

Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

BETWEEN:

PATRICK J. EYERLEY

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

SEASPAN INTERNATIONAL LIMITED

Respondent

SUPPLEMENTARY DECISION

T.D. 10/02

2002/07/11

MEMBER: J. Grant Sinclair

[1] In its decision dated December 21, 2001, the Tribunal retained jurisdiction to deal with any difficulties that may arise with respect to the implementation of its order in this matter. The order required the complainant, Patrick Eyerley, to be assessed for medical and vocational fitness for the duties of a deckhand. If Mr. Eyerley so qualified, Seaspan was to offer him the first permanent deckhand position that became available on any Seaspan ship assist tugs. If none were available, Mr. Eyerley was to be offered a relief position until a permanent position became available. This was to be done without regard for seniority.

[2] The parties sought clarification from the Tribunal as to where Mr. Eyerley should be positioned on the roster of deckhands who currently work on Seaspan ship assist tugs. There was also the question as to where Mr. Eyerley should rank on the seniority list for unlicensed personnel at Seaspan.

[3] A hearing was held by the Tribunal in Vancouver on July 4 and 5, 2002, to deal with these questions. Seaspan, the Canadian Human Rights Commission and Mr. Eyerley were present. Seaspan presented both documentary and oral evidence through Captain Steve Thompson, Manager, Marine Personnel, Seaspan. Mr. Eyerley gave evidence on behalf of himself and on behalf of the Commission. All three parties made submissions.

[4] At the present time, Seaspan has three ship assist tugs, which ply in Vancouver Harbour/Roberts Bank, being the Discovery, the Falcon and the Hawk. All three tugs operate on a shift basis. The crews on the Hawk and the Falcon work twelve hours on, twelve hours off, seven days/week, one week on and one week off. These two tugs are crewed with a master and a deckhand.

[5] The Discovery is crewed with a master, an engineer and a deckhand. It operates on a two week on, two week off rotation. However, the crew of the Discovery works on an as needed basis, but are on call for twenty-four hours when on shift.

[6] This schedule requires a permanent deckhand complement of twelve deckhands. The deckhands who Seaspan says currently hold a permanent deckhand position are all those listed in Tab 4, Exhibit R-13, "TRACTOR CREWS, June 1, 2001 to May 31, 2002". A copy of this list is

attached as Schedule 'A' hereto. I accept this evidence that those persons listed have permanent deckhand positions on the ship assist tugs, with the exception of Brian Fraser. I do not consider him to occupy a permanent position on the ship assist tugs.

[7] In accordance with the Tribunal's order, and because there are no permanent deckhand positions available now, Mr. Eyerley is to be given first preference for any relief work on any of the three ship assist tugs. In the event that any of the twelve persons who are listed on Schedule 'A' as holding a permanent deckhand position, vacates their position for any reason, then Mr. Eyerley is to be placed in that position and hold a permanent deckhand position on the ship assist tugs.

[8] Mr. Eyerley is to be paid on the same basis as other Seaspan deckhand employees in accordance with the provisions of the Collective Agreement now in effect between the Council of Marine Carriers and I.L.W.U., Local 400, Marine Section. I understand from the evidence that the monthly salary is based on the formula of 2.24 times 14 days worked in a month, times the rate of pay. Mr. Eyerley is also to receive all benefits under the Benefit Plan provision in the Collective Agreement.

[9] On the question of seniority Mr. Eyerley is to be credited with seniority as a cook/deckhand from January 1, 1996. This is without prejudice to Mr. Eyerley to dispute this seniority credit in whatever forum and by whatever method he may choose.

[10] Mr. Eyerley has requested that he receive backpay from Seaspan from April 22, 2002, the date when he was advised that he was medically and vocationally fit to work as a deckhand on a ship assist tug. His position is that Seaspan should have, but did not, offer him any work at that time.

[11] I do not agree with this request. The evidence is that Seaspan asked Mr. Eyerley to provide certain documentation before Seaspan could schedule him for work. Mr. Eyerley did not do so. More to the point, there was no evidence to show what relief work would have been available or whether Mr. Eyerley would have been available if relief work had been offered to him by Seaspan.

[12] Mr. Eyerley did point out that he has not been fully reimbursed for his expenses relating to the medical and vocational assessments. Seaspan is responsible for these expenses under the Tribunal order and I have directed that Mr. Eyerley give all receipts to Commission Counsel who will forward them on to Seaspan. Once received, Seaspan is to reimburse Mr. Eyerley forthwith.

[13] Mr. Eyerley requested I retain jurisdiction in this matter. I do not see any need to do so. In my opinion, the matters that needed to be clarified have been clarified. It is not the function of this Tribunal to see to the enforcement of its order. This can be done under s.57 of the *Canadian Human Rights Act*, whereby the Tribunal's order may be filed with and enforced through the Federal Court of Canada.

[14] Finally, I urge both Mr. Eyerley and Seaspan to look forward, not backward. For Mr. Eyerley, his motto should be "carpe diem, seize the day" and take advantage of what has the

potential to be an excellent and very desirable employment opportunity. He should shift his focus from what Seaspan has not done for him, to what he can do for Seaspan.

[15] As for Seaspan, I urge that it approach this situation in good faith and look for ways to maximize work for Mr. Eyerley rather than focus on "all offers of employment, acceptance and denial will be recorded" as set out in Captain Thompson's May 2, 2002 memorandum. It is clearly in Seaspan's interest that Mr. Eyerley not be put in the red and blocked off pay. I also note from Captain Thompson's evidence that Seaspan has an active policy which he supports, of accommodating its disabled employees. Captain Thompson should apply this policy with the same generosity to Mr. Eyerley.

"Original signed by"

J. Grant Sinclair

OTTAWA, Ontario

July 11, 2002

CANADIAN HUMAN RIGHTS TRIBUNAL
COUNSEL OF RECORD

TRIBUNAL FILE NO.: T565/2300

STYLE OF CAUSE: Patrick J. Eyerley v. Seaspan International Limited

PLACE OF HEARING: Vancouver, British Columbia

(July 4 to 5, 2002)

DECISION OF THE TRIBUNAL DATED: July 11, 2002

APPEARANCES:

Patrick J. Eyerley On his own behalf

Ceilidh Snider For the Canadian Human Rights Commission

Michael Hunter For Seaspán International Limited

Reference: T.D. 18/01