

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

**Between:**

**A.B.**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Eazy Express Inc.**

**Respondent**

**Decision**

**File No.:** T1798/2812

**Member:** Réjean Bélanger

**Date:** December 10, 2014

**Citation:** 2014 CHRT 35

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## **I. Introduction**

[1] Eazy Express Inc. provides courier and delivery services. One of its clients is Canada Post. For this client, Eazy Express provides daily parcel delivery along specified routes. It hires sub-contractors for each of these routes. These sub-contractors follow Canada Post procedures for scanning parcels prior to going out for delivery and again at the delivery point. This ensures parcels are tracked and delivered on time.

[2] The Complainant used to be a full-time sub-contractor for Eazy Express until she was terminated. Namely, Eazy Express says she was committing too many scanning errors. The Complainant alleges Eazy Express discriminated against her pursuant to section 7 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [the *CHRA*], by considering the prohibited ground of sex (pregnancy) as a factor in its decision to end her full-time courier job. Pursuant to section 10 of the *CHRA*, the Complainant also alleges her situation is reflective of a larger practice by the Respondent, whereby it encourages couriers to quit or terminates them when they become pregnant.

[3] Seven days of hearings were held in Guelph, Ontario from October 22-24, 2013, April 8-10, 2014, and August 12, 2014. A total of nine witnesses were heard.

## **II. Preliminary Issues**

[4] The Commission raised two preliminary issues. First, the Commission asks that the Complainant, another witness and two other persons named during the hearing be identified in this decision using initials. Second, the Commission raises the issue of whether the employment relationship between the Complainant and the Respondent is covered by sections 7 and 10 of the *CHRA*.

**A. Identifying the Complainant and other persons by initials**

[5] On this issue, the Commission submits that, since Tribunal decisions are publicly accessible, the Complainant, a witness, and two additional persons who did not testify, but whose names were mentioned during the hearing, be identified in this decision by the use of initials only and preferably not by their own initials. According to the Commission, personal matters, which do not deal with the issue of discrimination, were discussed during the hearing and will cause undue hardship to the persons involved in the events should they be made public.

[6] The Respondent objects to the request to use initials and submits the circumstances of the case do not justify it. It is unclear what undue hardship would be caused to the Complainant and the other persons involved and it contends that some of the personal matters go to the Complainant's credibility.

[7] I agree that some personal matters were discussed during the hearing that could potentially be harmful to the Complainant and another witness should they be disclosed publicly in this decision. As much as possible, I have anonymized this information in this decision. In fact, I did not find it necessary to refer to the other two individuals named during the hearing that the Commission and Complainant had concerns about. However, given the nature of the personal information disclosed during these proceedings, I will use the initials A.B. to identify the Complainant and C.D. to identify one of the witnesses.

**B. Is the employment relationship between the Complainant and Respondent covered by the CHRA?**

[8] This second preliminary issue arose because couriers at Eazy Express are independent contractors. According to the Commission, the evidence indicates that: (1) the remuneration and conditions of employment were unilaterally imposed by Eazy Express; (2) all couriers reported to the same supervisor; (3) the couriers were provided the tools of work such as the uniforms, radio and scanner to the exception of the vehicle for which a set compensation was provided; (4) the couriers had to perform their work during set hours determined by Eazy Express; and,

(5) the couriers were obliged to follow Eazy Express' policies and procedures. Based on applicable case law (namely *Canadian Pacific Ltd. v. Canada (Human Rights Commission)*, [1991] 1 F.C. 571 (C.A.) (QL); and, *McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39, among others), the Commission submits there was an employment relationship between the Complainant and Respondent, which is covered by sections 7 and 10 of the *CHRA*

[9] The Respondent does not take issue with the *CHRA* being applicable to the employment relationship between it and the Complainant. Therefore, for the reasons expressed by the Commission above, I accept that the employment relationship between the Complainant and Respondent is covered by sections 7 and 10 of the *CHRA*.

### **III. Legal Framework**

[10] The complaint is brought under two different sections of the *CHRA*. Section 7(a) of the *CHRA* makes it a discriminatory practice to refuse to employ or continue to employ an individual, because of a prohibited ground of discrimination. Section 10(a) of the *CHRA* makes it a discriminatory practice for an employer to establish or pursue a policy or practice that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination. Sex is a prohibited ground of discrimination, which includes discrimination on the basis pregnancy (see sections 3(1) and 3(2) of the *CHRA*).

[11] The Complainant has the burden of proof of establishing a *prima facie* case of discrimination. A *prima facie* case is "...one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent" (*Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC) at para. 28).

[12] In the context of this case, to demonstrate *prima facie* discrimination the Complainant must show: that she had a characteristic protected from discrimination under the *CHRA*; that she experienced an adverse impact with respect to her employment; and, that the protected

characteristic was a factor in that adverse impact (see *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33 [*Moore*]).

[13] A respondent faced with a *prima facie* case can avoid an adverse finding by calling evidence to show its actions were not discriminatory; or, by establishing a statutory defence that justifies the discrimination. Where the respondent relies on a statutory defence, the burden of proof shifts to the respondent (*Peel Law Association v. Pieters*, 2013 ONCA 396 at para. 67 [*Pieters*]). Where the respondent simply leads evidence to rebut the *prima facie* case, only the evidential burden shifts to the respondent (*Pieters* at para. 68). In that situation, the burden of proof remains on the complainant to establish the respondent's evidence is false or a pretext, and that the true motivation behind the respondent's actions was, in fact, discriminatory (see *Pieters* at para. 74; and, *Basi v. Canadian National Railway*, 1988 CanLII 108 (CHRT) [*Basi*]).

[14] Proving allegations of discrimination by way of direct evidence is generally difficult, as recognized by the Tribunal in *Basi*:

Discrimination is not a practice which one would expect to see displayed overtly. In fact, rarely are there cases where one can show by direct evidence that discrimination is purposely practiced.

[15] Therefore, in many instances, the Tribunal will draw the inference of discrimination, if any, from circumstantial evidence. As the standard of proof in discrimination cases is the ordinary civil standard of the balance of probabilities, "An inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses" (Béatrice Vizkelety, *Proving Discrimination in Canada* (Toronto: Carswell, 1987) at p. 142).

[16] Finally, it is not necessary that discriminatory considerations be the sole reason for the actions in issue for a complaint to succeed. It is sufficient if the Complainant's pregnancy was one factor in the decision to terminate her employment (*Holden v. Canadian National Railway Co.*, [1990] F.C.J. No. 419 (C.A.) (QL)).

**IV. Evidence at the hearing****C. Witnesses called by the Complainant and Commission****(i) The Complainant**

[17] The Complainant commenced her contract with Eazy Express Inc. towards the end of January 2008. She had been referred to the job by Ms. C.D., another courier for Eazy Express and her friend at the time. Initially, she worked as a contract relief worker. At the end of March 2008, when a full-time courier position became available, the Complainant was offered the contract.

[18] The Complainant testified that she had been pregnant twice during the time she worked for Eazy Express.

[19] She declared she was first pregnant in August 2008. According to the Complainant, this first pregnancy ended in a miscarriage around the weekend of August 22-23, 2008. The Complainant stated she informed her supervisor, Glenda Frandsen, and her other co-workers of her miscarriage on Monday, August 25, 2008.

[20] At some point during the month of August 2008, the Complainant testified that she had been told by Sherry Rideout, a co-worker, that Ms. Frandsen had said to another co-worker: "take her [the Complainant] to a clinic and get rid of the problem". The Complainant's understanding was that this comment was in reference to aborting her pregnancy.

[21] The Complainant announced a second pregnancy at the beginning of November 2008. She recalls informing 8 of her co-workers about the second pregnancy, but did not directly inform Ms. Frandsen. The Complainant says she did not inform Ms. Frandsen of the pregnancy because she had no reason to tell her. Later on she said she did not inform Ms. Frandsen based on her alleged comments regarding her first pregnancy ("take her [the Complainant] to a clinic and get rid of the problem").

[22] On Friday, November 21, 2008, the Complainant says she was unexpectedly called into a meeting with Ms. Frandsen and advised of the termination of her full-time job as courier. Ms. Frandsen's justification for the termination was that the Complainant was making too many scanning errors.

[23] Before that day, the Complainant says she was never told of her scanning errors, nor made aware of any performance issues and had never been disciplined for any reason whatsoever. She also claimed to have never had access to any report with regard to her scanner performance. She does admit however that some personal and family issues, which also involved C.D. and another co-worker, became a distraction in the office in August 2008. In this regard, the Complainant testified that Ms. Frandsen told her not to let her home life affect her work life. The Complainant recognized this was a "fair request", but added: "I deny Glenda said I had problems at work".

[24] Immediately after being informed of the termination, the Complainant told Ms. Frandsen of her second pregnancy. However, she assumed Ms. Frandsen must have already known about the pregnancy since she had already informed many of her co-workers about it. The Complainant assumed it was common knowledge in the work place that she was pregnant for a second time.

[25] Despite her termination, the Complainant says Ms. Frandsen offered her a part-time job as a relief worker for the upcoming Christmas period. The Complainant testified that she was shocked and hurt by Eazy Express' decision to terminate her full-time route but accepted, with reluctance, to work as a relief worker. She felt obliged to accept the offer because she was the only income in her household at that moment, with two children to support and the Christmas period nearing. In the Complainant's view, it was odd that Eazy Express would continue to have her work in relief considering she had been accused of making too many scanning errors and was not offered any additional scanner training.

[26] The Complainant testified that she started working as a relief worker on Monday, November 24, 2008. During that week, she claims to have overheard co-workers



discussing the termination of her subcontract. She confronted them and was told by her co-workers that her subcontract was terminated because she was pregnant. During that same week, she says she was also told by Jason Bunnaman, the courier hired to replace her, that she was terminated because she was pregnant.

[27] December 30, 2008 was the last day she worked at Eazy Express.

[28] Until the termination of her contract with Eazy Express, the Complainant says she got along well with Ms. Frandsen and agreed she was a decent supervisor and a fair person.

[29] The Complainant had a baby on July 19, 2009.

**(ii) Trudy Guenther**

[30] Ms. Guenther testified that she worked at Eazy Express for several years, as an independent contractor, and had three pregnancies during that period of time. As an independent contractor it was her understanding that she was responsible for any time off she needed, which would necessitate hiring someone to cover her route. Therefore, for the last 3 months of each of her pregnancies, she took the initiative to ask a member of her family to replace her on her route. She did not approach Eazy Express about the possibility of accommodation or having them find someone to replace her on her route.

[31] She also testified that she did not know anyone at Eazy Express who was fired as a result of being pregnant and said that she was not aware of the existence of any policy to deal with pregnant employees.

**(iii) Kim Bilton**

[32] Ms. Bilton started working at Eazy Express Inc. in the fall of 2005 as a relief driver, until February or March of 2006, at which time she became pregnant. At that time, she had a conversation with Ms. Frandsen and Maria Cunha, another Eazy Express supervisor, about her

pregnancy. According to Ms. Bilton, it was suggested to her to get another job where she would qualify for employment insurance maternity leave benefits, because contractors did not qualify for them. It was also suggested to Ms. Bilton that the physical demands of the job may not be good for the pregnancy. In this regard, Ms. Bilton claims Ms. Cunha told her that a pregnant woman working for Eazy Express in Cambridge lost her baby due to the physical demands of the job. Ms. Bilton also testified that she was told that Ted Brooks, the owner of Eazy Express at the time, did not have insurance to cover for pregnancy situations. Ms. Bilton added that no discussion regarding accommodation of her pregnancy took place, but that she could continue to work for the Respondent until she found another job.

[33] Ms. Bilton found another job and had her baby in October 2006. She testified that she did not feel slighted by the conversation with Ms. Frandsen and Ms. Cunha, nor did she have any ill feelings towards the company or her supervisors. Indeed, after her pregnancy, she returned to Eazy Express as a relief driver for the 2006 Christmas period. In February 2007, she got a full-time route.

[34] In March or April 2008, Ms. Bilton became pregnant again. Once more, in order to qualify for employment insurance maternity benefits, she decided to get another job before giving birth to her baby.

[35] Regarding scanning errors, Ms. Bilton was certain that all couriers made mistakes, but in her case, she was never spoken to about them.

**(iv) Sherry Rideout**

[36] Ms. Rideout is another former Eazy Express courier and co-worker of the Complainant. She also admitted to being friends with the Complainant. She worked for Eazy Express Inc. for approximately 7 months, from February to September 2008.

[37] Ms. Rideout testified that she considered the Complainant to be a very hard worker, that her work was phenomenal, that she was not lazy and that she was quick at doing her work.

[38] She testified that there was a lot of gossip and talk in the workplace about the Complainant's personal and family issues, and her conflict with C.D. She agreed that this was distracting in the workplace.

[39] Ms. Rideout testified that sometimes drivers made scanning errors and recognized that she made errors herself; and, that it was Ms. Frandsen's responsibility to follow up with drivers with respect to scanning errors.

[40] Ms. Rideout thought she got along well with Ms. Frandsen as a supervisor and believed she was a fair supervisor.

[41] The reason she left Eazy Express Inc. was because she did not make enough money to cover her vehicle expenses. She added that her leaving Eazy Express had nothing to do with Ms. Frandsen or the way she was treated by the organization.

[42] Ms. Rideout indicated that, at the beginning of August 2008, she overheard part of a conversation between Ms. Frandsen and another co-worker wherein Ms. Frandsen said: "Take her [the Complainant] to a clinic and get rid of the problem". She assumed the comment was in reference to an abortion clinic, but admitted "I could be wrong" in this assumption. In cross-examination, Ms. Rideout stated that she did not hear the other co-worker saying anything and only heard Ms. Frandsen's statement.

**(v) Jason Bunnaman**

[43] Mr. Bunnaman worked as a courier for Eazy Express Inc. from September 24, 2008 to March 16, 2011. He replaced the Complainant, as the full-time driver on her route following her termination in November 2008.

[44] At the time of being offered the Complainant's full-time route, Mr. Bunnaman testified that Ms. Frandsen told him the reason the Complainant was being removed from her route was that

she was making too many scanning errors, missed too much time, that she was pregnant and was considered a liability because Christmas was coming and there were heavy parcels to deliver.

[45] However, in cross-examination, Mr. Bunnaman was questioned on the content of his written statement of January 10, 2011, made to the Commission's Investigator, wherein he stated the Complainant had quit her job and had not been fired. He testified that what was written in the statement was true and that he voluntarily wrote the note.

[46] Mr. Bunnaman testified that he was terminated from Eazy Express after taking unauthorized time off. He considered his firing unfair and remains bitter about it. However, he admits he got along well with Ms. Frandsen as his supervisor.

[47] During his time at Eazy Express, Mr. Bunnaman testified that he made scanning errors sometimes, which were brought to his attention by Ms. Cunha and Ms. Frandsen, who asked him to be more diligent. There was no mention of any sanctions related thereto. Finally, Mr. Bunnaman testified that a printout was available for all drivers to check their scanning mistakes from the previous day.

#### **D. Witnesses called by the Respondent**

##### **(i) April Desaulniers**

[48] Upon request by the Respondent, the Tribunal issued a subpoena to Groves Memorial Community Hospital, in Fergus, Ontario, to get a copy of the Complainant's medical file for the time period of August 22, 23 and 24, 2008.

[49] April Desaulniers, a Health Information Management Professional with the Hospital, appeared before the Tribunal and produced the Complainant's medical records. Ms. Desaulniers found no record of any attendance by the Complainant on August 22, 23, or 24, 2008. She did however produce records for two different visits made by the Complainant to the Hospital during 2008.

[50] The first visit, in May 2008, was for a sprained ankle.

[51] The second visit, on August 18, 2008, for reasons that do not need to be divulged, indicated the Complainant was not pregnant at that time.

**(ii) C.D.**

[52] C.D. worked as a courier for Eazy Express Inc. from 2004 to 2012. She testified that she trained all new employees, including the Complainant. She agreed that scanning was an important function of the job.

[53] In C.D.'s view, the Complainant was making a lot of scanning errors. A report indicating each courier's scanning errors, left on a desk in the office, was available at the end of each workday for employees to identify their scanning errors, if any. According to C.D., based on consulting the daily scanning error report, the Complainant's errors were constant. Sometimes, C.D. said she noticed as many as 10 or 15 errors from the Complainant in a day.

[54] Regarding the Complainant's first pregnancy, C.D. remembers she was told about it by the Complainant and heard her discussing it openly at the workplace. She remembered she was told on a Monday by the Complainant that she had had a miscarriage during the weekend.

[55] Regarding the Complainant's second pregnancy, C.D. testified that the Complainant advised her in private that she was pregnant again. According to C.D., the Complainant asked her not to tell anyone about the pregnancy. C.D. said she respected the Complainant's wish.

[56] C.D. also testified about the gossip in the workplace regarding the personal and family issues faced by the Complainant. According to C.D., the gossip was such that she found it distracting in doing her job in view of the tense atmosphere it created. In fact, C.D. testified that she was involved in the personal and family issues being faced by the Complainant. As a result, while C.D. said she and the Complainant were friends until the personal and family issues began, they did not talk much afterwards.

[57] With regard to the Complainant's removal from her full-time route, C.D. testified that the Complainant had told her that the reason given for her termination was that the Complainant was committing too many scanning errors.

**(iii) Maria Cunha**

[58] Ms. Cunha started working at Eazy Express in 2004 and is the supervisor at the Cambridge office. She occasionally works in Guelph, filling in for Ms. Frandsen when she is unavailable. Ms. Cunha and Ms. Frandsen are also life partners. C.D. is also a friend of the couple.

[59] Ms. Cunha testified about her experience with pregnant women at Eazy Express. She made reference to three different cases.

[60] In the first case, the driver came to Ms. Cunha in about her fifth month of pregnancy indicating that her doctor had advised her that, due to medical complications, she should not carry on working as a driver. She provided Eazy Express 2 weeks' notice and moved on to a cab company. This driver subsequently came back to Eazy Express and was given a full-time run.

[61] The second case was Ms. Guenther. Ms. Cunha testified that Ms. Guenther decided to work up until the birth of her child, took 2 days off, and then came back to work. According to Ms. Cunha, Ms. Guenther arranged to contract out her run to a relative during her two day leave, as she did not want to lose the money for the run.

[62] The third pregnancy case Ms. Cunha spoke to was Ms. Bilton. Ms. Cunha recalled the conversation she had with Ms. Bilton regarding her pregnancy. She said Ms. Bilton came to her, informed her of the pregnancy, and asked what benefits were available to her from Eazy Express. According to Ms. Cunha, she explained to Ms. Bilton that as a self-employed contractor she was not entitled to employment insurance maternity leave benefits. She advised Ms. Bilton that to her knowledge, the only way she could access employment insurance benefits would be to get a job where she would be on the payroll for a number of weeks. Ms. Cunha indicated that she was

prepared to allow Ms. Bilton to continue to work at Eazy Express if she chose to, but that it was Ms. Bilton's decision to move to a temporary agency in order to access employment insurance maternity leave benefits. Ms. Cunha claims she was only providing friendly advice to Ms. Bilton so that she could become eligible for employment insurance benefits during her maternity leave. Ms. Cunha denies having told Ms. Bilton about a Cambridge employee who had suffered a miscarriage or that Mr. Brooks did not have insurance to cover pregnancy situations. She added that she has no knowledge of the company's insurance coverage.

[63] In the summer and fall of 2008, Ms. Cunha says she spent lots of time in the Guelph office because she was training new drivers and there was a Canada Post strike. During that time, she testified that she was advised by Canada Post of a high number of scanning errors made by the Complainant. Ms. Cunha remembered approaching the Complainant on 2 to 3 occasions to speak to her about her scanning errors. During these meetings, she says she would show the Complainant a report illustrating her errors. According to Ms. Cunha, the Complainant did not seem to recall making errors; she seemed distracted and not focused; and, was generally unable to provide any reasonable explanation for her errors.

[64] Ms. Cunha testified that there was no exchange of correspondence or any written material between Canada Post and Eazy Express with regard to the Complainant's scanning errors. Furthermore, the scanning error reports were shredded.

[65] Ms. Cunha also testified about Customer Relations Management complaints being received with respect to the Complainant, which involved customers complaining of a failure to make or attempt to make a delivery. According to Ms. Cunha, when she would approach the Complainant regarding these complaints, she would deny that these errors were being made.

[66] Ms. Cunha also testified about a discussion she had with Ms. Frandsen at their home on the evening of November 21, 2008, regarding the Complainant's termination. According to Ms. Cunha, Ms. Frandsen told her that Mr. Brooks instructed Ms. Frandsen to terminate the Complainant because of the scanning errors she was making. Ms. Cunha further testified that

Ms. Frandsen told her that immediately following the Complainant being notified of her termination she informed Ms. Frandsen that she was pregnant, that her husband was without work, that Christmas was coming and that she would be unable to provide for her two kids. Ms. Cunha said she only learned at that moment that the Complainant was pregnant again. Ms. Frandsen then told Ms. Cunha that she called Mr. Brooks to explain the situation and that Mr. Brooks maintained the termination of her full time route but, considering the situation, offered to keep the Complainant on as a relief driver for the Christmas period. Ms. Cunha then testified that Ms. Frandsen told her that Mr. Brooks instructed Ms. Frandsen to assist the Complainant with her scanning during her relief work in view of the scanning errors that the Complainant had been making.

**(iv) Glenda Frandsen**

[67] Ms. Frandsen has worked for Eazy Express since 2004, becoming a supervisor in the Guelph office in 2006. In her role as supervisor, she acts as a liaison between Canada Post and the Eazy Express drivers, and ensures that the drivers are respecting the proper processes, namely the scanning processes. She reported to Mr. Brooks, until he died in December 2012. According to Ms. Frandsen, Mr. Brooks was the only person with hiring and firing authority at the company.

[68] Ms. Frandsen testified that she has children herself and that lots of women who worked for Eazy Express became pregnant.

[69] Ms. Frandsen interviewed the Complainant for a position at Eazy Express and recommended her to Mr. Brooks for hire, who ultimately decided to hire her. According to Ms. Frandsen, the Complainant was initially a very satisfactory driver, who committed limited scanning errors and seemed to get along with fellow drivers. On this basis, she recommended the Complainant for a full-time route in March 2008 and Mr. Brooks authorized her nomination.

[70] Ms. Frandsen explained that Canada Post provided a daily report identifying each driver's scanning errors. Those reports highlighted errors made by the driver 48 hours earlier.



Those sheets were made available to all drivers for a review on a daily basis. The sheets remained the property of Canada Post and were destroyed after 6 months. Ms. Frandsen added that Canada Post also provided Eazy Express with Customer Relation Management complaints, which would show instances where a driver failed to attempt a delivery.

[71] Ms. Frandsen said the Complainant's scanning went from "impeccable at first" to "bad" in the middle of the summer of 2008 when "daily errors" arose. She testified that in early July 2008 Canada Post contacted her indicating that Eazy Express should work with the Complainant to decrease her scanning errors. Ms. Frandsen checked the scanning error report for that day and saw the Complainant had made 6 to 7 errors. In Ms. Frandsen's view, 1 to 2 errors per week was reasonable, but 6 to 7 errors in one day was quite remarkable. She says she showed the Complainant the errors report and asked for an explanation, but the Complainant did not have one. Ms. Frandsen testified that she worked with the Complainant to find a way to redress the situation.

[72] In late July, beginning of August 2008, Ms. Frandsen said there were rumours and innuendos in the work place relating to the Complainant's personal and family matters, including an issue with C.D. and another co-worker. Ms. Frandsen indicated that this was creating tensions among the drivers and between the Complainant and C.D. Ms. Frandsen informed Mr. Brooks of the situation. He told her to tell the Complainant and C.D. to be more professional in their working relationship. As required, Ms. Frandsen met with both of them and asked them to remain professional and to not create tension in the office because of their personal lives. According to Ms. Frandsen, they assured her of their cooperation and promised to discontinue talking about their personal lives at work.

[73] In early August 2008, a few days after the meeting she had with the Complainant and C.D., Ms. Frandsen says the Complainant informed her that she was pregnant (the first pregnancy). At that time, Ms. Frandsen testified that she asked the Complainant if she could continue performing her duties and asked her that if there was an issue with some of the parcels

being too heavy that she would come to her to ask for help. According to Ms. Frandsen, the Complainant said there was no problem and welcomed her invitation.

[74] On the Monday following the weekend of August 22, 23 and 24, 2008, Ms. Frandsen says the Complainant approached her to advise her that she had lost her pregnancy. She offered the Complainant to take time off if she felt it necessary. The Complainant declined the offer. Ms. Frandsen invited the Complainant to come to her if the situation changed.

[75] In October 2008, Ms. Frandsen was informed by Canada Post that the Complainant had committed 25 scanning errors in one day. According to Ms. Frandsen, Canada Post also indicated that, due to the amount of errors, the Complainant's route was "on the chopping block". Therefore, Ms. Frandsen was concerned the Complainant's scanning errors could affect Eazy Express' contract with Canada Post.

[76] Ms. Frandsen informed Mr. Brooks of the situation. He instructed her to give the Complainant one final warning.

[77] On that same day, Ms. Frandsen says she met with the Complainant, instructed her to get her errors under control and that it was her final warning. According to Ms. Frandsen, the Complainant broke down in tears, advised her that her husband was not working, that she was the sole income earner in the family, and that she would attempt to keep her errors under control.

[78] Over the next 2 weeks, Ms. Frandsen says the Complainant's scanning errors appeared to be declining. However, there were approximately four Customer Relation Management complaints reported by Canada Post over the next six weeks in relation to the Complainant's deliveries.

[79] In November 2008, Canada Post again spoke to Ms. Frandsen to inform her that 13 errors had been made in one day on the Complainant's route, and that the driver of that route needed to be replaced. Ms. Frandsen informed Mr. Brooks of the situation. He asked her if she believed she

had done everything possible to assist the Complainant and she replied in the affirmative. He then informed her to “cut her loose then”. Ms. Frandsen understood this as meaning that Mr. Brooks was giving her instructions to terminate the Complainant’s contract with Eazy Express.

[80] On that same day, at the end of the working day, Ms. Frandsen met with the Complainant. She says she informed the Complainant of the situation with Canada Post and Mr. Brooks’ decision. At that point, Ms. Frandsen says the Complainant began to cry and told Ms. Frandsen that she was pregnant. The Complainant was also worried about her children and the fact that Christmas was coming.

[81] Ms. Frandsen testified that this was the first knowledge that she had of the Complainant’s new pregnancy. This came as a surprise to Ms. Frandsen because the Complainant had just told her she had suffered a miscarriage a few weeks before. According to Ms. Frandsen, she told the Complainant that she would speak to Mr. Brooks to see if a temporary arrangement could be put in place.

[82] Following her meeting with the Complainant, Ms. Frandsen testified that she phoned Mr. Brooks and advised him that the Complainant was pregnant. He authorized Ms. Frandsen to offer relief work to the Complainant to assist her over the Christmas period, but on the condition that Ms. Frandsen assist the Complainant with her scanning.

[83] That evening, Ms. Frandsen says she phoned the Complainant to advise her that Mr. Brooks had authorized the relief work.

[84] According to Ms. Frandsen, the Complainant worked as a relief driver until December 31, 2008.

[85] Ms. Frandsen denies being present for or overhearing any conversation involving Ms. Bilton and Ms. Cunha about Ms. Bilton’s pregnancy.

[86] She also denies making the comment to take the Complainant to a clinic to get rid of the problem. She further added that she is against abortion and would never make such a comment.

[87] Ms. Frandsen also denies giving Mr. Bunnaman any reasons for the termination of the Complainant's contract. She says it is not her practice to discuss with drivers the reasons or the circumstances surrounding the termination of another drivers' contract.

**V. Has the Complainant established a *prima facie* case of discrimination?**

[88] As mentioned above, to establish a *prima facie* case of discrimination the Complainant must show: that she had a characteristic protected from discrimination under the *CHRA*; that she experienced an adverse impact with respect to her employment; and, that the protected characteristic was a factor in that adverse impact (see *Moore* at para. 33).

[89] There is no dispute about the first two elements of this analysis. The Complainant lost her full-time job. She was pregnant at the time she lost her job. Pregnancy is protected from discrimination by section 3(2) of the *CHRA*. The final question is whether the pregnancy was a factor in her losing her full-time route.

**E. Was pregnancy a factor in the Complainant's termination?**

[90] In the circumstances of this case, for pregnancy to have been a factor in the Complainant's termination, there must be some indication that Eazy Express knew about it. If Eazy Express did not know about the Complainant's pregnancy, then it could not have considered it as a factor in terminating her employment. My assessment of the Complainant's evidence does not lead me to believe, on a *prima facie* basis, that the Respondent was aware of the Complainant's pregnancy when it terminated her employment.

[91] The Complainant admitted that she did not inform Ms. Frandsen, her immediate supervisor, about her pregnancy until after her termination, because she had no reason to tell her. Later on she said she did not inform Ms. Frandsen because of her alleged comments regarding

the first pregnancy (“take her [the Complainant] to a clinic and get rid of the problem”). In any event, it is clear the Complainant did not directly inform Eazy Express of her second pregnancy. The Complainant assumed her employer knew about her second pregnancy since she had told 8 co-workers that she was pregnant. She assumed her pregnancy was common knowledge in the workplace. However, this abstract belief, without some fact to confirm that belief, is not enough (*Filgueira v. Garfield Container Transport Inc.*, 2005 CHRT 32 at paras. 41-43, aff’d 2006 FC 785).

[92] The Complainant says she overheard co-workers discussing her termination and they told her that she was terminated because she was pregnant. However, it is difficult to ascribe any weight to this evidence because none of these co-workers were called to testify and no context is provided to explain the basis of their assertion. On what basis did these co-workers determine that the Complainant was terminated because she was pregnant? Were they told this by a supervisor? Did they assume this because of the timing of the termination? Or, was it simply office gossip? Ultimately, this evidence leaves the Tribunal with another assumption, without anything to back it up.

[93] The only other evidence brought forward by the Complainant or Commission in support of the Respondent being aware of the Complainant’s pregnancy and having considered that fact in terminating the Complainant’s employment is the testimony of Mr. Bunnaman. However, his evidence was contradictory on this issue. On one hand, he enumerated a list of the reasons allegedly given to him by Ms. Frandsen for the Complainant’s contract termination, including that she was pregnant; while on the other hand he stands behind a previous statement he made to the Commission that the Complainant quit her job and was not fired. In this regard, I note Mr. Bunnaman’s statement to the Commission was made before his termination. During his testimony he admitted that he considered his termination was unfair and remained bitter about it. This makes me think he may have had a reason to take a stance in favour of the Complainant. Furthermore, I have difficulty believing that Ms. Frandsen, Mr. Bunnaman’s supervisor, would have given him a list of all the reasons for terminating an employee’s contract, including admitting to discrimination. This is especially the case when the witnesses called by

Complainant and Commission, including the Complainant and Mr. Bunnaman, indicated that they got along well with Ms. Frandsen and that she was a fair supervisor. Given the above, I give no weight to Mr. Bunnaman's statement regarding the reasons for the Complainant's termination.

**F. Did the Respondent have a practice of terminating pregnant women or encouraging them to quit?**

[94] The other evidence brought forward by the Complainant and Commission, the testimony of Ms. Guenther and Ms. Bilton, attempted to show that the Respondent terminates couriers or encourages them to quit when they become pregnant. The comments overheard by Ms. Rideout would also seem to fall under this allegation. The argument advanced here is that there is a systemic practice which can also be relied upon in support of proving individual discrimination against the Complainant. However, in my view, the evidence does not support the Complainant's allegations.

[95] Ms. Guenther and Ms. Bilton were pregnant multiple times while employed by Eazy Express. Ms. Guenther testified that it was her understanding that, as an independent contractor, it was her responsibility to arrange for someone to cover her route when she needed time off, including maternity leave. With each of her 3 pregnancies, she took the initiative to ask a member of her family to replace her on her route. She was not fired or encouraged to quit during or following her pregnancies. The Commission argues that the implication of Ms. Guenther's actions is that she would have lost her route had she not found a replacement, which seemed to be Ms. Guenther's understanding as well. However, she also indicated in her testimony that she did not approach Eazy Express to discuss this assumption or accommodation generally.

[96] Ms. Bilton testified that when she became pregnant in 2006 she had a conversation with Ms. Frandsen and Ms. Cunha regarding access to employment insurance benefits, the physical demands of the job and its potential effects on the pregnancy and the company's lack of insurance to cover pregnancy situations. During this conversation, she learnt that, given she was working as an independent contractor, she did not qualify for employment insurance maternity

leave benefits. According to Ms. Bilton, she was told that, if she wanted access to these benefits, it would be in her best interest to apply for another job where she could qualify for them. This is in fact what she did. She had not negative feelings towards Eazy Express or her supervisors because of this and subsequently returned to work for the company. She followed the same procedure for her second pregnancy, which also occurred while she worked for Eazy Express.

[97] I do not see anything discriminatory about this conversation. By inviting Ms. Bilton to seek work where she would be covered by employment insurance, and therefore could collect maternity leave benefits, appears to have been raised in the best interest of the employee and for valid economic reasons more than anything else. If the other issues were discussed, which the Respondent denies, Ms. Bilton did not indicate that she thought they were being raised in an effort to encourage her to quit. In the end, Ms. Bilton was not fired and decided on her own to pursue another employment opportunity where she could qualify for employment insurance.

[98] With regard to the alleged comments made by Ms. Frandsen to another co-worker and overheard by Ms. Rideout regarding the Complainant's alleged first pregnancy ("take her [the Complainant] to a clinic and get rid of the problem"), it is difficult to put much weight on this evidence given the co-worker involved in this conversation was not called to testify and no context to the conversation was provided. In any event, I am not sure what inference could be drawn from these alleged comments given there was no evidence regarding any discriminatory actions made against the Complainant with regard to her alleged first pregnancy. Even though the Complainant informed co-workers, including her supervisors, about her alleged first pregnancy, she was not fired and no evidence was submitted that she was encouraged to quit.

#### **G. Conclusion on *prima facie* case**

[99] Therefore, for the above reasons, there is insufficient evidence to support the Complainant's allegation that pregnancy was a factor in the Respondent's decision to terminate her contract as a full-time driver. Nor was there sufficient evidence to support the allegation that the Respondent terminates couriers or encourages them to quit when they become pregnant. As a

result, the Complainant has not established a *prima facie* case of discrimination under section 7 or 10 of the *CHRA* and her complaint is dismissed.

**VI. Has the Respondent provided a reasonable explanation for the decision to terminate the Complainant's contract?**

[100] While the Complainant has not established a *prima facie* case, I also accept the Respondent's explanation for its decision to terminate the Complainant.

[101] Ms. Cunha, Ms. Frandsen and C.D. testified that the Complainant was making numerous scanning errors between the months of July and November 2008.

[102] Ms. Cunha said she discussed the situation with the Complainant on a couple of occasions and her reaction was that she did not remember making scanning errors, seemed distracted and not focused and generally unable to provide any reasonable explanation for her errors.

[103] Ms. Frandsen testified that she received many complaints from Canada Post regarding the Complainant's scanning errors. When she met with the Complainant and asked her for explanations, she received none. She also says she worked with the Complainant to help her reduce her errors. However, that only seemed to work over the short term.

[104] Witness C.D. testified that on many occasions, while checking the daily scanning error report, she noticed the Complainant was making a lot of scanning errors, sometimes as many as 15 in one day.

[105] The evidence submitted by Ms. Cunha, Ms. Frandsen and C.D. supports the Respondent's explanation that the Complainant was terminated because of numerous and continuous scanning errors. While the Respondent did not submit documentary evidence to support the Complainant's termination, including any of the scanning error reports, records of conversations between the Complainant and her supervisors or conversations with Canada Post, I



am satisfied that the testimony of Ms. Cunha, Ms. Frandsen and C.D. is credible and reliable. They maintained a consistent version of the facts; their answers were generally clear and short; and, despite C.D. having personal issues with the Complainant and Ms. Cunha and Ms. Frandsen still working for the Respondent, they gave me no reason to believe they were testifying in a self-serving manner. Furthermore, the testimony that the Complainant's scanning errors grew over time and were most significant during a time when she was dealing with many significant events in her life, makes Ms. Cunha, Ms. Frandsen and C.D.'s evidence more plausible than not under the circumstances.

[106] The Complainant claims she never had access to any report regarding scanning errors, nor was she ever told of her scanning errors. However, many of the witnesses put this claim into question. Ms. Frandsen and Ms. Cunha explained that Canada Post provided daily scanning error reports, which were made available to all drivers for review. When the Complainant's scanning errors were brought to their attention by Canada Post, Ms. Cunha and Ms. Frandsen testified that they showed the scanning error reports to the Complainant, asked her for an explanation and tried to work with her to correct the problem. Witness C.D. indicated that she consulted the scanning error report regularly and noticed the Complainant was making a lot of scanning errors. Ms. Rideout testified that it was Ms. Frandsen's responsibility to follow up with drivers with respect to scanning errors. Finally, Mr. Bunnaman testified that a printout was available for all drivers to check their scanning mistakes from the previous day. Mr. Bunnaman added that he made scanning errors sometimes, which were brought to his attention by Ms. Cunha and Ms. Frandsen, who asked him to be more diligent.

[107] The Complainant and Commission also argue that the continuation of the Complainant's employment as a relief worker after her termination puts in question the Respondent's explanation for the termination. If Eazy Express was concerned about the Complainant's scanning errors why would they then continue to employ her in a role that involved scanning?

[108] Again, I accept Ms. Frandsen's evidence on this issue. She testified that once she informed the Complainant of her termination, it was then that the Complainant informed her that

she was pregnant; that her husband was without work; that she had to take care of their 2 children; and, that she was desperate because the Christmas period was coming. Ms. Frandsen then told the Complainant that she would speak to Mr. Brooks to see if a temporary arrangement could be put in place. Mr. Brooks authorized relief work for the Complainant over the Christmas rush period, with the caveat that Ms. Frandsen assist the Complainant with her scanning.

[109] The Complainant's version of these events does not differ significantly from that of Ms. Frandsen. She says Ms. Frandsen simply offered her the relief work following the Complainant's declaration that she was pregnant. However, she subsequently admitted that it was possible that Ms. Frandsen contacted her later in the evening to offer her relief work following a conversation with Mr. Brooks. In any event, it is clear that the relief work was offered in response to the Complainant's announcement that she was pregnant and her related concerns. Furthermore, the caveat of Ms. Frandsen assisting the Complainant with her scanning provides further probability to the reasons behind the Complainant's termination and subsequent job offer.

[110] As a final comment, and in evaluating the evidence as a whole, I note that I have doubts about the Complainant's credibility in general. Apart from some of the contradictions mentioned above (reasons for not informing Ms. Frandsen of her second pregnancy, at para. 91; and, never having access to the scanning errors report, at para. 106), I was struck by the inconsistency between the Complainant's version of events and the evidence of Ms. Desaulniers. The Complainant told her co-workers and Eazy Express that she was pregnant in August 2008 and that she suffered a miscarriage. She maintained this version of events before the Tribunal until the evidence of Ms. Desaulniers was brought forward. The evidence of Ms. Desaulniers also indicated the Complainant attended the hospital in May 2008 for a sprained ankle. However, the Complainant testified that, although she sprained her ankle around June 16, 2008, she did not go to the hospital. No explanation was provided for these inconsistencies in the evidence. While neither the inconsistency about the first pregnancy or the sprained ankle factored directly into my analysis of the issues in this complaint, I believe these additional credibility issues further reinforce my findings on a balance of probabilities.

[111] Therefore, for these additional reasons, even if the Complainant had established a *prima facie* case, I find the Respondent has provided a reasonable explanation for the Complainant's termination and that this explanation is not a pretext for discrimination.

## **VII. Decision**

[112] For the foregoing reasons, I find the Respondent, Eazy Express Inc., did not engage in a discriminatory practice on the prohibited ground of sex (pregnancy), under section 7 of the *CHRA*, when it terminated the Complainant's employment on November 21, 2008.

[113] I also find the Respondent has not engaged in a practice, within the meaning of section 10 of the *CHRA*, of terminating the positions of full time couriers, or encouraging them to quit, when they became pregnant.

[114] As the complaint is not substantiated, no remedy is ordered in favour of the Complainant.

*Signed by*

Réjean Bélanger  
Tribunal Member

Ottawa, Ontario  
December 10, 2014

**Canadian Human Rights Tribunal**

**Parties of Record**

**Tribunal File:** T1798/2812

**Style of Cause:** A.B. v. Eazy Express Inc.

**Decision of the Tribunal Dated:** December 10, 2014

**Date and Place of Hearing:** October 22-24, 2013  
April 8-10, 2014  
August 12, 2014  
  
Guelph, Ontario

**Appearances:**

A.B., for herself

Giacomo Vigna, for the Canadian Human Rights Commission

Thomas A. Stefanik, for the Respondent