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IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Sandy R. Schmidt

COMPLAINANT

A N D:

Dawn Burling and Herb Mittelstaedt

RESPONDENTS

**REASONS FOR PRELIMINARY DECISION
APPLICATION TO DISMISS**

Tribunal Member:

Lindsay M. Lyster

On her own behalf:

Sandy Schmidt

Counsel for the Respondents:

Michael H. Korbin

Introduction

[1] Sandy Schmidt filed a complaint in which she alleged that Dawn Burling and Herb Mittelstaedt discriminated against her in respect of her employment on the basis of her marital status, contrary to s. 13 of the *Human Rights Code*.

[2] All three parties were employed at Cott Revelstoke Ltd., a beverage bottling company located in Revelstoke, BC. At the time of the events in question, Ms. Schmidt was a probationary employee working as a seasonal blowmoulding technician. Ms. Burling was her Lead Hand. Mr. Mittelstaedt was the Operations Manager.

[3] In her complaint, Ms. Schmidt alleges that on May 12, 2006, during her six week evaluation, Ms. Burling accused her of spending most of her time with her husband, who was also employed by Cott, and not getting her work done. Ms. Schmidt alleges that a couple of days later, Mr. Mittelstaedt came in to say he was wrong and to apologize to her through her husband. Despite this, she quit, as she and her husband were "sick to death about their accusations".

[4] The respondents have applied to have the complaint dismissed under ss. 27(1)(b), (c) and (d)(ii) of the *Code*. Both respondents filed affidavits in support of the application.

[5] Ms. Schmidt initially failed to file a submission in response to the application. On her request, the respondents consented to a letter, apparently written by Ms. Schmidt in response to their Response to Complaint, and not their application to dismiss, being accepted as a late-filed response to the application. I have considered Ms. Schmidt's letter in reaching this decision.

Analysis

[6] In my view, this application is most appropriately considered under s. 27(1)(c). I therefore consider whether the complaint has no reasonable prospect of success.

[7] In doing so, I consider all of the materials filed by the parties. The respondents submit that I must accept their sworn evidence in preference to Ms. Schmidt's unsworn materials. I do not agree. In a case such as this, where one party is self-represented and

the other parties are represented by counsel, I would not discount the self-represented party's materials, merely because they are unsworn. That would create an unfair barrier to self-represented parties, who may not realize the significance of having their statements sworn or who may be unable to afford to have their statements sworn. I consider all of the materials filed, and give each the weight I consider appropriate in the circumstances.

[8] On Ms. Schmidt's own version of events, she was told, in her six week review, that she was spending too much time away from her station with her husband. Ms. Burling, in her affidavit, agrees that she raised this issue with Ms. Schmidt. The Probationary Review Form attached to Ms. Burling's affidavit confirms that they discussed it.

[9] It cannot be considered discriminatory for an employer to raise concerns with a probationary employee about spending too much time away from her work station. As the respondents submit, it really is irrelevant why Ms. Schmidt was doing so – she could have been with her best friend, or by herself reading a book. The point is she was away from her work station, a fact which could obviously cause production problems.

[10] Ms. Burling's affidavit and the Probationary Review Form also indicate that, despite this concern, the review was generally positive. In her response, Ms. Schmidt did not deny that this was so. What she did take issue with is whether Ms. Burling's concerns were well-founded. Whether they were or not is not the issue for decision by the Tribunal. Ms. Burling could have been acting on inaccurate information. That would not be a basis for finding discrimination on the basis of marital status.

[11] Turning to Mr. Mittelstaedt's involvement, both he and Ms. Burling say that they met together with Ms. Schmidt after the probationary review meeting. They both say that they reinforced the message that Ms. Schmidt was spending too much time away from her station, and that it had been observed that she was sometimes with her husband. Once again, there is nothing discriminatory in an employer having and communicating such concerns.

[12] Mr. Mittelstaedt says that it was in this same meeting that Ms. Schmidt was upset and said she was going to quit. He recommended that she take some time and think about

it rather than making such an important decision when she was upset. He says that he told her they could resolve whatever problems were bothering her. He says that she did not quit then, but later in May.

[13] Regardless of whose version of the conversation about Ms. Schmidt's quitting is accepted, there is nothing discriminatory about an employer trying to persuade an employee not to quit or to take time to consider her actions.

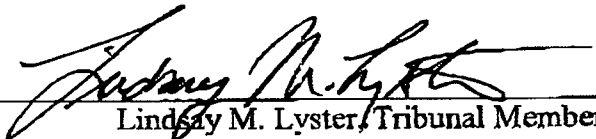
[14] In his affidavit, Mr. Mittelstaedt denies Ms. Schmidt's allegation that he came in a few days later to apologize about anything in relation to her. Rather, he says that he apologized to her husband about an unrelated issue with his performance. Given that Ms. Schmidt does not claim to have been present for this conversation, and there is no statement from her husband, I would give greater weight to Mr. Mittelstaedt's recollection.

[15] Looking at the totality of the evidence and information before me with respect to these events, I am persuaded that Ms. Schmidt's complaint has no reasonable prospect of success.

[16] That conclusion is only strengthened by further reference to Ms. Schmidt's response to the application. In it, she says "if they would put policies in place that do not allow family members to work at the plant and a rule that employees are not allowed to date then all of this could have been avoided in the very beginning." As the respondents submit, this is the height of irony. Ms. Schmidt appears to be submitting that there would never have been a complaint if the respondents had discriminated on the basis of marital status from the start. A blanket rule of the kind Ms. Schmidt proposes would be contrary to the *Code*. By contrast, there is no reasonable prospect that any of the actions actually engaged in by the respondents would be found to be discriminatory.

Conclusion

[17] The complaint is dismissed under s. 27(1)(c) of the *Code*.


Lindsay M. Lyster, Tribunal Member