

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS
DE LA PERSONNE

NANETTE HUNT

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

TRANSPORT ONE LTD.

Respondent

DECISION

MEMBER: Karen A. Jensen

2008 CHRT 23
2008/06/10

[1] Nanette Hunt brought a complaint against her former employer, Transport One Ltd., alleging that she was sexually harassed by Harry Wadhwa, the General Manager of Transport One Ltd., and Wayne Dibbley, a dispatcher with Transport One Ltd.

[2] No one appeared at the hearing on behalf of the Respondent, Transport One Ltd. Moreover, the Respondent did not participate in the case conferences that were held prior to the hearing. The Tribunal sent numerous letters by courier and mail to two addresses in Windsor, Ontario informing Mr. Wadhwa about the case conferences and the hearing into this matter.

[3] Notwithstanding the Tribunal's efforts to invite the Respondent's representative(s) to participate in the case management and inquiry process, they chose not to respond to the Tribunal, to present themselves for the case management conferences or to appear for the hearing.

[4] Rule 9(8) of the Tribunal's Rules of Procedure authorizes the Tribunal to proceed with an inquiry into the complaint even though a party fails to appear before the Tribunal where the Tribunal is satisfied that the party received proper notice of the hearing. Although the rules cannot expand the Tribunal's legal authority, they do serve as notice to the parties of measures that may be taken by the Tribunal in conducting an inquiry into the complaint.

[5] The Tribunal was satisfied that the Respondent received proper notice of the hearing, and therefore, that it was fair to proceed with the hearing in the absence of the Respondent.

[6] At the hearing, Ms. Hunt testified about the incidents that gave rise to the filing of her complaint on September 19, 2005. Although she was not cross-examined since the Respondent did not appear at the hearing, I found Ms. Hunt's testimony to be forthright, sincere and consistent; I found her to be a credible witness. There were no other witnesses.

[7] The Canadian Human Rights Commission did not appear at the hearing.

[8] Ms. Hunt testified that on July 14, 2005, she was hired by Mr. Harry Wadhwa as an office manager for a new transportation brokerage company by the name of Transport One Ltd. located in Windsor, Ontario. Ms. Hunt started work on July 25, 2005. In the

beginning, the only people working at Transport One Ltd. were Ms. Hunt and Mr. Wadhwa. However, shortly after she was hired, Mr. Wadhwa hired Mr. Wayne Dibbley as a dispatcher. Later, Mr. Wadhwa hired Mr. Mike Bronson to be the Sales Manager of Transport One Ltd.

[9] Ms. Hunt, Mr. Wadhwa, Mr. Dibbley, and then latterly, Mr. Bronson, all worked together in a 40 foot trailer. The legal relationship between Harry Wadhwa and the Respondent Transport One Ltd. was unclear. At the hearing, Ms. Hunt adduced evidence that Mr. Wadhwa's parents owned the property on which the trailer was parked. Ms. Hunt thought that Mr. Wadhwa shared ownership of the company with his parents. She said that Mr. Wadhwa ran the operation, and that his parents were not involved in the day-to-day functioning of the business. On the basis of this evidence, I find that, at the very least, Mr. Wadhwa acted as the agent of the Respondent Corporation in hiring employees and in directing the overall operations of Transport One Ltd.

[10] Ms. Hunt's office was at the east end of the Transport One Ltd. trailer/office. Her computer was the only one that had Internet access. As a result, Mr. Wadhwa and Mr. Dibbley often leaned over her to view her monitor or asked Ms. Hunt to get out of her chair so that they could use her computer to gain access to the Internet.

[11] On August 18, 2005, Mr. Dibbley and Ms. Hunt were working alone in the Transport One Ltd. trailer/office. Mr. Dibbley began making comments of a sexual nature about Ms. Hunt's physical appearance, stating, among other things, that she looked good in jeans and that he liked it when she bent over her desk. Ms. Hunt ignored the comments and continued to do her work, hoping that Mr. Dibbley would stop.

[12] On August 18, Ms. Hunt was wearing a jacket with a t-shirt underneath. The jacket zipper was $\frac{3}{4}$ of the way down. After making the comments noted above, Mr. Dibbley came up behind Ms. Hunt and reached around in front of her. He grasped the zipper on her jacket and began pulling it up. As he did so he rubbed her breasts. In an angry voice, Ms. Hunt asked him what he was doing. Mr. Dibbley replied that her chest was "distracting" him. He then went over to the trailer door, opened it and stood on the threshold staring at Ms. Hunt. Mr. Dibbley told Ms. Hunt that he needed some fresh air "to settle down what was happening in his pants". After that, he left the trailer for a few minutes.

[13] When he came back into the trailer later that same morning on August 18, 2005, Mr. Dibbley approached Ms. Hunt again and told her to unzip her zipper stating that he "liked the view better that way". He kept staring at her chest area and making sexual comments. Ms. Hunt testified that she was visibly upset; she was crying and sulking. She said she felt sick and on the verge of vomiting at work. She was outraged by Mr. Dibbley's behaviour.

[14] In the afternoon of August 18, Mr. Wadhwa called Ms. Hunt at the office and asked her to drive over to his house and take him to work. Ms. Hunt complied with the request. She stated that after she returned to the office with Mr. Wadhwa, she was still very upset about the events of the morning; she was crying and sulking. Ms. Hunt left the trailer at one point during the afternoon of August 18 because she was so upset. While she was standing outside the trailer crying, Mr. Wadhwa approached her. He put his arm around her and told Ms. Hunt that "all she needed was a good man to give it to her".

[15] Ms. Hunt did not testify about her response to Mr. Wadhwa's embrace and comment. She was unrepresented during the hearing and at times, clearly found it difficult to relate

her experiences to the Tribunal without assistance. It was also apparent to me that Ms. Hunt did not think that she needed to go into all of the details of her complaint because they were in the complaint form that she had submitted to the Commission.

[16] In her complaint, Ms. Hunt said that she responded to Mr. Wadhwa's suggestion that "all she needed was a good man to give it to her" by asking him if he knew one (a "good man"). His reply was "plenty", pointing to himself as he spoke. Ms. Hunt stated in her complaint that at that point, she turned and walked back into the office, grabbed her keys and left.

[17] I accept the information in Ms. Hunt's complaint as sufficiently reliable to fill the gap left in her testimony regarding her response to Mr. Wadhwa. Although Ms. Hunt did not seek to have her complaint entered into evidence, the Tribunal is entitled, pursuant to s. 58(3)(c) of the *Act*, to accept information where it sees fit even if that information would not be admissible in a court of law. The complaint form is signed by Ms. Hunt and dated September 19, 2005, a short time after the incidents occurred. The information in the complaint was therefore produced while it was still fresh in her memory. For these reasons, I have accepted the information provided therein with regard to this particular incident.

[18] Ms. Hunt testified that on August 19, 2005 she again found herself working alone with Mr. Dibbley. She stated that Mr. Dibbley kept coming over to her desk, asking her to move, brushing up against her or reaching around her. That morning, Mr. Wadhwa again called to ask Ms. Hunt to drive him to work. When Ms. Hunt attempted to leave the trailer to go pick Mr. Wadhwa up, Mr. Dibbley blocked her way to the door with his arm. She attempted to get past him several times, but he would not let her pass. Ms. Hunt then used more force to push her way past Mr. Dibbley, but as she did so Mr. Dibbley rubbed her breast and stomach area. Ms. Hunt was extremely upset by this incident.

[19] When she picked Mr. Wadhwa up from his home, Ms. Hunt told him what had happened and how upset she was about it. Mr. Wadhwa's response was that "it'll be o.k."

[20] Upon her arrival at work on August 22, 2005, Ms. Hunt learned that Mr. Dibbley had been assigned to do dispatch work in the afternoons. This meant that she would see less of Mr. Dibbley in the foreseeable future. However, she was still worried about what might happen with Mr. Wadhwa.

[21] On August 24, 2005 Ms. Hunt told Mr. Bronson, now general manager, how upset she was about the treatment she was receiving, and that she was going to look for a new job. Mr. Bronson encouraged her to stay at Transport One Ltd., stating that things would improve. He did not explain to her what he meant by this comment. Ms. Hunt decided to terminate her employment with Transport One Ltd. later that day, when Mr. Wadhwa called her "a fucking idiot" because she could not find a post-it note that she had placed on her computer.

[22] As noted, the Respondent did not appear at the hearing and therefore, did not provide a response to the version of events conveyed by Ms. Hunt concerning her five weeks' of employment at Transport One Ltd.

Sexual Harassment

[23] Section 14(1)(c) of the *Canadian Human Rights Act* stipulates that it is a discriminatory practice to harass an individual on the basis of a prohibited ground of discrimination in matters related to employment. Section 14(2) deems sexual harassment to be harassment on the basis of a prohibited ground of discrimination.

[24] Sexual harassment has been defined as unwelcome conduct of a sexual nature that is detrimental to the work environment (*Janzen v. Platy Enterprises*, [1989] 1 S.C.R. 1252 at p. 1284). In order to determine if the conduct is unwelcome, the Tribunal will look at the complainant's reaction at the time the incident occurred and assess whether she expressly, or by her behaviour, demonstrated that the conduct was unwelcome. A verbal "no" will not be required in all cases (*Canada (Canadian Human Rights Commission) v. Franke*, [1999] 3 F.C. 653 (T.D.) at para. 36). Nonetheless, the complainant must establish, for instance by her body language or by her repetitive failure to respond to suggestive comments, that she had in some way signaled to the harasser that his conduct was unwelcome. A sexual advance may incite a strong refusal and outrage or may be met with stony silence and evasion. Both responses signal unwanted or unwelcome behaviour (*Miller v. Sam's Pizza House*, [1995] N.S.H.R.B.I.D. No. 2 (Q.L.)).

[25] The second element of the definition requires the conduct to be sexual in nature. Human rights tribunals have recognized a broad scope of conduct which may fall under the definition of sexual harassment, depending on the circumstances, including gender-based insults, sexist remarks, comments about a person's looks, dress, appearance or sexual habits (*Franke*, at para. 37).

[26] Finally, fairness requires the employee, whenever possible, to notify the employer of the alleged offensive conduct (*Franke*, at para. 47).

[27] Harassment generally requires an element of persistence or repetition, although in certain circumstances a single incident may be enough to create a hostile work environment. Some forms of unwanted sexual attention, such as sexual assault, may be severe enough to constitute sexual harassment even though they have occurred only once. Such incidents would, because of their gravity, immediately create a poisoned work environment. The more serious the conduct and its consequences are, the less repetition is necessary; conversely, the less severe the conduct, the more persistence will have to be demonstrated (*Franke*, at paras. 43-45).

[28] For example, in *Goodwin v. Birkett*, there was only one incident of sexual conduct but it involved physical contact (*Goodwin v. Birkett*, 2004 CHRT 29, at para. 22; aff'd: 2007 FC 428). The complainant awoke at 3:00 a.m. to find the respondent in her bed at a hotel, caressing her inappropriately. She told him to stop and he left the room. The Tribunal held that this incident was serious enough to poison the work environment. Therefore, it constituted sexual harassment.

[29] In the present case, Ms. Hunt's testimony describing Mr. Dibbley's conduct meets the test for sexual harassment. There were two incidents of physical contact that were of a sexual nature: pulling Ms. Hunt's jacket zipper down; and barring her exit from the trailer. During both incidents, Mr. Dibbley fondled Ms. Hunt's breasts and stomach area. On the first occasion, he made sexually suggestive remarks to her. On the second occasion, Mr. Dibbley attempted to bar Ms. Hunt from leaving the trailer as a means of requiring her to submit to sexual touching. This was very frightening to her.

[30] Ms. Hunt testified that she let Mr. Dibbley know that the sexual contact was unwelcome by angrily asking him what he was doing at the time of the first physical incident, and by evading him, crying and refusing to talk with him. Ms. Hunt was very upset by Mr. Dibbley's conduct; she felt sick to her stomach at work, and her ulcer symptoms flared up. Ms. Hunt informed her employer, Mr. Wadhwa, about what had happened on August 19, 2005.

[31] Thus, although Mr. Dibley's conduct occurred on two occasions only, the very serious and physical nature of the sexual conduct and its consequences for Ms. Hunt were enough to create a poisoned work environment.

[32] Did Mr. Wadhwa's crude sexual proposition and embrace on August 18, 2005 constitute sexual harassment? According to Ms. Hunt's testimony, Mr. Wadhwa put his arm around her while she was outside the trailer crying, and told her that all she "needed a good man to give it to her". Ms. Hunt was crying and visibly upset before Mr. Wadhwa embraced and propositioned her. Ms. Hunt's emotionally vulnerable state would have provided the first clue to her employer that his attention, which was clearly of a sexual nature, would not be welcome.

[33] Although it is less common to analyze the complainant's behaviour prior to the impugned incident(s) to determine whether the attention was unwelcome, I think that it is appropriate to do so where, as in the present case, the complainant is in a subordinate employment relationship to the alleged harasser, and therefore may not be in a position to clearly voice her or his negative reaction to the behaviour after it has occurred. In addition, an examination of the complainant's behaviour prior to the impugned incident recognizes that it is incumbent upon those who wish to offer their sexual attention to their subordinates to ascertain, prior to offering that attention, whether it would likely be welcome.

[34] Rather than inquiring into the source of Ms. Hunt's distress when she was outside of the trailer, Mr. Wadhwa took advantage of her emotional vulnerability and made a crude sexual proposition. In light of his authority over Ms. Hunt, Mr. Wadhwa's sexual attention took on a more coercive nature than if it had come from an employee at the same level as Ms. Hunt. Mr. Wadhwa's remark made Ms. Hunt feel all the more vulnerable at work, since the very person she was counting upon to address the situation with Mr. Dibley had demonstrated that he too was seeking to take sexual advantage of her employment with Transport One Ltd.

[35] After the embrace and the remark about needing a good man to "give it to her", Ms. Hunt asked Mr. Wadhwa whether he knew any "good men". She then turned her back on him, walked to the trailer, collected her things and left the workplace. Seen as a whole, this sequence of actions indicates that Ms. Hunt did not welcome Mr. Wadhwa's sexual attention.

[36] I conclude that although it occurred only once, the conduct of Mr. Wadhwa, the person who hired Ms. Hunt, was sufficiently serious and unwelcome to independently create a hostile work environment for her. It therefore constituted sexual harassment.

The Respondent's Liability for the Sexual Harassment

[37] Section 65 of the *Act* deems the act of an officer, a director, an employee or an agent of an organization in the course of employment, to be the act of the organization unless the organization can establish that it did not consent to the commission of the act, and that it exercised all due diligence to prevent the act or to mitigate or avoid the effect of the act.

[38] An employer make take a number of measures to prevent harassment from occurring in the workplace including: instructing newly hired employees that harassment will not be tolerated in the workplace; providing information sessions about harassment to employees, supervisors and directors of the company; developing harassment policies and investigation procedures and posting them in a public place. Effective strategies to

mitigate the effects of harassment include: providing information to the individuals involved about the process and measures that will be taken to address the alleged harassment; providing separate work spaces for the alleged harasser and the complainant; conducting a timely and fair investigation of complaints of harassment; taking appropriate disciplinary action against harassers and providing victims with information about the disciplinary action taken; making counseling services available to the individuals involved. The appropriateness of some of these measures will depend upon the circumstances of the case.

[39] In the present case, there was no evidence that Transport One Ltd. had taken any measures to prevent sexual harassment from occurring. There was no evidence of anti-harassment policies and investigation procedures, information sessions for employees or any other similar preventative measures.

[40] Ms. Hunt testified that some action was taken to mitigate the effects of Mr. Dibley's harassment of Ms. Hunt: he was moved to the afternoon shift thereby reducing the contact between the two employees. However, Ms. Hunt had no assurance that Mr. Dibley's unwanted sexual attentions would be permanently curtailed as there had been no investigation or meaningful discussion about the problem with Mr. Wadhwa. In addition, Ms. Hunt was not informed that Mr. Dibley had been reprimanded and told that the harassment of employees would not be tolerated. Finally, nothing was done to address the sexual harassment of Ms. Hunt by Mr. Wadhwa.

[41] Mr. Bronson, the Sales Manager/General Manager at Transport One Ltd., told Ms. Hunt not to quit on August 24, 2005. He told her that the situation would improve. However, there was no indication of when and how this improvement would take place. Moreover, Mr. Bronson did not explain how he was in a position to ensure that the conduct of his superior, Mr. Wadhwa, would be addressed.

[42] For these reasons, I find that Transport One Ltd. did not exercise all due diligence to prevent the sexual harassment of Ms. Hunt and to mitigate or avoid the effects of it on her. Transport One Ltd. is, therefore, liable under s. 65(1) of the *Act* for the actions of Mr. Dibley and Mr. Wadhwa.

The Appropriate Remedy

[43] The Tribunal derives its remedial jurisdiction from s. 53 of the *Act*. The remedies contemplated therein are designed to stop the discrimination that is occurring from continuing, to prevent future discrimination from occurring, and to compensate individual victims for past or ongoing discriminatory practices.

[44] Ms. Hunt testified that she thought that Transport One Ltd. may no longer be operational. She thought that it might even be bankrupt. There was, however, no evidence before me that Transport One Ltd. has been the subject of any proceedings or orders under the *Bankruptcy and Insolvency Act*. In the absence of any such information, it remains appropriate for the Tribunal to exercise remedial jurisdiction under s. 53.

[45] Ms. Hunt requested a remedy that would hold Transport One Ltd. accountable for what happened and would prevent others from experiencing the harassment that she experienced. She requested compensation in the amount of \$10,000 for pain and suffering.

[46] Ms. Hunt suffers from an ulcer. She takes medication to control the symptoms. During the five weeks that she was employed at Transport One Ltd., her ulcer symptoms flared up. She constantly felt sick to her stomach. She believed that the stress of the

unwelcome sexual attention she was receiving from Mr. Dibbley and Mr. Wadhwa was the cause of the flare up. Ms. Hunt's doctor prescribed a stronger medication to treat her ulcer condition.

[47] Although it is clear that Ms. Hunt experienced a significant degree of suffering as a result of the sexual harassment by Mr. Dibbley and Mr. Wadhwa, I think that there were other factors in the work environment that contributed to her physical and emotional distress that were not related to the discriminatory conduct. For example, Ms. Hunt testified that the lack of office equipment and the physical condition of the office environment were a source of frustration for her. She was also upset about the number of personal errands that she was asked to run for Mr. Wadhwa. In light of the fact that not all of her pain and suffering was attributable to the discriminatory conduct, I find that an award of \$6,000 is appropriate in the circumstances.

[48] In order to prevent harassment of the nature experienced by Ms. Hunt from occurring in the future, it is necessary to make an order requiring the Respondent to take certain measures. At a minimum, information (whether in the form of Policies and Procedures, or simply a statement by a company official) should be provided to everyone in the workplace which explains what harassment is, that harassment will not be tolerated, and sets out the procedures that will be followed in the event that harassment does occur. It goes without saying that any such information is only effective in preventing harassment if it is fully understood by everyone in the workplace. To that end, information sessions or sensitization programs are useful to provide employees, supervisors and company directors with the knowledge that is needed to make anti-harassment policies work.

[49] In order to prevent discrimination of the nature experienced by Ms. Hunt from occurring in the future, it is appropriate to make the following orders, pursuant to s. 53(2)(a) of the *Act*:

1. If the Respondent has Sexual Harassment Policies and Procedures, it shall provide these documents to the Canadian Human Rights Commission for review. In the event that the Respondent has not developed Policies and Procedures that deal with the prevention and handling of sexual harassment complaints, it shall do so in consultation with the Commission. Once in final form, a copy of the Policies and Procedures shall be displayed in a manner that is accessible to all employees; and,
2. The Respondent shall provide, at its own cost, a program for the employees, officers and directors of the Company to sensitize them to the issue of sexual harassment. It shall consult with the Canadian Human Rights Commission regarding the content of the program and potential program providers.

[50] In addition, pursuant to s. 53(2)(e), the Tribunal orders that:

3. The Respondent shall provide compensation to Ms. Hunt in the amount of \$6,000 for the pain and suffering that she experienced as a result of the discriminatory conduct.

"Signed by"

Karen A. Jensen

OTTAWA, Ontario

June 10, 2008

PARTIES OF RECORD

TRIBUNAL FILE:	T1191/0307
STYLE OF CAUSE:	Nanette Hunt v. Transport One Ltd.
DATE AND PLACE OF HEARING:	April 28, 2008 Windsor, Ontario
DECISION OF THE TRIBUNAL DATED:	June 10, 2008
APPEARANCES:	
Nanette Hunt	For herself
No one appearing	For the Canadian Human Rights Commission
No one appearing	For the Respondent