

PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES

Commission des droits de la personne et des droits de la jeunesse v. Systèmes de drainage Modernes inc Human Rights Tribunal (Québec) (2009)

FACTS

Mike Allard was born with a left hand that was missing fingers and a thumb. Despite this, he had always done work requiring manual dexterity.

While studying industrial mechanics, he found a part-time job as a machine operator in a plastics factory owned by Les Systèmes de drainage modernes inc. The job advertisement mentioned that manual dexterity was one of the job requirements. The work involved removing plastic pieces from a mould and trimming off excess bits.

Two days after starting work, Mr. Allard was called into a meeting with the company's director of human resources, Mr. Charlebois. He was told he could no longer work at the company because "he was missing a hand". Mr. Charlebois said that because of this disability, Mr. Allard did not meet workplace health and safety standards and "multi-tasking" requirements.

Mr. Charlebois had never observed Mr. Allard working. He testified in court that he assumed Mr. Allard could not do the work based on his own judgment and the comments of a co-worker, who said Mr. Allard was "missing a hand". However, the factory foreman testified in court that Mr. Allard was doing the work correctly. Also, when asked by the foreman to comment on Mr. Allard's performance, two of his colleagues did not mention any problems related to his disability.

Two experts in ergonomics (people who study the interaction between people and their work tasks and workplaces) also testified in court. They did not agree on whether Mr. Allard's condition prevented him from doing his work safely and correctly: one said he could, the other said he could not. Neither had actually observed Mr. Allard doing his work.

Mr. Allard filed a complaint against the company with the Commission des droits de la personne et des droits de la jeunesse. The Commission agreed to take the complaint on his behalf to the Québec Human Rights Tribunal, a kind of court for human rights cases.

QUESTIONS

Discrimination Based on a “Handicap”

1. Did the company illegally discriminate against Mr. Allard when it fired him? (See Sections 10 and 16 of the Québec Charter.)
2. Was the company’s firing of Mr. Allard permitted under Section 20 of the Québec Charter, which states that distinctions based on job requirements are not considered to be discriminatory?

In other words, if a requirement is really necessary to do a job, it will not be considered to be discriminatory. For example, the courts have decided that a city can refuse to hire a person as a firefighter because of deafness in one ear. Requiring good hearing in both ears was found to be an a legitimate job requirement and therefore not discrimination.

Damages

If Mr. Allard was in fact discriminated against, the court must then decide if he is entitled to monetary compensation, also called “damages”.

3. Does the company have to pay him moral damages under Section 49 (1) of the Québec Charter?

***Moral damages** compensate a person for psychological harm as opposed to physical harm to the person or his or her property. For example, moral damages can be given for mental suffering or damage to a person’s reputation.*

4. Was the discrimination intentional? If so, does the company have to pay him punitive damages under Section 49 (2) of the Québec Charter?

***Punitive damages** are meant to punish a person who intentionally harms someone.*



EXPLANATIONS

Discrimination:

- Someone who claims to have been a victim of discrimination must prove that he or she was discriminated against based on one of the characteristics listed in Section 10 of the Québec Charter, such as a “handicap”.
- This person must also show that, because of this discrimination, his or her right to be treated equally was denied. (See the second paragraph of Section 10 of the Québec Charter.)

Intentional discrimination:

- A violation of fundamental rights will be considered to be “intentional” if the person who violated someone else’s rights knew that his or her actions would probably cause harm.

Section 20 of the Québec Charter:

- If there was discrimination, the employer must prove the discrimination was justified because it was based on skills or qualifications required for the job.
- To prove this, the employer must demonstrate the following:
 - ⇒ The skills or qualifications required were logically connected to the job.
 - ⇒ The measures taken to implement those job requirements were reasonable.
 - ⇒ It was impossible to accommodate differences between employees without extreme inconvenience. For example, if a company that is not very profitable has to spend \$300,000 to accommodate one employee, the accommodation might be considered too difficult and therefore “impossible”.

“Accommodating differences” means making changes to the physical workplace or the way work is organized. Examples of accommodation include giving an employee with vision problems a larger computer screen or allowing an employee to work on a different schedule than co-workers.

PREPARATION FOR PLEADINGS

Lawyers for the Commission (plaintiff)

The lawyers for the Commission must show the following:

Discrimination Based on a Handicap

- Mr. Allard was discriminated against based on a “handicap”.
- Because of this discrimination, he was denied the right to be treated equally.

Damages

- Mr. Allard suffered psychological harm as a result of the discrimination. He is therefore entitled to receive moral damages.
- The violation of Mr. Allard’s rights was intentional. He is therefore entitled to receive punitive damages.

For help with your arguments, refer to the explanations given above.

Lawyers for SDM (defendant)

The lawyers for the company must show the following:

Discrimination Based on a Handicap

- Mr. Allard was not discriminated against based on a handicap.
- Even if Mr. Allard was discriminated against, this discrimination was justified under Section 20 of Québec Charter. Apply the three criteria explained above.
- Ask yourself these questions:
 - ⇒ Did the employer try hard enough to accommodate Mr. Allard before claiming it was impossible to do so?
 - ⇒ Why was it impossible to accommodate Mr. Allard?
- Because of this discrimination, he was denied the right to be treated equally.

Damages

- Even if Mr. Allard’s rights were violated, he did not suffer any psychological harm and is not entitled to moral damages.
- The violation of his rights was not done intentionally, so he is not entitled to punitive damages.

For help with your arguments, refer to the explanations given above.