

TRANSLATION
DECISIONS RENDERED ON MAY 8, 1981
TD-6/81

THE CANADIAN HUMAN RIGHTS ACT

BETWEEN:

Marthe Archambault

Complainant.

- and -

Eldorado Nuclear Ltd.

Respondent.

Before: Denis Lemieux, Q.C., appointed a Human Rights Tribunal pursuant to Section 39(1) of the Act.

Appearances: H el ene LeBel, representing Canadian Human Rights Commission and Marthe Archambault.

David Casey, representing Eldorado Nuclear Ltd.

Heard in Ottawa, Ontario, on December 17, 1980, and February 2 and 3, 1981.

This involves a complaint of sexual discrimination arising from the dismissal of the complainant from her job with Eldorado Nuclear Ltd during the summer of 1978. The complaint is made pursuant to s 7 of the Canadian Human Rights Act.

The complainant, Miss Marthe Archambault, was a student of geology at the Universit e de Montr eal. During the summer of 1977, she worked on a project in the Gasp e region for the Quebec department of natural resources. In 1978, she applied for summer employment with Eldorado Nuclear, a Crown mining company.

Miss Archambault's application for summer employment was approved following an interview with Mr Robert Tremblay, who was to be her supervisor.

Miss Archambault's work contract stated that she was to be in the employ of Eldorado from May 22 to September 8, at a wage of \$965 per month. From May 22 until the actual start of the work, she was to remain available and receive one half of the pay agreed upon, although this money was to be received only upon termination of employment, in the form of a bonus.

The work involved prospecting for mining operations. This meant doing land surveys, preparing reports, and doing some maintenance work around the camp as a base of operations. The work week extended from Monday through Saturday.

The prospection work began on June 26. The location was camp Bouteille, 180 miles north-west of Shefferville, Quebec. The group was made up of about fifteen people, including geologists, geophysicists and support staff. In addition to this base camp, a

"flying" camp composed of five or six persons was set up farther along. The members of this "flying" team did not return to camp Bouteille until forty-eight hours before the complainant's dismissal.

Camp Bouteille was made up of tents, a helicopter pad, and a dock for hydroplanes. In general, team members lived two to a tent. Each morning the helicopter would fly the team to the prospection site for that day. Members would be divided into small groups to carry out the survey work. Work would stop at lunch time and then resume in the afternoon. Toward the end of the afternoon, the helicopter would take team members back to camp, where research reports for the day were prepared. Evenings were free. When the weather was bad, team members were assigned maintenance work in the camp.

Right from the start of the project, some members got into the habit of congregating in one of the tents in the evening to listen to music recorded on cassettes, chat and have a drink. Most of the get-togethers were held in the tent of the only two women in the camp, Marthe Archambault and Isabelle Cadieux.

These evenings were usually rather noisy, a fact which was accentuated by the surrounding solitude and silence.

After a few days, the camp director, Robert Tremblay, warned the two young women that there was too much noise. He later suggested that they should move their tent in order to cut down on this noise. The women refused to do so, since they felt that the location suggested was too close to the helicopter pad.

It would seem that Mr Tremblay never insisted that the women move their tent, but he apparently did speak to Marthe Archambault and Isabelle Cadieux once more about the noise caused by these get-togethers, as well as their lack of motivation in the camp, although the evidence concerning this point is rather unclear. No formal warning was ever issued, however.

Work progressed normally at camp Bouteille, in spite of the rain which hindered operations. The parties continued, but became quieter affairs. They usually ended at about twelve-thirty, and do not seem to have greatly affected the participants' work. There is no evidence that the men's work suffered as a result. The

testimonies regarding Marthe Archambault and Isabelle Cadieux are not as clear, but it seems that their work did not suffer unduly because of any lack of sleep.

In any case, it is clear that the camp director never issued any formal warning to any of the participants concerning these evening sessions, nor did he bring up the matter at the last camp meeting before Marthe Archambault and Isabelle Cadieux were dismissed, even though the purpose of the meetings was to solve administrative and personnel problems in the camp. It would seem, however, that Mr

Tremblay's general attitude showed that he disapproved of the two young women's overall behaviour.

In early August, the members of the "flying" team returned to camp Bouteille. To mark the occasion, the camp director decided that a special celebration should be organized. The extremely loud party did not break up until 4 am, and several members of the "flying" team became intoxicated. This upset certain individuals, including the helicopter pilot who showed his disapproval the next morning by buzzing the tent of Marthe Archambault and Isabelle Cadieux, where the party had been held.

On the following day, that is, August 7, Robert Tremblay called in Isabelle Cadieux and Marthe Archambault in turn and informed them that they were being dismissed. It would seem that in both cases, it was a question of dismissal, not resignation, since neither of the women were given the option of staying.

In Marthe Archambault's case, Robert Tremblay made it clear at the interview that her work was not the reason for the dismissal, and he even offered to provide a favourable recommendation for any future job, which he did. Mr Tremblay explained that her presence in the camp following Miss Cadieux's departure would create an impossible situation since she would be the only woman in the camp. For this reason, she too had to leave.

Marthe Archambault left the camp at once. Almost two years later, on April 29, 1980, she filed a complaint with the Canadian Human Rights Commission, stating that her dismissal constituted an act of sexual discrimination.

Marthe Archambault explained that she had not made the complaint before then because her friend, Isabelle Cadieux, had filed a complaint with the Commission shortly after her dismissal and the complaint had been blocked by legal proceedings in the Federal Court. Further, the effects of her dismissal were only felt after the fact. In any case, the Commission has exercised its discretionary power under the Act to extend the time period, and so this point is not in question here.

The basic question to be answered, rather, is whether the dismissal of the complainant constitutes a breach of s 7 of the Canadian Human Rights Act.

The French wording of this section reads as follows:

Constitue un acte discriminatoire le fait

a) de refuser d'employer ou de continuer d'employer un individu, ou

b) de défavoriser un employé directement ou indirectement, pour un motif de distinction illicite.

Section 3 provides that sex is a "motif de distinction illicite" (prohibited ground of discrimination).

It is interesting to note that the English version of s 7 seems more precise than the corresponding French text. It provides that:

It is a discriminatory practice, directly or indirectly
a) to refuse to employ or continue to employ an individual,
or
b) in the course of employment, to differentiate adversely
in relation to an employee, on a prohibited ground of
discrimination.

If it is decided that the dismissal does constitute a breach, it will be necessary to decide on other questions arising out of the first, as follows.

(1) Is the complainant entitled to compensation for loss of wages?
(2) Is she entitled to compensation for subsequent loss of
revenue?

(3) Is she entitled to the supplementary compensation provided for
under s 41(3) of the Act?

(4) Should Eldorado Nuclear be ordered to implement measures, in
consultation with the Commission, to prevent any similar
discriminatory practice occurring in future?

(5) Should the Tribunal order Eldorado Nuclear to send a letter of
apology to the complainant?

It must first be decided whether Marthe Archambault was dismissed
because of her sex or for some other unrelated reason.

It is possible to establish that the dismissal was not related to
the competence or incompetence of Marthe Archambault. The evidence
shows that her camp work was also acceptable. Although she was not
overly zealous, the complainant never disobeyed any formal orders
and was never careless in the performance of the duties assigned to
her. The interview with Robert Tremblay prior to her departure
moreover confirms this.

The dismissal was not related to the noisy get-togethers or the
complainant's general attitude toward other members of the team.
The reprimands concerning the noise seem to have been forgotten by
the beginning of August, and the complainant was apparently not
responsible for organizing the last party held, which was
especially loud. Further, it was established that team spirit was
good, or at least average for such a camp.

The real reason seems to be related to Mr. Tremblay's wish to maintain discipline in the camp. He was apparently worried that the fatigue experienced by certain members due to lack of sleep might have a cumulative effect and result in more and more delays and slowdowns in the summer's work.

This was Mr Tremblay's first attempt at directing a prospecting camp. He was relatively young and was not in a position to consult with his superiors in Ottawa. He clearly had some difficulty in communicating with members of his team. Moreover, half of the employees reporting to him were under twenty-five years of age. Mr Tremblay would seem to have decided that since Isabelle Cadieux had been dismissed, it was necessary to dismiss Marthe Archambault too since her presence might disrupt the camp and cause problems among the men. He indicated in this respect that the extremely friendly relations between the complainant and one of the camp's senior geologists could have affected the camp's smooth operation. The company also referred to Miss Archambault's relative lack of maturity (see testimony of Robert Tremblay, pp 365, 427 and 429).

Even though the good faith of the camp director, Mr Tremblay, is not in question, he could not dismiss Miss Archambault too without there being an implication of sexual discrimination. It might make good sense to want to maintain a balance between the men and women in an isolated mining camp, but the Act formally prohibits practices which differentiate adversely in relation to an employee on the ground of his or her sex. Moreover, the evidence shows that no male member of the team was ever given a warning or reprimand before or after the complainants departure.

I must therefore conclude that the dismissal of the complainant was at least partly if not totally founded on a prohibited ground of discrimination based on the sex of the complainant.

It is now necessary to decide on the various subsidiary claims.

First, it is clear that the complainant is entitled to compensation for loss of wages since the decision to end her contract was based on sexual discrimination. The amount owing in this respect, including the bonus which she would normally have received, is \$1,500.

As regards to the one-year delay in her professional career due to the loss of one university year, it seems that the delay was caused by a lack of funds from 1978 summer earnings. It was argued that Miss Archambault did not apply for a loan/bursary for the fall of 1978, and the complainant's explanation on this point was not very convincing. Nevertheless, should the complainant be required to go into debt to pursue her studies (the loan/bursary being by its very nature repayable)? I do not believe so. I feel that the loss of one year, which was caused directly by her dismissal from camp Bouteille, should therefore be paid for by Eldorado Nuclear. The evidence showed the difference in salary to be in the order of \$500

per month, for a total of \$6,000. No evidence in rebuttal was produced.

Section 41(3) also provides for supplementary compensation not exceeding five thousand dollars where a person has engaged in a discriminatory practice wilfully or recklessly or where the victim of the discriminatory practice has suffered in respect of feelings or self-respect as a result of the practice.

Even though Mr Tremblay's good faith is not in question and he did provide the complainant with a recommendation when she applied for work elsewhere at a later date, there was a certain amount of recklessness in the manner in which Miss Archambault was treated.

Further, she suffered as a result of the dismissal, namely during her summer job in 1979 and from the comments made concerning the incident (testimony of Marthe Archambault, pp 30, 52, 108 and 109). For these reasons, I feel that the sum of \$2,000 is justified in this regard.

It has been asked that Eldorado Nuclear be required to adopt a program, in consultation with the Commission, to prevent a similar discriminatory practice occurring in future. However, the Commission did not prove that the company's policies were discriminatory with regard to the hiring of female employees, or that there have been any sanctions or dismissals because of sex other than the case of Miss Cadieux, who was obliged to leave the camp at the same time as the complainant. On the contrary, it is recognized that Eldorado Nuclear has tried to encourage greater recruitment of female staff. Further, there was no evidence of similar incidents at other comparable camps either before or after the summer of 1978.

I have the impression that the publicity which surrounded these two

dismissals had made Eldorado Nuclear aware of what can happen when women are introduced into isolated areas such as camp Bouteille, if it was already aware of this. I do not feel that a program such as that requested is necessary under the circumstances.

Lastly, although I do not wish to make any decision regarding the competence of the Human Rights Tribunal in this regard, I do not feel that it would be appropriate for Eldorado Nuclear to send the complainant a letter of apology, since there is no evidence of bad faith. The company in question has already provided the complainant with a favourable recommendation, and it admits that the dismissal was extremely unfortunate (Mr Casey, counsel for Eldorado, pp 330 and 554). Moreover, this judgment re-establishes facts. This would seem sufficient to repair the damage done in this respect.

Consequently, the Tribunal:
DECLARES that the dismissal of Miss Marthe Archambault from her employment as an assistant geologist during the summer of 1978 by

her employer Eldorado Nuclear constituted a discriminatory practice, contrary to s 7 of the Canadian Human Rights Act, since this dismissal was based in part or in whole on a prohibited ground of discrimination, that is, the sex of the complainant, Marthe Archambault;

ORDERS that the respondent, Eldorado Nuclear, pay the complainant, Marthe Archambault, the sum of \$9,500 in compensation for the damage suffered as a result of this discriminatory dismissal, as follows:

loss of wages: \$1,500,
- loss of revenue: \$6,000,
- special compensation for
suffering in respecting of
feelings or self-respect: \$2,000,

DISMISSES the other claims made by the complainant.

(sgd)
Denis Lemieux
Chairman

ORIGINAL VERSION IN FRENCH
April 27, 1981