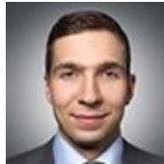


October 14, 2015

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## **Harassing Comments Are No Joke: Employer Ordered to Pay Employee \$7,500**



By [Jason Kully](#)

*Mohamud v. Canadian Dewatering (2006) Ltd.*, [2015 AHRC 16](#), is a recent decision of the Alberta Human Rights Commission. This decision demonstrates the type of workplace harassment that creates a poisoned workplace and is a reminder that an employer may be responsible for paying damages to an employee as compensation for injury to the worker's dignity caused by the discriminatory actions of other employees.

Mr. Liban Mohamud was employed as a pump operator with Canadian Dewatering (2006) Ltd. During the field season, he worked in the field monitoring pumps at tailing ponds. He worked in the shop when the field season ended.

Mr. Mohamud initially made an internal complaint to Canadian Dewatering in which he alleged human rights violations due to workplace harassment. Canadian Dewatering conducted an investigation and determined that the incidents were attributable to miscommunication or misunderstanding rather than discrimination.

Mr. Mohamud then made a discrimination complaint to the Human Rights Commission about a poisoned work environment created by workplace harassment as a result of his race, colour and religion on June 20, 2011. Canadian Dewatering subsequently terminated him on July 15, 2011. Mr. Mohamud made a second complaint to the Human Rights Commission that his termination was retaliation by Canadian Dewatering as a result of his initial discrimination complaint.

According to the Alberta Human Rights Commission, a poisoned work environment is created when a workplace is hostile or unwelcoming because of insulting, offensive or degrading comments or behaviour aimed at an employee. When comments or behaviour violate the *Alberta Human Rights Act*, a discrimination complaint may be made. For example, an employee who is subjected to racial or religious slurs and harassment may make a human rights complaint on the grounds of race or religion.

If the offensive behaviour directed toward an employee is not based on the grounds protected in the *Act*, the employee cannot make a discrimination

complaint. For example, an employee who is insulted or harassed by a coworker because of their intelligence or abilities will not be able to make a complaint if the comments are not based on a protected ground such as mental or physical disability. While comments like these are offensive and may result in other workplace liabilities and responsibilities for employees and employers, they are not the subject of a discrimination complaint.

In his initial complaint, Mr. Mohamud stated that a number of discriminatory workplace incidents arose between November 2010 and June 2011. Mr. Mohamud alleged, and the Commission found, that the following incidents occurred:

- Mr. Mohamud greeted a friend using the Arabic salutation "Asalamu Aleykum" to which another employee stated "Don't you talk that shit language around here. This is Canada";
- Mr. Mohamud protested directly to this employee that he felt terrible about the objection to a common greeting. Mr. Mohamud advised a shop supervisor of this interaction and was told by the supervisor to "give it a week";
- The employee who made the "This is Canada" comment confronted Mr. Mohamud about talking to the supervisor and drew a circle in the mud and pointed to the middle of the circle while telling Mr. Mohamud "That's your job", implying that Mr. Mohamud was insignificant;
- Mr. Mohamud heard the shop supervisor chide the employee in a joking manner and tell him "I'm going to get Liban after you";
- Mr. Mohamud reported this occurrence to the Branch Manager and a meeting was convened where the company advised employees that it had no tolerance for discrimination. Mr. Mohamud reported this message was undone by the shop supervisor who stated that any joking around which might sound discriminatory was not a source of concern;
- The employee who made the negative remarks to Mr. Mohamud and another employee were standing by suspended chains and one of them started either swinging from the chains or swinging them back and forth while making monkey noises directed at Mr. Mohamud; and
- An employee mocked and stereotyped Mr. Mohamud as a black man from a ghetto by saying words to the effect of "Hey man, what's up y'all. Let's keep it professional", while the shop supervisor was present.

The Commission found that the actions of the shop workers and the apparent approbation of the shop supervisor were belittling and humiliating to Mr. Mohamud and that these actions were based on Mr. Mohamud's race, colour and religious beliefs. This created a poisoned work environment that Mr. Mohamud endured as a condition or term of his continued employment.

Canadian Dewatering did not argue the discriminatory conduct did not occur and did not offer a non-discriminatory explanation for it. Accordingly, a case of discrimination was established as the actions of Mr. Mohamud's co-workers and supervisor were "unacceptable, discriminatory conduct and not to be tolerated in any workplace".

Due to the repeated events which took place over a limited period of time, the Commission ordered that Canadian Dewatering pay \$7,500.00 to Mr. Mohamud as a result of the injury to Mr. Mohamud's dignity.

With respect to the retaliation complaint, the Commission concluded that the evidence demonstrated Mr. Mohamud was terminated because of his unsatisfactory work performance and its impact on workplace safety and production. Accordingly, retaliation was not a factor in the decision to terminate and Mr. Mohamud's retaliation complaint was dismissed.

The Commission attributed liability to the employer due to the actions of a few employees and despite efforts by the employer to address the alleged harassment. However, the Commission found that the employer's efforts were largely undone by the actions of the shop supervisor who suggested that the negative conduct complained of was acceptable because it was a joke. Employers should take complaints of workplace harassment seriously and should ensure that a clear message is presented to all employees that harassment is not acceptable, even if the comments are intended to be a joke.

For more information on workplace harassment, toxic or poisoned workplaces, and an employer's obligations and best practices when a harassment complaint is made, join Field Law's Labour and Employment Group for a free seminar in either Edmonton or Calgary. For dates and registration information, please [click here](#).

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