

T.D. 16/94
Decision rendered on November 4, 1994

CANADIAN HUMAN RIGHTS ACT
R.S.C. 1985, c. H-6 (as amended)

HUMAN RIGHTS TRIBUNAL

BETWEEN:

HARBANS SINGH RANDHAWA

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

GOVERNMENT OF THE YUKON TERRITORY

Respondent

TRIBUNAL DECISION

TRIBUNAL: Donald Allin Souch

APPEARANCES BY: René Duval, Counsel for the Commission

Thomas E. Ulyett, Counsel for the Respondent

DATES AND PLACE

OF HEARING: September 21-25, 1992

March 15-19, 1993

February 3-5, 1994

February 7-11, 1994

Whitehorse, Yukon

March 2-4, 1994

Vancouver, British Columbia

REASONS

COMPLAINT

This Tribunal was appointed to deal with a complaint by Harbans Singh Randhawa against the Government of the Yukon Territory. Mr. Randhawa filed his initial complaint with the Canadian Human Rights Commission on July 9, 1987 and filed an amended complaint on January 7, 1991. In his complaint Mr. Randhawa claims that he was a victim of racial harrasment and was denied three job promotions because of his race. The relevant sections of the Canadian Human Rights Act are Sections 7 and 14.

Mr. Randhawa's complaint as amended sets out the three job promotions that Mr. Randhawa claims that he was denied because of his race. The three job competitions are as follows:

1. A Field Mechanical Superintendent position which was awarded in or about the month of April, 1986.
2. The position of Mechanical Superintendent Central Workshop which

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was awarded in or about the month of August, 1986.

3. The position of Heavy Duty Mechanic Foreman which was awarded in or about the month of October, 1986.

All of the above positions were within the Department of Community and Transportation Services of the Government of the Yukon Territory.

Mr. Randhawa stated in his amended complaint that "I have reason to believe that I didn't get these three promotions because of the poisoned environment at work and because the people who interviewed me had racist feelings about me." Mr. Randhawa then described in his complaint certain comments which were alleged to have been made to support his claim of racial harrasment and discrimination. Mr. Randhawa also states in his complaint that he was denied all three job promotions despite the fact that he was better qualified than the successful candidates.

BACKGROUND

The Complainant was born in Punjab, India on August 6, 1936. He is married and he stated in his evidence that he had three daughters ages 5, 8 and 11. The Complainant and his family reside in Whitehorse where he has worked since 1984.

The Complainant's evidence of his education, employment and personal background was unchallenged and I accepted as being true. Mr. Randhawa stated that he completed High School in India and learned to speak English while he was still in India. While attending High School and following High School, he worked at a family business in India repairing motors. He stated that eventually he became certified as a mechanic by the Government of India. In 1954 the Complainant said that he and his older brother started an aviation workshop in India, that was approved by the Government of India. It was there that Mr. Randhawa said that he began his apprenticeship in aircraft maintenance. He also gained aviation experience in India as a flight mechanic, flight engineer and pilot.

Mr. Randhawa came to Canada in 1968. He first arrived in Vancouver, B.C. and resided there for approximately one year. While in Vancouver he worked as an automotive mechanic and became certified in British Columbia as an automotive mechanic.

The Complainant left Vancouver after about a year and for the next several years held a variety of jobs throughout Canada, mostly in the mechanical and automotive field. During this period he continued to upgrade his knowledge and skills.

After leaving Vancouver, the Complainant obtained employment as a heavy duty mechanic in the Queen Charlotte Islands, which are located off the north coast of British Columbia. His duties there were to repair motorized vehicles and equipment for a mining company. He remained in this position for about two years during which he was promoted to "Lead Hand" supervising ten to fifteen people during the afternoon shift.

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The Complainant's next job was in Toronto where he began work as a mechanic at a Ford dealership. He stated that he held that position for about six months and then continued to work in Ontario over the next two years as a mechanic for two separate companies. While in Ontario, the Complainant said he became certified as a mechanic in that province. He also stated that he attended evening classes to achieve his certification in diesel engines and diesel equipment.

The Complainant's next stop took him to the Yukon for the first time. He took a position at the Cypress Anvil Mine at Farrow as a heavy equipment mechanic. He says he only held this job for about one year after which he moved back to London, Ontario for about six months and then spent six months after that in Edmonton, Alberta. While he was in London and Edmonton, the Complainant says he obtained a Commercial Airline Pilot's

Licence. He also worked in Edmonton as a heavy duty mechanic during the time he was there.

After leaving Edmonton the Complainant went back to the Yukon where he obtained a job as a heavy duty mechanic with a mining company located at Clinton Creek. The Complainant says that after about six months working at Clinton Creek he was promoted to Heavy Equipment Foreman and eventually he was moved into the Shop as a Shop Mechanical Foreman where he supervised about seven or eight workers. He stayed in Clinton Creek for about three and one-half years and left because of the mine closing down.

After leaving Clinton Creek the Complainant moved back to Farrow to take another position with Cypress Anvil as a heavy duty mechanic. He worked there for about six months and then took an extended vacation and travelled for about six months. When he returned to Cypress Anvil, he held the position of Shop Supervisor supervising about twenty-five to thirty people including welders, heavy duty mechanics and machinists. He stayed in this position for about six to eight months and then accepted what would appear to be a promotion to what he described as a "departmental head in charge of the Central Maintenance Planning Department". In this position the Complainant said that he supervised two planning supervisors and two planning technicians, two planning clerks and one correspondence clerk. He says that his prime responsibility was "to establish that department and develop it into a full fledged organization that will do all the planning and organization for all the maintenance work on the Cypress Anvil Mine property". The Complainant stated that he developed his new department into a full fledged operation in about six to nine months.

Mr. Randhawa stated that he left his job at the Cypress Anvil Mine in Farrow after about one and one-half years to return to India. He was in India for about two and one-half months during which time he was married to his wife, Jasbir Randhawa. When he returned to Canada he was employed again at the Cypress Anvil Mine. His position at that time was Field Mechanical Supervisor whose responsibility was to look after all of the equipment in the field outside of the Shop. The Complainant said he supervised about eight to ten people during a shift, including heavy duty mechanics working in the field. He remained in this position until

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September of 1982 when he lost his job due to the mine closing down.

Following the mine closure, the Complainant remained unemployed until May or June of 1984 when he was hired as a Field Mechanic by the Government of Yukon, Department of Community and Transportation Services.

Previously, in the Fall of 1983, Mr. Randhawa had applied for the position of Field Mechanical Superintendent with the same department and, although he was interviewed and certified for the position, the job was offered to Don Jones. When he was hired as a field mechanic in 1984, he was assigned to work at a grader station in the Mayo Stewart Crossing Region of the Yukon and was under the supervision of a foreman whose immediate supervisor was the same Don Jones, the Field Mechanical Superintendent who had obtained the position that Mr. Randhawa applied for in 1983. In August of 1984, about three months after his appointment as a field mechanic, the Complainant successfully applied for a vacant position in Whitehorse with the same department as a Heavy Equipment Mechanic, a position he has held ever since.

The Complainant has been actively involved in a senior capacity with both the Yukon Government Employees Union and the Yukon Federation of Labour for the past several years. At the time the Complainant testified in September 1992, he indicated that he was President of the Yukon Government Employees Union and had been in that position for almost two years. He stated that he had been a Union representative for about six years and had been a member of the Executive of the Yukon Government Employees Union for about four years.

For a one year period ending in May of 1992, the Complainant held the position of President of the Yukon Federation of Labour, which I would assume would be the highest ranking Union position in the Yukon Territory. The Yukon Federation of Labour is comprised of other Unions throughout the Yukon Territory and is affiliated with the Canadian Labour Congress.

It seems apparent that the Complainant is generally held in high regard by his co-workers and other members of the Union since he was elected to his offices, and in particular the offices of President of the Yukon Federation of Labour and the President of the Government of the Yukon Employees Union. Mr. Randhawa indicated that there were approximately 1,600 members of the Yukon Government Employees Union and about 3,000 members from throughout the Yukon Territory who comprised the Yukon Federation of Labour.

Mr. Randhawa stated some of his Union duties, projects and accomplishments. He indicated that he has investigated and presented grievances on behalf of Union members. He has worked with the Yukon Health and Safety Department developing training and education programs. He stated that he has been involved in making submissions and revisions to the Yukon Workers Compensation Act and the Yukon Employment Standards Act and co-authored both the written and verbal submission by the Union to the Yukon Electoral Boundaries Commission reviewing the electoral boundaries in the Yukon.

The Complainant's union duties also required him to attend various conferences including some outside of the Yukon. Of his union activities, the Complainant stated "I speak to people every day. I present the labour views to the media. I represent the labour in very many different in fact, I am the representative of the workers in the Yukon. And whatever I do, whatever I say, there is some implication or some representation of the people."

Mr. Randhawa also stated that at one time the Yukon Government was trying to implement a "job evaluation system" with the purpose of having each and every job evaluated as to the type of work being done and the value of the work being done, in other words to create some sort of classification and pay system. The Complainant said he was delegated by the mechanics in the Heavy Duty Shop to participate in this project on behalf of the heavy duty mechanics. The Complainant said that at that time the department did not have any job descriptions for the heavy duty mechanics, so his first priority was to put a job description in place with the input and assistance from the heavy duty mechanics and others. Once he completed this he handed it to the shop steward who then presented it to management, and he says it was used as a basis for the job description for the heavy duty mechanics. The Complainant further said that when the Government issued the job classification for the heavy duty mechanics, the mechanics did not agree with it and so they filed an appeal, and the Complainant stated that he represented the heavy duty mechanics at the appeal hearing and was successful in upgrading the classification of heavy duty mechanics which presumably resulted in a higher pay scale.

The Complainant has worked in what is described as "Central Workshop" since his appointment as heavy equipment mechanic in 1984. The Central Workshop is located in the City of Whitehorse, which is the commercial and government centre of the Yukon. The Central Workshop was the main repair facility for the Department of Transportation and Highways in the Yukon and was under the control of the Department of Community and Transportation Services of the Government of Yukon. In 1986 approximately 50 to 60 people worked in the Central Workshop, which was divided into about four main areas on the main floor. One area was for the repair and maintenance of automobiles and light trucks. Another area was reserved for the repair and maintenance of heavy duty trucks and equipment, another area comprised parts department and there was another area used by the welders. Offices were located on the second floor of the Central Workshop.

RACIAL HARRASSMENT

Kent Forrest was the only other non-white working in the Central Workshop. Mr. Forrest was born in Black River, Jamaica and was of negro ancestry.

When the Complainant first came to the Central Workshop in August of 1984, his immediate supervisor was a Stan Fuller who was Heavy Equipment Mechanical Foreman. Mr. Fuller's responsibility was the heavy equipment such as graders, road maintenance and construction equipment. Robert

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Magnuson was the Foreman who looked after the truck side of the operation. The Complainant stated that in 1984 Mr. Magnuson and Mr. Fuller reported to a Henry Wenting who was Mechanical Superintendent of the Central Workshop. Mr. Wenting was located within the Central Workshop at the time and he reported to Dick Arnold who was the Manager of Mechanical Operations. Mr. Arnold at that time was not located in the Central Workshop.

Mr. Forrest was a welder in the Central Workshop. He had been employed by the Government of the Yukon since November of 1980.

The tenor of Mr. Forrest's evidence is that the perpetrators of racism within the Central Workshop were Stan Fuller, Robert Magnuson and Zenny Zatorski. Mr. Forrest knew Stan Fuller well since Fuller was Forrest's immediate supervisor in the Central Workshop for several years. These two individuals also associated together outside of the workplace fishing and enjoying the outdoors together.

Sufficient evidence was led for me to conclude that there was racial harrasment within the Central Workshop where the Complainant was working which created somewhat of a poisoned work environment. The fact that there was racial harrasment was conceded by the Respondent's Counsel.

The most blatant and despicable act of racism was a memorandum which appeared to be typed on the Government of the Province of British Columbia stationery mimicking a wild life poster or a notice to all hunters. The document stated that the 1984-1985 Big Game Season would be cancelled to all British Columbia hunters due to a shortage of big game animals. However, the memorandum went on to state that in place of the big game animals "There will be an open season on Punjabs (locally known as Pakis, rag-heads or rug-riders)." The memo went on to say "These snake charmers must be thinned out every two or three years." The memo then went on to describe in some detail what the regulations were with respect to hunting these individuals. I don't think it serves any useful purpose to describe the rest of this disgusting document.

Penny Goldrick, the Human Rights Commission investigator who testified at this hearing, stated that she learned that this document was posted in the Central Workshop area just prior to the Complainant arriving there in August of 1984. It should be noted that when the Complainant was first hired into the Central Workshop, which is located in Whitehorse, the Complainant's immediate Supervisor was Stan Fuller. One side of the Central Workshop was used for the repair and maintenance of trucks and the other side was used for the repair and maintenance of the rest of the heavy equipment. Inside the Central Workshop was a Parts Department, an Automotive Shop and offices. Welders, mechanics and other tradesmen worked within the Central Workshop. [The heavy equipment were such things as graders, heavy road maintenance and construction equipment]. In 1984 when the Complainant was hired in the Central Workshop, his immediate Supervisor was Stan Fuller who was Heavy Equipment Mechanical Foreman. The other foreman on the truck side was Robert Magnuson. The Complainant stated that in 1984 both Mr. Magnuson and Mr. Fuller reported to Henry Wenting, who was

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Mechanical Superintendent of the Central Workshop and whose office was located within the Central Workshop. Mr. Wenting reported to Dick Arnold who was the Manager of Mechanical Operations and whose office at that time was outside of the Central Workshop.

In the course of her investigation, Ms. Goldrick stated that she interviewed Stan Fuller and obtained a statement from Mr. Fuller in 1989 that was marked as an exhibit in these proceedings. At the time of giving a statement Mr. Fuller was no longer employed by the Government of the Yukon. In his statement to Ms. Goldrick, Fuller stated that he recalled that the memorandum or "poster", as it was often referred to in the hearing, had been around for "two or three years" prior to the Complainant arriving at the Central Workshop. He stated that the memorandum was "on the bulletin boards as jokes". He further stated that when the Complainant was hired, he told his employees to take the posters down. Fuller stated "The posters were a joke like any other joke. This isn't the only place that Sheiks have caused problems like this, alleging discrimination." Fuller further stated "It was regulations for hunting East Indians, just as if you were hunting moose or other animals." It should be noted that Stan Fuller was not called as a witness at these proceedings. However, the statements made by Mr. Fuller to Ms. Goldrick are consistent with the evidence of other witnesses who testified that Fuller was racially prejudiced against East Indians and had a hatred for them.

Kent Forrest testified that he was a welder in the Central Workshop and had been employed by the Government of the Yukon since 1980.

Mr. Forrest was born in Black River, Jamaica. He never testified to what his heritage was, but he was perceived by some of his co-workers as being "black", and it seemed apparent from his physical characteristics that he was non-white and perhaps had at least some negro ancestry. Mr. Forrest testified that Stan Fuller in his view was a "bigot" although, according to Forrest, he and Fuller got along quite well and went fishing and hunting together. There is no evidence of any racial harrassment directed by Fuller towards Forrest. However, Mr. Forrest did testify that Stan Fuller asked him on one occassion if he had seen any of the "posters" around, and when Forrest asked why Fuller, according to Forrest, stated that "So that fellow does not get a hold of them" pointing towards the Complainant. Forrest testified that he had been given a copy of the poster by another co-worker, Zenny Zatorski, and a notation on Exhibit HR38 indicates that the poster or memorandum was given to Mr. Forrest in July of 1984. Forrest stated in cross-examination that he saw the poster after Mr. Randhawa had started working at the Central Workshop, but didn't provide any date nor was he questioned further on that. He said he had seen "several copies of it laying on the tool room counter", but again did not relate this to any particular time or date. He did not recall seeing the memorandum on any bulletin board in the Central Workshop. It should be pointed out that the Complainant testified that he did not have any knowledge of this memorandum or poster until some time after the hiring for the third competition had taken place in late 1986. No one else who testified also stated that they saw the poster after Mr. Randhawa commenced employment in 1984. [Kent Forrest stated "I might have seen it before Mr. Randhawa got there, Sir,

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and I certainly saw it after he got there. Because I had a copy of it."
[This indicates that maybe he only saw it after because of the fact that he had already been given a copy in July of 1984.]

The Complainant testified that when he first joined the Central Workshop in 1984 he observed racist remarks on the washroom walls. As an example of the graffiti the Complainant referred to the words "Pakis go home" and "niggers" as some of the racist remarks that appeared on the walls. The Complainant's evidence of the graffiti was virtually unchallenged, and I accept the truth of what he said.

The word "nigger" that Mr. Randhawa stated he observed on the washroom walls no doubt referred to Kent Forrest who also testified that he had been the victim of racial harrassment as a result of comments and incidents perpetrated by some of his co-workers. Mr. Forrest singled out Robert Magnuson for making racial comments, stating that on one occasion Mr. Magnuson called him a "nigger" and also stating that he overheard Mr.

Magnuson on one occasion state that he didn't drink Labatts beer because it was brewed by Pakis. Mr. Magnuson was one of the shop foremen in 1984, and in 1986 became the Mechanical Superintendent of the Central Workshop. [Review evidence of Magnuson, Campbell and Cumming in this regard and the correspondence.]

Mr. Forrest also tried to confirm some of the other allegations of racism contained in Mr. Randhawa's complaint. Some of the testimony in this regard amounted to double hearsay, and I think it would be stretching the rules of evidence even in proceedings of this nature to place much weight on this evidence. However, with respect to the allegation that Mr. Fuller had thrown out a pair of scissors because he found out they were made in India, I would have strong suspicions that this allegation was true given the fact that it has been established that Mr. Fuller was clearly prejudice and spiteful towards East Indians.

While the Respondent's Counsel concedes that there were acts constituting racial harrasment within the workplace, he argues that the Respondent as employer took reasonable steps to deal with the situation and to ensure that the incidents of racism would not be repeated. At this time, it might be appropriate to refer to that often quoted decision of the Canadian Human Rights Tribunal in Leon Hinds vs. Canada Employment and Immigration Commission where it was established that in order for an employer to escape liability under Section 65 of the Canadian Human Rights Act, the Tribunal had to be satisfied as to the following:

1. That the employer did not consent to the commission of the act or omission complained of;
2. That the employer exercised all due diligence to prevent the act or omission from being committed; and

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3. That the employer exercised all due diligence subsequently to mitigate or avoid the effect of the act or omission.

It is important in this case to divorce the evidence relating to harrasment against Mr. Forrest from that directed against the Complainant. We are in this case only concerned with racial harrasment insofar as the Complainant was concerned or to the extent that the Complainant was a victim of racial harrasment. [Note that the Complainant and Forrest were the only non-whites working in the Central Workshop.]

There was no evidence presented that the memorandum or poster was circulating in the Central Workshop after the Complainant began working there. Mr. Fuller told Mr. Goldrick that he had ordered the poster to be removed when the Complainant came to the Central Workshop and this evidence was uncontradicted, and I accept that this occurred. There is no evidence to suggest that it was circulated within the Central Workshop after the time that Mr. Randhawa commenced employment there. Mr. Randhawa himself said that he wasn't even aware of this memorandum until the Fall of 1986 following the third competition that he had applied for. Mr. Arnold who is responsible for the Central Workshop said he had no knowledge of the poster being in the Central Workshop. None of the other witnesses, who testified before this Tribunal, were aware of the poster or memorandum. Even Robert Magnuson testified he was not aware of it although I will deal with the veracity of his evidence later. The point to be made here though is that there is no evidence to suggest that this poster was circulating in the Central Workshop after Mr. Fuller had ordered it removed.

I should add that while it was generally acknowledged that Mr. Fuller was a racist and a bigot and had a hatred for East Indians, there is little, if any, evidence of direct harassment against the Complainant. While the Complainant agreed that Mr. Fuller could be cool to people who were not compatible with him, he said that he was not aware of any employees who have quit or were transferred because of him and he did not believe that he put people down. It seems that generally Mr. Randhawa and Mr. Fuller got along reasonably well in the workplace.

Mr. Randhawa states that he saw graffiti in the washrooms of the Central Workshop, and this was also confirmed by other witnesses. However, it would appear that Mr. Randhawa was less concerned about this than Kent Forrest who formally made a complaint about the graffiti. In fact, Mr. Randhawa never seemed to be personally affected by any racial incidents and certainly never complained about any until after the three job competitions had been completed in 1986. No racial slurs or incidents were directed at Mr. Randhawa personally. I am not attempting to lessen the seriousness of the poster and the comments made by Mr. Fuller and Mr. Magnuson regarding East Indians, but these were directed to East Indians as a whole and not specifically towards Mr. Randhawa. In response to Mr. Forrest's complaint, including his complaints of graffiti on the washroom walls, Mr. Arnold wrote a letter in January 1986 which was posted to the attention of all employees at the Central Workshop drawing to their attention that discrimination on the basis of race, national or ethnic origin, colour,

religion, age, etc. will not be tolerated and advising that disciplinary action will be instituted if any employee is found to be doing anything which would be a violation of the Canadian Human Rights Act. Mr. Arnold also testified that he spoke to the Central Workshop employees on January 10, 1986 and stated that he would not tolerate harrasing messages in toilet cubicles.

As indicated, most of the complaints that management had to deal with in respect to racial slurs and incidents were those relating to Kent Forrest. Although we are not dealing with Mr. Forrest's claim here, I do note that in all of the instances the management took some action. Mr. Forrest had made a complaint in 1983 which prompted management to address the issue and to post a notice on all highways and transportation department bulletin boards pointing out to employees the provisions of the Canadian Human Rights Act and indicating that any violation would be subject to discipline. Mr. Arnold, as already indicated, posted a similar memo in January of 1986. In addition, Mr. Arnold reprimanded one of the individuals that was involved in one of the incidents complained of by Mr. Forrest. A letter sent out by Mr. Arnold on January 23, 1986 described the letter as a "severe reprimand" and stated that a recurrence of the incident or any similar incident would result in an automatic suspension from work leading to possible dismissal. Evidence was also led by the Respondent as to various cross-cultural and affirmative action training courses dealing with discrimination in the workplace and other actions taken by the Yukon Government to ensure that any form of discrimination, racial or otherwise, be eradicated from the work force. In 1983 a letter was sent by the Deputy Minister of Highways & Transportation to all Managers, shops and divisions of the department.

In 1986 or 1987 Stan Fuller was moved out of the Central Workshop by management which has to be seen as a positive move given his entrenched feelings towards East Indians. Evidence was given at various workshops and seminars were given from 1986 right up to the time of trial to educate government, management and employees on human rights matters. So it cannot be said that management simply ignored this whole issue of racial harrassment. They addressed it when they became aware of it and they took steps to ensure that the workplace would become and remain free of any form of racial harrassment.

FIELD MECHANICAL SUPERINTENDENT COMPETITION

The first job promotion the Complainant alleges that he was denied, because of his race, was the Field Mechanical Superintendent position which became available in December 1985, as a result of the sudden death of Don Jones. As indicated previously, this was the position the

Complainant had applied for in 1983 but lost out to Don Jones. The Complainant stated in his evidence that, on his first day of work following Christmas 1985, he first learned of Jones' death and stated that it came as quite a shock to him. About two or three days later the Complainant stated that he was asked to see Henry Wenting who was the Mechanical

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Superintendent in the Shop at the time. When he went to see Wenting, Wenting asked if he would be interested in taking over Jones' position on a temporary basis. The Complainant told Wenting that he was still under shock, that the death happened so sudden and that he wanted to think about it for a couple of days. The Complainant says that he never did get back to Mr. Wenting with an answer, nor did Wenting approach him again on the matter. Wenting eventually appointed Robert Magnuson to the position, presumably because he didn't get a response from the Complainant.

A recruitment action request dated December 23, 1985 was forwarded to the Public Service Commission of the Yukon by the Department of Community & Transportation Services to initiate the process for the hiring of a new Field Mechanical Superintendent. A job advertisement or notice was eventually posted in respect to this position which set March 7, 1986 as the deadline for applying for the position. It should be pointed out that this was a management position offering a salary range of \$40,166.00 to \$52,232.00 per annum.

As part of the hiring process a Hiring Board was set up. It was explained by witnesses employed by the Public Service Commission that generally the Hiring Boards consist of one representative from the Public Service Commission, a personnel representative from the Department, and the direct Supervisor of the position. With respect to the Field Mechanical Superintendent position, the Hiring Board consisted of Dick Arnold who at that time was Manager of Mechanical Operations for the Department, Connie Zatorski who was the departmental representative from Personnel, and Glenis Allen who was the Public Service Commission representative.

Connie Zatorski testified that, as the departmental personnel representative on the Hiring Board, she started the hiring process by placing the recruitment action request which would have set out some of the details of the position. Glenis Allen, who was the Public Service Commission representative on the Board, said her responsibility was, upon receiving the recruitment request, to discuss the competition with the Department, write up an ad or notice of employment and to do up a statement of qualifications in conjunction with the Department. It was generally acknowledged by the witnesses from the Public Service Commission that their

responsibility was to ensure that the hiring process was conducted fairly and to assist in the shortlisting of applicants, the interviews, etc. It was the Public Service Commission's role to ensure that the successful candidate was certified, in other words that the successful candidate had all of the essential or mandatory requirements for the job. It was the Department's responsibility, and in particular the responsibility of the immediate Supervisor on the Board, to select a candidate from those who were certifiable. The usual procedure is to shortlist the applicants, conduct the interviews, identify those shortlisted applicants who were certifiable and then to have the Department choose what they consider to be the most qualified candidate from those that were certifiable.

Ms. Goldrick testified that her investigation revealed that twenty-four applicants applied for this position and that five applicants

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including the Complainant were interviewed. There was a further shortlist of three final candidates. The three candidates were Robert Magnuson, who at the time was already Acting Field Mechanical Superintendent as previously noted, Bert Frederickson, who at that time was employed outside of the Department, and the Complainant Mr. Randhawa. Of the shortlisted candidates the Complainant was the only non-white person.

Of the final three candidates, Glenis Allen, the Public Service Commission representative, found both Bert Frederickson and the Complainant to be certifiable but would not agree to certify Mr. Magnuson because he did not meet all of the mandatory requirements for the position. It was very clear, however, that Dick Arnold not only wanted Mr. Magnuson certified but wanted him appointed to the position. A dispute ensued between Arnold and Allen over Magnuson's certifiability. Ms. Allen and the Public Service Commission refused to give in on this issue and, following discussions amongst the Board members, Mr. Malleck who was the Director of Recruitment and Training for the Public Service Commission sent a letter to Mr. D.G. Campbell, the Assistant Deputy Minister of Highways & Transportation at the time, and advised him and his Department to make a decision from amongst the two certified candidates, Mr. Frederickson and Mr. Randhawa. From the evidence there is no question that the successful candidate would be selected from the final three shortlisted candidates, being Mr. Magnuson, Mr. Randhawa and Mr. Frederickson, and since Mr. Magnuson was not certifiable then it came down to Mr. Frederickson or Mr. Randhawa. The Department of Community & Transportation Services came under the Ministry of Highways & Transportation and Mr. Campbell was Dick Arnold's superior. Pat Cumming who was head of the Yukon Public Service Commission testified that while it was the Public Service Commission's

responsibility to certify the applicants, it was the Department that was allowed to select the successful candidate from any of the certified applicants. While under the Public Service Commission Act the deputy head of the Department has the right to choose amongst the certified candidates regardless of ranking, Ms. Cumming testified that the practice was that only the top rank candidate would be selected. Connie Zatorski stated in her evidence that the direct Supervisor of the position is the one that chooses from the list of certified candidates in normal situations, and of course this was Dick Arnold in this particular instance.

Both Connie Zatorski and Glenis Allen took notes during the interview and their top rank candidate was, as previously indicated, Bert Frederickson. Mr. Arnold used his own pointer grading system during the selection process and ranked Mr. Magnuson first, Mr. Randhawa second, and then Mr. Frederickson. Mr. Arnold's position on the ranking of these candidates did not appear to change throughout the selection process. In a lengthy letter to Mr. Campbell dated April 3, 1986 Mr. Arnold set out what he stated in the letter were his "observations, recommendations, remarks and concerns along with an outline of the duties of the position". He described what he considered to be the strengths and weaknesses of the three final candidates and recommended that Robert Magnuson be appointed to this position. Mr. Arnold was obviously trying to exert some pressure at a senior level to have Mr. Magnuson certified so that he could be selected

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for this position. However, as previously mentioned, Mr. Arnold was unsuccessful in changing the Public Service Commission's position in this regard. Mr. Arnold confirms in his letter that his second choice was Mr. Randhawa. He states in his letter "Should our P.S.C. representative refuse to certify Mr. Magnuson over those with more supervisory experience, it is evident that the next most suitable candidate is Mr. Randhawa."

Mr. Arnold went on to state that "In view of his high wage demands the P.S.C. may have a problem in recommending him for a job offer", referring to the Complainant. Dealing with the issue of Mr. Randhawa's salary requirements, both Mr. Arnold and Glenis Allen stated that it could become an issue. Glenis Allen testified that she got the impression from the Complainant that if he was offered less than \$47,000.00 to \$48,000.00 per year, he wouldn't be interested in the position and the feeling was that this was a little on the high side for a starting salary in this position. Connie Zatorski testified that she couldn't recall any discussion about salary at the interview, while the Complainant testified that he mentioned a salary figure but didn't indicate that he wouldn't work for less. In any event, the evidence presented by Ms. Cumming and others

from the Public Service Commission was that salary does not enter into the picture until the successful candidate is selected. At that point, the candidate is then offered the job at a certain salary, and if the candidate is unwilling to accept the salary then they would select the next ranked candidate. In other words, the successful candidate was always given the option to accept or reject whatever specific salary was being offered within the posted range.

As indicated, Mr. Campbell became involved in this process when Mr. Arnold tried in vain to get Magnuson certified. While it was unusual for the Deputy Minister to become involved in this selection process, there was nothing improper about it. However, what was unusual was that Mr. Campbell himself made the final selection and chose Mr. Frederickson over Mr. Randhawa, contrary to Mr. Arnold's rankings and recommendations. Why Campbell chose Frederickson is a mystery. Both in his statement to Ms. Goldrick and in his all testimony before this Tribunal, Mr. Campbell could not give a satisfactory explanation as to why he chose Mr. Frederickson over Mr. Randhawa. He stated that he did his own analysis but had difficulty providing any details of this analysis or any reasonable basis for his findings.

Connie Zatorski testified that she has sat on hundreds of Hiring Boards and in her statement to Ms. Goldrick stated "I am not aware of any situations where, after the Board interviews, a member of the Department who is not on the Board, does an assessment of the candidates to determine who should be selected for the position." Goldrick states that at no time during her discussions with Mr. Campbell did he give her a direct explanation as to why the Complainant was not considered by him for the position.

It is equally as perplexing as to why both Glenis Allen and Connie Zatorski rated Mr. Frederickson ahead of Mr. Randhawa. One of the

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things they said they were concerned about was the Complainant's willingness to travel which was an essential component of this job. The Complainant testified that he understood the travelling requirements but left the impression with the Board that he felt the amount of travel could be reduced. However, he said he didn't indicate that he wouldn't travel, and Mr. Arnold, in his letter to Mr. Campbell, stated that the Complainant was prepared to accept the need to travel up to 75% of his time, which from the evidence of Mr. Arnold seemed to meet the travel requirements of this position. Ms. Zatorski in her evidence said that it was her understanding that the successful candidate would have to be away from Whitehorse more

than 50% of the time, and, since this is considerably less than what the Complainant was willing to do, I fail to see the logic of this concern. On the evidence given by Ms. Allen and Ms. Zatorski, I fail to see how they could have any substantial concern at that time that the Complainant would not meet his travelling requirements.

Connie Zatorski also stated that, in her view, Mr. Randhawa wasn't as strong as Frederickson in the areas of preventive maintenance programs. However, she didn't provide any details as to what these concerns were, and furthermore, this was clearly something within Mr. Arnold's area of expertise and there was no concern expressed by Mr. Arnold in this regard. In cross-examination, Ms. Zatorski stated that Frederickson, in her view, demonstrated what she called "deeper skills" in the areas of finance and supervisory experience. However, Mr. Arnold testified that the financial aspects of the job, and in particular, the ability to prepare budgets, was only a desirable qualification as opposed to a mandatory one. While Frederickson had more supervisory experience, Arnold was satisfied with Mr. Randhawa's eight years of supervisory experience working in Canada.

During the interview Ms. Allen said she found Mr. Randhawa, at times, somewhat difficult to understand and had some concern with his communication skills and his ability to communicate with the workers. However, Mr. Arnold stated in his letter to Mr. Campbell that Mr. Randhawa was a "good communicator". While Mr. Randhawa may have been soft spoken during the interview, I think it would be rather difficult to question his ability to communicate given the fact that he has occupied the most senior position in the Yukon labour movement. I just fail to see how anyone could be elected to the President of the Yukon Federation of Labour and the President of the Yukon Government Employees Union without good communication and inter-personal skills. Therefore, I cannot accept that there is any merit whatsoever to not hiring Mr. Randhawa on the basis of his personal suitability.

The impression that I am left with is that there was no reasonable explanation provided by any of the participants in this hiring process as to why Mr. Randhawa was not selected for the Field Mechanical Superintendent position. He was certified by the Public Service Commission and he was designated by Mr. Arnold as his second choice behind Mr. Magnuson. Since Mr. Magnuson was not certifiable, Mr. Randhawa ought to have been offered the position in the absence of some reasonable and

credible explanation. We are not talking about a situation here where either Ms. Allen or Ms. Zatorski had the final say in the selection. They certainly had input into the process but it was Mr. Arnold who was the person best able to judge who would be the most suitable candidate from those shortlisted certified candidates. It was Mr. Arnold who was the supervisor of the position, and it was Mr. Arnold who had the most knowledge of what was required in that position. It was Mr. Arnold's function and responsibility to do this, and it was the practice of the Ministry or Department to accept his selection or his recommendation unless some compelling reason was shown that Mr. Arnold had erred or for some other reason had made the wrong selection. No evidence in this regard was presented to this Tribunal. We are left with no satisfactory explanation. [Allen stated that she had no reason to dispute the Complainant's mechanical or technical skills. Also she confirmed that Frederickson did not have any experience or familiarity in airport lighting systems as did the Complainant, nor did she believe that Frederickson had any knowledge of government policies while the evidence suggests that the Complainant did have knowledge of government policies. [Allen also said "Mr. Arnold has the authority to make the selection out of the certified candidates." She was asked the question "So he could be the one to pick between the certified candidates the one that he wanted?" Answer "Yes". She also indicated in her direct evidence that she had conducted one reference check on the Complainant outside of the Government and it was with Cypress Anvil, and they stated that they recalled that the Complainant had good mechanical knowledge and a good technical background and wouldn't have a problem hiring him back in that field but they had concerns about hiring him back as a supervisor. On cross-examination she confirmed that she had previously given a statement to Goldrick where she said that she couldn't recall whether they had said they would take him back as a supervisor. Therefore, there is some inconsistency here between her statement given to Goldrick and her statement given under oath at the hearing in this regard.]