

**Canadian Human Rights Tribunal**

**Tribunal canadien des droits de la personne**

**BETWEEN:**

**VERNON CROUSE**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**CANADIAN STEAMSHIP LINES INC.**

**Respondent**

**REASONS FOR DECISION**

**T.D. 7/01**

**2001/06/18**

**PANEL: Anne Mactavish, Chairperson**

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[1] Vernon Crouse has worked on cargo ships for many years. In May of 1996, Canada Steamship Lines Inc. (CSL) refused to hire Mr. Crouse for a position as a permanent relief electrician. At issue in this proceeding is whether CSL's refusal to hire Mr. Crouse was based, in whole or in part, upon the perception that he was dependent on alcohol.

### **I. Background**

[2] After working as an electrician, taxi driver and salesperson, Vernon Crouse joined the Seafarers' International Union in 1988. His first job as a union member was on the M/V Honourable Paul Martin, a self-unloading cargo ship operated by CSL.

[3] On April 7, 1988, the Paul Martin sailed from Nova Scotia. Some days later, it docked in Savannah, Georgia, where its cargo was to be unloaded. According to Mr. Crouse, he was unable to assist in the unloading as he had been drinking. On April 15, 1988, the ship's Captain and the Chief Engineer issued a written warning with respect to Mr. Crouse's behaviour. Insofar as Mr.

Crouse's drinking was concerned, the notice stated that "This type of behaviour is unacceptable and will not be tolerated onboard this vessel. Any further unacceptable conduct/behaviour aboard this vessel could result in your dismissal for cause". The notice goes on, however, to identify a second area of concern with respect to Mr. Crouse's performance, noting "In addition ... I find that your electrical experience is insufficient for this vessel."

[4] On April 19, 1988, Mr. Crouse failed to report to work, and was found asleep in his bunk by the Ship's Captain and the Second Engineer. As a consequence, CSL dismissed Mr. Crouse for cause. The notice of dismissal states: "Mr. Crouse, during your time onboard you have carried out your duties in an incompetent manner. In addition to the above mentioned, your drunkenness [sic] will no longer be tolerated and as a result you are dismissed."

[5] Although there was a grievance procedure available to Mr. Crouse under the Seafarers' International Union collective agreement, he did not take any action against CSL as a result of his dismissal. Mr. Crouse initially suggested that he was not aware of the grievance option, although he acknowledged having previous experience with unionized workplaces. He subsequently offered a different explanation, testifying that he figured that it was his fault, that he had made a mistake, and that 'you take your lumps'.

[6] CSL subsequently attempted to advise Mr. Crouse that the company would not rehire him. In a letter to Mr. Crouse dated October 19, 1988, CSL's Director of Human Resources stated:

During the twelve days you were employed with us your services were totally unacceptable. Please be advised that you will not be hired aboard any C.S.L.-managed vessel again in the future due to this incident...

Finally, you would be well advised to seek treatment for your alcohol problem through your union as we will not consider reviewing our rehiring restriction against you in the future unless you can prove you have rehabilitated yourself.

Mr. Crouse evidently had moved, and it appears that this letter did not reach him in the Fall of 1988, although he did get it when it was resent, some twenty months later.

[7] At some point in 1989, Mr. Crouse was verbally advised by Maureen Harris, CSL's Fleet Personnel Co-ordinator, that he would not be rehired by CSL because of his previous employment record. In May of 1990, Mr. Crouse wrote to Richard Lagacé, CSL's Manager of Human Resources, asking if he could be reinstated with a probationary period. Mr. Lagacé wrote back, noting that CSL's earlier letter had been returned, and enclosing a further copy of that correspondence. Mr. Lagacé went on to say that he would only consider reviewing the restriction on re-employing Mr. Crouse if two conditions were met: First, that Mr. Crouse provide proof that he had gone to a rehabilitation centre for his alcohol problem; and second, that Mr. Crouse provide letters of reference from Chief Engineers for whom Mr. Crouse had worked since April of 1988, together with a copy of his discharge book<sup>(1)</sup> entries for the period in question.

[8] Mr. Crouse did not respond to Mr. Lagacé's letter for approximately 2 ½ years, explaining that he had steady employment and did not think it necessary to do so. When it was pointed out

that there were times during this period in which he was not steadily employed, Mr. Crouse then testified that he thought that it would have been a waste of time to send the information requested, and that he had 'sort of ignored' Mr. Lagacé's suggestion.

[9] In the years after he was discharged by CSL, Mr. Crouse worked in various capacities on ships operated by companies other than CSL, with mixed results. Mr. Crouse acknowledged that he was fired from the M/V Algolake in June of 1991 for allegedly sleeping at the controls of a hopper. While denying that he was sleeping, Mr. Crouse confirmed that he did not grieve his dismissal, although he does not now recall why not. He went on to say that he did not like the Chief Engineer on the ship, and just decided to go somewhere else. According to Mr. Crouse, although he was later rehired on the M/V Algolake, he was fired again in 1994, this time for allegedly drinking on the job. While Mr. Crouse maintains that he was not drinking, once again, he did not attempt to grieve or otherwise challenge his dismissal.

[10] Mr. Crouse's performance during this period was evidently acceptable to some employers. He obtained a positive assessment (known as a Sea Service Testimonial) from the Chief Engineer on the M/V Mantadoc, owned by N.V. Paterson and Sons Limited, where he worked as an electrician in 1991. He also received a positive assessment for his work as an electrician on the Great Lakes Bulk Carriers Inc. ship, the M/V LeMoyne. In a 1992 Sea Service Testimonial, the Chief Engineer of the M/V LeMoyne described Mr. Crouse as a 'very able and willing electrician'. Both the Mantadoc and the LeMoyne were bulk carriers. [\(2\)](#)

[11] Mr. Crouse eventually responded to Mr. Lagacé's invitation to provide documentary evidence supporting his request to be considered for future employment with CSL. On February 1, 1993, Mr. Crouse wrote Ms. Harris, enclosing copies of the Sea Service Testimonials from the M/V Mantadoc and the M/V LeMoyne. Mr. Crouse acknowledged that it would have made more sense for him to have sent the company testimonials relating to his work on self-unloaders, given that most of the ships operated by CSL were self-unloaders.

[12] Mr. Crouse also advised Ms. Harris that a letter would be forthcoming from the Niagara Alcohol and Drug Assessment Service with respect to 'an intense counselling session [Mr. Crouse] attended'. CSL did in fact receive such a letter. Heather Serafini of the Niagara Alcohol and Drug Assessment Service wrote Ms. Harris on February 1, 1993, advising that she had assessed Mr. Crouse. Based upon the information provided by Mr. Crouse, and from self-administered questionnaires, Ms. Serafini was of the view that 'addiction specific treatment is not warranted for Vernon's alcohol use.' Ms. Serafini's letter notes that Mr. Crouse had agreed to remain in contact with her on a regular basis in order to monitor his alcohol use. There is nothing in the evidence to indicate whether or not this occurred.

[13] Gerald Carter is CSL's Executive Vice President and Chief Operating Officer. In 1993, he was the company's 'Director Labour & Relations'. In this latter capacity, Mr. Carter replied to Mr. Crouse's February letter on July 21, 1993, advising that CSL would not remove the restriction on Mr. Crouse's employment at that time. However, Mr. Carter invited Mr. Crouse to provide CSL with updated information with respect to his employment in a year's time, and to provide 'any additional letters of recommendation.' Mr. Carter testified that CSL had previously had two concerns with respect to Mr. Crouse, his alcohol problem and his competence. The

concern with respect to his alcohol problem had been fully addressed by the letter from the Niagara Alcohol and Drug Assessment Service. The company continued, however, to have concerns regarding Mr. Crouse's competence as an electrician, and for this reason asked for additional references from current employers. Mr. Carter did not identify any specific area of concern, or ask for references relating to a particular type of work in his letter, explaining that the letter that he sent to Mr. Crouse was essentially a form letter.

[14] At first, Mr. Crouse denied receiving Mr. Carter's letter, claiming that he had never lived at the address indicated in the letter. When it was pointed out that the letter was sent to the address Mr. Crouse had used on his February 1 letter, he subsequently conceded that he must have received it.

[15] Mr. Crouse initially testified that he did not provide CSL with any additional letters of recommendation at any time over the ensuing three years, as he did not think it necessary to do so. Counsel for CSL then confronted Mr. Crouse with a letter that he had written to the Canadian Human Rights Commission in the course of the Commission investigation, wherein he claimed to have sent three additional testimonials to Ms. Harris during this period. Mr. Crouse's letter to the Commission indicated that he would be contacting officers on the ships in question in order to obtain copies of the testimonials. Mr. Crouse responded that he now recalled having written to Ms. Harris sometime in 1994 or 1995, but had previously forgotten that he had done so. Mr. Crouse claimed that he had not retained copies of the testimonials, and thus could not produce them at the hearing, despite his previous undertaking to obtain further copies for the Commission.

[16] Ms. Harris denies ever receiving any such documentation. Mr. Crouse's testimony in this regard was internally inconsistent and unconvincing. I find that at no time between July of 1993 and January of 1996 did Mr. Crouse provide CSL with any information with respect to his employment performance.

## **II. Nature and Extent of Mr. Crouse's Work Experience Before 1996**

[17] One of the central issues in this case is whether Mr. Crouse was qualified for the permanent relief electrician position with CSL that he applied for in May of 1996. Before examining the circumstances surrounding Mr. Crouse's later contact with CSL, it is therefore necessary to examine the nature and extent of Mr. Crouse's prior experience. This involves a consideration of the types of ships that Mr. Crouse had worked on, the duties of electricians on each type of ship, and, as well, a consideration of the responsibilities associated with various categories of electrician positions.

### **A. Duties of Electricians on Bulkers and Self-unloaders**

[18] An issue arose as to the responsibilities of electricians on bulkers as opposed to self-unloaders. In this regard, it is noteworthy that electrician positions were eliminated on bulkers in or around 1992. Bill Ross, the Vice-President of the Seafarers' International Union, candidly

acknowledged that the Union had been getting away with 'featherbedding' insofar as having electricians on bulkers was concerned. In the early 1990's the Union finally conceded that there was simply not enough work for electricians to do on bulkers, and the elimination of electrician positions on this type of ship was negotiated. Electrician services are now provided to bulkers by shore-based contractors. Emergency repairs at sea are handled by Engineers.

[19] It is significant that both the Union and the shipping companies recognized that there was a problem with the limited skill level of the electricians who had previously been primarily working on bulkers. As a consequence, arrangements were made to provide training to these individuals in order to upgrade their skills to the level necessary to enable them to work successfully on self-unloaders. This training was provided through the Seafarers' Training Institute. The Institute is a co-operative venture, financed by the shipping companies as a result of a negotiated arrangement between the companies and the Seafarers' International Union. Electrician upgrade courses were made available to anyone who had worked on ships, at no cost to the individual. For permanent employees, the employees' tuition costs, as well as their transportation and living expenses, were paid by their employers. Individuals such as Mr. Crouse, who worked for various companies through the hiring hall system, had their expenses associated with attending the training program fully covered by the Union. The courses were offered in the winter, over three successive years, when there was no shipping activity going on.

[20] In my view, the commitment of such attention and resources to upgrading the skills of electricians indicates that there were significant differences in the skills necessary to work as an electrician on a bulker in comparison to the skills required of electricians on self-unloaders.

[21] Mr. Crouse has worked on both bulkers and self-unloaders. He was prepared to concede only that the work performed by electricians on board self-unloaders was 'a little more complex' than the work that electricians performed on bulkers. At the same time, he acknowledged that it was very important for electricians to have the appropriate training in order to obtain employment on self-unloaders. Mr. Crouse has never attempted to upgrade his qualifications, and acknowledged that he has virtually no prospect of working in the Canadian shipping industry as an electrician on a self-unloader, without additional training.

[22] On all of the evidence, I am satisfied that the responsibilities of electricians on self-unloaders were significantly more complex than those of electricians on bulkers.

## **B. Categories of Electrician Positions**

[23] Electrician services are provided on CSL self-unloaders by persons working in three discrete categories of positions: Permanent electricians, permanent relief electricians and relief electricians. As the title suggests, permanent electricians are employed by the company on a permanent basis. They are assigned to a single, specific ship, and work for a period of three months, followed by one month off.

[24] When permanent electricians are on their scheduled month off, they will ordinarily be replaced by permanent relief electricians. These individuals are also permanent CSL employees. Instead of being assigned to one ship, however, the permanent relief electrician is assigned to

three ships, and works three months in a row, in a rotation, replacing the permanent electrician on each ship as that person takes his or her month off. After three months, the permanent relief electrician then has a month off, before starting the rotation over again.

[25] Both permanent electricians and permanent relief electricians are entitled to benefits associated with their status as permanent employees, including the accrual of vacation pay and seniority rights.

[26] Relief electricians are not permanent CSL employees. They are hired through the hiring hall dispatch system, and work for the company on a casual or as-needed basis, replacing permanent staff when they are ill, or on compassionate or personal leave. Unlike permanent staff, relief electricians do not have rights of recall nor do they accumulate seniority. Relief electricians are usually employed for short periods of time.

### **C. Responsibilities Associated With Various Categories of Electrician Positions**

[27] Mr. Crouse testified that there were no material differences between the duties of the permanent electrician, the permanent relief electrician and the relief electrician. He was prepared to concede, however, that permanent employees might have a little more to do in terms of preventative maintenance on the ships. In his view, Mr. Crouse's prior experience as a relief electrician qualified him for a position as a permanent relief electrician on CSL ships. Mr. Crouse's testimony in this regard was corroborated by Mr. Ross of the Seafarers' International Union, who was called as one of CSL's own witnesses.

[28] In contrast, Mr. Carter, Ms. Harris and Ernest Beaupertuis all testified that there were fundamental differences in the nature and scope of the duties and responsibilities of permanent electricians and permanent relief electricians, as compared to those of relief electricians.

[29] Mr. Carter and Ms. Harris did not have first hand knowledge of the nuances of the roles played by the different types of electricians, and were largely dependent on Chief Engineers for their information. Similarly, Mr. Ross is a shore-based Union official, responsible for running the Thorold hiring hall. While Mr. Ross is involved in the dispatch process as it related to electricians, he acknowledged that he has no training as an electrician, noting that he 'can barely change a light bulb'. There is nothing in the evidence to suggest that he has any first-hand knowledge of the relative scope of the duties of the various types of electricians.

[30] While Mr. Crouse certainly has ship-board experience, I have to approach his testimony in this regard with some caution. I have previously expressed concern with respect to the accuracy of Mr. Crouse's testimony, and did not find him to be a generally reliable witness. His testimony was often inconsistent, and he was sometimes somewhat flippant in his manner. In addition, it is common ground that there was only one electrician on board ship at any given time, and thus Mr. Crouse would not have had the opportunity to observe permanent electricians and permanent relief electricians at work on CSL ships.

[31] Ernest Beaupertuis is the Manager of Personnel for Acomarit Canada Inc. In contrast to the other witnesses, Mr. Beaupertuis has 40 years of experience in the industry, including 20 years at

sea. Mr. Beaupertuis worked for eight years as a Chief Engineer, where he was responsible for supervising all of the different types of electricians. Although Mr. Beaupertuis has not worked on ships since at least 1987, I am not persuaded that there have been such material changes to either the technology or staffing procedures as to render his testimony out of date. Indeed, Mr. Crouse himself testified that self-unloaders have not changed appreciably in the last twenty years. I found Mr. Beaupertuis to be an experienced and credible witness, and prefer his testimony in this regard to that of both Mr. Crouse and Mr. Ross.

[32] According to Mr. Beaupertuis, permanent electricians are responsible for all of the electrical equipment on board ships, including the electrical generation system that creates the ship's electricity, the propulsion system, the navigational system (including the radio, radar, and satellite positioning systems and the emergency systems). In addition, permanent electricians are responsible for the ventilation and water circulation systems, as well as the complex electrical mechanisms of the unloading system.

[33] Preventative maintenance is a significant part of the duties of the permanent electrician. According to Mr. Beaupertuis, there are a hundred or so different motors on a self-unloader, and it is essential that an orderly system be put in place for their maintenance. Permanent electricians are expected to develop and implement a schedule for such preventative maintenance, and to be able to work independently, under the supervision of the Chief Engineer.

[34] Permanent relief electricians fulfill the same duties as the permanent electrician. The duties of the permanent relief electrician are even more onerous than those of the permanent electrician, however, as the permanent relief electrician is expected to have intimate familiarity with the workings of and maintenance procedures for three different ships, each of which may be a different make, with its own quirks and idiosyncrasies.

[35] In contrast, Mr. Beaupertuis says, relief electricians perform routine duties, working as assistants to the ship's Chief Engineer, under close supervision. The relief electrician does not need to have knowledge of the particular ship in issue, and has no direct responsibility for preventative maintenance. In this regard, analogies were drawn by Mr. Beaupertuis and others to the types of responsibilities typically assigned to temporary office staff and supply teachers.

[36] Mr. Beaupertuis testified that the position of the ship-board electrician is a highly safety-sensitive one. Serious consequences could arise for the ship and its crew if systems such as the navigational or emergency equipment failed. In this regard, Mr. Ross was in agreement with Mr. Beaupertuis: Both individuals cited instances of electricians having been electrocuted on board vessels.

### **III. Mr. Crouse's 1995 Hiring for the S.T.S. Tarantau**

[37] In December of 1995, Mr. Crouse bid on and was accepted for a position as a relief electrician on the S.T.S. Tarantau. The Tarantau was a self-unloader owned by CSL. Mr. Crouse worked on the ship from December 13, 1995 until January 4, 1996, a period of some 22 days.



[38] The Chief Engineer on the Tarantau was Robert Stockman. Mr. Stockman provided Mr. Crouse with a performance appraisal regarding his service on the Tarantau, which appraisal noted that Mr. Crouse's service was satisfactory. Indicating that he would consider Mr. Crouse for future employment, Mr. Stockman observed that Mr. Crouse 'worked hard and was conscientious during his stay on [the] vessel'. He went on to observe that Mr. Crouse was 'very attentive to his duties, worked hard, and behaved in a sober manner.'

#### **IV. CSL's Refusal to Hire Vernon Crouse as a Permanent Relief Electrician**

[39] On May 10, 1996, Mr. Crouse bid on a position as a permanent relief electrician with CSL. It is CSL's refusal to accept Mr. Crouse for this position, and its reasons for doing so, that are in issue in this case.

[40] According to Mr. Carter, the position of permanent relief electrician had been eliminated in the 1992 round of collective bargaining between the shipping companies and the Seafarers' International Union. For several years after 1992, permanent electricians were routinely replaced by relief electricians. This was a very unsatisfactory arrangement for the companies, as the lack of continuity inherent in the new relief system created significant problems to the point that it was a strike issue for the companies in the 1996 negotiations. The companies' position prevailed, and as of June 1, 1996, the position of permanent relief electrician was reinstated in the collective agreement. As a result, in May of 1996, CSL was hiring three permanent relief electricians, each to be responsible for providing regular relief services on three different ships.

[41] Under the hiring hall (or dispatch) system, union members who are looking for work register at the hall. From time to time, different types of jobs with various shipping companies are posted on a job board. Union members who are registered for the type of position in question, and who are physically present in the hall, can then 'throw their cards in' or bid on the various jobs. There is a protocol for determining which candidate will be dispatched by the union to the company in question: Full or 'book' members of the union have priority over probationary members. If two members of equal status are bidding on a job, the member who registered first will have priority. Once a member's name is sent to the potential employer, the company can then accept or reject the candidate.

[42] CSL used a slightly different procedure in May of 1996 to fill the permanent relief electrician positions. According to Mr. Carter, once three candidates were identified who were acceptable to the company, the individuals were going to be interviewed by CSL technical staff before a final decision was made to hire any of them. Mr. Carter testified that the insertion of the additional interview step is indicative of the significant responsibilities associated with the positions.

[43] The jobs were posted in the Thorold hiring hall late in the afternoon of Friday, May 10. Mr. Crouse says that he was the only person in the hall at the time, and that he threw his card in for the positions. The following Monday, Ms. Harris sent a fax to Mr. Ross at the Union hall, advising that "Due to his past work history Mr. Crouse is refused for the position of Perm Relief

Electrician on any Canada Steamship Lines vessel." Neither Mr. Crouse nor Mr. Ross have any direct knowledge of CSL's reasons for rejecting Mr. Crouse. It is common ground, however, that by 10 am on Monday, May 13, the decision had been made to reject Mr. Crouse as a candidate.

[44] The Union subsequently dispatched additional individuals to CSL, and all three permanent relief electrician positions were filled by May 13, subject to the candidates' performance at their interviews.

[45] CSL's witnesses explained what happened concerning Mr. Crouse's application for the job. According to Ms. Harris, Mr. Crouse's name, as well as the name of a second individual who was evidently also present in the hall, was forwarded to Ms. Harris at CSL's offices in Montreal at 4 pm on the afternoon of May 10. As CSL's Fleet Personnel Coordinator, Ms. Harris was responsible for ensuring that CSL's ships were properly crewed with qualified personnel. Ms. Harris explained that when the Union forwarded a name to CSL for a position, she would first check the company's 'Employment Selection Program' (ESP).<sup>(3)</sup> The ESP consists of a list of individuals who had been dismissed from the company, along with a notation of the reason for the dismissal. Although the actual ESP list was not produced at the hearing, Ms. Harris testified that, to the best of her recollection, the reason noted for Mr. Crouse's discharge was 'intoxication'.

[46] According to Mr. Carter, once an individual's name was on the ESP, the name would stay there in perpetuity, unless either the individual or the Union asked to have it removed. Mr. Carter and Ms. Harris periodically reviewed the accumulated reinstatement requests, along with the individuals' files, in order to determine whether there was sufficient evidence that the problem that had originally resulted in the employment restriction in issue had been addressed.

[47] Mr. Carter and Ms. Harris reviewed Mr. Crouse's file in July of 1993. Mr. Carter stated that CSL had two concerns with respect to re-employing Mr. Crouse that arose out of his earlier employment with the company. Not only was CSL concerned about Mr. Crouse's drinking, it was also concerned about his competence, given the concerns expressed by the Captain of the Paul Martin in each of the 1988 Notices of Misconduct. Mr. Carter testified that the company's concern with respect to Mr. Crouse's drinking had been fully addressed in February of 1993, by the letter from the Niagara Alcohol and Drug Assessment Service. He remained concerned, however, about the issue of Mr. Crouse's competence, particularly as it related to working as an electrician on self-unloaders. It should be noted that the Paul Martin is a self-unloader, and that both of the Sea Service Testimonials that Mr. Crouse had sent to the company in 1993 were from bulkers. As a result, Mr. Carter had declined to remove Mr. Crouse from the ESP list in 1993, but asked instead for additional references with respect to his performance.

[48] It is noteworthy that in his response to Mr. Crouse in July of 1993, Mr. Carter did not seek any further information with respect to Mr. Crouse's alcohol consumption or rehabilitation.<sup>(4)</sup>

[49] Ms. Harris testified that she again reviewed Mr. Crouse's file with Mr. Carter at the time that Mr. Crouse's name was dispatched by the Union in May of 1996. Mr. Carter noted that Mr. Crouse had not provided the company with an update of his discharge book, or information with respect to what he had been doing since 1992. Indeed, there was nothing on Mr. Crouse's file that

had not been there at the time that Mr. Crouse's file was reviewed in July of 1993, save and except the Sea Service Testimonial from Chief Engineer Stockman regarding Mr. Crouse's service on the S.T.S. Tarantau in late December of 1995 and early January of 1996.

[50] Both Mr. Carter and Ms. Harris testified that even though there was a recent, positive reference on Mr. Crouse's file regarding his performance as a relief electrician on a CSL self-unloader, they continued to have serious concerns regarding his competence. Both testified that while Mr. Stockman was good at the technical aspects of his job, he had difficulty in confronting his employees regarding deficiencies in their performance. Mr. Stockman was evidently somewhat notorious within the company for writing uncritical, and uniformly positive, appraisals of his employees. This propensity had led to problems in the past, when individuals that Mr. Stockman had recommended proved to be unable to do the job. Mr. Carter also noted that the Stockman reference related to a relatively short period of time, when Mr. Crouse was acting as a relief electrician. He further observed that the reference was noteworthy for what it did not say: Namely, that Mr. Crouse was qualified for the job.

[51] Given the absence of what they considered to be reliable references regarding Mr. Crouse's performance as an electrician on self-unloaders, or evidence that Mr. Crouse had taken the courses that were being offered to upgrade his skills, Mr. Carter made the decision to reject Mr. Crouse as a candidate for the permanent relief electrician position. Mr. Carter acknowledged that he and Ms. Harris probably spent no more than five or ten minutes considering Mr. Crouse for the position before resolving to reject him as a candidate. He stated that he was not prepared to let Mr. Crouse proceed to the interview stage, as he had still not demonstrated that he had the requisite skill level to qualify him for the job. Mr. Carter also suggested that Mr. Crouse's failure to respond to the company's earlier requests for information in a timely fashion suggested to him that Mr. Crouse had little real desire to work for CSL.

[52] When asked why he had not sought an updated copy of Mr. Crouse's discharge book in order to fully assess his experience, Mr. Carter noted that CSL employs approximately 600 individuals on a permanent basis, and issues some 2,500 T-4 forms each year, which includes those hired through the hiring hall. In Mr. Carter's view, it was incumbent upon those seeking jobs to put their best foot forward, and he should not be expected to chase after prospective employees to get the necessary information.

[53] The primary reason given for refusing to hire Mr. Crouse as a permanent relief electrician in May of 1996 related to concerns with respect to his competence in relation to self-unloaders. In this context, both Mr. Carter and Ms. Harris were asked why it was that CSL was prepared to hire Mr. Crouse as a relief electrician for the S.T.S. Tarantau in December of 1995, given that the Tarantau was itself a self-unloader. It was Ms. Harris who actually made the decision to hire Mr. Crouse in December, 1995. She testified that she had been told by Chief Engineers that she need not be overly concerned about the qualifications of relief employees, but should ensure that really good people were hired for permanent positions. The position in issue in December, 1995 was a relief position. Ms. Harris understood that the duties of relief electricians were less onerous than those assigned to permanent employees, and that Mr. Crouse would be closely supervised by the ship's Chief Engineer. Ms. Harris echoed Mr. Carter's testimony when she stated that she had no concerns with respect to Mr. Crouse's drinking when she hired him for the

relief position in December, 1995, as whatever concerns the company may have had in that regard had been fully addressed by the February, 1993 letter from the Niagara Alcohol and Drug Assessment Service.

[54] Mr. Carter was not involved in the decision to hire Mr. Crouse in 1995. He suggested, however, that it may have been difficult for the company to find a relief electrician in the month of December. CSL was prepared to hire Mr. Crouse for a relief position in 1995, because of the limited nature of the responsibilities associated with the position, the fact that relief electricians are closely supervised, and the short duration of the assignment. The company was not willing to hire Mr. Crouse for a permanent position in 1996, however, because of the critical nature of the responsibilities of the permanent relief electrician and the ongoing concerns with respect to Mr. Crouse's competence.

## V. Law

[55] Section 7 of the *Canadian Human Rights Act* makes it a discriminatory practice to refuse to employ an individual because of a prohibited ground of discrimination.

[56] Addiction to alcohol is considered to be a disability<sup>(5)</sup>, which is a prohibited ground of discrimination. It does not matter if Mr. Crouse actually suffered from the disability in issue for there to be discrimination: A violation of the *Act* will be made out if it can be shown that CSL's actions were taken because of the perception that Mr. Crouse suffered from a disability, whether or not that was, in fact, the case.<sup>(6)</sup>

[57] In a case of this nature, the burden of proof is on Mr. Crouse to establish a *prima facie* case of discrimination. Once that is done, the burden shifts to CSL to provide a reasonable explanation for the conduct in issue.<sup>(7)</sup>

[58] A *prima facie* case is one which covers the allegations made, and which, if believed, is complete and sufficient to justify a verdict in Mr. Crouse's favour in the absence of an answer from CSL.<sup>(8)</sup>

[59] If CSL does provide a reasonable explanation for the otherwise discriminatory behaviour, Mr. Crouse then has the burden of demonstrating that the explanation was pretextual, and that the true motivation behind CSL's actions was, in fact, discriminatory.<sup>(9)</sup>

[60] The jurisprudence recognizes the difficulty in proving allegations of discrimination by way of direct evidence. As was noted in *Basi*:

Discrimination is not a practice which one would expect to see displayed overtly, in fact, there are rarely cases where one can show by direct evidence that discrimination is purposely practised. (at p. D/5038).

Rather, it is the task of the Tribunal to consider all of the circumstances to determine if there exists what was described in the *Basi* case as the "subtle scent of discrimination".

[61] The standard of proof in discrimination cases is the ordinary civil standard of the balance of probabilities. In cases of circumstantial evidence, the test may be formulated as follows:

An inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses. <sup>(10)</sup>

[62] It is not necessary that discriminatory considerations be the sole reason for the actions in issue for a complaint to succeed. It is sufficient that the perception that Mr. Crouse was dependent upon alcohol be *a basis* for CSL's decision. <sup>(11)</sup>

## VI. Analysis

[63] I was not provided with any information with respect to the qualifications of the three individuals ultimately hired by CSL, and am thus unable to compare their qualifications and experience to that of Mr. Crouse. In a conventional hiring situation, information of this nature would ordinarily be an essential element of a *prima facie* case. <sup>(12)</sup>

[64] In this case, however, Mr. Crouse applied for the position in issue through the hiring hall system. Given the dispatch protocol, Mr. Crouse had a presumptive entitlement to the permanent relief electrician position, subject to his being approved by CSL. CSL refused to accept Mr. Crouse as a candidate, and Ms. Harris's fax makes it clear that the company's reason for doing so related to 'his past work history'. Incidents of misconduct relating to Mr. Crouse's abuse of alcohol on the job form part of Mr. Crouse's work history. Indeed, reference to 'intoxication' was evidently noted next to Mr. Crouse's name in the ESP list. In my view, these circumstances are sufficient to establish a *prima facie* case of discrimination.

[65] Counsel for the Commission focused much of his argument on the tripartite test articulated by the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* <sup>(13)</sup> (*Meiorin*), submitting that the evidence adduced by CSL with respect to the safety sensitivity of electrician positions on self-unloaders was anecdotal and impressionistic, and thus failed to meet the standard articulated by the Supreme Court to justify discriminatory action. In my view, the Commission's argument fundamentally misconceives the nature of CSL's position in this case. The company is not arguing that freedom from alcohol dependence constitutes *bona fide* occupational requirement, given the safety sensitive nature of electrician positions on its ships (in which case the *Meiorin* test would come into play). Rather, CSL submits that, at the time it decided not to hire Mr. Crouse in 1996, any concerns that it had once had with respect to Mr. Crouse's drinking had been fully addressed, and played no part in its decision. This is a factual question.

[66] Mr. Carter and Ms. Harris, both of whom impressed me as credible witnesses, say that the reason Mr. Crouse was rejected as a candidate for the permanent relief electrician position in May of 1996 was because they had serious concerns with respect to his competence and his ability to discharge the responsibilities of a permanent relief electrician on self-unloaders. I find that the explanation offered by CSL is a reasonable one, especially when reference is had to the earlier actions of the company.

[67] It is common ground that there is only one electrician on board a self-unloader at any given time, whether that individual is a permanent, permanent relief or relief electrician. Self-unloaders are valuable, highly sophisticated craft, and there are significant safety concerns that relate to the proper operation of the numerous electrical systems on board. If CSL did, in fact, have ongoing concerns about Mr. Crouse's perceived dependence on alcohol, it simply does not make sense that it would have hired him as a relief electrician in December of 1995. Even though relief electricians are closely supervised by Chief Engineers, there would, nonetheless, be a real potential for damage to the ship, or perhaps even loss of life, if a relief electrician worked while intoxicated. The fact that CSL was prepared to hire Mr. Crouse for a safety-sensitive position, albeit in a relief capacity for a short period of time, indicates that the company was no longer concerned about his potential to consume alcohol on the job.

[68] It is apparent from the evidence of Ms. Harris and Mr. Carter that Mr. Crouse's candidacy for the permanent relief electrician position was given very cursory consideration in May of 1996. It may well have been possible for CSL to have called Mr. Crouse, in order to obtain an updated copy of his discharge book, and references with respect to his performance on self-unloaders. However, the issue before me is not the adequacy of CSL's hiring procedures generally, but rather whether a perception on the part of CSL that Vernon Crouse had an alcohol problem played any role in the company's refusal to hire Mr. Crouse as a permanent relief electrician in May of 1996.

[69] Given that CSL was prepared to hire Mr. Crouse as a relief electrician in December of 1995, why was it unwilling to hire him as a permanent relief electrician six months later? On all of the evidence, I am satisfied that it was because the responsibilities associated with the position of permanent relief electrician on a CSL self-unloader are significantly more onerous than the responsibilities assigned to relief electricians. It is apparent that the company had long-standing concerns with respect to Mr. Crouse's competence as it related to work on self-unloaders, and I find that it was these concerns, coupled with the perception that Mr. Crouse was not really very interested in working for CSL, that led to Mr. Carter's decision to reject Mr. Crouse in May of 1996. I am not persuaded that concerns or perceptions with respect to Mr. Crouse's past or ongoing dependence on alcohol played any role in Mr. Carter's decision.

[70] As a result, I am satisfied that CSL has provided a reasonable explanation for its decision. I have not been persuaded that CSL's explanation is pretextual.

## **VII. Order**

[71] For the foregoing reasons, this complaint is dismissed.

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Anne L. Mactavish, Chairperson

OTTAWA, Ontario

June 18, 2000

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T585/4300

STYLE OF CAUSE: Vernon Crouse v. Canadian Steamship Lines Inc.

PLACE OF HEARING: St. Catharines, Ontario

DECISION OF THE TRIBUNAL DATED: June 18, 2000

APPEARANCES:

Vernon Crouse On his own behalf

G. Vigna For the Canadian Human Rights Commission

Louise Laplante and For Canada Steamship Lines Inc.

Casper M. Bloom

1. A 'discharge book' is a log containing a chronological listing of all of the ships on which the individual has worked, together with a description of the voyage, the capacity in which the individual worked, the dates worked and the signatures of the responsible officers.
2. There are two types of cargo ships in issue in this proceeding: "Bulk Carriers", also known as "Straightbacks" or "Bulkers", and "Self-unloaders". Bulkers are traditional-style cargo ships, which are unloaded by crane from the shore. Self-unloaders are newer, more sophisticated ships, which, as their name suggests, have the capacity to load and unload themselves through a complex system of cranes and conveyor belts. CSL primarily operates self-unloaders, each of which is worth somewhere in the vicinity of \$60 million.
3. Mr. Carter referred to the Employment Restriction Program. However, it appears that both Ms. Harris and Mr. Carter were referring to the same thing.
4. It should be noted that there is nothing in the evidence to suggest that CSL was aware of the fact that Mr. Crouse had twice been fired from the M/V Algolake, at least once for alcohol-related misconduct.
5. *Niles v. Canadian National Railway Company* (1992), 18 C.H.R.R. D/152, rev'd on other grounds 142 N.R. 188 (F.C.A.)
6. *Québec (C.D.P.D.J.) v. Montréal (City)*, [2000] 1 S.C.R. 665.
7. *Israeli v. Canadian Human Rights Commission*, 4 C.H.R.R. D/1616 at p. 1617 (aff'd 5 C.H.R.R. D/2147) and *Basi v. Canadian National Railway Company* (1988), 9 C.H.R.R. D/5029
8. *Ontario Human Rights Commission and O'Malley v. Simpson Sears Limited*, [1985], 2 S.C.R. 536 at 558
9. *Israeli*, supra., and *Basi*, supra.
10. B. Vizkelety, Proving Discrimination in Canada (Toronto), Carswell, 1987 at p. 142.
11. *Holden v. Canadian National Railway* (1990), 14 C.H.R.R. D/12 at p. D/15.
12. See, for example, *Shakes v. Rex Pak Limited* (1982), 3 C.H.R.R. D/1001
13. [1999] 3 S.C.R. 3