CN employee won $35,000 for family status discrimination

Canadian National freight train conductor Denise Seeley got award for discrimination based on family status

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The Federal Court has recently upheld a Canadian Human Rights Tribunal decision awarding a Canadian National Railway employee $35,000 for discrimination based on family status. The company fired her when she would not accept a transfer from Jasper Alberta to Vancouver due to her inability to make appropriate childcare arrangements.

This case establishes that human rights legislation prohibiting discrimination based on family status extends protection to employees who require accommodation for certain childcare obligations.

Denise Seeley was a freight train conductor based in Jasper, Alberta. She was hired in 1991 and became a conductor two years later. Her husband is also employed by the company working as a locomotive engineer. They have two children born in 1999 and 2003.

Seeley was on layoff between 1997 and 2005, but continued to accumulate seniority under the collective agreement. The union contract specified that based on seniority, workers could be required to report to work on 15 days notice anywhere in the western region including Vancouver.

In February, 2005 she was recalled to cover a shortage in Vancouver. She asked for and received a 30 day extension. Shortly before the new deadline, she wrote a letter to CN asking to be relieved from reporting to Vancouver on a compassionate basis under the terms of the collective agreement.

In the letter, she said that she had two young children and her husband was frequently away for 14 to 24 hours at a time. She had no family in Vancouver and could not find suitable childcare because most daycares keep standard business hours.

Her reporting date was extended several times. However, she was fired in July 2005 when she did not take up the Vancouver position. She subsequently filed a claim with the Canadian Human Rights Commission alleging discrimination based on family status.

In 2010 the Canadian Human Rights Tribunal allowed Seeley's claim due to her parental obligations and concluded that CN did not produce evidence that accommodating Seeley would have resulted in undue hardship to the company

The Tribunal also found that CN had "a comprehensive accommodation policy" and the collective agreement allowed the company to exempt employees from covering shortages if they had a "satisfactory reason." CN's failure to investigate accommodation options contributed to the discrimination, the Tribunal said.

Seeley was reinstated in her job effective March 2007 with uninterrupted seniority plus compensation for wages and benefits. She was also awarded $15,000 for pain and suffering plus the maximum of $20,000 in damages allowable for reckless conduct.

Subsequently two other female conductors at CN with similar childcare problems caused by the shortage recall also made successful claims of discrimination based on family status before the Tribunal.

Nevertheless, CN appealed Seeley's case to the Federal Court. Judge Mandamin did not accept CN's argument that the Tribunal erred by interpreting family status to include personal choices as to how Seeley addressed her parental obligations.
The judge also said that CN had an obligation to respond to Seeley's letters and telephone calls with information available only to the company about the Vancouver working conditions and the accommodation that might be available for her and her children. Therefore, in a February 2013 decision he upheld the Tribunal's decision and the award for damages.

This decision is consistent with other recent cases on family status accommodation that require employers to make "meaningful inquiries" to establish whether or not a duty of accommodation exists once they become aware of possible circumstances which may lead to such an obligation.

Employers must also make individualized assessments and recognize that there may be different ways to perform a job.