

BEFORE THE HUMAN RIGHTS BOARD OF ADJUDICATION

IN THE MATTER OF THE YUKON HUMAN RIGHTS ACT

AND
IN THE MATTER OF

COUCHIE, Janice vs. D.W. Inglis Limited

— DECISION —

Prior to commencement of the hearing of this matter, the Respondent advised the Board that the correct name of the Respondent is D.W. Inglis Limited, accordingly, the name of the Respondent was amended on the Complaint from Canadian Tire Limited #452 to "D.W. Inglis Limited"

The Complainant in this matter alleges that she was denied employment as a cashier at the Canadian Tire Store in Whitehorse owned and operated by D.W. Inglis Limited as a result of her physical disability. The physical disability in question was a back injury, which prevented the Complainant from lifting. The Complainant alleges that this denial represented discrimination in connection with any aspect of employment or application for employment (Section 8(b) of the *Yukon Human Rights Act*) on the prohibited ground of physical or mental disability (Section 6(h)).

The Respondent's position was that it would be "undue hardship" (under Section 7(2)) for D.W. Inglis Limited to accommodate the Complainant's special needs in connection with employment as a cashier.

ISSUES:

- 1) Was the Complainant treated unfavorably on a prohibited ground set out in the *Yukon Human Rights Act* in connection with any aspect of employment or application for employment. If "yes" to (1) then, was the treatment based on:
 - a) reasonable requirements or qualifications for the employment;(S.9(b) of the *Act*)...or
 - b) other factors establishing reasonable cause for the discrimination. (S. 9(d) of the *Act*).

- 2) As discrimination on the ground of physical disability is alleged the Board must also consider Section 7 of the *Act*. If a physical disability is found which created special needs in the Complainant, the Board must consider the duty to make reasonable provisions in connection with the employment or whether this duty did not exist upon consideration of the factors set out in Section 7(2) of the *Yukon Human Rights Act* resulting in "undue hardship".

The Board heard evidence over the course of the two day hearing in this matter from the following individuals:

The Complainant: Janice Couchie

Witness: Susan Simpson (former cashier supervisor at Canadian Tire)

Witness: Linda Johnson (warehouse manager at Canadian Tire)

The Respondent: Doug Inglis

The Commission, the Complainant, the Respondent and the Board each had the opportunity to question each witness.

In addition the Board considered documents entered as exhibits in this matter as follows:

- Exhibit "A" Application for Employment – Janice Couchie, Dated June 10, 1994
- Exhibit "B" Record of Employment for Janice Couchie, Dated 08/08/94 (Box 19 Completed)
- Exhibit "C" Record of Employment for Janice Couchie, Dated 08/08/94 (Box 19 Not Completed)
- Exhibit "D" "The First Step" Questionnaire
- Exhibit "E" "The First Step" Evaluation Sheet
- Exhibit "F" Dr. Valorie Cunningham's computer generated notes
- Exhibit "G" Letter from Dr. Valorie Cunningham to the Yukon Workers' Compensation Health and Safety Board.
- Exhibit "H" Letter from Doug Inglis to Yukon Human Rights Commission
- Exhibit "I" Warehouse schedule for period commencing June 13, 1994 to July 30, 1994

On the first issue the Board finds on the evidence that the Complainant was treated unfavorably as a result of mental or physical disability pursuant to Section 6(h) of the *Yukon Human Rights Act*. However, due to the nature of the merchandise in this Canadian Tire store and the requirements of a cashier, the treatment of the Complainant, in this case, was based on reasonable requirements or qualifications for the employment as a cashier at Canadian Tire pursuant to Section 9(b) of the *Yukon Human Rights Act*.

The Board considered the evidence of Susan Simpson who indicated that cashiers are required to lift heavy objects (although if they need assistance they can ask others for

help). She also provided evidence that cashiers would take items out to the parking lot for customers and that, additionally, cashiers would have to bend into carts and turn heavy boxes in order to find price tags on them

With respect to the second issue, the Board considered evidence of the possible provisions, which were suggested to address the Complainant's physical needs as follows:

- 1) Provision of a stool with periodic breaks (for moving or stretching)
- 2) Asking other employees to assist when dealing with heavy items
- 3) Asking customers to assist in lifting or turning items at the cash.

The Complainant, in her Complaint dated December 2, 1994, clearly references consideration for her skills and experience as a *cashier*. The Complainant had only completed 12 or 13 shifts at the store and those shifts were shifts in the warehouse. The Complainant's evidence concerning the length of time she was required to work in the warehouse prior to moving to a cashier position was described by her as "two weeks", "a minimum of two weeks" and "up to two weeks". When questioned by a Board member, the Complainant agreed that the two weeks was flexible and dependent on job openings on the tills.

The evidence of other witnesses stated warehouse training of several months was typical and that movement to a cashier position was dependent on the need for a cashier at the time. The Board also heard conflicting evidence from Janice Couchie and Doug Inglis as to the conversation between them which took place on July 8th, 1994 when Ms. Couchie's employment options were discussed. Where their evidence conflicts, the Board prefers the evidence of Doug Inglis. The Board therefore finds that during this conversation the Complainant was adamant that she wanted a job as a cashier. It is clear from Mr. Inglis's evidence that the Complainant considered that she was entitled to be a cashier at that time (July 8th, 1994) and demanded that position.

On the facts of this case, the Board finds that D.W. Inglis Limited did not have the duty to make provisions in the cashier position for Ms. Couchie's specific physical needs because undue hardship would have resulted. The Board considers that the only realistic, reasonable provisions which could have been made in this case, as outlined on page four (4) of this decision, would have resulted in undue hardship to D.W. Inglis Limited as follows:

1) **Cost:**

- a) The Complainant would have displaced other cashiers because the evidence of Susan Simpson and Doug Inglis, was that there was no need for more cashiers at the time.
- b) The Complainant had no training on the cashier's till at Canadian Tire and would require the assistance of another employee during training.
- c) The Complainant would require assistance to move or turn merchandise to read pricing codes.

2) **Safety:**

- a) The Complainant would be in a position to injure herself further or injure a customer or other employee. (Mr. Inglis gave evidence that reaching for a heavy item from a shelf could result in the item falling, and injuring customer, employee or the Complainant herself.)

3) **Business Efficiency:**

- a) To schedule the Complainant, the manager would have to reschedule staff (as set out above, there were no openings on the cashiers' tills at the relevant time).
- b) The Complainant would have to continually request help from other employees and, as a very junior employee, this could create friction with other employees.

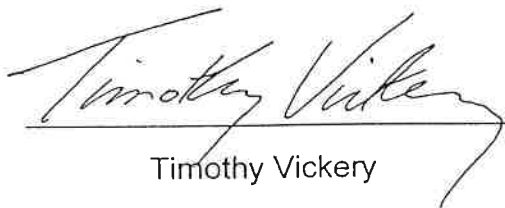
- 4) **Disruption to the Public:**
- a) The Complainant would, on occasion, inconvenience customers and expect them to assist her in moving merchandise if she was unable to do so and further, the Complainant would not be able to move certain heavy objects out to customers' vehicles.

Based on the particular facts of this case, namely, that the Complainant had no training as a cashier at Canadian Tire, that the Complainant couldn't lift items as one of her job functions and the fact that there were no cashier positions open at the relevant time, the Board finds that undue hardship would have resulted to the Respondent and finds that the Respondent did not fail to make reasonable provisions for the special needs arising from the Complainant's physical disability in the circumstances. The Board wishes to be clear that in no way is this finding to be read that persons with physical disabilities are not suitable for employment at Canadian Tire. This decision is based on the particular facts presented in this case.

The Complaint is dismissed.



Monica Leask, Chair



Timothy Vickery



Jan Kulicki