

NOVA SCOTIA COURT OF APPEAL

Citation: Nova Scotia (Human Rights Commission) v. Play It Again Sports Ltd.,
2004 NSCA 132

Date: 20041029
Docket: CA 217567
Registry: Halifax

Between:

The Nova Scotia Human Rights Commission and
Dorothy Kateri Moore

Appellants

v.

Play It Again Sports Ltd., Trevor Muller
and Ronald Muller

Respondents

Judge: The Honourable Justice David Chipman

Appeal Heard: October 6, 2004

Subject: *Human Rights - Discrimination - Racial Harassment -
Poisoned Workplace - Human Rights Act, R.S.N.S. 1989, c.
214, ss. 3, 4, 5, 34(8), and 36(1)*

Summary: The appellant, Moore, a Mi'kmaq, living in Membertou, Nova Scotia had been employed at the respondents' retail sports outlet. The respondent, Trevor Muller, was part owner and general manager. On or about October 15, 1999, the respondent left her employment and filed a complaint under the **Human Rights Act**, R.S.N.S. 1989, c. 214, alleging that she had left her employment because she was improperly accused of not providing service and further, that she had been discriminated against under the **Act** by reason of her race in that she had been subjected to a poisoned work environment by reason of being called by Ronald and Trevor Muller and others by the appellation "kemosabe" which had been used as a greeting in the Lone Ranger television series and movies of the 1940s and 1950s.

Ms. Moore's complaint was dismissed by a Board appointed pursuant to the provisions of the **Act**. The Board found that on or about October 15, 1999, Ms. Moore voluntarily quit her employment at a time when she was most probably suffering some form of a breakdown. As to the allegations of racial harassment, the Board examined the evidence and found that a number of incidents relied upon by Ms. Moore were insufficiently compelling to conclude that she was treated with a lack of respect or dignity on account of her aboriginal origin.

As to the appellation *kemosabe*, the Board examined the evidence, including the showing of episodes from the Lone Ranger series. The Board concluded that the evidence was contradictory on whether the use of the appellation *kemosabe* was in and of itself considered a racial slur by members of the Mi'kmaq nation. It referred to evidence that Ms. Moore had asked Trevor Muller the meaning of the word when he addressed her by it, and he informed her that it meant "my friend." Ms. Moore, at no time before leaving her employment, made any investigation elsewhere as to the meaning of the word. The Board did not accept that if the word *kemosabe* had the capacity to hold a meaning which was offensive to Ms. Moore as an aboriginal person that that was sufficient to support an allegation of discrimination. The Board then examined the evidence to see if Ms. Moore made known to the respondents that she was offended by the appellation. The Board concluded that, in the circumstances, the respondents could not know that she considered it a racial slur "absent some clear and unequivocal indication thereof." The Board concluded that she did not give any such indication and further concluded in any event that she was not, in fact, offended by the term. The complaint was dismissed.

An appeal was taken to the Nova Scotia Court of Appeal by Ms. Moore and the Nova Scotia Human rights Commission, limited to a question of law by reason of s. 36(1) of the **Act**.

Issues:

1. Whether the Board erred in law in its fact-finding process?
2. Whether the Board erred in law in determining the burden which rested on Ms. Moore to establish her case?

Result: The Nova Scotia Court of Appeal reviewed the evidence in detail and concluded that the Board made no error of law in any part of its fact-finding process.

The Nova Scotia Court of Appeal reviewed the law respecting racial discrimination and racial harassment and concluded that the Board had not erred in the burden it placed on Ms. Moore to prove her case and further held that on the findings reached by the Board, Ms. Moore had not established a case. The appeal was dismissed.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 27 pages.