

2003/03/06

MEMBER: Anne Mactavish

[1] Tara Hodgins filed a complaint against her former employer, Transport North American Express Inc. ("TNA"), alleging that the company failed to provide her with a harassment-free workplace, in breach of its obligations under the *Canadian Human Rights Act*. She also alleges that her employer treated her in an adverse differential fashion and terminated her employment because of her pregnancy. Ms. Hodgins subsequently filed additional complaints against the former owners of the company, Ken and Karen Dragosists, alleging that both Mr. and Ms. Dragosists sexually harassed her in the course of her employment with TNA.

[2] In preparation for the hearing of Ms. Hodgins' complaints, the Tribunal Registry sent pre-hearing questionnaires to each of the parties. Neither Mr. Dragosists nor Ms. Dragosists have responded, or given any indication to date that they intend to participate in the hearing. TNA returned its completed questionnaire. At the same time, David Bazar, one of the current owners of TNA, asked that "The Commission consider removing TNA as a respondent in this matter since it seems to me that there can be no useful purpose served by TNA being a respondent." Given that the request was sent to the Canadian Human Rights Tribunal, I understand TNA to be seeking an order from the Tribunal dismissing the complaint against TNA, and have treated Mr. Bazar's correspondence as a motion for such relief.

[3] TNA's submissions are very brief. Although Mr. Bazar was afforded the opportunity to file more complete submissions in support of the company's request, he elected not to do so. I must therefore address the company's request based upon the limited information before me.

[4] Mr. Bazar indicates that he and his wife acquired control of Transport North American Express Inc. subsequent to the events described in Ms. Hodgins' complaint. As a consequence, neither Mr. Bazar nor his wife have any knowledge of the facts surrounding Ms. Hodgins' allegations. According to Mr. Bazar, the assets of TNA were seized last July, following a demand for repayment by the Bank of Montreal, which was evidently a secured creditor of the company. Mr. Bazar states that TNA's assets were subsequently sold by a Trustee. The company currently has no assets or employees, and is no longer generating any revenue.

[5] The Commission's submissions are predicated upon the assumption that TNA has gone through formal bankruptcy proceedings. Mr. Bazar does not, however, assert that

TNA was ever in bankruptcy. As a result, I do not need to consider the effects that such a bankruptcy might have had on these proceedings. It may well be that the Trustee referred to in Mr. Bazar's correspondence was appointed under the Bank's security agreement, for the purposes of realizing on the Bank's security.

[6] TNA was Ms. Hodgins' employer. Section 65 (1) of the *Canadian Human Rights Act* makes employers liable for harassment in the workplace, where the harassment involves one or more of the proscribed grounds enumerated in Section 3 of the *Act*, unless the employer can satisfy the elements of the due diligence defense described in Section 65 (2) of the *Act*. The fact that control of TNA may have changed in the period between Ms. Hodgins' departure from the company and the present time does not, by itself, operate to relieve the company of liability for any discriminatory conduct that might have occurred in the workplace prior to the change in control.

[7] Mr. Bazar asserts that Mr. and Ms. Dragosists are no longer associated with the company, and that the company is currently in litigation with the Dragosists. As a result, Mr. Bazar says, the company is unable to call any witnesses in its defense. There is no suggestion, however, that the Dragosists are unavailable to testify. It is open to TNA to subpoena the Dragosists if it deems their testimony to be necessary for its defense.

[8] Accordingly, TNA's motion for dismissal of the complaint against the company is dismissed. Given the limited information provided to the Tribunal regarding the circumstances surrounding the change in ownership of TNA, however, I am dismissing the motion without prejudice to TNA's right to renew its request at the hearing of this matter, provided that such request is supported by a more complete evidentiary foundation.

[9] Given Mr. Bazar's assertion that TNA has no assets, and generates no income, Ms. Hodgins and the Commission may wish to consider whether there is any useful purpose to be served in pursuing the complaint against TNA. That is, however, a decision for the Commission and Ms. Hodgins, and not for this Tribunal.

"Original signed by"

Anne Mactavish

OTTAWA, Ontario

March 6, 2003

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T745/5002, T746/5102 and T747/5202

STYLE OF CAUSE: Tara Hodgins v. Transport North American Express Inc. and Ken Dragosists and Karen Dragosists

RULING OF THE TRIBUNAL DATED: March 6, 2003

APPEARANCES:

Dan Pagowski For the Canadian Human Rights Commission

David Bazar For Transport North American Express Inc.