

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

HUMAN RIGHTS TRIBUNAL

BETWEEN:

TINA (HUBBERT) RADFORD

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

WORLDWAYS CANADA LTD.

Respondent

DECISION OF THE TRIBUNAL FOR
TINA (HUBBERT) RADFORD RELATED TO DAMAGES

TRIBUNAL: Carl E. Fleck, Q.C. - Chairman
Dudley Campbell - Member
Judith Dohnberg - Member

APPEARANCES:

René Duval Counsel for the Canadian Human Rights
Commission

DATE AND
LOCATION OF

HEARING: July 19, 1991
Toronto, Ontario

Reference: T.D. 1/91
April 5, 1991

This decision is the completion of the complaint filed by the

Complainant Tina (Hubbert) Radford. The decision rendered on April 5th, 1991 upheld her complaint of discrimination as it relates to the Respondent Worldways Canada Ltd.

On consent of all counsel in the main hearing it was agreed that the question of discrimination would be decided before a determination of the question of damages. This Tribunal was reconvened on July 19th, 1991 to consider the question of damages to be awarded to the Complainant Tina (Hubbert) Radford.

Before dealing with the question of damages certain developments occurred following the decision on discrimination rendered April 5th, 1991. Counsel for the Respondent Worldways Canada Ltd. Mr. Pollock was apparently discharged by the Respondent. On July 15th, 1991 a letter was forwarded to the Canadian Human Rights Commission (hereinafter referred to as "C.H.R.C.") by the firm of Ogilvy, Renault indicating that they were undertaking the representation of the Respondent Worldways Canada Ltd.

This letter indicated that counsel of this firm was not going to appear on the date scheduled for the hearing which was July 19th, 1991.

This Tribunal through the Registrar's office advised counsel that the complaint had been commenced approximately five years ago and that there had been several adjournments conceded to at the request of the Respondent as well as a request to split the question of determination of the complaint as it relates to discrimination and damages. All of these requests were conceded

- 2 -

to and the Respondent was accommodated throughout. Mr. Pollock was apparently discharged in April and approximately three months elapsed before any effort was made to advise the Tribunal of a change in counsel. The letter filed on behalf of Worldways through the firm of Ogilvy, Renault indicates in a concluding paragraph that the question of damages would be academic in any event since the operations of Worldways ceased on October 11th, 1990.

Evidence was called at the hearing on July 19th, 1991 and the Tribunal heard from Mr. Peter Douglas the national representative for Canadian Union of Public Employees. With respect to the question of Worldways operations he gave evidence that the Union had negotiated a contract with Worldways on a short time basis for the balance of 1991 and part of 1992 to continue operations. He described the nature of his negotiations with Worldways which indeed he outlined were conducted through

their solicitors Ogilvy, Renault. He gave evidence that the basis of the negotiations were on the understanding that there would be a revitalization of the airline as opposed to a termination of its operation. He outlined that under the restructured company Mr. D. Donald Bunker would be Chairman of the Board. Mr. Bunker is a senior counsel with Ogilvy, Renault.

The Complainant Tina (Hubbert) Radford gave evidence that at the time she had made her application in June 1985 with Worldways she was employed as a C.R.-2 Temp. with the Provincial Government. At the time she applied she was single and living on her own and thought a career with the Respondent would be an exciting challenge and a method of travelling the world. She testified that she had completed Grade 13 and that she was in good health. Following her graduation from secondary school she held a number of clerical jobs.

She outlined in detail the experience with the Respondent at the time of her interview. She recalls attending with several other people at the premises of the Respondent. This interview had been set-up approximately one week after she had applied to the Respondent in June 1985. She was interviewed by a female employee of the Respondent and halfway through the interview was told that the interview was terminated because she did not meet the visual requirements.

The Complainant indicates that as a result of this treatment she was extremely upset and discouraged.

The Complainant gave evidence of the position she held following the interview in June 1985. In addition there were filed as exhibits her various T-4 slips for the years 1985 through to the present date. Since the interview in 1985 she has married and started raising a family. It should be noted that the hospitalization and medical benefits and most importantly the pregnancy leave benefits were a particularly attractive feature for the Complainant as it relates to her obtaining employment with the Respondent. A review of the exhibits filed would indicate that she earned the following income:

- a) 1985 \$ 3,279.00;
- b) 1986 \$18,539.02;
- c) 1987 \$21,939.00;
- d) 1988 \$27,765.00;

TOTAL \$71,522.02

She testified that with respect to her last position

they did not have paid maternity leave nor did they have part-time work available. Apparently she had raised with her employer Intercity Paper the question of working part-time after she was due to come back in October of that year from her maternity leave. They did not have any part-time work available.

During 1989 and 1990 she spent time with her family although she applied for temporary work through an employment agency.

The Complainant testified that she was seeking an Order from the Tribunal to be awarded the next available job as a flight attendant with the accompanying seniority for the position that she had been denied as a result of the interview of June 1985. In addition she seeks damages for hurt feelings and damages for the loss of benefits that would have been afforded to her through employment with the Respondent.

Counsel for C.H.R.C. called Mr. Peter Douglas a representative of C.U.P.E. (Airline Division) to outline the nature of the employee wage structure and benefits of the Respondent. He is senior representative having worked some seventeen years in the airline division of C.U.P.E. which represents virtually all flight attendants in Canada. He was fully conversant with the various collective agreements negotiated since 1984 through to the present time and the wage structure and benefit package arising therefrom. He testified as to these agreements which were filed as Exhibits. He had participated in the negotiation of most of these agreements.

Mr. Douglas testified that a flight attendant's salary is calculated on the basis of flight hours. There is a minimum guarantee of sixty-five flight hours per month in the collective agreement. He estimated that a fair average of hours received by a Worldways flight attendant was seventy-five hours a month over a year's time. At the request of counsel for C.H.R.C. Mr. Douglas prepared calculations which formed the basis of the overall wage loss of the Complainant. This calculation was filed as Exhibit HR-18 entitled "Wage Calculations for Tina Radford".

The basis of the calculations assume that the Complainant commenced employment with the Respondent in June 1985 then followed the increases that would have accrued to her had she been employed down to the present time. He testified with the seniority she would have achieved she would have most likely have worked down to the present time even through the interim financial difficulties of the Respondent.

With respect to maternity leave provisions Mr. Douglas testified that the agreements called for a period of seventeen weeks and for a further twenty-four weeks for child care leave. He testified that many flight attendants have children and continue to fly and raise young children. He outlined further that there was a method of working on a full-time part-time basis by bidding their block of flights. Because the Complainant would have been a senior employee she would be able to make her schedule of flying around her child care arrangements. He also gave evidence that pregnancy does not prevent female flight attendants from flying.

Mr. Douglas outlined the health care benefits that are provided which includes a dental plan, drug plan and certain ancillary extended health benefits. In addition there is life insurance, accidental death, dismemberment and travel insurance. An important bonus for flight attendants is flying passes which allows an employee to virtually fly for no charge on any Worldways Flight to any destination on space available basis. There is a further arrangement between airlines wherein a flight attendant can arrange with another carrier to get a reduced rate fare.

- 4 -

To reemphasize Mr. Douglas testified that seniority was the most important possession of a flight attendant.

Mr. Douglas gave evidence as to the advancement possibilities within the Respondent's employment structure. He testified that advancement is allowed on a progression basis from a flight attendant through to an in-flight service manager (I.S.M.). This position is now referred to as an in-flight coordinator which is within the bargaining unit at a premium rate of pay. He testified that the Complainant would have had an excellent chance of applying for that position.

After hearing all evidence on the matter of damages and submissions for counsel of C.H.R.C. this Tribunal concludes that the following award is appropriate for the Complainant:

- a) It is ordered that the Complainant be awarded the next available job as a flight attendant with the Respondent Worldways Canada Ltd. and that this job offer shall carry with it the seniority that the Complainant would have had had she not been denied the position in the first place.
- b) It is ordered that the Complainant shall receive for lost wages the sum of \$120,619.43 less the sum of \$71,522.02 being the amount of income earned since June 1985. The net wage loss award is \$49,097.41.

c) It is ordered that she receive for value of the loss of benefits including medical, dental and pharmaceutical as well as loss of maternity leave benefits and flight passes the sum of \$10,000.00;

d) It is ordered that the Complainant shall receive the sum of \$1,000.00 for hurt feelings.

e) It is ordered that the Complainant shall receive interest on this award fixed at the prime rate from the date of the complaint being filed herein being 13% per annum.

DATED this 26th day of November, 1991.

CARL E. FLECK, Q.C. Chairman

DUDLEY CAMPBELL, Member

JUDITH DOHNBERG, Member