

HILL ADVISORY NEWS

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Do a few 'Rude' and 'Offensive' Comments Amount to Harassment ??



Some derogatory remarks which were sexual in nature and related to a co-worker's race and ethnicity were made in the workplace over a period of a few days. Although certain behaviours and gestures amongst employees may seem vulgar and in bad taste, does this necessarily create a 'hostile' or 'poisoned' work environment ? A Canadian Human Rights Tribunal has recently considered the following

- * Tanya was born in India and raised in Trinidad. She came to Canada as a young girl and worked for the federal government for 8 years. Her job was such that whenever her initial position did not have enough work, she would be assigned to another position, until such time as the workload required her to return. On one of these assignments, Tanya met Brian, another employee who was also involved in a similar work situation.
- * Tanya reported to her work area one morning and Brian told her not to put her purse on the floor. He indicated that if it was stolen either he or Jason, a friend of his, would be accused of stealing it. Both Brian and Jason were black.
- * Tanya started talking to Jason who informed her that he had previously worked with her sister. During the conversation Brian started making remarks about Tanya's sister and said that she had been fooling around with a black man. Tanya was annoyed and told Brian to *“mind his own business.”* Later that day Brian and Jason made other remarks about another female employee. Brian called her a *‘slut’* and referred to her as a *‘Barbie doll.’*
- * Brian then made derogatory comments about Tanya's hair colour as she had recently lightened her hair. He also asked other employees if they had ever seen a *‘black woman with blonde hair.’* Brian then called Tanya a *‘paki-coolee.’* The word *‘coolee’* was an insulting term used in the West Indies to refer to a person of East Indian origin. Brian also addressed her as *‘bitch’* on several occasions and commented on Tanya coming from a *‘mixed race’* family.
- * Tanya was not about to back off and asked Brian if he was jealous of her hair since he was bald. She also told him to *‘f --- off’* several times. Brian then noticed that Mary, another employee, was talking to the shop steward and crying. He told Tanya that if it were up to him he would have *“kicked Mary's butt and her unborn child's butt.”*
- * At the end of the day Tanya reported Brian's behaviour to the shop steward. The next day the shop steward spoke with Brian and told him that if these incidents did occur as Tanya had explained, this type of behaviour had to stop.
- * The following day Tanya went back to her initial job. She told a co-worker about Brian's remark about Mary the previous day. The co-worker then relayed this information to Mary. Later that day Brian and Mary approached her. Brian began swearing at her for saying he had made comments about Mary and her baby. Brian then called Tanya a *‘f--- ing Boy George look-alike,’ ‘f --- ing low-class paki-coolee’* and *‘f --- ing bitch.’* Tanya began to cry and immediately went to the shop steward to file a harassment complaint.
- * An internal investigation was conducted. Both Tanya and Brian were interviewed. Brian denied all of the allegations against him and stated that Tanya had harassed him. The employer eventually decided that *“There was no evidence to support either of their allegations of discrimination.”* However, both Tanya and Brian were re-assigned so that they would not have to work together again. *Tanya filed a complaint against Brian with the Human Rights Commission alleging harassment on the grounds of her ethnic origin and her sex.*

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- * A Canadian Human Rights Tribunal investigated Tanya's complaints. Brian denied many of her complaints and disagreed with her recollection of other incidents. *Brian stated he had only ever had a few exchanges with Tanya, which were of short duration. Brian did admit he made the remark about Tanya putting her purse on the floor but said that other minority groups had been accused of stealing in the past.* He also admitted he had been acting like a 'smart ass' when he made the remark about Tanya's hair colour. He stated Tanya had told him that it was natural and he had burst out laughing. He then turned to his supervisor who had been passing by and asked her if she had ever seen a black woman with blonde hair. She replied "No" and told them to get back to work.
- * Brian denied ever swearing at or insulting Tanya and claimed that he never called her a 'paki-coolee' or a 'bitch.' He stated Tanya had told him several times to 'f--- off' but that it was in a friendly joking tone. Brian's supervisor testified that Tanya, Brian and Jason were all laughing when Brian made the remark to her about the 'blonde black woman.' She indicated that the reason she had approached them and told them to get back to work was due to the loudness of their laughter.
- * The Tribunal stated they did not believe Brian when he denied calling Tanya a 'paki-coolee.' The Tribunal indicated there was no doubt that such an expression related 'directly to a person's ethnic origin, in a most derogatory way and as such satisfied the test for harassment.'
- * The Tribunal also noted *the use of the term 'Boy George look-alike' and 'bitch' were intended to imply sexual unattractiveness and were sexual in nature.* However, they also noted that even Tanya admitted there was a fair degree of derogatory remarks being made back and forth between her and Brian.
- * The Tribunal added that even if Tanya's evidence was accepted Brian's conduct did not 'constitute harassment on the grounds of sex or ethnic origin, within the meaning of the Act.' While they had no doubt that Tanya was bothered and annoyed by Brian's behaviour and that it was offensive *'his conduct was not repetitive nor of a severity to constitute the type of harassment prohibited by the Act.'*
- * The Tribunal added 'The conduct that we have found to be of a nature that is sexual or related to Tanya's ethnic origin was limited to a few incidents, over a span of one to two days' and that when the conduct 'takes the form of racial slurs, jokes in bad taste and stereotyping, it must be persistent and frequent in order to constitute harassment. An isolated racial slur, even one that is very harsh, will not by itself constitute harassment within the meaning of the Act.'
- * In closing, the Tribunal stated that although Brian's remarks may have been offensive and rude, unless it had continued on an ongoing basis there could be no finding of harassment.

**** As this case points out in order to come to a finding of harassment, it must be demonstrated that the conduct of the respondent was such as to have detrimentally affected the work environment. A certain level of seriousness or repetition in the conduct is required for such a 'hostile' or 'poisoned' environment to develop. Words, gestures or behaviour that within the context of everyday relations between a man and a woman, may seem vulgar, in bad taste, misplaced, or even coarse - and therefore sexist does not automatically constitute harassment. ****

It is interesting to note that Tanya immediately took stress related leave when she was informed of her employer's decision following the investigation of her 'harassment' complaint. During the Human Rights Tribunal hearing this was not considered to be evidence of a 'poisoned' work environment, since Tanya managed to continue working for 3 months after the incidents.



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**Believe it
 or not ??**



Recently, a magazine ran a contest. They were looking for people to submit quotes from their real-life managers. Here is the winning submission

"As of tomorrow, employees will only be able to access the building using individual 'security' cards. Pictures will be taken next Wednesday and employees will receive their cards in 2 weeks."