Canadian Human Rights Tribunal **Tribunal canadien des droits de la personne**

BETWEEN:

CAROL RAMPERSADSINGH

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

DWIGHT WIGNALL

Respondent

REASONS FOR DECISION

T.D. 13/02

2002/11/26

MEMBER: Athanasios D. Hadjis

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[1] The Complainant alleges that the Respondent discriminated against her by harassing her on the grounds of her national or ethnic origin and her sex, in contravention of Section 14 of the *Canadian Human Rights Act* ("***Act***").

[2] The Commission was the only party represented by legal counsel at the hearing before the Tribunal. The Complainant's case was essentially introduced through the evidence led by the Commission. The Respondent presented his case on his own.

I. THE FACTS

[3] The Complainant's national origin is from Trinidad and she is of East Indian extraction. The Respondent is of Jamaican origin. Both individuals consider themselves to be members of visible minority groups. They are both employed by Canada Post Corporation ("**Canada Post**"), the Complainant having commenced her employment in 1987. In July 1995, the Complainant began working at the Bulk Mail Facility located within Canada Post's Gateway complex in Mississauga, Ontario. The Bulk Mail Facility's operations extended around the clock and about 400 workers were employed over the three daily eight-hour shifts. The activities at this location related to the sorting of parcels and the encoding of postal codes thereon. The Complainant's primary duty was to key in the postal codes of parcels on a computer terminal.

[4] It was the practice within the facility that whenever work at an employee's primary station was not available, he or she would be assigned to the "East-West Finals Sortation Area" ("**Sortation Area**") to sort parcels by hand. On November 28, 1995, the Complainant and the Respondent were both working on the evening shift, from 4 PM to midnight. As there were no parcels available that evening for postal code keying, the Complainant was instructed by her supervisor to work at the Sortation Area. The Respondent had also been assigned to such duty from his usual post elsewhere in the facility. This work involved taking parcels from a large container and sorting them into one of several other smaller bins. The employees therefore would walk back and forth from bin to bin and had ample opportunity to speak to each other.

II. THE EVIDENCE PRESENTED IN SUPPORT OF THE COMPLAINT

A. The Evening Shift - November 28, 1995.

[5] It is not disputed that the Complainant and the Respondent had never met before that evening. Amongst the persons working at the Sortation Area that evening was a friend of the Respondent, Mr. Garland Drummond. The Complainant alleges that when she arrived at the Sortation Area, she placed her purse on the floor. The Respondent immediately told her to keep an eye on the purse because if it were to be stolen, he and Mr. Drummond (both of whom were black) would be accused of the theft.

[6] Soon thereafter, Mr. Drummond began conversing with the Complainant about her sister, who was once employed at Canada Post. At one point, according to the Complainant, the Respondent broke into the conversation and commented that her sister had been "fooling around with a black man". The Complainant responded that the matter was none of his business.

[7] According to the Complainant, some time later, the Respondent and Mr. Drummond began expressing certain opinions about several of the women who worked at the Canada Post facility. He allegedly called one white employee a "slut" and alluded to her being a "Barbie doll". The Complainant claims that he asked another woman working in the Sortation Area, who was of the Islamic faith, why she had not covered herself from head to toe.

[8] The Complainant also claims that the Respondent made some disparaging remarks about her hair colour. She acknowledged in her testimony that she has adopted a lighter than natural tint for her hair. Apparently, during their discussions that evening, the Respondent made fun of her hair, asking other employees if they had ever seen a black woman with blonde hair. He allegedly also stated that he did not like the way that another black employee had braided her hair.

[9] The Complainant further testified that on numerous occasions that evening, the Respondent referred to her as a "paki-coolie". She explained that the word "coolie" is an insulting term used in the West Indies to refer to persons of East Indian origin. Obviously, she feels that the addition as a prefix of a similarly offensive term accentuated the insult. She added that the Respondent often addressed her as "bitch" throughout the evening.

[10] The Complainant concedes that in the course of these discussions she retorted with some strong language of her own. For instance, when he made fun of her hair, she replied, "Are you jealous?", apparently alluding to the Respondent's baldness. She also told him to "fuck off" several times. On one such occasion, he reacted by telling her that if they were in Jamaica, he could pull a cutlass on her for having used such language and get away with it. She replied that he was probably right.

[11] In a context that was never clarified in the evidence, the Complainant also alleges that the Respondent threatened to get another male employee, who happened to be passing by them at that moment, to "beat her up" and that he would tell all the white female employees about "her attitude" towards them and get them to beat her up too.

[12] At some point during the course of the evening, the Respondent noticed that another worker, Ms. Geri Bogdanow, had been crying while talking to a shop steward. The Respondent apparently started making fun of her. According to the Complainant, he said that if this event had

occurred outside of the Canada Post facility, he would have "kicked [Ms. Bogdanow's] butt and her unborn child's butt".

[13] At the end of her shift, the Complainant spoke to one of the shop stewards present that evening, Mr. Darryl Ellis, and complained to him about the Respondent's conduct. Mr. Ellis, who testified at the hearing, recalls her approaching him in a visibly upset state. He cannot remember the details about her complaint other than that the Respondent had been bothering her. Either the same or the following day, Mr. Ellis met with the Respondent. He has a limited recollection of the conversation but he thinks that he gave the advice that he typically provides in such situations: if the conduct did occur, it should cease, and if not, the parties should at least work apart from each other to avoid any future conflict.

B. November 29, 1995

[14] The Complainant returned to work the following evening. She was assigned to go back to her normal work duty, at the postal code keying station. When working in this area, employees are at least twelve feet apart from each other, as they are seated in front of their keyboards and beside the chutes on which the parcels pass.

[15] The Complainant testified that prior to beginning this shift, she had told another employee, Ms. Nancy Collins, about the comment that the Respondent had made regarding Ms. Bogdanow. Ms. Collins confirmed in her testimony that she in turn repeated the story to Ms. Bogdanow. Ms. Bogdanow testified (as a witness called by the Respondent) that she was upset upon hearing this news. She therefore approached the Respondent for an explanation. He denied having made the remark. Both he and Ms. Bogdanow then decided to find the Complainant and speak to her about the alleged statement.

[16] They both came up to the Complainant's keying station. According to the Complainant, the Respondent approached her in an aggressive manner, placing himself physically close to her. He began berating her for having said that he had made the comment about Ms. Bogdanow. He acted as if he had never made the statement and that the Complainant had fabricated the story. The Complainant alleges that in the process, the Respondent swore at her and called her names such as "fucking Boy George look-alike", "fucking low-class", "fucking paki-coolie" and "fucking bitch". He said she was fat and that she was a liar. He added that if she were a man, he would have "kicked her ass" right there. She claims that he was waving his fists in front of her face as he was speaking. She replied to his remarks by telling him to "fuck off" at least once. She also began to cry.

[17] Ms. Nancy Collins was working at the adjacent keying station. The area is very noisy due to the constant running of the parcel belts. Yet, she recalls hearing, over the din, the loud voices coming from the Complainant's station. She was only able to make out certain portions of the conversation. She heard the Respondent deny making any statements about an unborn child. He also told the Complainant that by changing her hair colour, she was trying to pretend she was white. He referred to her children as "zebras", which Ms. Collins interprets as a reference to their being born to parents of different races. Ms. Collins confirms that the Complainant was in tears.

At one point, Ms. Collins went over to the Complainant's station and offered her a handkerchief. She recalls that the Respondent was loud, agitated and aggressive.

[18] The Complainant eventually got up to leave and go file a complaint with her supervisor. This required going down a set of stairs. She, Ms. Bogdanow and the Respondent proceeded at about the same time. As they descended the stairs, the Complainant claims that the Respondent touched her hand in a manner resembling a light slap. She alleges that he then feigned a stumble as a result of the contact and turned to Ms. Bogdanow to exclaim, "Did you see how this fucking bitch tried to push me down?" The Complainant then declared that she was not "putting up with this shit" and went directly to her supervisor's office to complain. She was crying throughout this incident.

[19] The Complainant met with her supervisor to file her complaint. She claims that she also contacted Canada Post's security office and that she telephoned the Peel Regional Police. Apparently, the police could only arrive after the end of the shift, so she passed by the police station the following day and reported the incident. The police did visit the Bulk Mail Facility at some point in order to investigate. The police officers were informed that the management of Canada Post would inquire into the matter and consequently, the police decided to not get involved at that time, deeming it to be an internal issue.

[20] Indeed, Canada Post did follow up with an investigation. The matter was inquired into by Ms. Cecidia Farrugia, who was an acting superintendent at the Gateway facility at the time. Ms. Farrugia testified that the Complainant first met with her after the second incident. The Complainant was visibly upset. Ms. Farrugia took her statement with regard to the November 28 and 29 incidents. She also interviewed other employees who may have witnessed the events. She testified that the Respondent was not as cooperative in providing her with his version of the facts. He ultimately did meet with her and it was evident that he disagreed with the allegations. He apparently also asserted that the Complainant had harassed him.

[21] In light of the contradictory statements, and on the advice of the Human Relations Section of Canada Post, Ms. Farrugia notified the parties in writing, on March 1, 1996, that there was "no evidence to support" either of their allegations of "discrimination".

C. Additional Alleged Incidents of Harassment

[22] The Complainant alleges that in the months following the November incidents, the Respondent "harassed" her several other times. It should be noted here that although both of the parties continued to work within the Bulk Mail Facility on the same evening shift, they were never assigned to work together again. In fact, her supervisor had permanently placed her at the postal code keying station in order to minimize any contact with the Respondent. Nevertheless, the Complainant claims that on the occasions when the Respondent would pass by her location or run into her elsewhere in the building, he would stare at her and grin or make other faces. He never spoke to her but she testified that these facial gestures disturbed her.

[23] The Complainant also referred to three particular occurrences of what she considers to be harassment. She recalls that one day in February 1996, many of the employees had agreed to

order their mid-shift meal from a Chinese restaurant. As was the practice on such occasions, the workers would go to the building's reception area to get their food. When the Complainant arrived, she found herself next to the Respondent, who was speaking to Mr. Drummond. The Respondent then told Mr. Drummond, "something stinks around here," while looking directly at her. The Complainant gave him an angry look and walked away.

[24] The second incident occurred a short time later, while she was driving out of the Gateway parking lot. The Respondent was leaving at the same time and as his car approached hers from the opposite direction, he began to flash his headlights incessantly and honk his horn at her. Finally, the third event took place in the parking lot of a local West Indian food supermarket. As she was leaving the store with her daughter, she noticed that the Respondent's car was also parked there and that he was sitting inside it. He began making faces at her, grinning, sticking his tongue out and then pretending to hide his face behind a book. She and her daughter got in her car and left.

D. Events Leading up to the Filing of the Human Rights Complaint

[25] In the months following her original complaint to her employer regarding the incidents of November 1995, the Complainant devoted much energy and time to assisting Canada Post with its investigation into the matter. She had to meet on numerous occasions with representatives of her union and of the employer. She was often asked to prepare and organize information for the purposes of the investigation. This required that she spend a significant amount of time after work on these activities, while at the same time trying to take care of her daughter.

[26] She was consequently very disappointed upon learning, on March 1, 1996, that her employer had determined that "there was no evidence to support that [the Respondent] had discriminated against [her]". She therefore took stress-related leave from her employment effective the same day. She remained off work until July 26, 1996. The Commission filed copies of documents signed by her physician that were submitted to the employer with respect to her illness. In one letter dated April 18, 1996, the physician indicated that the Complainant was suffering from "chronic cervical strain with tension headaches secondary to the cervical strain", as well as "work related stress or anxiety that was secondary to the racial harassment in the workplace". The physician prescribed some medication to her and a series of physiotherapy sessions. The physician concluded that she should be able to return to work once the physiotherapy program was completed, adding that it is "imperative that [the] patient avoids stress that is secondary to the harassment by [the] fellow employee".

[27] On June 17, 1996, the Complainant's physician signed a note stating that she was now fit to return to work provided her shift was altered, presumably so as to not work at the same time as the Respondent. The Complainant was informed in late July 1996 by her union that, pursuant to the terms of the collective agreement, a transfer had been arranged for her to the West Letter Processing Plant of the Gateway facility. This plant is situated on the same property as the Bulk Mail Facility but is set off in a separate building. She was not likely to ever enter into contact with the Respondent there. She therefore returned to work for Canada Post on July 26, 1996.

[28] In the meantime, on March 29, 1996, the Complainant had signed and filed with the Commission the human rights complaint that is before this Tribunal. It appears that the Complainant also filed a human rights complaint against Canada Post. That complaint was eventually settled.

[29] The remedies being sought by the Commission and the Complainant against the Respondent in the current matter consist of a request that the Tribunal order the Respondent to provide a letter of apology and to undergo sensitivity training. In addition, an order for special compensation has been sought. Counsel for the Commission acknowledged that since the facts giving rise to the complaint occurred prior to the 1998 amendments to the *Act*,[(1)] the claim for non-pecuniary damages must be made in accordance with the provisions of the *Act* as they stood prior to these amendments. Consequently, pursuant to the pre-1998 version of Paragraph 53(3), the Tribunal can only order the Respondent to pay to the Complainant a sum no greater than $5,000, in special compensation. The Commission and the Complainant confirmed that no damage claim for lost wages is being pursued.

III. RESPONDENT'S EVIDENCE

[30] The Respondent denies many aspects of the Complainant's evidence and disagrees with her recollection of some of the incidents. He has worked at Canada Post since 1989. He had never met nor had any knowledge about the Complainant prior to being assigned to work with her at the Sortation Area on November 28, 1995. He contends that throughout the course of that evening, he only had a few exchanges, of short duration, with the Complainant.

[31] The Respondent acknowledges that a conversation occurred regarding her placing the purse on the floor when she arrived at the work area but he insists that his comments were innocent in nature. Other employees, principally from visible minority groups, had been accused in the past of the theft of objects from the work areas. He notes that because of these thefts, the employer had established a rule prohibiting employees from leaving personal property on the work floor. He claims therefore that he was only advising her to take care of her belongings always mindful that if something were to happen to her purse, he and the other black employees would likely be the first to be blamed.

[32] He was not involved in the initial discussions between Mr. Drummond and the Complainant regarding her sister. However, at a given moment, he was surprised to hear the Complainant declare that all the black men working at the Bulk Mail Facility were only interested in dating women who look like "Barbie dolls". The Respondent admits that he was acting like a "smart ass" when he decided to intervene at this point and ask her why she had decided to change her own hair colour to a lighter shade, if she disagreed so much with the preferences of these male employees. The Complainant responded that her colour was natural. He chuckled at her reply and turned to a supervisor, Ms. Sophie Marshall, who was passing by at that point, and asked her if she had ever heard of a black woman with naturally blonde hair. Ms. Marshall said, "No", and instructed the Respondent, the Complainant and Mr. Drummond to go back to work.

[33] After Ms. Marshall had left the area, the Complainant told the Respondent that he had probably fathered a child with a white woman. The Respondent answered her comment by

suggesting that perhaps he should tell some of the white female employees at the workplace what the Complainant thought about them.

[34] The Respondent denies ever having sworn at or insulted her on the evening of November 28th. In particular, he claims that he never called her a "paki-coolie" or a "bitch", nor did he refer to other women as being "sluts". On the other hand, the Complainant told him to "fuck off" numerous times, but he insists that it was in a friendly tone, not akin to an indication that his comments were unwelcome. The Respondent called the above-mentioned supervisor, Ms. Marshall, to testify at the hearing. To her recollection, the Complainant, the Respondent and Mr. Drummond were all laughing when she spoke to them on the evening of November 28, 1995. Although she did not stay near them for more than a few seconds, she recalls that the reason she approached them from her previous position, about twenty-feet away, was because of their elevated level of laughter. The laughter was general and coming from all of the participants, including the Complainant.

[35] The Respondent contends that he never used the term "cutlass" and never threatened to assault or hurt her in any way. He claims to have not made any racial slurs whatsoever. He points out that in his mind at the time, he considered the Complainant to be a black woman and not of East Indian origin. It was for this reason that he questioned Ms. Marshall on whether she had ever seen a black woman with naturally light coloured hair. It would therefore have made no sense for him to call the Complainant a "paki-coolie".

[36] The Respondent denies ever having made any remark about Ms. Bogdanow. In particular, he claims that he never said he would kick her or her unborn baby's "butt". However, he confirms that the following day, November 29, 1995, shortly after beginning his work shift, Ms. Bogdanow questioned him on whether he had made such a statement. He repudiated the allegation and he suggested to Ms. Bogdanow that they both go and speak to the Complainant about the matter. He and Ms. Bogdanow found the Complainant working at her keying station. Ms. Bogdanow spoke first, asking the Complainant about the origin of the statement. The Complainant asserted that she had heard the Respondent say the alleged words. The Respondent was upset upon hearing this reply, and he immediately broke into the conversation to charge that the Complainant was lying. The Respondent readily admits that he was angered by the Complainant's allegedly false accusations and that in the process, began using foul language against the Complainant. He hastens to add however that the Complainant responded by telling him to "fuck off" several times.

[37] The conversation ended with the Respondent and Ms. Bogdanow telling the Complainant to never spread rumours about them to anyone again. Ms. Bogdanow turned to leave and he followed her down a short flight of stairs. As he was descending, he felt a push on his shoulder, causing him to lose his footing and grab the railing. He realized that it was the Complainant who had pushed him so he turned to her and told her not to do so. She retorted that he should not touch her. He answered that he could not have possibly touched her since he was walking in front of her. He acknowledges that she then said she "did not have to take this shit" and that she walked towards the management office. He did not hear anything more about the incident until he was informed that she had filed a complaint of harassment against him with Canada Post.

[38] Heeding the advice of Mr. Ellis that they should avoid each other, the Respondent claims that he intentionally did not come into any contact with the Complainant after these incidents. He denies having made any comment about the Complainant when the Chinese food was being delivered to the employees in the building's reception area and he claims that he never honked or blinked his lights at the Complainant in the Gateway facility's parking lot. He concedes that he was seated in his car at the West Indian supermarket parking lot, as the Complainant was leaving the store, but he insists that he never taunted her, as she alleges.

IV. THE LAW

[39] Paragraph 14(1)(c) of the *Act* provides that it is a discriminatory practice to harass an individual on a prohibited ground of discrimination in matters related to employment. The prohibited grounds of discrimination include sex and national or ethnic origin (Subsection 3(1)). Moreover, Subsection 14(2) specifies that sexual harassment shall, for the purposes of Subsection 14(1), be deemed to be harassment on a prohibited ground.

[40] Harassment that is proscribed under the *Act* can take many forms. Sexual harassment is not limited to circumstances in which the harasser promises some financial or other reward in exchange for a sexual favour. As the Supreme Court of Canada held in *Janzen* v. *Platy Enterprises Inc.*,[(2)] this form is simply one manifestation of sexual harassment. Harassment also encompasses situations in which employees are forced to endure sexual groping, propositions and inappropriate comments, even where there are no tangible economic rewards attached to their involvement in such behaviour. Thus, according to the Court, sexual harassment is broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment. The Court added that sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.[(3)] It is not necessary for harassment to be the sole reason for the actions complained of for a complaint to be substantiated and the harassment need not even be intentional on the part of the perpetrator.[(4)] These principles have been held to be equally applicable where the harassment is related to another prohibited ground, such as race and national or ethnic origin.[(5)]

[41] The Federal Court of Canada-Trial Division case of *Canada (HRC)* v. *Canada (Armed Forces) and Franke*,[(6)] ("***Franke***") concerned a complaint of sexual harassment filed pursuant to Sections 7 and 14 of the *Act*. In her decision, Madame Justice Tremblay-Lamer took the opportunity to elaborate on the test for sexual harassment that had been previously set out in *Janzen*. She stated that in order for a complaint of harassment to be substantiated, the following must be demonstrated:

> (i) The acts that are the subject of the complaint were unwelcome. This can be determined by assessing the complainant's reaction at the time of the alleged incidents of harassment and whether she expressly, or by her behaviour, demonstrated that the conduct was unwelcome. The Court recognized that a verbal "no" is not required in all cases and that a repetitive failure to respond to a harasser's comments constitutes a signal to him that his conduct is unwelcome.

The appropriate standard against which to assess a complainant's conduct will be that of a reasonable person in the circumstances.

(ii) Where the complaint is of sexual harassment, the impugned conduct must be sexual in nature. Presumably, in cases where the complainant alleges that there has been harassment practiced on the basis of her national or ethnic origin, the respondent's conduct must somehow be shown to be related to that ground. The acts of harassment, particularly in the case of sexual harassment, may be physical in nature, such as pinching, grabbing, hugging and kissing. However, harassment can also be verbal in nature, encompassing conduct such as insults or remarks regarding a person's sex or her national or ethnic origin, as well as comments regarding a person's appearance or sexual habits. The Tribunal's determination of what is "sexual in nature" or of a nature relating to one of the other prohibited grounds of discrimination should again be carried out in accordance with the standard of a reasonable person in the circumstances of the case, keeping in mind the prevailing social norms.

(iii) Ordinarily, harassment requires an element of persistence or repetition, but in certain circumstances even a single incident may be severe enough to create a hostile environment. The Court in *Franke* noted, for example, that a physical assault may be serious enough to constitute in itself sexual harassment. On the other hand, a crude sexual joke, although in poor taste, will not generally be enough to constitute sexual harassment and would rarely create a negative work environment. The objective reasonable person standard is used to assess this factor as well.

(iv) The final factor arises where a complaint is filed against an employer regarding the conduct of one of its employees. Fairness requires that in such cases, the victim of the harassment, whenever possible, notify the employer of the alleged offensive conduct. In light of the fact that there is no complaint before me regarding Canada Post, this factor is not relevant to the present case.

[42] In *Stadnyk* v. *Canada (Employment and Immigration Comm.)* [(7)], the Federal Court of Appeal expanded somewhat on the findings in *Franke*. The case involved a complaint of sexual harassment made by a female complainant. The Court approved of the Canadian Human Rights Tribunal's decision in the first instance to adapt the reasonable person standard to that of a reasonable female person. This adjustment served to recognize that male-female interaction could be perceived differently depending on whether one is a man or a woman. It should be noted however that in *Stadnyck*, the Tribunal had received expert evidence in support of this proposition.

V. ANALYSIS OF THE FACTS

[43] I find that even if one is to accept that the facts of the case are in accordance with the evidence led in support of the complaint, the Respondent's conduct does not constitute harassment on the grounds of sex or national or ethnic origin, within the meaning of the *Act*. I

have no doubt that the Complainant was bothered and annoyed by the Respondent's behaviour but this activity does not meet the standard established in law for the proscribed form of harassment.

A. Was the Impugned Conduct Related to the Complainant's National/Ethnic Origin or Sexual in Nature?

[44] The Complainant alleges that the Respondent called her a "paki-coolie" and this constituted conduct related to her national or ethnic origin. On the evidence, I am satisfied that the Respondent used this term in his discussions with the Complainant on both evenings. His denials regarding this point were unconvincing. There is no doubt that an expression such as "paki-coolie" relates directly to a person's national or ethnic origin, in a most derogatory way, and as such satisfies this aspect of the test for harassment. As for the other remarks related to the Complainant's nationality or ethnicity, the Respondent acknowledged that he commented on the Complainant's light-coloured hair. Although he claims that he was not trying to ridicule her in making the statement, I accept that a reasonable person would interpret it as a taunt related to her national/ethnic origin: that is, an attempt to make fun of a person of East Asian origin from Trinidad who chose to have "blonde hair".

[45] Turning to the conduct by the Respondent that is alleged to have been of a sexual nature, I am satisfied, on the evidence, that the Respondent did in fact call the Complainant fat and a "Boy-George look-alike" and that he addressed her as "bitch". Are these terms "sexual in nature"? The ambit of conduct that is deemed "sexual in nature" is fairly broad, as the Court pointed out in *Franke*.[(8)] In some cases, a reference to a woman's appearance could be treated as a reference to her sex. Furthermore, it is not necessary for the comments to suggest that the woman is sexually attractive. For instance, the Ontario Board of Inquiry found, in *Shaw* v. *Levac Supply Ltd.*,[(9)] that disparaging comments about a female employee's appearance were sexual in nature. The Board noted that comments that are intended to imply sexual unattractiveness are as sexual in nature as those that suggest that the harasser desires to have sex with the victim. Accordingly, I accept that the Respondent's above noted references to her appearance were intended to imply that she was sexually unattractive. As such, these comments were sexual in nature.

[46] I am also satisfied that the expression "bitch", in the manner with which it was used by the Respondent, took on a connotation that was disparaging and uncomplimentary to the Complainant, as a woman. I therefore find that his remarks containing this term were related to the Complainant's sex. However, I would add that I do not find the insertion of the term "fucking" before this and some of the other epithets used by the Respondent, during the argument on the second evening, to have been sexual in nature. While the word "fuck" can have a sexual connotation, in the context in which it was used in the present case, it was not sexual in nature, but rather, an expression of anger.[(10)] As I indicated earlier, the Complainant used the term numerous times herself and it was certainly not in a sense that was sexual in nature.

[47] I am not persuaded that the Respondent said the word "zebra" during the altercation of November 29, 1995. Aside from the fact that the Complainant made no mention of this during her testimony, I note that in a written statement prepared by Ms. Collins describing the incident,

filed with Ms. Farrugia only a few days later, no mention was made about this comment either. In any event, considering the elevated noise level in the postal code keying area attested to by Ms. Collins herself, it is questionable whether anyone could have reliably overheard the conversation going on several metres away.

[48] I am not convinced that the Respondent's statement that he would or could get a fellow employee, who was passing by at that moment, to "beat the Complainant up" was at all serious. Aside from the fact that the Complainant's evidence on this point was weak and unconvincing, I find that this comment, assuming it was made at all, merely formed part of the banter in which these two postal workers and Mr. Drummond had engaged that evening. The Respondent readily admits that he was acting as a "smart ass" when making some of his comments and the Complainant concedes that she threw some insults back at him.

[49] It was likely in a similar context that the Respondent made reference to how, in Jamaica, a cutlass would be used against a woman for telling a man to "fuck off", as the Complainant had just done to the Respondent. In fact, the Complainant agreed with the Respondent and told him he was probably right. Overall, I do not believe that a reasonable person would perceive either of these comments by the Respondent as being sexual in nature.

B. Was the Impugned Conduct Unwelcome?

[50] The Complainant testified that on numerous occasions she said, "Fuck off," to the Respondent during their discussions while they worked together on November 28, 1995. The Commission argues that this alone should demonstrate that the Respondent's comments were unwelcome. However, it is clear, even from the Complainant's own evidence, that there was a fair degree of repartee going on between her, the Respondent and Mr. Drummond throughout the evening. She did not hesitate to make her own jibes about the Respondent's appearance, for instance. The testimony of Ms. Marshall confirmed that the atmosphere seemed quite jovial amongst all three employees when she approached them. The Complainant attempted to discredit Ms. Marshall's testimony because she was a friend of the Respondent, but I found Ms. Marshall's evidence overall to have been credible. I find that a reasonable person seeking to demonstrate that the Respondent's comments were unwelcome would have reacted in a manner different from that which the Complainant adopted that evening.

[51] It is true that after working with the Respondent that evening, the Complainant complained to Mr. Ellis, the shop steward, about the Respondent's conduct. Counsel for the Commission submitted that this constitutes evidence that the Respondent's behaviour was unwelcome. However, this issue is not determined on the basis of how a complainant reacted after interacting with the alleged harasser, but rather, on the basis of what her reaction was vis-à-vis the harasser, while the conduct was occurring. I do not find the evidence in the present case to support the Complainant's contention that she reasonably demonstrated that the Respondent's conduct was unwelcome while the conduct was taking place. It is also noteworthy that Mr. Ellis recalled that the Complainant was upset but he could not confirm that the cause for her concern was the Respondent's use of discriminatory language against her.

[52] My findings are to the contrary with respect to the second incident between the parties, on November 29, 1995. Faced with the kind of aggressive intervention that the Respondent directed against the Complainant, any reasonable person seeking to demonstrate that the conduct was unwelcome would have reacted similarly. I accept the Complainant's evidence that she became visibly upset because of the remarks made by the Respondent and of the manner in which he addressed her. Any reasonable person would have interpreted her resulting state as a sign that the comments were unwelcome. Her use of the term "fuck off" appears to have been made in an entirely different context than the previous evening's, one in which she was attempting to convince the Respondent to leave her alone.

C. Was the Impugned Conduct Serious or Repetitive Enough?

[53] I find that although most of the Respondent's remarks were offensive, his conduct was not repetitive enough nor of a sufficient severity to constitute the type of harassment proscribed by the *Act*. In effect, the conduct that I have found to be of a nature that is sexual or related to the Complainant's national or ethnic origin is limited to several uses, over a span of one to two days, of the expressions "paki-coolie" and "bitch", as well as some additional rather cruel remarks about her physical appearance.

[54] As the Supreme Court of Canada stated in *Janzen*, in order to come to a finding of harassment, it must be demonstrated that the conduct of a respondent was such as to have detrimentally affected the work environment. A certain level of seriousness or repetition in the conduct is required for such a hostile or poisoned environment to develop. The Canadian Human Rights Tribunal pointed out, in *Pitawanakwat* v. *Department of Secretary of State*[(11)] as well as in *Dhanjal*[(12)], that when the impugned conduct takes the form of racial slurs, jokes in bad taste and stereotyping, it must be persistent and frequent in order to constitute harassment. An isolated racial slur, even one that is very harsh, will not by itself constitute harassment within the meaning of the *Act*. It was further noted in *Dhanjal*[(13)] that:

> In short, the more serious the conduct the less need there is for it to be repeated, and, conversely, the less serious it is, the greater the need to demonstrate its persistence in order to create a hostile work environment and constitute racial harassment.

[55] The same issue was dealt with by the Court of Appeal of Quebec in the case of *Habachi* v. *Commission des droits de la personne du Québec*[(14)]. The Court recognized that a single act, provided it is serious enough and has an ongoing effect, may constitute harassment.[(15)] As an example, Madame Justice Deschamps suggested that a single incident of sexual assault at the workplace would create the deep, long-lasting and unfavourable effect required to constitute sexual harassment.[(16)] But Mr. Justice Baudouin also pointed out in the same case that if one were to conclude that acts lacking the requisite severity nevertheless constitute harassment, the effect would be to trivialize a provision of the *Act* that was intended to deal with a very specific form of discrimination:[(17)]

> [TRANSLATION] Words, gestures or behaviour that, within the context of everyday relations between a man and a woman, may seem vulgar, in bad taste,

> misplaced or even coarse and therefore sexist, cannot automatically constitute harassment. The law has not been enacted to impose politeness, pleasantness of manner, life skills or political correctness. They can, however, become harassment if they are of a repetitive nature (which, it must be reiterated, is not very pronounced in the present case) and, especially, within the context of a relationship of dependency. Caution is called for in these matters, however, *so as not to trivialize an offence that the legislator intended to be specific and distinct from mere discrimination.*
> (My emphasis)

[56] I note that, just as in *Habachi*, in the case before me there did not exist a relationship of dependence between the parties. They were both postal workers working within a large facility in which hundreds of other persons were employed. The Court noted that in such situations it becomes all the more important to establish a certain level of repetition in the impugned conduct in order to make out a valid case of harassment.

[57] I find that as objectionable as the Respondent's conduct may have been, it was of limited duration and severity. He and the Complainant only worked together that one evening of November 28, 1995. The other incident occurred the following evening and lasted for no more than a few minutes. When asked specifically during her testimony, the Complainant conceded that she had no further contact with the Respondent other than on the three occasions she identified in her testimony (the Chinese meal, the Gateway parking lot and the West Indian supermarket parking lot). She indicated that the Respondent smiled and grinned at her on other occasions while at work and that this upset her. There is no question that the Complainant and the Respondent were unfriendly to each other, particularly after the confrontation of November 29, 1995. I find the Complainant's evidence credible with respect to the three specific incidents mentioned above. I also accept that the Respondent may have grinned in the Complainant's direction, although due to the vagueness in her testimony on this point, I am not convinced that these incidents occurred more than on a handful of occasions. All of these acts demonstrate an immaturity on the Respondent's part but the conduct is far from being sexual in nature or related to her national or ethnic origin. I find that a reasonable person would not perceive this conduct as having contributed to the severity or the duration of any of the other alleged acts of harassment on the proscribed grounds.

[58] The fact that the Complainant felt compelled to cease working at the Bulk Mail Facility is not an indication that a poisoned work environment had developed. There is no doubt, as I have already pointed out, that the Complainant and the Respondent were antagonistic towards each other, and this may have been a factor in her decision to stop working within the same facility as he. However, it is also noteworthy that the Complainant did manage to continue working there for three months following the incidents of November 1995 and only left after learning that her internal complaint against the Respondent had been rejected. Ultimately, the focus of the analysis must return to the Respondent's specific conduct. I am satisfied that a reasonable person would not conclude that a poisoned or hostile work environment developed as a result of those utterances, made over the two evenings, that were sexual in nature or related to the Complainant's national or ethnic origin.

[59] In contrast to what transpired in the *Stadnyck* case, no evidence, expert or otherwise, was led before me to specifically suggest how the events would be perceived differently if the standard of reasonableness was adjusted to that of a reasonable woman or a reasonable person of the Complainant's national or ethnic origin. In fact, this point was not even argued by the Commission. In any event, based on the evidence that was actually adduced in the present case, I do not believe that my findings would be any different if the standard of reasonableness was adapted to take into account these attributes of the Complainant.

VI. CONCLUSION

[60] In conclusion, I find that the words and expressions used by the Respondent on November 28 and 29, 1995, were offensive and rude. He used terms that are inappropriate in any workplace and there is no question that the Complainant was annoyed and agitated by his conduct, particularly as a result of the confrontation with him on the second evening. One is tempted, upon learning of the use of such language, to assume that harassment has taken place. But the law of harassment provides otherwise. Discouraging and preventing persons from ever directing pejorative or insulting comments to each other, particularly when such expressions are related to one of the proscribed grounds of discrimination under the *Act*, is a laudable goal. However, the provisions in the *Act* regarding harassment are not intended to sanction brief or sporadic conduct of this nature. Had the Respondent's behaviour continued on an ongoing basis, it may have constituted a proscribed form of harassment, but due to its short duration, there can be no finding of harassment in the present case.

VII. ORDER

[61] For these reasons, the complaint is dismissed.

"Original signed by"

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Athanasios D. Hadjis

OTTAWA, Ontario

November 26, 2002

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T591/4900

STYLE OF CAUSE: Carol Rampersadsingh v. Dwight Wignall

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APPEARANCES:

Carol Rampersadsingh On her own behalf

Giocomo Vigna For the Canadian Human Rights Commission

Dwight Wignall On his own behalf

1. [1] *An Act to amend the Canada Evidence Act and the Criminal Code in respect of persons with disabilities, to amend the Canadian Human Rights Act in respect of persons with disabilities and other matters and to make consequential amendments to other Acts*, S.C. 1998, c. 9, s. 29.

2. [2] [1989] 1 S.C.R. 1252 at page 1282.

3. [3] *Ibid* at page 1284.

4. [4] *Swan* v. *Canada (Armed Forces)* (1994), 25 C.H.R.R. D/312 at para. 73 (C.H.R.T.), rev'd on other grounds (1995) 25 C.H.R.R. D/333 (F.C.T.D.).

5. [5] *Dhanjal* v. *Air Canada*, (1996), C.H.R.R. D/27 at para. 206 (C.H.R.T.), aff'd [1997] F.C.J. No. 1599 (F.C.T.D.) (Q.L.); *Marinaki* v. *Canada (Human Resources Development)*, [2000] C.H.R.D. No. 2 at para. 187 (C.H.R.T.) (Q.L.).

6. [6] [1999] 3 F.C. 653 at paras. 29-50 (F.C.T.D.).

7. [7] (2000), 38 C.H.R.R. D/290 at para. 25, [2000] F.C.J. No. 1225 (F.C.A.) (Q.L.).

8. [8] *Franke*, *supra*, note 6, at para 39.

9. [9] (1990), C.H.R.R. D/36 at paras. 139-141 (Ont. Bd. Inq.).

10. [10] See *Marinaki*, *supra* note 5 at para. 200.

11. [11] *Pitawanakwat* v. *Department of the Secretary of the State* (1992), 19 C.H.R.R. D/110 at paras. 40-42 (C.H.R.T.), rev 'd on other grounds [1994] 3 F.C. 298, (1994) 21 C.H.R.R. D/355 (F.C.T.D.).

12. [12] *Supra*, note 5 at para. 212.

13. [13] *Ibid* at para. 215.

14. [14] [1999] R.J.Q. 2522, R.E.J.B. 1999-14361, [1999] J.Q. No. 4269 (Q.L.) (C.A.Q.).

15. [15] *Ibid* at 2528.

16. [16] *Ibid* at 2541.

17. [17] *Ibid* at 2533-34.