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Feature

Workplace Conversations: Offensive or Discriminatory?

Understanding your role as the employer

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In the recent decision of Wasacase v The Ranchmen's Club, 2025 AHRC 62, the Alberta Human Rights Tribunal (the "Tribunal") contemplated the issue of whether comments made by an employee which caused offence to another employee amounted to an adverse impact under human rights law, specifically a poisoned work environment.

The Comments

The complainant is an Indigenous woman who worked as a sous chef. While working in the office off the kitchen, the complainant overheard a conversation between two of her colleagues who were in the kitchen, which the complainant summarized as follows:

- The first thing JS (the colleague) would do if she was in government or in power is to get rid of every reserve. It would just be more cost effective.
- Her parents know people from a reserve down in Lethbridge that's incredibly mismanaged and they had negative experiences so they wouldn't go back to the Reserve ever.
- The reserves are mismanaged. JS stated the Chief of the reserve lives in a gorgeous home and his parents live in a gorgeous home. But there's a bunch of bordered up shacks and so that's why she would get rid of the reserves.

The Employer's Response

The complainant felt overwhelmed by the comments and immediately spoke with the food and beverage manager, a former general manager and the controller. The controller recommended that the complainant contact the Employee Assistance Program.

The manager also confronted JS about the comments, which JS denied making. The manager told JS to apologize, but JS refused, because she said the conversation was not directed to the complainant and was a private conversation.

The complainant then met with the Facilities Chair and club president, who committed to follow up on the matter. The Facilities Chair spoke with JS privately and mentioned that the complainant had found her comments very hurtful. JS was reluctant to issue the apology and stated that she needed more time to do it. Ultimately, the Facilities Chair directed JS to apologize to the complainant, but JS did not. The complainant felt she could not work with the employer any longer and accepted employment elsewhere. The employer did not want the complainant to resign; told her she is a valued employee and asked the complainant to stay.

The Complaint

The complainant subsequently filed a human rights complaint on the basis that the employer did not adequately respond to racially discriminatory remarks made by JS, which created a hostile and unsafe work environment. The complainant specifically complained that the employer failed to address her concerns in a timely manner.

The Decision

The Tribunal cited Lalwani v ClaimsPro Inc., 2016 AHRC 2, which stated that "General rudeness or

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bullying is not within the purview of human rights legislation. Where bullying includes negative comments about an individual in relation to the grounds specifically listed in the Act such that the employee is forced to endure the comments as a term or condition of employment, a poisoned work environment is created". The Tribunal considered factors such as whether further comments were made, whether the employer took steps to resolve the issue and whether the complainant and JS continued to work together without issue.

In this case, the Tribunal found that the lack of apology from JS did not amount to a poisoned atmosphere and that, while the issue was not resolved prior to the complainant resigning, the employer did take steps to try to appropriately address the complainant's concerns. In its decision, the Tribunal explained that while comments can cause real and lasting damage, they do not always amount to discrimination under the law, stating "expressing an opinion […] is not the same as a racially motivated attack… the complainant did not hear the beginning or the end of the conversation to understand the full context". Further, the Tribunal found the employer acted reasonably in the circumstances and made efforts to resolve the complainant's complaint. The fact that the issue had not been resolved within one month of the incident occurring was not seen as unreasonable in the circumstances.

Take-Away for Employers

In Alberta, in addition to the duty not to discriminate against an employee, employers have a duty to ensure, as far as it is reasonably practicable, that none of the employer's workers are subjected to or participate in harassment at the work site. Specifically, employers are required to develop and implement a violence and harassment prevention plan which includes procedures to report violence and harassment as well as procedures to investigate complaints. This case demonstrates that by taking reasonable steps to address and attempt to resolve workplace conflicts, the risk of an employer being seen as complicit in a discriminatory act will be reduced.

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