

Alberta worker's discrimination complaint dismissed for lack of evidence

It was 'difficult for the tribunal to find that she'd even experienced an adverse impact,' says employment lawyer



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“Employers need to be cautious about microaggressions, comments, and incidents that occur in the workplace, and try to maintain an awareness of whether those microaggressions and conflicts have the potential to create a poisoned workplace.”

So says Nathanael Bowles, a labour and employment lawyer at McLennan Ross in Calgary, after the Alberta Human Rights Tribunal dismissed a worker’s complaint alleging employment discrimination by a private school stemming from a conflict with co-workers.

The worker, who was an Arab woman originally from Tunisia, started working for Al-Mustafa Academy and Humanitarian Society (AMA), a Muslim private school in Edmonton, in September 2018 as a teacher’s assistant. Two years later, the worker moved into an administrative assistant role in the school office. Her four children attended school or daycare at AMA during the worker’s employment without paying school fees.

The worker had work-related conflicts with two co-workers referred to as OKS and GO. According to the worker, she was bullied and harassed by the co-workers and they made comments related to her job performance. GO, who had the worker’s son in their class, also criticized the son’s behaviour. However, she didn’t mention that she felt discriminated against to her spouse or her son and said that she felt “mentally fine.”

According to the worker, on one occasion OKS said the worker was leaning over his desk “like Israel over Palestine” and threatened the worker’s job, although they had no power over her employment.

Workplace conflict

Things escalated until the worker had a heated argument with both OKS and GO on Nov. 18. After the incident, the worker took one day of medical leave before resuming work briefly and then starting an extended leave on Nov. 22. According to the worker, she suffered from mental health problems after the argument and she gradually withdrew from her family.

While the worker was on medical leave, her son continued to attend AMA and delivered medical notes for his mother. According to him, he didn’t notice anything unusual about the school atmosphere or his treatment. All of the worker’s children continued to attend AMA until the end of June 2021.

The worker told her doctor that she had issues with two co-workers, but didn’t mention discrimination.

The worker filed a human rights complaint against the co-workers and AMA on Feb. 21, 2021, alleging that the bullying and harassment by her co-workers – along with comments by the school principal - was discrimination based on ancestry, place of origin, [race, and colour](#). She also alleged that her children were treated differently by her co-workers and the principal, which was discrimination based on family status – she alleged that the criticism of her one son and taking the other out of class for using his laptop to watch Netflix and texting was discriminatory, as was disciplining her daughter for using the “N word” during school.

The worker didn’t make a complaint to AMA before her human rights application, but had she raised concerns to AMA, it would’ve had an obligation to take action, says Bowles, noting that the employer responded quickly to her mental health issues.

“[AMA] granted her medical leave to deal with the medical injuries and illnesses that she was experiencing after the dispute, so that’s a positive action to accommodate a request for accommodation,” he says. “The employer did a great job of responding to its obligation to accommodate.”

Test for discrimination

The tribunal referred to the three-part [test for prima facie discrimination](#) established by the Supreme Court of Canada, which requires proof that the worker has a characteristic protected from discrimination, the worker experienced an adverse impact, and the protected characteristic was a factor in the adverse impact.

The tribunal accepted that the worker had protected characteristics under the Alberta Human Rights Act, including race, colour, ancestry, place of origin, and family status.

However, the tribunal noted several inconsistencies in the worker’s evidence. Despite her claims, there was no corroborative evidence confirming alleged discriminatory comments or treatment from the co-workers. The tribunal highlighted the absence of testimony from key witnesses, such as other staff at AMA, who could have potentially substantiated claims of a poisoned workplace. In addition, there was no evidence linking the “Israel over Palestine” comment or threatening her job to her protected characteristics, the tribunal said, noting that the worker had no mental health issues until after the heated argument.

As for the worker's family status, the tribunal found no evidence that her children were treated differently compared to other students. The testimony of her son, who continued to attend the school, didn't support the claims of discrimination. The discipline of her other son for using his laptop for Netflix and texting, and her daughter for using a racial slur, were consistent with school policy and there was nothing linking them with a protected ground, said the tribunal.

The tribunal didn't find sufficient evidence to conclude that AMA was a poisoned workplace. Although conflicts were described between the worker and her co-workers, these disagreements were related to her work performance rather than any protected characteristic, the tribunal said, noting that personal conflicts and criticism of work performance don't amount to a poisoned workplace unless linked directly to discriminatory conduct.

No proof of adverse treatment

The tribunal found that the worker didn't meet the second and third parts of the discrimination test - she failed to prove she suffered adverse treatment linked to her protected characteristics and no evidence was provided to show that a protected characteristic was a factor in any alleged adverse impact.

"The tribunal found that [the worker] failed to meet the burden of demonstrating that she experienced an adverse impact or, even if she had experienced an adverse impact that it was connected to her protected characteristics," says Bowles. "This case is interesting in that often the first two elements [of the test for prima facie discrimination] are almost taken for granted - where there's typically an adverse impact such as termination and a clear protected ground, and it's just about whether or not the [protected ground was a factor](#)."

"The ultimate factor that contributed to the complaint getting dismissed and the worker not proving that she'd experienced an adverse impact, was that she presented evidence that wasn't credible or reliable, and that made it difficult for the tribunal to find that she'd even experienced an adverse impact in the first place," he adds.

The tribunal noted that the worker's personal experience from the conflict with her co-workers was traumatizing and affected her mental health - and AMA should have acted more promptly and conducted an investigation - but there was no discriminatory conduct.

"The act cannot sanction all 'bad behaviour' which occurs between parties," said the tribunal in concluding that the complaint didn't rise above a workplace dispute among co-workers.

Conflict not discrimination: tribunal

The tribunal determined that the worker didn't establish any adverse impact based on a poisoned workplace. Although allegations of bullying and harassment were presented, the tribunal found no evidence to connect the treatment to the worker's protected characteristics. As a result, the complaint was dismissed.

A big problem for the worker was that she alleged that there was a pattern of discrimination, bullying, and harassment that continued through her employment that culminated in heated argument, but her evidence was inconsistent, according to Bowles.

“[The worker] said that she hadn't experienced any adverse impact through mental illness or injury until after that heated argument at work,” he says. “And the tribunal looked at that heated argument and found that her evidence about that argument was that it was focused on criticism of her job performance and her son's behavior at school - neither of which were related to a protected characteristic.”

For someone to prove that they've experienced a poisoned workplace, they have to demonstrate conduct that is so negative, persistent, and repeated that it makes the work environment intolerable, says Bowles.

“The tribunal noted that there are going to be incidents and occasions where employees will experience workplace disputes that will make them feel like they've experienced wrongful behavior, but there's an expectation that they have to deal with a certain amount of that conduct,” he says. “If that sort of conduct is only occasional and not particularly serious or repeated, the expectation is essentially that the employee will move on and focus on providing employment services.”

It can be difficult for employers to keep track of every little thing that's going on in the workplace, but they have an obligation to act reasonably to limit conflict that could lead to a poisoned work environment, says Bowles.

“Employers shouldn't turn a blind eye to conflict within the workplace, because it can amount to a poisoned workplace and discrimination - I recommend general caution in keeping an eye on conflict in the workplace and ensuring that where there is wrongful behavior, it doesn't become persistent and repeated.”

See [N.B.A. v. Al-Mustafa Academy and Humanitarian Society, 2024 AHRC 107](#).

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