

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 10

Date: February 5, 2025

File No.: T2763/13921

Between:

Annie Kebede

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Toronto-Dominion Bank

Respondent

Decision

Member: Edward P. Lustig

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I. OVERVIEW

[1] The Complainant, Ms. Annie Kebede, identifies as a 65-year-old Black woman of African descent. She worked for the Respondent, the Toronto-Dominion Bank (“TD”), from May 30, 2005, until September 20, 2016, when she was terminated without cause. She alleges that TD discriminated against her during her employment on the grounds of her race, national or ethnic origin, colour, age and disability by treating her in an adverse differential manner, terminating her employment and failing to provide her with a harassment-free environment, contrary to sections 7 and 14 of the *Canadian Human Rights Act, R.S.C., 1985, c H-6* (CHRA).

[2] The time period of the allegations referred by the Canadian Human Rights Commission (the “Commission”) to the Tribunal for adjudication in this case is between March 25, 2015, and September 20, 2016 (the “material dates”), during which there were a number of events that Ms. Kebede alleges were discriminatory and constituted harassment.

[3] The Respondent disputes the allegations and submits that it did not discriminate or harass Ms. Kebede and that the complaint is without merit based on the evidence and should be dismissed.

II. DECISION

[4] While there is no doubt that Ms. Kebede was upset that TD did not, in her view, properly address her various concerns and believes that she was discriminated against during her employment, the complaint has not been substantiated on the evidence before me and is dismissed.

III. ISSUE

[5] The sole issue in this case is whether TD discriminated against Ms. Kebede during the material dates?

IV. BACKGROUND

[6] Ms. Kebede was born in Djibouti, Africa, in 1959 where she grew up. She testified that it was a poor country and that, as a member of the minority Catholic religion, she was exposed to persecution and was also the victim of abuse. Djibouti was formerly under French rule, and she spoke French along with other local languages.

[7] Ms. Kebede left Djibouti to come to Canada in 1991 to start a new life. She has two children she raised herself who both testified at the hearing on her behalf. In Canada, she studied English as a second language and obtained a college diploma.

[8] Ms. Kebede started to work for TD in the Fraud department in May 2005 as a fraud detection agent and became a senior fraud analyst in 2006. In 2008, she joined the Merchant Services division at TD's call centre in Markham, Ontario, as a bilingual merchant services specialist and became a senior bilingual merchant services specialist in 2013.

[9] Ms. Kebede's work at the call centre primarily involved receiving and trying to resolve telephone calls from merchants across Canada reporting problems they were having in using their point-of-sale machines to conduct business. Over the years of her employment as a merchant services specialist, the job continued to involve taking phone calls but evolved as more responsibilities were added to the job and new and different computer applications requiring more training were implemented at the call centre.

[10] Ms. Kebede worked in shifts alongside other merchant services specialists in teams manning the phones. The majority of the specialists spoke only English. Ms. Kebede, along with a number of other French-speaking colleagues, was hired to handle calls in both in French and English, with French calls specifically directed to her and her French-speaking colleagues to respond to. When they were available, they also took calls in English. There was additional pay for being a bilingual specialist.

[11] The call centre where Ms. Kebede worked as a bilingual senior merchant services specialist had tables where the specialists sat and took the problem phone calls from merchants. They had access to computer programs that assisted them in doing their jobs. The main objectives and goals of the specialists' job were to try to independently resolve

problems on calls as quickly and efficiently as possible, ensuring merchant satisfaction while minimizing the need to prolong the calls by requesting further technical assistance from others for the machines and systems.

[12] The specialists' annual performance assessments were based upon achieving the objectives, goals and metrics that were established for each specialist and team in a published playbook for the fiscal year. The goals of the business would translate into individual goals set for an employee for that fiscal year. Specialists were monitored based on their performance against these goals in the form of a scorecard. One of the main business priorities of the call centre was customer (i.e., merchant) experience during calls.

[13] In the fiscal year 2015, Merchant Services introduced the Legendary Experience Index (LEI), which was a new measure of customer experience. The LEI was measured by an independent third party based on call evaluations and the customer feedback, which were monitored by the independent third party and reported on to management. All specialists had the same performance goals. They were outlined in their performance appraisal. They consisted of LEI (30%), No Fault Found (25%), Productivity (20%), MFOCUS Ticket Creation (15%) and employee adherence to the Code of Conduct and Ethics (the "Code") (10%).

[14] In November 2015, the call centre decided to eliminate the role of resource officers who handled escalated customer inquiries and complaints and performed more advanced tasks to assist the specialists. As a result of this change, all specialists had to be provided with additional training and additional system access to undertake these new duties and responsibilities.

[15] The merchant services specialists at the call centre worked in teams, of which there were five, during the material dates. Each team had eight specialists. The members of each team reported to a team manager who supervised and supported the team and who reported to a group manager. The group managers who supervised and supported groups of teams reported to an associate vice-president who supervised and supported all of the teams and managers at the call centre. In addition, there were IT and Human Resources (HR) services available to assist and support the merchant services specialists.

[16] During the material dates, Ms. Kebede was one of ten bilingual specialists at the call centre. Karen Fink was the Associate Vice-President, Victoria Carter was the Group Manager and Marie-Josée Saudino was one of the team managers who supervised, supported and interacted with Ms. Kebede. They were among the witnesses at the hearing.

[17] After being hired, each specialist was initially trained to start the job and then regularly (i.e., monthly) assessed in performing the job while at the same time continuously trained both individually and as part of a larger group of specialists.

[18] During the material dates, TD had in place various policies to try to ensure that all employees could work in a respectful workplace, free from harassment and discrimination including the Code, the Respectful Workplace Policy (the "Policy") and the Respectful Workplace Standard.

[19] Employees were required to undergo mandatory annual training on the Code, including on discrimination and harassment, and complete and pass an assessment, following which they had to sign an annual attestation that they had had reviewed, understood and complied with the Code.

[20] The Code and Policy required employees to report violations of the Code, including discrimination and harassment. Failure to comply with the Code subjected employees to possible discipline up to and including possible termination.

[21] During the material dates, TD also had in place an employee complaint resolution process (ECRP) that provided for several avenues to escalate employee complaints through various channels, including to their people manager, their next level manager, the HR Advice Channel Partner, the Senior Executive Team Member or the President and CEO, Ombudsperson and online through programs such as Ethicspoint or BetweenUS. Employees could choose which avenue to report a complaint and, at any time, could reach out to HR.

[22] TD provides employees with health insurance coverage through Manulife, which is responsible for operating and managing the coverage programs, including receiving, assessing and adjudicating claims. TD also provides employees with an accommodation

policy for disabilities. Manulife is responsible for the adjudication of the claims for short-term and long-term disability and for accommodation plans on the basis of medical condition. TD is responsible to pay the benefits.

[23] Providing the various policies, codes, standards and processes described in paragraphs 18 to 22 does not guarantee that discriminatory acts, harassment or violation of policies will not take place in the workplace, nor does it ensure that the employer will properly and fairly respond to complaints. Employee and employer participation is required to ensure that discrimination and harassment does not take place in the workplace.

[24] Ms. Kebede's evidence at the hearing in sum was that despite the existence of the various policies, she felt that her many complaints were not properly or fairly addressed for the most part, leading her to finally cry out for help to the top executive level at TD. This led to an internal investigation that made findings denying her complaints. She alleges the investigation was not properly or fairly carried out. Immediately upon learning of the outcome of the investigation, she left work, went on a paid sick leave and made a short-term sick leave benefits claim with Manulife in March of 2016 that was not approved. Thereafter, she did not return to work and was ultimately terminated without cause by TD in September of 2016 while she claims she had a disability that was not accommodated by TD. TD disagrees with Ms. Kebede's allegations. As will be described in greater detail, there are clearly differences of opinion between the parties about what happened in this case during the material dates.

[25] Ms. Kebede testified that, when she was in the Fraud department at the beginning of her career with TD, she did not encounter the various problems that she encountered upon joining the Merchant Services division. She felt that, at the Fraud department, any concerns she had were appropriately and efficiently resolved in a timely manner. Once she started at the Merchant Services division, she claims to have experienced a number of events that were discriminatory and negatively impactful to her on the grounds of her protected characteristics. As a result, she made complaints about these events to TD that were not, in her opinion, appropriately, efficiently or fairly responded to, investigated or resolved by TD. This ultimately led to her mental health disability that she testified was not

accommodated by TD and did not allow her to return to work, resulting in her improper termination.

[26] At the hearing, Ms. Kebede testified about various concerns and complaints she had about events that occurred at the Merchant Services division that predated the material dates of this case that she felt were not appropriately, efficiently or fairly responded to or resolved by TD. While this information provides some contextual input, it is not determinative of the issue in this case, as it lies outside of the material dates referred to the Tribunal by the Commission for adjudication in this case. Rather, it is the evidence about matters complained of occurring during the material dates that is determinative of the issue of liability in this case, as will be further discussed in greater detail. These matters include the following: alleged racist comments made in the workplace, alleged isolation and humiliation in the workplace, alleged improper annual performance appraisal in 2015, alleged denial of promotions, alleged denial of coaching and training, alleged denial of computer access and password concerns, alleged denial of the right to complain to HR, alleged breaches of computer system security and privacy, alleged failure to properly respond to and investigate complaints, alleged failure to accommodate a disability and alleged improper termination of employment.

A. ALLEGED RACIST COMMENTS

[27] Ms. Kebede testified that on March 25, 2015, one of her colleagues, “MG”, made the following comment after completing a difficult call with a merchant—“Fucking African”. The comment was made in Ms. Kebede and other colleagues’ presence, and she said it impacted her negatively. While the comment was not made about her, Ms. Kebede testified that MG made the comment while looking at her. Ms. Kebede reported the comment to her group manager, Ms. Carter, who told her shortly thereafter that she had “handled the situation”. Ms. Carter escalated the issue to her superior, Ms. Fink, the Associate Vice-President, and informed Ms. Saudino, the Team Manager. Ms. Kebede thanked Ms. Carter by email for addressing the issue, but Ms. Kebede testified that she was never told about how the matter was actually handled by TD or whether there was any disciplinary action taken by TD against MG. Ms. Kebede testified that later in the day after the comment was

made, MG was commended in the presence of the team for a promoter (i.e., positive) call she took.

[28] Ms. Carter testified that, while she could not produce any record indicating what disciplinary action was taken against MG, she was sure that there would have been disciplinary action taken. She reported the incident to Ms. Fink who testified that she was told that Ms. Carter had spoken to MG about the incident. No further negative interaction occurred between MG and Ms. Kebede.

[29] In June of 2014 (i.e., outside of the material dates of this case), Ms. Kebede alleges that SP, a colleague of hers, made the following comment to a mutual colleague about his weight loss, “you look so much like people on TV called Biafra, like Somalians”. Allegedly, SP turned to Ms. Kebede and said, “Isn’t it true that in your country you guys are starving?” She reported this to Ms. Fink who escalated it to HR and who also got Ms. Carter involved. Ms. Carter gave a written reprimand to SP, making her ineligible for awards for that quarter. Ms. Fink also sent out a note to the Merchant Services division reminding them of the need to be respectful in the workplace. Ms. Kebede did not receive an apology from SP, but she made no further complaints about SP.

[30] In June of 2015, Ms. Kebede alleged that while she was eating a banana in between calls, one of her colleagues, Khang Le, said in Ms. Kebede and other colleagues’ presence, “Do you know that we have a monkey on the floor?” Ms. Kebede says she reported the incident to her team manager, Ms. Saudino, but was not aware of what TD did about this or of any disciplinary action that was taken against Mr. Le. There was no corroborating evidence that this comment was made, and there were witnesses present at the time who testified that they did not hear it.

[31] Mr. Le testified for TD that he was not aware of any such comment made by him or anyone else. Ms. Saudino testified that she was not made aware of the comment.

[32] In October of 2015, Ms. Kebede alleged that, during Halloween, a compliment was made by someone to Ms. Saudino about a necklace she was wearing. According to Ms. Kebede, thereafter Mr. Le said in front of Ms. Kebede, Ms. Saudino and others “Wow,

you decided to wear a noose for a necklace today”. To Ms. Kebede, a noose is a symbol of anti-Black racism.

[33] Mr. Le testified that he was not aware of any such comment made by him or anyone else. Ms. Saudino denied that the incident took place. There was no corroborating evidence that this comment was made, and there was contrary evidence that it occurred as alleged.

[34] On November 3, 2015, Ms. Kebede was told by her team manager at the time, Mr. Sagi Rathakrishnan, that she was not going to be able to attend the Employee Insight Session that was scheduled for that day as a result of there being a high volume of service calls for which she needed to be available. When she asked him about this, she alleged that he told her “you are a strong woman. You are on the escalation call and we need you [...] with your DNA, you guys are very strong so that’s why I canceled the meeting and let you take the escalation calls”. She testified that Ms. Saudino who was there then said “you should be proud because you guys are very strong, we are lazy in the 17th Century only people like you do the cotton and so on”. Ms. Kebede further testified that Ms. Carter was also present and said, “it’s just a compliment”.

[35] Mr. Rathakrishnan, Ms. Saudino and Ms. Carter in their testimonies denied that the comments referred to in paragraph 34 were heard by them or made by them. Ms. Kebede testified that she did not report these comments to anyone. She testified that “I don’t need to go further because I don’t even have the right to go further. I cannot go to the human resources because they won’t take my word”. Ms. Kebede expressed her intention to attend the Employee Insight Session. TD agreed to have her shift extended by 30 minutes to allow her to attend, and she was paid overtime for the extension.

B. ALLEGED ISOLATION AND HUMILIATION IN THE WORKPLACE

[36] Ms. Kebede testified that, while she was on her shift, she often sat alone at her workstation because the other computers at her table had signs indicating that these workstations were not operational, preventing anyone else from sitting at her table. She alleges that the signs were promptly removed after her shift would end. She also testified that, in March of 2013 (i.e., outside of the material dates of this case), she was singled out

by TD management as being “ineligible” for the League of Excellence incentive program that year in an email sent to all employees in the Merchant Services division advising of their scores on the program in the year to date. She felt humiliated, cried and went home when she read the email.

[37] Witnesses who were colleagues of Ms. Kebede at the time testified that they did not recall Ms. Kebede being isolated at her workstation as described in paragraph 36. They testified that there was no assigned seating, and employees could sit wherever they wanted. Ms. Kebede had an assigned desk with her requested ergonomic equipment around the corner from Ms. Fink's office, which she could easily and would often visit.

[38] Ms. Fink apologized to Ms. Kebede and agreed that the email about her ineligibility for the League of Excellence should not have been sent. Ms. Fink says that she sent an email to everyone the day after the League of Excellence incentive program email described in paragraph 36 in which she noted that the email about Ms. Kebede being ineligible for the League of Excellence was inaccurate and sent in error.

[39] Ms. Kebede also complained that, on May 17, 2013 (i.e., outside of the material dates of this case), Mr. Rathakrishnan allegedly told her in front of all of her colleagues that she was responsible for a detractor (i.e., a complaint from a merchant about the service provided in a call) that had negative impacts on her team's performance. She alleged that despite requesting proof, no information was provided to her to confirm that she was responsible for the detractor and that she received no training about the incident.

[40] Mr. Rashakrishnan testified that he did not publicly identify Ms. Kebede as the specialist responsible for the detractor as this would not have been his practice when a detractor was assigned to a specialist by the group monitoring the calls for quality. He said he would never publicly identify Ms. Kebede as the recipient of a detractor and did not in this case.

C. ALLEGED IMPROPER 2015 ANNUAL PERFORMANCE APPRAISAL

[41] Annual performance assessments were carried out every fiscal year end (as well as mid-year reviews) for all TD employees. The results of the performance appraisals had an

impact on the employee's pay and their ability to progress in their career development. The performance assessments were based on a guide for performance ratings outlining the definitions and applicability of the various performance ratings. Ms. Kebede's 2014 year-end rating had been "Quality High" (QH) which was the second-highest rating behind "Quality Exceptional". Most employees do not usually receive either of these two ratings. The largest group received "Quality Solid" (QS) ratings—still a good rating, but not an exceptional one. Exceptional ratings were reserved for the rare cases of exceptionalism, while high ratings were reserved for employees whose performance exceeded accountabilities the majority of the time. The ratings were based on the assessment and the guide.

[42] In her 2015 mid-year review, Ms. Kebede was advised by Ms. Saudino that she was then trending to a QH rating. She was shocked and upset when her final performance evaluation for 2015 rated her QS. She felt she had exceeded the expectations for identified objectives for her position as well as having been recognized for her outstanding work. She complained to her team manager and to her group manager to no avail, and then she escalated her complaint to TD's executive. Ultimately, after that, Ms. Fink decided to change her rating to QH and apologized to her. Despite having her pay rate also adjusted to reflect the QH rating retroactively, Ms. Kebede was still upset that she had to go through three levels of management before the adjustment took place. She was also not satisfied that her concerns about the process and alleged inaccuracies in her performance assessment were recognized.

[43] Ms. Fink, Ms. Carter and Ms. Saudino all testified that Ms. Kebede's scorecard, based on objective metrics outlined in the performance assessment guide, ought to have been rated QS, the original rating that she received. All three witnesses testified that Ms. Kebede had successfully met her performance objectives at least 90% of the time, but all three also agreed that she did not exceed her job accountabilities at least 50% of the time which was required to have done for a QH rating.

[44] Ms. Saudino admitted that, while she had noted that Ms. Kebede was trending QH at the mid-year review, she disputed that she had exceeded four of the five goals for her job performance as alleged by Ms. Kebede. She also noted at the mid-year review that Ms. Kebede needed to focus on her call quality and LEI to hold on to the QH rating. Ms. Fink

testified that she decided to restore the QH rating to Ms. Kebede not because she deserved it based on her performance as detailed in her scorecard, but because she had been given the unfair expectation that she was trending to QH as a result of Ms. Saudino's mid-year comments. Ms. Fink testified that she felt that Ms. Kebede should have been rated QS during both her mid-year and year-end review based on her performance and her scorecard, as did Ms. Carter and Ms. Saudino.

D. ALLEGED DENIAL OF PROMOTIONS

[45] Ms. Kebede alleged that, while other colleagues were promoted during her tenure at the Merchant Services division, except for her advancement in 2013 to Senior Bilingual Specialist, she received no promotions. She testified that she did not apply for the position of bilingual team manager that became available in the fall or early winter of 2015 because it was not posted and that an external candidate to TD was hired for that position. She also implied that the delay in changing her QS final rating to QH also impeded her path to that position as it was no longer available when the change was made. No particulars of other job opportunities or applications she made at TD were provided by Ms. Kebede.

[46] Ms. Fink and Ms. Carter testified that Ms. Kebede never advised them that she wished to apply for a bilingual team manager position and that a QH rating would not have been required for the position. There was no evidence that the position was not posted first before an external candidate was hired.

E. ALLEGED DENIAL OF COACHING AND TRAINING

[47] Ms. Kebede alleged in her evidence that, throughout her tenure in the Merchant Services division, her training and/or coaching was routinely cancelled, postponed or wholly inadequate and that she was excluded from both formal and informal training opportunities, which undermined her professional development.

[48] Ms. Saudino testified that Ms. Kebede was delivered all monthly focused coaching in 2015 except for two sessions that were declined by Ms. Kebede in January of 2015 (i.e., outside of the material dates of this case). Ms. Saudino testified that the coaching sessions

that had to be cancelled because of a mismatch in availabilities between her and Ms. Kebede, for vacation or shift scheduling, or due to unanticipated high service needs were rescheduled.

[49] Formal, scheduled training as well as ad hoc (group huddling) training, particularly related to the introduction of new computer programs, applications and technology was provided to specialists. The TD witnesses in this case testified that the training was provided to all of the specialists in the same manner with both ad hoc huddles and formal scheduled sessions. Ms. Kebede was treated just like everyone else in this regard, according to the TD witnesses.

[50] It was TD witnesses' evidence that, as call volume reached a peak in demand, training for everyone needed to man the phones was often cancelled to avoid unacceptable delays for merchants in getting their problems solved properly within a reasonable period of time. Ms. Kebede's training was cancelled in the same manner as her colleagues, but, whenever training was cancelled, it was then rescheduled for everyone affected. The French-speaking specialists were on a separate system for calls from the English-only specialists. As a result, there were more times the peak was reached on the French-speaking specialists' lines because there were fewer French-speaking specialists, and in 2015 there was generally higher than usual call activity.

[51] Irvin Tingley, TD's IT tech person for the Merchant Services division at the time, testified that he trained, provided refresher training and supported the specialists regularly and equally. This was done both in huddles and in formal sessions and where needed by specialists to help them learn and adapt to new technology, systems and applications and to solve immediate issues. He testified that he trained and refresh trained Ms. Kebede after 2014. Neither Mr. Tingley nor the Team Manager did the schedule for the training as that was done based on service levels.

[52] TD acknowledged that, as a result of the elimination of the resource officer role in the fall of 2015 as referred to in paragraph 14, a lot of new training was required for the specialists to take on the new and more complex responsibilities. Ms. Carter testified that this took time to accomplish and, during the transition period, several specialists, not just

Ms. Kebede, had not yet received training regarding their new elevated duties. In November of 2015, they complained to HR about this lack of training and support tools—something acknowledged by TD existed for this group as a whole.

F. ALLEGED DENIAL OF COMPUTER ACCESS AND PASSWORD CONCERNS

[53] Ms. Kebede complained that, between 2015 and 2016, she experienced ongoing issues with computer access and password resets in great volume and frequency that prevented her from getting online to do her work properly. Her computer tower had to be replaced twice and, despite requests for help, the situation mostly remained unresolved for months.

[54] Ms. Carter testified that several specialists, not just Ms. Kebede, had access problems during the transition period referred to in paragraphs 14 and 52 when specialists needed to be trained on new systems and applications as a result of the elimination of the resource officer role and the transfer of additional responsibilities to the specialists. Like 20 other specialists, Ms. Kebede had not received access to the TD Merchant Gift Card Portal in early 2016; however, by January 16, 2016, Ms. Kebede confirmed to Mr. Tingley that she had received access.

[55] With respect to password resets, Mr. Le testified that specialists used several systems and that each of the systems needed a unique password. Sometimes, specialists like Ms. Kebede forgot their passwords, and they had to be reset. Sometimes passwords were programmed to expire in time or for non-use and then had to be reset. Ms. Carter testified that there were mechanisms in place to ensure that a specialist's scorecard was not negatively affected when they did not have access to the system.

G. ALLEGED DENIAL OF THE RIGHT TO COMPLAIN TO HUMAN RESOURCES

[56] Ms. Kebede testified about not being able to discuss concerns with and make complaints directly to HR without permission, despite the ECRP described in paragraph 21. As such, according to Ms. Kebede, her concerns were not dealt with in an appropriate manner. She related her experience in receiving permission in writing from Ms. Fink to speak

to Mr. Zareyan of HR in relation to a problem she was having on June 10, 2014 (i.e., outside of the material dates of this case).

[57] TD produced an email sent from Ms. Kebede directly to Mr. Zareyan on June 6, 2014, requesting an appointment with him. Ms. Fink testified that she asked Ms. Kebede to continue to meet with Mr. Zareyan on June 10, 2014, as she understood that Ms. Kebede had reached out to him first before speaking to Ms. Fink.

[58] All of Ms. Kebede's managers, including Ms. Fink, Ms. Carter and Mr. Rathakrishnan, testified that they would often involve HR with complaints that Ms. Kebede had, unless they could be easily resolved by them. Betty Vettese, an HR relationship manager, testified that employees could come directly into her HR office in Markham to raise their concerns directly with her without having to get permission.

H. ALLEGED BREACHES OF SYSTEM SECURITY AND CONFIDENTIALITY

[59] Ms. Kebede alleged that someone had logged in to her computer system while she was already logged in. She also alleged that TD team managers who had the capability to listen in to her calls live risked breaching security and confidentiality as specialists like her discussed temporary password/password changes to system-specific platforms while on the phone with IT services staff. She also alleged that on December 19, 2015, while she was using her workstation's computer, she felt as though the mouse cursor was dragging seemingly on its own like when an IT employee would remotely connect for troubleshooting purposes. She felt that this was another potential system concern which she felt should be investigated, given the sensitive and confidential banking access she had, as well as how seriously she took the confidentiality of her access.

[60] TD's witnesses testified that there was no breach of confidentiality or security as alleged by Ms. Kebede and that the events concerning the logging into her system by someone while she was already logged in and the mouse cursor dragging could not have happened.

I. ALLEGED FAILURE TO PROPERLY RESPOND TO AND INVESTIGATE COMPLAINTS

[61] As noted above, there are various matters that Ms. Kebede complained about during her tenure at TD's Merchant Services division both before and during the material dates of this case. Generally, she testified that many of her complaints were not properly responded to, that she was not able to directly get HR involved with her complaints, that there was a lack of follow up to her complaints and that she was not advised of what steps, if any, TD had taken in response to some of her complaints and why. Ms. Kebede believes that the matters complained of and the manner in which they were dealt with by TD constituted the discrimination in this case as they related to her protected characteristics under the CHRA.

[62] Ms. Fink testified that she regularly met with Ms. Kebede to discuss her complaints, doing so more often than with other employees who did not have nearly as many complaints as Ms. Kebede had. She testified that although Ms. Kebede complained more than others, she took all of Ms. Kebede's complaints seriously. Several other witnesses, including Ms. Saudino, Ms. Carter and Mr. Rathakrishnan, confirmed that Ms. Kebede was very vocal in raising her concerns and that they would review and address her complaints fairly and properly. They testified that Ms. Kebede occasionally expressed that she appreciated their efforts in handling her concerns. They genuinely appeared to like Ms. Kebede, as did her colleagues who testified. They did not feel that her concerns went unaddressed or that she was being discriminated against in respect of any of her protected characteristics or that she was harassed or adversely differentiated by the actions of TD.

[63] As explained above, it is TD's view and their evidence that Ms. Kebede's complaints were always taken seriously and were properly responded to, followed up on and addressed. In some instances, TD witnesses testified that the matter complained of by Ms. Kebede did not actually occur, such as her complaint about the cursor on her computer moving without her control.

[64] Julie Toms, an experienced in-house TD HR specialist who carried out an internal investigation (the "investigation") of the complaints Ms. Kebede claimed were unaddressed near the end of her employment, testified that Ms. Kebede appeared to be "erratic",

“paranoid” and “all over the place” in her interactions with her during the investigation in January/February of 2016.

[65] The investigation was prompted by Ms. Kebede writing to TD CEO Bahrat Masrani and other bank executives in December of 2015 in an email titled “last cry for help” (following an earlier email from her dated November 30, 2015). In her November 30 and December 21 emails, Ms. Kebede raised a number of complaints that she felt were unaddressed and should be reviewed, including those described in paragraphs 41–44, 59 and 60. She contended that her unaddressed complaints were a symptom of underlying concerns about the workplace environment that were pervasive for several years and reflected an ongoing refusal of TD to hear employees’ concerns. She expressed her frustration that there was a lack of transparency and silence by TD in response to concerns that were raised and concluded her email with her request to work in an environment free from harassment. There was no other evidence at the hearing from any other employees confirming Ms. Kebede’s concerns about the workplace at the time.

[66] Ms. Toms investigated the following allegations made by Ms. Kebede for the investigator report:

- 1) Are team managers changing and manipulating the scorecard results?
- 2) Did someone tamper with her computer?
- 3) Was access to required systems intentionally withheld in order to impact her results?
- 4) Did team managers give preferential treatment and favour some agents over others?
- 5) Are agents not provided with the tools and training required to successfully do their jobs?
- 6) Did members of her team view a former team manager’s private information?
- 7) Was she being abused and harassed by TD?

[67] Ms. Toms’ investigation took place between January and the end of February in 2016 and included a lengthy interview with Ms. Kebede on January 12, 2016, and consultations with others, including managers, in the course of the investigation.

[68] On March 3, 2016, Ms. Toms reported her findings to Ms. Kebede with respect to the seven allegations referred to in paragraph 66. Her findings were that, except for allegation five, all of the other allegations were unfounded. With respect to allegation five, Ms. Toms found that additional training and support would benefit the whole team and that ongoing

activities were in place to ensure that agents had the training and tools required to do their jobs. With respect to allegation seven, her finding was that Ms. Kebede was not able to specify an example of abuse. Regarding the reference to harassment in her email, it was noted that she had made a complaint in the past regarding other agents but that these concerns had been addressed by HR and resolved.

[69] The report itself was a summary and did not give reasons or provide insight into how the investigation was carried out or why the investigation reached the conclusions it did, nor was there any information provided to Ms. Kebede about a process to appeal the findings. However, Ms. Toms met with Ms. Kebede in the presence of her scribe from HR, Caroline Tawell, to go over the findings.

[70] Ms. Toms testified that she was very experienced in this work, having conducted hundreds of investigations in her career. She testified that although she worked for TD, her investigations were completely neutral, and she had no vested interest in the outcome. She testified that she took all of Ms. Kebede's comments into consideration and reviewed all of the documents she presented in making her findings. She also spoke with various other employees, including some in management and in HR, in conducting the investigation.

[71] According to Ms. Toms, Ms. Kebede did not raise any allegations of discrimination or harassment on the basis of any protected grounds under the CHRA in the investigation, contrary to the evidence of Ms. Kebede. Ms. Toms' evidence of the meeting with Ms. Kebede was corroborated by Ms. Tawell. When Ms. Toms provided Ms. Kebede with the findings, she was very emotional and upset according to Ms. Toms and Ms. Tawell.

J. ALLEGED FAILURE TO ACCOMMODATE A DISABILITY

[72] Following the receipt of the report findings, Ms. Kebede left work on March 3, 2016, and never returned. She felt depressed and under stress. She requested a medical leave of absence from work and provided Ms. Carter with a medical note from her nurse practitioner, Jason Posnansky, to support her two-week absence from March 9, 2016, to March 23, 2016. She proceeded to make an application to Manulife for short-term disability benefits that were denied. There was no finding that she could not return to work. She did not appeal the denial.

[73] Between the end of March 2016 and the middle of August 2016, Ms. Kebede was not physically at work, but she was coded as actively at work by TD. She received her regular earnings from March 3, 2016, to June 5, 2016, even though she was not actually working for TD. Thereafter, due to her coding status, Ms. Kebede continued to receive certain elements of her compensation, but not her regular wages up until her termination in September of 2016.

[74] Prior to March 3, 2016, Ms. Kebede's mental health was not an issue that she raised with TD according to the evidence. That said, as noted above, when she was dealing with the investigation, Ms. Toms and Ms. Tawell testified that they observed her to be emotional and very upset, and Ms. Toms offered Ms. Kebede the Employee Assistance program.

[75] Ms. Kebede was described by witnesses as being erratic and paranoid. None of these witnesses were medical experts, and their evidence was given as their observations in the context of her making some complaints that did not seem realistic to them, such as the cursor on her computer being moved by someone remotely without her consent. Also, Ms. Kebede had a high level of absenteeism from work prior to the investigation report findings being provided to her, but there was no medical evidence that she had a disability that affected her ability to regularly attend work at this stage and she did not disclose the nature of her absences to TD.

[76] Ms. Fink and Ms. Carter reached out to Ms. Kebede on a few occasions to see how she was doing. When Ms. Kebede commenced a medical leave on March 9, 2016, TD provided her with information to submit a short-term benefits claim, which Manulife adjudicated and determined that she had a medical condition. However, Manulife determined that it did not affect her ability to work. TD made efforts to return Ms. Kebede to work by arranging for a workplace facilitation meeting between Manulife, Ms. Kebede, HR and Ms. Carter.

[77] During the hearing, Ms. Kebede agreed that she would not be pursuing certain allegations raised in her Statement of Particulars as she did not wish to waive settlement privilege over discussions between TD and Ms. Kebede's lawyer between March 30, 2016, and August 2016. Specifically, Ms. Kebede agreed that she would not be relying on the

alleged cancellation of her short-term disability benefits and the alleged cancellation of the workplace facilitation meeting. Rather, the evidence would be confined to her employment status at TD as well as whether she was paid between March 2016 and August 2016.

[78] Ms. Kebede's son, David Habte, testified that before 2015 his mother was active in the community and extroverted but that he noticed a gradual shift in her behaviour in 2015 and 2016. There were days when she would come home from work and just stay in her room and keep to herself without any social contact. Ms. Kebede's daughter, Gabriella Kebede, gave similar evidence about observing her mother's deterioration from an active, full of life, funny, vibrant person who had friends and a social life and who was actively involved in her community but became withdrawn and stayed in her room towards the end of her employment with TD. Neither of these witnesses had any medical qualifications, and neither was able to give any evidence about what was going on at work for their mother to be upset. They also were not able to provide any evidence about her medical condition or what she was discussing with Mr. Posnansky, her nurse practitioner.

[79] Mr. Posnansky testified that he made contemporaneous notes of his examinations of her during her appointments with him that he referred to in his evidence at the hearing. Mr. Posnansky was added to the hearing Witness List after the start of the hearing, as the Tribunal indicated that it wanted to hear from him in person respecting the notes and records produced at the hearing. There appeared to be an unexplained difference of about 14 pages between the medical records sent to Mr. Kebede's counsel (736) and the number on Mr. Posnansky's records (750).

[80] Mr. Posnansky testified that the first time that Ms. Kebede mentioned anxiety and depression to him was on March 9, 2016, when he provided her with a medical note to allow her to be away from work. He recalled that she was upset about the difficulties she was having at work. He did not conduct any objective clinical tests or prescribe her medication for anxiety and depression at that time.

[81] During an appointment on August 16, 2016, Mr. Posnansky noted that Ms. Kebede advised him that she would be starting a new job at AMEX in September of 2016 and that she appeared to be happy and optimistic. She took that job which was in a similar type of

operation as her job at TD with a competitor of TD. This was not disclosed to TD until the hearing. She testified that she took the job because she had no work earnings at that time and needed the money. She did not stay very long in the AMEX job as she was feeling unwell while she was working there. She testified that she would have returned to TD if she had been given a chance by TD as her earnings at AMEX were significantly lower than they were at TD.

[82] The next time that Mr. Posnansky's notes referred to anxiety or depression was on February 5, 2018, long after she had left TD. The note did not refer to TD bank as a factor in the anxiety or depression. At that time, he administered a clinical test and diagnosed her with anxiety and depression and prescribed for the first time medication to treat her mental health condition and recommended counselling.

[83] In 2019, Mr. Posnansky noted that Ms. Kebede was experiencing worsening mixed anxiety disorder, agoraphobia, panic attacks and flashbacks/PTSD connected to her work experience at TD, and he prescribed antidepressant medication which she had been resisting for some time.

K. ALLEGED IMPROPER TERMINATION OF EMPLOYMENT

[84] Ms. Kebede provided a second medical note to both Ms. Carter and Penny Reid, a senior HR manager, on March 22, 2016, to support a second two-week absence, from March 23, 2016, to April 6, 2016. As noted in paragraph 73, Ms. Kebede continued to receive her regular earnings until June 5, 2016, even though she was not working and there had not been any approval of her short-term disability benefits claim.

[85] Ms. Kebede alleged that she telephoned TD Bank's HR Contact Centre several times between July and August of 2016 when she was still an employee of TD and receiving certain elements of her compensation, requesting written confirmation of her employment status, as well as to confirm her leave status, so as to pursue short-term or long-term disability benefits.

[86] Kristine Garbutt of HR testified that she attempted, on several occasions, to reach Ms. Kebede to advise her of her status and the impact that it had on her benefits and retiree

benefits. Ms. Kebede refused to speak to Ms. Garbutt on the phone, and she proceeded to use a progressive approach to warn Ms. Kebede of the employment consequences for her failure to return to work without any valid medical excuse. In her last correspondence, Ms. Garbutt invited Ms. Kebede to raise any further allegations to support her claim of an unsafe workplace given that the investigation report concluded that the workplace was safe. Ms. Kebede responded that she had nothing further to give and was waiting “impatiently” for TD’s final decision.

[87] TD decided to terminate Ms. Kebede’s employment on a without cause basis and provide her with her minimum statutory entitlements under the *Canada Labour Code*, R.S.C., 1985, c. L-2. Ms. Kebede confirmed that she had been working at AMEX at the time of her termination. Ms. Garbutt confirmed that she was not aware that Ms. Kebede was working at AMEX at the time of the termination.

V. LEGAL FRAMEWORK

[88] Section 7 (b) of the CHRA provides that it is a discriminatory practice, directly or indirectly, in the course of employment to differentiate adversely in relation to an employee on a prohibited ground of discrimination.

[89] Section 7 (a) of the CHRA provides that it is a discriminatory practice to refuse to employ or continue to employ an individual on a prohibited ground of discrimination.

[90] Section 14 (1) (c) of the CHRA provides, in part, that it is a discriminatory practice, in matters related to employment, to harass an individual on a prohibited ground of discrimination.

[91] Section 3 (1) of the CHRA provides, in part, that for the purposes of the CHRA, the prohibited grounds of discrimination include race, national or ethnic origin, colour, age and disability.

[92] A complainant alleging conduct in contravention of the provisions of the CHRA bears the onus of proving a *prima facie* case of discrimination. The applicable standard of proof is the civil standard of the balance of probabilities. To discharge the onus, a complainant must

establish at least a simple “connection” or “factor” rather than “a causal connection” between the impugned conduct and a prohibited ground under the CHRA (see *Miller v. Toronto-Dominion Bank*, 2024 CHRT 94, at para 67 [*Miller*]).

[93] 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-employer (see *Miller* at para 68).

[94] To establish a *prima facie* case, the complainant must show that it is more likely than not that: 1) they have one or more characteristics protected from discrimination under the CHRA; 2) they were subjected to treatment that had an adverse impact with respect to employment; 3) one or more of their protected characteristics was a factor, but not necessarily the only factor in the adverse treatment and impact (see *Miller* at para 69).

[95] Whether a protected characteristic is a factor in the adverse impact will depend on the facts and must be assessed on a case-by-case basis (see *Steward v. Elk Valley Coal Corp.*, 2017 SCC 30 at para 39).

[96] In order to meet the second part of the three-part test, a complainant must prove that the treatment was distinct in comparison to the treatment of others who do not share the same protected characteristics as the person alleging adverse treatment (see *Alizadeh-Ebadi v. Manitoba Telecom Services Inc.*, 2017 CHRT 36 at para 156 [*Manitoba Telecom*]).

[97] General unfairness resulting from an adverse impact does not amount to *prima facie* discrimination unless the complainant can prove, on the balance of probabilities, that an inference can be drawn of a nexus between the protected characteristics and the adverse impact (see *Nipa v. Transport Canada*, 2023 CHRT 33 at paras 86–87).

[98] A complainant is not required to prove that the respondent-employer intended to discriminate in order to establish a *prima facie* case as some discrimination involves multiple factors and is unconscious. Indeed, it is often said that discrimination is not a practice that would ordinarily be displayed openly or even practised intentionally. As a result, the tribunal must examine all of the circumstances, invariably often involving circumstantial rather than direct evidence, that both support and undermine the allegation of discrimination to

determine if there exists what the Tribunal has called the “subtle scent of discrimination” (see *Miller* at para 70).

[99] Once a *prima facie* case is established, the burden shifts to the respondent to refute the allegations of discrimination or demonstrate that the conduct was justified, within the framework of the exemptions provided under the CHRA. If the conduct cannot be refuted or justified, discrimination will be found to have occurred (see *Miller* at para 71).

[100] Where a complainant has a complaint that is not linked to an enumerated prohibited ground of discrimination under the CHRA, the complaint cannot succeed (see *Miller* at para 72).

[101] Harassment, as proscribed under the CHRA, has been broadly defined as unwelcome conduct related to one of the prohibited grounds of discrimination that detrimentally affects the work environment or leads to adverse job-related consequences for victims. To establish a *prima facie* case of discriminatory harassment, the complainant must prove, according to a reasonable person standard, that the behaviour or conduct i) was related to a prohibited ground of discrimination alleged in the complaint, ii) was unwelcome, and iii) was persistent or repetitious or serious enough to create a hostile or negative work environment negatively affecting the dignity of the complainant (see *Morin v. Canada (Attorney General)*, 2005 CHRT 41 at para 246 [*Morin*]; *St-Jean v. Canada Revenue Agency*, 2024 CHRT 100 at para 40).

[102] The less severe the conduct and its consequences, the more persistent the conduct will have to be to meet the definition of harassment. Consequently, it is possible for the conduct to be found to be offensive and based on personal characteristic, but not repetitive enough or serious enough to constitute harassment under the CHRA (see *Manitoba Telecom* at para 163).

[103] Although the CHRA does not impose a duty on an employer to maintain a pristine work environment, there is a duty upon an employer to take prompt and effectual action when it knows or should know of co-employees’ conduct in the workplace amounting to racial harassment. To avoid liability, the employer is obliged to take reasonable steps to alleviate, as best it can, the distress arising within the work environment and to reassure

those concerned that it is committed to the maintenance of a workplace free of racial harassment. A response that is both timely and corrective is called for, and its degree must turn upon the circumstances of the harassment in each case (see *Stanger v. Canada Post Corporation*, 2017 CHRT 8 at para 214).

[104] Where a complaint is filed against an employer regarding the conduct of one or more of its employees, fairness demands that the victim of the harassment, whenever possible, notify the employer of the alleged offensive conduct. This requirement exists where the employer has a personnel department with a comprehensive and effective harassment policy, including appropriate redress mechanisms, which are already in place (see *Morin* at para 246).

[105] Under section 65 of the CHRA, an employer is deemed liable for the discriminatory workplace conduct of its employees unless it can meet its burden of proving the following: 1) it did not consent to the conduct; 2) it exercised all due diligence to prevent the conduct; and 3) it exercised all due diligence to mitigate or avoid the impact of the conduct.

[106] Section 65 of the CHRA establishes a duty to conduct a timely, thorough and fair investigation to appropriately deal with the same. The employer's duty to investigate is held to a standard of reasonableness, not correctness or perfection (see *Young v. Via Rail Canada Inc.*, 2023 CHRT 25 at paras 231 and 242 [*Young*]).

[107] In assessing the employer's investigation efforts, the following criteria are applicable:

- 1) *Pre-Complaint*: Was there an awareness of issues of discrimination and harassment in the workplace at the time of the incident?; Was there a suitable anti-discrimination/harassment policy in place? Was there a proper complaint mechanism in place? Was adequate training given to management and employees?
- 2) *Post-Complaint*: Once an internal complaint was made, did the employer treat it seriously? Did it deal with the matter promptly and sensitively? Did it reasonably investigate and act?
- 3) *Resolution of the Complaint*: Did the employer provide a reasonable resolution in the circumstances? If the complainant chose to return to work, could the employer provide them with a healthy, discrimination-free work environment? Did it communicate its finding and actions to the complainant? (see *Young* at paras 287–288).

[108] Section 25 of the CHRA defines “disability” as any previous or existing mental or physical disability. “Disability” has been held to mean a “physical or mental impairment, which results in a functional limitation or is associated with a perception of impairment” (see *Desormeaux v. Corporation of the City of Ottawa*, 2005 FCA 311 at para 15).

[109] It is the employee’s duty to bring to the attention of the employer the facts relating to discrimination and to facilitate the search for accommodation for a disability, although the solution need not originate from the employee (see *Marcovecchio v. Air Canada*, 2023 CHRT 56 at para 67).

[110] There is no free-standing right to accommodation under the CHRA. Failure to accommodate a disability is neither a prohibited ground of discrimination nor a discriminatory practice under the CHRA (See *Todd v. City of Ottawa*, 2020 CHRT 26 at paras 203–204).

[111] An employee alleging that they were terminated because of a disability must prove on a *prima facie* basis that they were disabled, that the employer knew or ought to have known about the disability and failed to provide accommodation for it up to undue hardship and that the disability was a factor in the decision to terminate (see *Zeiger v. Osborne Trucking Ltd.*, 2014 CHRT 27 at paras 35–39).

VI. ANALYSIS

[112] As noted above, discrimination does not normally reveal itself in overt or intentional acts by individuals. It is usually much more subtle. To determine whether discrimination has occurred in a case like this—where overt or intentional acts of discrimination are not apparent and the facts about the allegations are disputed—requires a careful examination of circumstantial evidence and an assessment of the credibility of the witnesses who testified about their observations, perceptions and impressions of what occurred.

[113] Ms. Kebede testified on her own behalf for the first five days of the hearing and was fully engaged, pleasant and alert during her testimony. While she appeared to be genuine in her perceptions and impressions of what happened to her while she was working for the TD Merchant Services division, there were a number of omissions and contradictions in her

testimony. For example, she worked for AMEX during the time that she was also contending that she was unable to return to work for TD because of her disability in the period leading up to her termination, a fact she did not disclose until the hearing. She also did not disclose her full medical records until the hearing. She initially claimed that HR did not deal with her complaints, but, when confronted with clearly contradictory documentary evidence, she revised her testimony to say that her complaints were not dealt with at the level of seniority she expected. She testified that her complaints were not followed up to higher levels that she could contact, but she made direct contact with TD's highest level of executive, its CEO, as well as HR staff. She made claims about adversely differential treatment in her advancement and pay opportunities and in her training and access to systems and she claimed breaches by TD of privacy rights—all without any real proof.

[114] This is not to suggest that Ms. Kebede was dishonest or devious. To the contrary, my impression of her was that she was a bright, kind and also a very sensitive person. She had a difficult past in Africa and then had to raise two children alone in a new country while continuing to support relatives back home. No doubt this played a part in shaping her outlook. She became increasingly sensitive and concerned about the matters she complained of at work, perceiving them as unfair to her on account of her protected characteristics. My sense is that her perceptions of the events that she found objectionable in the workplace were largely misplaced and not based on grounds of discrimination, even though they might have appeared to Ms. Kebede as being unfair and hurtful. I think she truly believed she was being targeted because of her protected characteristics.

[115] Ms. Kebede appears to have done a wonderful job of raising her two children, Mr. Habte and Ms. Gabriella Kebede. They are both successful, well-educated people and were very impressive witnesses. They are clearly devoted to their mother for all she has done for them and have given up personal opportunities to help her now. I have no doubt about their genuine concerns about their mother's apparent negative change in behaviour from being outgoing and positive to more reclusive and sadder. That said, both of them were very deliberate and careful in their testimony to say that they did not know what actually was going on in the workplace for their mother to become upset or what her medical condition was. As such, their evidence is not particularly helpful in determining liability in this case.

[116] The other witness called by her was Mr. Posnansky. He was not on the pre-hearing Witness List and was called as a witness only after Ms. Kebede's counsel attempted to enter the full medical records at the hearing that had not been previously disclosed. He was not able to personally testify about any of her workplace complaints and instead relied on her comments about the stress and anxiety she felt, which she first reported to him during an examination after she left work in March of 2016 and did not return. He was not an expert in mental illnesses and was unable to assess her disability in terms of her ability to return to work, with or without accommodation.

[117] That is not to suggest that he was a poor witness. He was actually a very good, straightforward credible witness who was put in a difficult position of having to suddenly testify in support of a patient under somewhat challenging circumstances. He mainly relied on his notes made several years ago which provided a somewhat scant history of her medical condition related to stress, anxiety and depression as described in paragraphs 81–84. There was no expert medical evidence to support a disability rendering Ms. Kebede incapable of returning to work with or without any particular accommodation.

[118] A total of 12 witnesses were produced by TD at the hearing—all of whom worked for TD. Many of the witnesses were persons of colour or visible minorities. One was a Black man from the same country as Ms. Kebede who worked as a specialist with her. They represented Ms. Kebede's colleagues, managers and the Associate Vice-President during her employment with TD, as well as TD's instructing client witness, Ziska Truss. These witnesses included the employees who had relationships with Ms. Kebede during the material dates of the complaint relevant to the case.

[119] TD's witnesses all appeared to be knowledgeable, forthright and credible. Most of them had worked directly with Ms. Kebede during her employment with TD. All of them seemed to genuinely like her and care about her. In particular, Ms. Fink, the Associate Vice-President in charge of the operation, spent a great deal of time with Ms. Kebede and had a close working relationship with her, both personally and in terms of the proximity of her office to Ms. Kebede's workstation in the call centre. They spoke very often about Ms. Kebede's concerns. I am convinced that Ms. Fink would never have intended to harm or permit harm to Ms. Kebede in any way and would have supported and protected her as far as she could

from harm by others. Although there were some mistakes made, in assessing the credibility of the TD employees at the hearing, I find that they tried to work with Ms. Kebede to resolve her complaints and that none of them intended to harass, adversely differentiate or discriminate against her on the basis of any of her protected characteristics. I did not detect that there were acts of unintentional or unconscious discrimination against Ms. Kebede by any of her colleagues or employees of TD either.

[120] With respect to the alleged racist comments, MG's comment referred to in paragraphs 27 and 28 was certainly unwelcome, inappropriate and hurtful to Ms. Kebede even though it was not directed at her. However, I accept the evidence of Ms. Fink and Ms. Carter that when they were made aware of it, they took immediate action to address it by taking corrective steps with MG. Although it is troubling that no record of these steps was produced, their evidence on this point was not contradicted and seems reasonable to me given the circumstances surrounding SP's comments referred to in paragraph 29. Additionally, Ms. Kebede thanked Ms. Carter in writing for addressing the MG issue. Ms. Kebede did not indicate any further problems with SP or MG. As such, there does not appear to be persistent conduct amounting to harassment. Further, for valid privacy reasons, Ms. Kebede could not be provided with the results of disciplinary actions taken against other employees.

[121] I am satisfied that TD had policies in place, as described in paragraphs 18–21, regarding a respectful workplace, anti-harassment and anti-discrimination testified to in detail by Ms. Truss, a highly experienced and credible witness. The policies were sound and had to be attested to by employees annually, including Ms. Kebede. They included provisions for regular employee training on harassment and discrimination in the workplace and mandatory reporting of incidents by victims and witnesses, as well as thorough investigations of complaints by TD and appropriate responses to such complaints.

[122] The policies did provide for the elevation of complaints to higher managers or HR, and employees had various channels as described above to pursue their complaints internally, including having objective neutral investigations undertaken such as occurred in this case with the findings provided to Ms. Kebede by Ms. Toms, although none of the

allegations regarding alleged racist comments were raised by Ms. Kebede during the investigation.

[123] In having these policies and taking the actions it did in response to the two complaints about racial comments, TD was able to demonstrate due diligence and reasonable conduct in relation to the issue of harassment and these particular complaints.

[124] The alleged racist comments referred to in paragraphs 30, 32 and 34 are disputed by TD, and no reporting by Ms. Kebede about them at the time appears to have taken place. Mr. Le, Ms. Saudino, Ms. Carter and Mr. Raskrishnan all appeared to be very credible witnesses, and their testimonies disputing the comments cannot be disregarded by me as, in addition to denying that they took place in the manner alleged, these individuals also appeared to me to genuinely like Ms. Kebede and would not have wanted her to be hurt. Moreover, I am of the view that the comments, even if made, were not serious enough to create the hostile environment complained of by Ms. Kebede.

[125] With respect to the allegations of isolation and humiliation described in paragraphs 36 to 40, Ms. Kebede's evidence does not satisfy the onus of proof required to establish a *prima facie* case of discrimination. The alleged solitary seating arrangement was contradicted by the fact that Ms. Kebede had a desk very near to Ms. Fink whom she would speak to regularly regarding her complaints and was gratuitously serviced with ergonomic equipment she specifically requested. None of the witnesses agreed that there was any formal seating arrangement for specialists at the call centre as alleged or that signs were changed to discourage anyone from sitting next to Ms. Kebede. Further, the League of Excellence ineligibility comment was a mistake but was rectified by Ms. Fink with a prompt apology to Ms. Kebede and a note to the staff regarding the mistake. Finally, I accept Mr. Raskrishnan's evidence that he would not have publicly advised anyone of Ms. Kebede's or anyone else's detractor.

[126] With respect to the allegation of an improper 2015 annual performance evaluation for Ms. Kebede as described in paragraphs 41–44, I am not convinced that the original performance evaluation was improper or that it was in any way related to her protected characteristics or discriminatory. I accept the evidence of Ms. Fink, as corroborated by

Ms. Carter and Ms. Saudino, that the QS rating originally given was accurate based on her performance, her scorecard and the fact that Ms. Kebede did not exceed her job accountabilities at least 50% of the time as required by the rating guide to qualify for a QH rating. I accept the evidence of Ms. Fink that the change of the rating to QH and the reestablishment of retroactive pay was done because of the fact that she felt it was unfair to Ms. Kebede to have been told during her mid-year review that she was trending to QH. This change under the circumstances was actually differentially advantageous to Ms. Kebede compared to her colleagues rather than differentially adverse as alleged by Ms. Kebede.

[127] With respect to the allegation that Ms. Kebede was denied promotional opportunities as described in paragraphs 45 and 46, I find that there is insufficient evidence to establish that allegation. She did not apply for the Bilingual Team Manager position that was available in around the fall or winter of 2015, nor did she express an interest in it according to the evidence of Ms. Fink and Ms. Carter, which I accept. Nor would her temporary QS rating have prevented her from obtaining the job if she had been interested or applied for the job according to Ms. Fink. Further, there is no credible evidence that the job was not posted before an external candidate was chosen as alleged by Ms. Kebede. There was also no evidence that Ms. Kebede applied for any promotional opportunities or was not awarded any promotional opportunities.

[128] With respect to the allegation that Ms. Kebede was denied coaching and training opportunities as described in paragraphs 47 to 52, Ms. Kebede was not able to prove, on the balance of probabilities, that her coaching and training was cancelled for reasons related in any way to her protected characteristics. Ms. Fink, Mr. Rathakrishnan, Ms. Saudino and Ms. Carter all testified that the training and team huddles had to be cancelled for all specialists when service levels reached peak levels which they did often in 2014 and 2015 as new duties and systems were introduced into the system and TD strove to try to ensure that merchants were not left in line on the phone for inordinate periods of time. This was particularly an issue for the bilingual specialists of whom there were fewer to service the calls from merchants. Sometimes training was cancelled for specialists if schedules conflicted, but these were always made up for, and Ms. Kebede was not treated any differently than other specialists in this regard. TD acknowledged that training was an issue

particularly during the transition period in 2015 when there were new systems and applications to be learned but that it was something that TD was working on resolving for all specialists affected.

[129] With respect to the allegation that Ms. Kebede was denied computer access and had password concerns, as described in paragraphs 53–55, her evidence is not sufficient to justify a finding of discrimination or adverse differentiation. The problems that all specialists had with computer access were related to the transition of duties and the retraining necessary as a result of the elimination of the Resource Officer position in 2015 and 2016. I am satisfied that TD took reasonable steps to deal with problems in this regard that were felt by most if not all of the specialists at the time. Further, I am satisfied on the evidence that password resets were common at this time for all specialists for the reasons described in paragraph 55 and not related to any of Ms. Kebede's protected characteristics.

[130] With respect to the allegation that Ms. Kebede was denied the right to complain to HR as described in paragraphs 56–58, I find on the evidence that Ms. Kebede did have the right to complain to HR and she did so. The policies and procedures for elevating complaints included HR as described in paragraph 21, and Ms. Kebede acknowledged that she was aware of these policies. Ms. Fink and the various managers that dealt with Ms. Kebede testified that they would use HR to assist them with complaints made by Ms. Kebede. Ms. Kebede herself elevated some of her complaints directly to the highest level of TD management, including HR executives, which prompted the internal investigation of her complaints near the end of her work with TD.

[131] With respect to the allegation that Ms. Kebede was exposed to breaches of system security and confidentiality by TD as described in paragraphs 59 and 60, I find that there is no credible evidence that this occurred or if it did occur that it was somehow connected to her protected characteristics.

[132] With respect to the allegation that TD failed to properly respond to and investigate Ms. Kebede's complaints as described in paragraphs 61–71, while there is evidence that there were some mistakes made such as her being advised that she was ineligible for the League of Excellence and possibly her initial QS annual 2015 performance rating, in my

view these matters were investigated and responded to in a proper manner by TD. Moreover, they do not, on the evidence, represent discrimination or adverse differential treatment on the basis of any of her protected characteristics. As noted above, MG's comments were definitely racist in nature, but I am satisfied on the evidence that TD would have properly investigated and dealt with MG on this matter.

[133] While the investigation should have produced a more fulsome written report, including the reasons for the findings and the methodology of the investigation, Ms. Toms and Ms. Tawell did meet with Ms. Kebede to go over the report and explain the findings. Moreover, the report covered many of the matters that I have found on the evidence not to be discriminatory or involve harassment or adverse differentiation on the basis of a protected characteristic of Ms. Kebede that she has claimed. Further, I accept the evidence of Ms. Toms that, for the purposes of the investigation, Ms. Kebede did not actually raise any specific allegations of discrimination or harassment on the basis of any of her protected characteristics under the CHRA. In assessing TD's investigation efforts in this case, while not perfect, I am of the view that it satisfactorily complied with the criteria set out in paragraph 107.

[134] With respect to the allegations that TD failed to accommodate Ms. Kebede's disability and improperly terminated her, as described in paragraphs 72–87, the evidence in this case does not establish a *prima facie* case of discrimination against her by TD on a prohibited ground under the CHRA in my view.

[135] As noted in paragraph 110, there is no free-standing right to accommodation under the CHRA. Failure to accommodate a disability is neither a prohibited ground of discrimination nor a discriminatory practice under the CHRA.

[136] Evidence of Ms. Kebede's mental disability and TD's failure to accommodate was very scant in this case. This may be because of the agreement between the parties to exclude certain information for settlement privilege purposes, as described in paragraph 77. However, I am not able to speculate on evidence that was not made available to me and must rule based on the evidence that was presented at the hearing.

[137] Initially, Ms. Kebede's counsel attempted to introduce medical records for the first time at the hearing without a witness and then only added Mr. Posnansky who is not an expert in mental illness as a witness to testify to them after the hearing had begun. His evidence may have been incomplete as a number of pages of his notes appeared to be missing without a satisfactory explanation, although he was very forthright about this and straight forward in his evidence. There was insufficient evidence for me to rely on to find that Ms. Kebede had a disability that prevented her to return to work—one that TD knew about or should have known about during the material dates—and that TD should have done something to help her and not terminated her without cause.

[138] Mr. Posnansky was not able to identify an example of Ms. Kebede's stress, anxiety and depression until after she left work on March 3, 2016, to which she never returned. She was upset then about the investigation that did not confirm any of her complaints about events that were not related to a disability. She applied unsuccessfully to Manulife for short-term disability benefits while she was initially on a paid leave and did not appeal the outcome. Months later in August of 2016 when she next saw Mr. Posnansky, she did not appear to have these symptoms and was looking forward to starting to work at AMEX while she was still an employee of TD. At the same time, she was not responding to Ms. Garbutt's overtures to her to advise TD of her status or else face termination. On the contrary, she was "waiting impatiently" for a determination by TD. This does not appear to be consistent with the actions of someone who wanted to return to work. As such, in my view on the evidence, I do not believe she really gave TD an opportunity to accommodate her by letting TD know of her alleged disability. As such, the evidence does not satisfy the test described in paragraph 111.

[139] When TD terminated Ms. Kebede, it had attempted to contact her to discuss her status on several occasions without success. She was away from work without providing TD with any information so that it could help her return to work. TD admitted that it terminated her without cause but did not know that she was already working for AMEX at that time. Finally, the evidence that she had a disability that would excuse her from work is not clear to me at that time in any event.

VII. CONCLUSIONS:

[140] In this case, the Complainant has made a number of allegations about being discriminated against and harassed at work and adversely differentiated and wrongfully terminated by TD on the grounds of her personal protected characteristics under the CHRA. She claims that these issues arose due to actions that took place at her workplace during the material dates, which she argues impacted her negatively and which she holds TD responsible.

[141] Ms. Kebede also alleges that TD's failure to properly investigate and resolve these actions negatively affected her mental health such that she was not able to continue to work. As such, she alleges that her termination was discriminatory as TD failed to provide accommodation for her mental condition and terminated her unfairly and without cause while she was disabled.

[142] Ms. Kebede's evidence was not corroborated by anyone except her children, but their evidence did not go to the issue of liability. On disputed issues, I accept the consistent and credible evidence of the 12 TD witnesses who were all colleagues of Ms. Kebede and seemed to genuinely like her but did not agree that she had been discriminated, harassed or adversely differentiated in her treatment by TD because of any of her protected characteristics.

[143] Even for the events that did occur during the material dates that hurt Ms. Kebede's feelings that she perceived were discriminatory, there is insufficient probative evidence of a nexus between the events and a prohibited ground under the CHRA on the balance of probabilities. The racist comments during the material dates that were corroborated were dealt with expeditiously and fairly in my opinion, based on the most credible evidence provided at the hearing.

[144] There was also insufficient evidence produced at the hearing that TD knew or ought to have known about a disability that Ms. Kebede had during the material dates that would have allowed her to stay away from work without approval following her being upset about the unsuccessful investigation of non-disability complaints she had by the neutral internal

investigator as well as her unsuccessful application for short-term disability benefits by Manulife.

[145] Ms. Kebede decided herself not to return to work at TD after she became aware of the findings of the investigation and after she was refused a disability benefit that she did not appeal. She did not respond to the correspondence and calls from the TD HR department to determine her status while she was away during this time even though she was paid for part of the period as an employee not working and not on a disability leave. There is no evidence that she really gave TD an opportunity to address her condition or that she really intended to return to work at TD before she was terminated despite TD's efforts to reach her. At the same time, she did not advise TD that she was working for a competitor when she was off work as a TD employee during this time.

[146] Finally, the evidence of a mental health disability requiring Ms. Kebede to be off work was unclear to me from the sparse and possibly incomplete medical information that was adduced at the hearing.

[147] There is no doubt that Ms. Kebede has protected characteristics under the CHRA. There is also no doubt that Ms. Kebede was genuinely unhappy at work as a result of a number of events detailed above that she perceived to be discriminatory. As such, she was adversely impacted by the events. However, in my opinion, her perception of the events, on the evidence adduced at the hearing, did not reasonably prove, on the balance of probabilities, that she was actually treated differently than her colleagues or that she was harassed or that she was discriminated by TD because of any of her protected characteristics under the CHRA.

VIII. ORDER

[148] Based on the evidence before me, the complaint has not been substantiated and is therefore dismissed.

Signed by

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
February 5, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: T2763/13921

Style of Cause: Annie Kebede v. Toronto-Dominion Bank

Decision of the Tribunal Dated: February 5, 2025

Date and Place of Hearing: September 16–20, 2024;
September 23–27, 2024;
November 12–15, 2024; and
November 18, 2024
By videoconference

Appearances:

Aaron Rosenberg, for the Complainant

Tala Khoury and Shakila Salem, for the Respondent