010 and made general accusations of abuse of power, poor judgment and discrimination by the union.

[19] Nevertheless, Miss Siddoo recommenced her Checker training on September 13, 2010 and it was supposed to continue on for a period of about eight weeks. Around the beginning of November 2010, Miss Siddoo was suspended from her training. According to the ILWU, Miss Siddoo had missed work on October 22, 2010 without explanation, and left her station early on another occasion. There also appeared to be some allegations that the employer, TSI, had concerns with Miss Siddoo's conduct.

[20] As a result, Miss Siddoo's training was suspended and she was requested to attend the union's Grievance and Credentials Meeting on November 9, 2010 for an examination of the allegations. Miss Siddoo did not show up to the union meeting. Her testimony was that she never received notice. The ILWU's evidence was that notice was delivered to Miss Siddoo's "plate" at the Hall, which was their normal practice for the delivery of communications to employees.

[21] After missing the meeting on November 9, 2010, Miss Siddoo was telephoned for an explanation. She responded with an email to the President of the ILWU advising that she had filed a complaint with the Canadian Human Rights Commission and that she was contemplating a complaint to the police. She asked the union President if they were going to "put another hit out on me?" In her oral testimony, Miss Siddoo mentioned several times that she believed someone at the ILWU had arranged a contract to kill her.

[22] Mr. Verbeek responded to the email later that day and outlined the allegations of absenteeism and that TSI had some issues with Miss Siddoo's conduct. He said it was appropriate for them to continue the suspension of her training until the next Grievance and Credentials Meeting on January 4, 2011, at which time she could present her side of the story. In the meantime, she was welcome to come down to the Hall and apply for casual labour jobs if she wanted.

[23] Miss Siddoo presented into evidence an email from Mr. Chris Fletcher, a training field supervisor of BCMEA, dated November 10, 2010. The email is addressed to four of Mr. Fletcher's BCMEA colleagues and details a conversation Mr. Fletcher had just had with Mr. Verbeek concerning Miss Siddoo. Mr. Fletcher states that he told Mr. Verbeek

that neither the employer (TSI) nor the trainers had ever made him aware of any behavioural or discipline issues concerning Miss Siddoo. Mr. Fletcher states that he told Mr. Verbeek that Miss Siddoo will start the Checker training again as early as November 15, 2010. The email concludes with a report that Mr. Verbeek was not in full agreement and was going to speak with someone else about Miss Siddoo restarting her training.

[24] Mr. Fletcher was not called as a witness so not much weight can be attributed to his email submitted in evidence. In any event, it was not explored at the hearing why the ILWU did not accept Mr. Fletcher's apparent request that Miss Siddoo be called back in to complete her training.

[25] Miss Siddoo attended the January 4, 2011 Grievance and Credentials Meeting. She provided an explanation for her missed work, including a letter from her physiotherapist explaining the October 22, 2010 absence, which the union accepted. Miss Siddoo also presented a note from her doctor stating: "As of January 4, 2011, Penny is physically capable to return to checker training." The note was accepted by the ILWU, but before returning her to training, the union requested that her doctor complete a more comprehensive form called a Physical Demands Analysis Summary Table. The form, provided by the BCMEA, was specific to the Job Title "Head Checker" and listed the various job demands of that position.

[26] Miss Siddoo's doctor completed the form on February 1, 2011. However, his response indicated that Miss Siddoo was unable to perform the standing and walking job demands. He also recommended that she start back to work gradually, at 4 hours per day.

[27] According to her email to the union President on February 1, 2011, Miss Siddoo had dropped off the BCMEA doctor's form at the Hall in person that day. Before a response was received, Miss Siddoo wrote another email to the union the following day advising them that she was filing this complaint. Miss Siddoo did not pursue completion of the Checker training and did not apply for any more work through the Hall. She stated she

was fed up and instead decided to pursue her human rights complaint. The ILWU did not make any further attempts to engage Miss Siddoo.

IV. Analysis

A. Requirement to establish a *prima facie* case of discrimination

[28] In human rights cases, a complainant has the burden of proof to establish a *prima facie* case. 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” (*Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 S.C.R. 536, at para. 28). To demonstrate *prima facie* discrimination in the context of the *CHRA*, complainants are required to show: (1) that they have a characteristic or characteristics protected from discrimination under the *CHRA*; (2) that they experienced an adverse impact with respect to a situation covered by sections 5 to 14.1 of the *CHRA*; and, (3) that the protected characteristic or characteristics were a factor in the adverse impact (see *Moore v. British Columbia (Education)*, 2012 SCC 61, at para. 33). The three elements of discrimination must be proven on a balance of probabilities (see *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, at paras. 55-69).

[29] The Tribunal has recognized the difficulty in proving allegations of discrimination by way of direct evidence. As was noted in *Basi v. Canadian National Railway Company* 1988 CanLII 108 (CHRT) [*Basi*]: “discrimination is not a practise which one would expect to see displayed overtly. In fact, rarely are there cases where one can show by direct evidence that discrimination is purposely practised.” Rather, one must consider all of the circumstances to determine if there exists what was described in the *Basi* case as the “subtle scent of discrimination.”

B. The prohibited grounds of discrimination alleged to be at issue

[30] The first question for the Tribunal to decide is what prohibited grounds are alleged to be at issue in Miss Siddoo's allegations. Her initial complaint raised the grounds of race, national or ethnic origin, religion, sex, marital status and disability. Under cross-examination, and given the focus of her complaint was on the two training sessions in 2010, she stated she believed she was taken out of the first Checker training session because she is a woman, East Indian and disabled. With regard to her suspension from the second Checker training session, Miss Siddoo testified that it was based on her disability.

[31] The grounds of religion and marital status arise in the context of Miss Siddoo's allegations of harassment. She claims comments based on these grounds were made towards her or in her presence.

C. Alleged adverse impact based on prohibited grounds of discrimination

[32] The next questions are: did Miss Siddoo experience an adverse impact with respect to a situation covered by sections 5 to 14.1 of the *CHRA*; and, were the prohibited grounds at issue a factor in that adverse impact? Miss Siddoo's submissions before the Tribunal focussed on sections 7, 10 and 14 of the *CHRA*. Her initial complaint also referenced section 9. I will deal with Miss Siddoo's allegations under sections 7, 9 and 10 together, while providing a separate analysis for her allegations under section 14.

(i) Section 7, 9 and 10 allegations

[33] Generally, sections 7, 9 and 10 of the *CHRA* deal with discrimination in the context of employment. Section 9(c) specifically prohibits employee organizations from acting in any way that would limit or deprive an individual of employment opportunities. Miss Siddoo was deprived employment opportunities by being removed from Checker training twice, in July 2010 and November 2010. She did not return to Checker training or to the

Hall after November 2010, despite fulfilling the ILWU's request to submit a medical form from her doctor. Therefore, I am satisfied she suffered an adverse impact pursuant to section 9(c) of the *CHRA*.

[34] That said, at no time was Miss Siddoo able to establish that her race, national or ethnic origin, sex, and/or disability played a factor in her being removed from Checker training in either incidence in 2010. She submitted various emails between her and representatives of the ILWU into evidence, along with copies of Facebook email conversations with colleagues. While Respondent counsel justifiably expressed concern about the Facebook email conversations, given the individuals involved in the conversations were not called as witnesses and were not cross-examined on their statements, this evidence is admissible under section 50(3)(c) of the *CHRA* and I thought it might assist Miss Siddoo in the outline and presentation of her case. However, most of it pre-dated the 2010 incidents and there was nothing in the Facebook material relating to discrimination at the workplace. Even if this material was probative, I would not afford it much weight under the circumstances.

[35] While the emails and Facebook conversations suggest there may have been some animosity towards Miss Siddoo from Mr. Verbeek and other colleagues, there is no indication therein that any animosity that may have existed is based upon a prohibited ground.

[36] With regard to the first instance of removing Miss Siddoo from training, Mr. Verbeek provided the following detailed response by email on July 8, 2010:

I have spoken to [D.K.] and [D.G.]. Both trainers agreed that the other three candidates, [G.C.], [R.H.], and [A.O.] had far more experience than you. They both agreed that it would be unfair to both you and the other three trainees to train to your level of experience. [G] has Dock Gantry, RTG, Reachstacker and 17 years on the waterfront. Both [R] and [A] are fully rated checkers at Fraser Surrey Dock. They already know all the procedures just not the computer system. [D] has told me that you have not failed, you will be put in the next group of trainees.

[37] Miss Siddoo argued that her knowledge of that port facility made her equally or more experienced than the other trainees, but I was not convinced that was so. In the end, Miss Siddoo did not provide sufficient evidence to refute Mr. Verbeek's explanation or indicate how a prohibited ground was a factor in her treatment.

[38] With regard to the suspension in November 2010, there is some indication in the emails presented by Miss Siddoo that her suspension from training in November 2010 may have been procedurally unfair because BCMEA was not consulted. However, even if the suspension was an act of acrimony on the part of Mr. Verbeek, there is nothing to indicate that a prohibited ground played a factor in the action.

[39] It is not sufficient that Miss Siddoo is a woman, East Indian, or someone who has a disability, for this Tribunal to automatically make a finding of discrimination. Nor is it enough that Miss Siddoo was treated adversely or in a differential manner. As outlined above, it is incumbent upon complainants to show that a prohibited ground of discrimination was a factor in any adverse treatment they suffered. Despite the numerous and forceful allegations of discrimination, Miss Siddoo was unable to do so. She did not discharge her burden and even in my probing for more details, I did not catch a whiff of the subtle scent of discrimination. Therefore, Miss Siddoo has not established a *prima facie* case of discrimination under sections 7, 9 or 10 of the *CHRA*.

[40] In any event, I accept that the reasons advanced by the ILWU for why Miss Siddoo was removed from both training sessions were not discriminatory. The evidence suggests the ILWU was working with Miss Siddoo to find her work suitable to her needs. In the first part of 2010, Miss Siddoo requested special upgrade training to see if she was able to drive a Multi-Tractor again. That special training was arranged within 5 days of the request. When it became apparent that Miss Siddoo was unable to operate the Multi-Tractor for long periods due to her injuries, Mr. Verbeek arranged for Miss Siddoo to be enrolled in the Checker training as an alternative. Miss Siddoo was removed from the training session in July 2010 because of her experience level. She was removed from training in November 2010 because of concerns over absenteeism and conduct. The

merits of this last action are not for the Tribunal to decide. There was simply insufficient evidence to establish that discrimination played a factor in the actions.

[41] Finally, Miss Siddoo claims the ILWU failed in its duty to accommodate her disability because she has not been reinstated into Checker training after submitting the additional medical information requested by the ILWU. At the hearing, Respondent counsel made submissions suggesting it was not the duty of the ILWU, but rather the duty of BCMEA and TSI to provide accommodation. In this case, there is no need to determine if that is correct. While it is unclear what, if any, steps the ILWU took to accommodate Miss Siddoo following the submission of her additional medical information, the onus remains on the Complainant to establish that the union's actions or inaction in this regard were somehow influenced by a prohibited ground. Again, Miss Siddoo has been unable to establish this to be the case.

[42] I also note that after her email of February 2, 2010 declaring her intention to file this complaint, Miss Siddoo did not attempt to work with the ILWU to find a reasonable accommodation. There is a duty incumbent on persons requesting accommodation to take steps to facilitate the search for an accommodation (see *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 SCR 970, at p. 944 [*Renaud*]). In the present case, Miss Siddoo provided the additional medical report form as requested by the ILWU. However, the next day, and before the union could respond, she then walked away from the accommodation process to pursue this complaint.

[43] As a result, the Tribunal dismisses the complaints of discrimination under sections 7, 9 and 10 of the *CHRA*.

(ii) Section 14 allegations

[44] Section 14 of the *CHRA* prohibits harassment in matters related to employment. Miss Siddoo made several accusations of harassment against members of the ILWU and used the term frequently throughout the hearing. However, harassment is not easy to define.

[45] Every act by which a person causes some form of anxiety to another could be labelled as harassment. What offends one person may not offend the next person at all. Furthermore, none amongst us are perfect, and we are all capable of being, on occasion, somewhat thoughtless, insensitive and perhaps even outright stupid. Does this mean that there can never be any safe interactions between people? The question is not so much whether one is offended or feeling humiliated, but by what objective measure can we define harassment, so that people everywhere know exactly how to conduct themselves to avoid it.

[46] I do not think that every act of foolishness or insensitivity in the workplace was intended to be captured under section 14 of the *CHRA*. Harassment is a serious word, to be used seriously and applied vigorously when the occasion warrants its use. To do otherwise would be to trivialize it. It should not be cheapened or devalued in its meaning by using it to loosely label petty acts or foolish words where the harm, by any objective standard, is fleeting.

[47] The Tribunal has attempted to define harassment as any words or conduct that is unwelcome or ought to be known to be unwelcome, based on a prohibited ground of discrimination, and evaluated on a case-by-case basis from the standard of the reasonable person in the circumstances. It usually denotes repetitious or persistent acts, although a single serious event can be sufficient to constitute harassment (see *Janzen v. Platy enterprises Ltd.*, [1989] 1 SCR 1252; and, *Canada (Human Rights Commission) v. Canada (Armed Forces)*, [1999] 3 FC 653). In the employment context, the key is to examine whether the conduct has violated the dignity of the employee such that it has created a hostile or poisoned work environment (see *Day v. Canada Post Corporation*, 2007 CHRT 43, at para. 184; and, *Croteau v. Canadian National Railway Company*, 2014 CHRT 16, at para. 43).

[48] With regard to being removed from the training sessions in 2010, Miss Siddoo claims the ILWU and, specifically Mr. Verbeek, were trying to humiliate her by knowingly putting her in a training session in July 2010 with people who had superior longshore work experience. She also alleges the union harassed her by requiring her to complete the

medical form before returning to training. However, Miss Siddoo failed to establish that Mr. Verbeek was trying to humiliate her and, more importantly, how a prohibited ground was a factor in either alleged incident.

[49] Miss Siddoo also mentions that she was once called a “spinster” by another member of the union. Further, she claims a trainer made a comment regarding people who wear turbans. Even if these allegations were proven to be true, I would not find that they were repetitive or sufficiently severe to constitute the type of harassment proscribed by the *CHRA*.

[50] Miss Siddoo also spoke about an argument in 2005 when Mr. Verbeek told her, “Fuck off, Penny Siddoo.” Mr. Verbeek readily admitted to the statement under cross-examination and explained the context in which the remark was made. The comment by Mr. Verbeek was made only one time and therefore was not persistent or pervasive, nor do I find that it was singularly sufficient to have poisoned the work environment and therefore merit a finding of harassment under section 14 of the *CHRA*. Furthermore, with specific regard to Mr. Verbeek’s comment, there is no evidence to support that the alleged harassment was based on a prohibited ground of discrimination under the *CHRA*.

[51] Finally, Miss Siddoo claims to have been continuously harassed by members of the ILWU, including allegations of mobbing, gang stalking, psychological terrorism and death threats. There was insufficient evidence submitted to support these allegations, let alone that a prohibited ground factored into any of these alleged incidents.

[52] Therefore, the Tribunal also dismisses Miss Siddoo’s allegations of harassment as she has not been able to establish a *prima facie* case pursuant to section 14 of the *CHRA*.

V. Additional Comments

[53] Miss Siddoo appears prone to making improbable conclusions about events taking place around her. She also seems convinced that parties are sometimes colluding against her. Miss Siddoo was convinced that people in her workplace had colluded to make her

perform poorly during training, and that answers to a written examination had been altered to ensure her failure.

[54] The Complainant, while perhaps honestly believing representatives and members of the ILWU were “out to get her”, and perhaps experiencing distress and anxiety as a result, overreacted to events on several occasions. This led to her souring her relationship with some representatives and members of the ILWU, which may indeed have resulted in some acrimony in the workplace. However, I do not believe discrimination played a factor.

[55] It is unfortunate that the Commission failed to participate in this hearing. If it saw evidence of discrimination in its investigation, it would have been helpful for the Commission to present it before the Tribunal.

Signed by

David Thomas
Tribunal Member

Ottawa, Ontario
September 15, 2015

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1952/3213

Style of Cause: Munglegeet Kaur Siddoo v. International Longshoremen's and Warehousemen's Union, Local 502

Decision of the Tribunal Dated: September 15, 2015

Date and Place of Hearing: February 23, 24 & 26, 2015 in Vancouver, British Columbia

Appearances:

Munglegeet Kaur Siddoo, for the Complainant

No one appearing, for the Canadian Human Rights Commission

Bruce Laughton, Q.C., counsel for the Respondent