

BOARD OF ADJUDICATION DECISION

UNDER THE
HUMAN RIGHTS ACT

DERYCK HOCKLEY

COMPLAINANT

V.

GOVERNMENT OF YUKON PUBLIC SERVICE COMMISSION
and
YUKON GOVERNMENT EMPLOYEE'S UNION
(now PUBLIC SERVICE ALLIANCE OF CANADA)

RESPONDENT

Date of Complaint: September 20, 1988
Date of Hearing: June 3, 1992
Date of Decision: June 19, 1992
Place of Hearing: Whitehorse, Yukon
Before: CLIVE BOYD - Chair
CAROL GEDDES - Adjudicator, and
LONA HOBBS - Adjudicator
Appearances by: PAUL S. O'BRIEN - Counsel for the Complainant
and the Yukon Human Rights
Commission
THOMAS E. ULLYETT - Counsel for the Public
Service Commission
JAMES CAMERON - Counsel for the Yukon
Government Employee's Union
(now the Public Service
Alliance of Canada)

D E C I S I O N

Deryck Hockley was a permanent employee of the Government of Yukon and a member of the Yukon Government Employees' Union during 1987 and 1988. He was divorced from his wife on October 7, 1987. The couple had two sons and the Court granted custody to Mrs. Hockley with reasonable access for Deryck. Both parents were to maintain joint "guardianship"

of the children. Mr. Hockley understood this to mean that he was to maintain a daily responsibility for the care and upbringing of his children.

Mr. Hockley's access involved having the children live with him every other weekend and taking them for annual vacations of two to three weeks on Vancouver Island or Eastern Canada. In addition, he maintained regular and frequent contact with the children in his role as parent and paid financial support to his ex-wife in accordance with the court order. Mr. Hockely estimates that, on average, the children spent 100 days per year with him.

In the Collective Agreement between the Government of Yukon and the Union, one of the available benefits is the Yukon Bonus. In 1988 the Bonus provided a single employee with one non-refundable economy return air ticket for travel between Whitehorse and either Edmonton or Vancouver. Married employees without children could claim two such tickets. Married employees with children could claim a total of three such tickets. Single parents with two or more children could also claim three tickets.

In 1989 Deryck Hockley made a claim for three tickets from Whitehorse to Vancouver for himself and his two sons.

The Public Service Commission refused to provide the Bonus for the children because they were not residing with him. In Clause 33.02(c) of the Collective Agreement "child" is defined for the purpose of eligibility for the Yukon Bonus to mean "a person who is residing with the employee."

Mr. Hockley, with the support of the Union, grieved this denial of benefits through the internal grievance procedures under the Collective

Agreement. The Grievance was denied. At the hearing before the Public Service Commissioner, the Union, on behalf of Mr. Hockley, argued that the term in the Collective Agreement did not comply with the Human Rights Act. The Public Service Commissioner ruled that "Human Rights legislation cannot override collective agreements which are willingly entered into by both parties."

On September 20, 1988, Deryck Hockley filed a complaint with the Yukon Human Rights Commission naming the Government of Yukon Public Service Commission and the Yukon Government Employees's Union as respondents. He complained that by refusing to provide the Yukon Bonus for his children, the Government and the Union discriminated against him on the basis of marital and family status.

In September, 1991, the Yukon Human Rights commission requested that Mr. Hockley's complaint be referred to a Board of Adjudication for hearing.

The hearing was held in Whitehorse on June 3, 1992. Mr. Hockley and the Yukon Human Rights Commission relied upon an Agreed Statement of Facts and called no witnesses. The Public Service Commission called three witnesses: Terry Kinney, the Director of Pensions and Records; Pat Herbert, the present Director of Labour Relations; and Pat Cumming, the former Director of Labour Relations. The Union called Dave Hobbis, President of the Yukon Employee's Union. The Public Service Commission's witnesses testified about how the Collective Agreement was administered including giving details of how Mr. Hockley's claim was dealt with. Both the Public Service Commission witnesses and the Union witnesses testified that both sides recognized problems with the Yukon Bonus provisions in the Collective Agreement. During the last two rounds of collective bargaining, both parties proposed changes to the clause dealing with the Yukon Bonus. No proposed changes were mutually acceptable and the clause remained unaltered. The Board of Adjudication

does not see its role as helping the parties to draft a better collective agreement. We must decide whether language in the Agreement in force in 1988 violates the Human Rights Act.

- The Yukon Human Rights Act provides in Section 6(k):
"It is discrimination to treat any individual or group unfavourably on any of the following grounds:
Marital or family status..."
- Section 8(b) says "No person shall discriminate in connection with any aspect of employment..."

All parties agreed that Mr. Hockley's case dealt with his employment and therefore came within Section 8(b) of the Act. Mr. Hockley, the Yukon Human Rights Commission, and the Union all argued that he had been the victim of discrimination on the basis of marital or family status. The Public Service Commission disagreed.

The Board of Adjudication is not satisfied on a balance of probabilities that the complainant has established discrimination on the basis of marital or family status. The Board was impressed by the witnesses called by the Public Service Commission. We accept that the Collective Agreement was administered in a non-discriminatory way. In common sense terms, Mr. Hockley's children were not "residing" with him. Therefore, refusing to pay the Yukon Bonus was a reasonable and proper interpretation of the Collective Agreement.

We do not agree with the reasoning of the Public Service Commissioner who rejected Mr. Hockley's grievance under the Collective Agreement. If the language of the Collective Agreement violated the Human Rights Act, we would have no hesitation in finding for the complainant.


In this case, we do not believe Mr. Hockley was discriminated against on the basis of marital or family status. He would have been able to receive the Yukon Bonus whether he was single, married, divorced, widowed or separated as long as his children were residing with him. On the other hand, his marital or family status was equally irrelevant as long as his children were not residing with him.

The Collective Agreement made a distinction based on place of residence - which is not a prohibited ground of discrimination under the Human Rights Act.

For the reasons we have stated, we dismiss Mr. Hockley's complaint. The decision of the Board is unanimous.



CLIVE BOYD, Chair



CAROL GEDDES, Adjudicator



LONA HOBBS, Adjudicator