



IN THE MATTER OF THE HUMAN RIGHTS ACT 1981

IN THE MATTER OF THE BERMUDA HUMAN RIGHTS TRIBUNAL

BETWEEN:

CAROLINE BURCHALL

Complainant

-v-

BERMUDA SCHOOL UNIFORMS SHOP

First Respondent

CARMON CYRUS

Second Respondent

and

BELINDA CYRUS

Third Respondent

J U D G M E N T

1. This is a complaint brought by Caroline Burchall, a Canadian national, living in Bermuda against the Bermuda School Uniforms Shop, Mr Carmon Cyrus and Mrs Belinda Cyrus, the three Respondents in the matter. The Complainant alleges breaches of her human rights under the Human Rights Act 1981. There are two complaints made which are framed as follows:-

- (i) *"The Complainant alleges that the Respondents discriminated against her by failing to supply goods, facilities and services of the like quality, in the like manner and on the like terms to her on which the former normally makes them available to other members of the public because of her race, place of origin, colour, or ethnic, or national origins in contravention of Section 5(1) of the Human Rights Act, 1981 as read with Section 2(2)(a)(i) of the said Act."*



- (ii) *"The Complainant alleges that the Respondents, with intent to incite or promote ill will or hostility against any section of the public, used words which were threatening, abusive or insulting and were likely to promote or incite ill will or hostility against a section of the public distinguished by colour, race, ethnic or national origin, in contravention of Section 8A(1) of the Human Rights Act 1981."*
2. The Particulars of the Complaints are set out in the written complaint dated the 10th June 2013. The Tribunal does not intend to rehearse the entire particulars set out in the written complaint but they can be summarised as follows.
3. The Complainant alleges that on the 1st September 2012, she and her two children attended the Bermuda School Uniforms Shop. She was the second customer inside the shop. The Second Respondent was the only person serving customers at the time with the Third Respondent arriving at the end of the Complainant's visit. The Complainant alleges that the service was slow and she had to wait over an hour for service while multiple people who arrived after her were served before her. The Complaint alleged that the Complainant felt discriminated against.
4. The complaint further alleges that the Complainant attended the Bermuda School Uniforms Shop on the 19th September 2012 at 5.20 pm but found the shop was closed. She attended the next day on Thursday the 20th September 2012 on her lunch break but was unable to shop for her children's clothes despite the lights being on in the premises and two signs on the door saying that the shop was open. The Complainant says that she telephoned the shop several times but received no answer. After thirty minutes, the Complainant states that she gave up and walked back to work.
5. The thrust of the complaint surrounds the events that unfolded on Saturday, 22nd September 2012. The complaint alleges that when the Complainant attended the Bermuda School Uniforms Shop, she was met with a barrage of insults from the Third Respondent. The complaint avers that the Third Respondent referred to a previous email being sent to the school's principal and then alleges that the Third Respondent stated the following words:-

"You people come to Bermuda with nothing and then you disrespect Bermudians.

I'm sick and tired of all you coming and disrespecting Bermudians like we are nothing.

You did not want to come around here anyway.

You people are what's wrong with this country."



6. The Tribunal heard only the evidence of the Complainant in this matter who also produced a video recording of the incident on Saturday the 22nd September 2012. The Respondents chose not to participate in the proceedings.
7. From the evidence of the Complainant supplanted with the video evidence in this matter, the Tribunal made the following findings of fact. The Complainant first attended the Bermuda School Uniforms Shop in the summer of 2012 when she attempted to purchase uniform items in advance of the upcoming school term. At that time, she met Mr. Cyrus, the Second Respondent in this matter. They enjoyed a pleasant conversation and discussed a connection between the Complainant's former spouse's family and the Second and Third Respondents. The shop's credit card machine was not working and the Complainant left the shop empty handed
8. The Complainant visited the shop again on the 1st September 2012 when Mr. Cyrus was the only person working at the shop. The Tribunal accepts the Complainant's evidence that the service was slow and that other customers were served before her. She also complained that the uniforms were not ready to be sold, as the shop needed to order more sizes. In her witness statement, the Complainant stated she did not take the slow service personally, but she simply thought that it was a poorly run business. Mrs. Cyrus arrived just before she left the premises.
9. The Complainant next went to the shop on the 19th September 2012 and arrived there at 5:20 p.m. The shop was closed and the Complainant noted that the hours posted were Monday to Saturday, 10:00 a.m. to 5:00 p.m. The Complainant says she was frustrated as she was a single parent, and it was difficult for her to get away during the day due to her schedule.
10. The Complainant next attended the shop at 2:00 p.m., on the 20th September 2012 when she walked to the shop during her lunch break. On arrival, she found the lights on and two signs on the door indicating that the shop was open. Despite this, the doors were locked. The Complainant knocked on the door and telephoned the shop several times but received no answer. After staying at the store for 30 minutes, the Complainant finally gave up and walked back to work. The Complainant was frustrated. She then sent an email to the principal of the Francis Patton School expressing her frustration. The Complainant produced the narrative of the email dated the 20th September 2012 which set out Complainant's experience with the Bermuda School Uniforms Shop set out above. It is not necessary to recite the entire email; suffice to say that the Complainant's description of the service provided by the Bermuda School Uniforms Shop was sub par and wanting. Further the email stated:-

"Why are our Students of Excellence being made to buy these uniforms from a shop that is so extremely frustrating and difficult? Why can't we set an example and give our business to a Store of Excellence?? Being a second class citizen in this country, I don't get involved in politics but something is really wrong here."



11. The Complainant's email was obviously forwarded to the Third Respondent, which is evidenced by the unfortunate exchange that occurred between the Complainant and the Third Respondent when the Complainant attended the shop for the final time on 22nd September 2012. According to the evidence presented, it appears that the Bermuda School Uniforms Shop was the only store authorised to sell uniforms for the Francis Patton School.
12. The Tribunal had the benefit of a video produced by the Complainant that recorded much of the events on the 22nd September 2012. It was clear that the Third Respondent was visibly upset with the Complainant's email that had been forwarded to the Principal of Francis Patton School. Some of the more pertinent statements made by the Third Respondent during the "barrage" were:-

"Cause you people You come to Bermuda with nothing and then you disrespect Bermudians."

"I am sick and tired of you all coming here disrespecting Bermudians like we ain't nothing."

"I've read the email and I am going to take it to my lawyer because I'm sick and tired of you people coming here disrespecting Bermudians."

"If you had a problem you could have came here and sat down and talked to us. We left here that day and went down to the school because we had a meeting with the principal. And you sent this nasty email."

"You have to know who you're dealing with. You don't disrespect people like that. You don't send an email and then we have to find out what's going on...you don't send a nasty email to the school like that."

"Yeah so why did you put it in the email. It's ridiculous. You people carry on bad. That's why Bermuda is the way it is."

"And I don't appreciate you disrespecting us. When you come in here, we treat you like anybody else. But when you sent that email, you really got on my nerves. And I didn't even know you."

"You know why [you are getting this treatment]? Because I am really upset with you and I didn't even know you. You don't... carry on like that with people. People especially that you don't know."

"Politics. Politics don't have nothing to do with this..."



(Presumably, the reference to “*Politics, Politics*” is a direct reference to the part of the Complainant’s email cited above in paragraph 10 above.)

13. During the incident, Third Respondent quoted the price of \$108.00 for two gym sets of clothing but later reduced the price to the appropriate sale price when selling the items of clothing to the Complainant.

First Complaint

14. The law applicable to the first complaint is set out in Section 5(1) of the Human Rights Act 1981 as read with Section 2(2)(a)(i).

Provision of goods, facilities and services

5 (1) No person shall discriminate against any other person due to age or in any of the ways set out in section 2(2) in the supply of any goods, facilities or services, whether on payment or otherwise, where such person is seeking to obtain or use those goods, facilities or services, by refusing or deliberately omitting to provide him with any of them or to provide him with goods, services or facilities of the like quality, in the like manner and on the like terms in and on which the former normally makes them available to other members of the public.

(2) For the purposes of this Act a person shall be deemed to discriminate against another person—

(a) if he treats him less favourably than he treats or would treat other persons generally or refuses or deliberately omits to enter into any contract or arrangement with him on the like terms and the like circumstances as in the case of other persons generally or deliberately treats him differently to other persons because—

(i) of his race, place of origin, colour, or ethnic or national origins;

15. The Tribunal questioned the Complainant relative to the delay in service she encountered on the 1st September 2012 and to the “multitude” of persons who were served before her despite the Complainant being the second customer in the shop. There was no evidence as to the other customers’ place of origin, colour, ethnicity or national origins. The Complainant made no direct complaint in her evidence about her treatment by either the Second or Third Respondent on this day except that the service was slow. There were no verbal exchanges between the parties that were referred to by the Complainant.
16. The Complainant noted that there was only one changing room. The Complainant further testified that the Second Respondent was working by himself for the hour that the Complainant had to stay at the store. The Third Respondent arrived at the end of the



Complainant's visit to the store. When questioned by the Tribunal, the Complainant accepted that her real complaint in relation to the 1st September 2014 visit was that the business was being poorly run.

17. This was the Complainant's only contact with the Second Respondent in September 2012, and no complaint was ever made about his conduct. The Complainant did describe meeting the Second Respondent in the summer of 2012; however, she described this meeting as a pleasant interaction where they shared information about persons commonly known to them both. There was no evidence presented that could justify a complaint against the Second Respondent personally in this matter.
18. The real questions for the Tribunal concerned the events that occurred on the 22nd September and the actions of the Third Respondent.

Did the Respondents discriminate against the Complainant by failing to supply goods, facilities and services of the like quality, in the like manner and on the like terms on which the former normally makes them available to other members of the public because of her race, place of origin, colour, or ethnic, or national origins?

19. The Tribunal carefully considered the evidence in connection with this question. Although the Complainant did complain about the quality of the items she purchased for her children, there was no evidence whether the items purchased by the Complainant were of a lesser quality than that of clothes purchased by others. Further, although the Third Respondent initially quoted an inflated price for the goods (\$108.00 for two sets), the Third Respondent corrected the sale price prior to completing the transaction, so it cannot be said that she failed to supply the goods on like terms on which she supplied to them to other members of the public.
20. The case turns on whether the Respondents discriminated against the Complainant by failing to supply the goods in the like manner. Having seen the video and the actions of the Third Respondent, the Tribunal can infer that the Third Respondent did not provide the goods to the Complainant in the like manner as she normally makes them available to other members of the public.
21. The crucial question is whether the Third Respondent refused to supply the goods on like terms because of the Complainant's race, place of origin, colour, or ethnic, or national origins. The Tribunal reminds itself that the Complainant has the burden of proof on the civil standard. The Tribunal did not have the benefit of the Third Respondent's testimony, but the Tribunal was aided by the video recording that captured the events contemporaneously as they unfolded. At no point did the Third Respondent refer to the colour or nationality of the Complainant, but the references to "you people" in the context used by the Third Respondent were plainly references to foreign nationals.
22. The Third Respondent was clearly infuriated by the fact that the Complainant had sent the email to the principal of the Francis Patton School. As the sole supplier to the school,



this must have been an important contract for the Bermuda School Uniforms Shop. The Third Respondent saw the Complainant's email as an attack on her business and livelihood. The Tribunal is of the view that it was the disparaging email that served as the catalyst for the unprofessional conduct of the Third Respondent. The Tribunal has come to the conclusion that despite the epithets uttered by the Third Respondent, the root cause of those utterances was not as a result of the Third Respondent discriminating due to the Complainant's race, place of origin, colour, or ethnic, or national origins; rather, her utterances were a direct result of being upset with the transmission of the email to the school principal. We refer to the following statements made by the Third Respondent.

"If you had a problem you could have came here and sat down and talked to us. We left here that day and went down to the school because we had a meeting with the principal. And you sent this nasty email."

"You have to know who you're dealing with. You don't disrespect people like that. You don't send an email and then we have to find out what's going on...you don't send a nasty email to the school like that."

"Yeah so why did you put it in the email. It's ridiculous. You people carry on bad. That's why Bermuda is the way it is."

"And I don't appreciate you disrespecting us. When you come in here, we treat you like anybody else. But when you sent that email, you really got on my nerves. And I didn't even know you."

23. It seems clear that the motivation for the verbal barrage was not the Respondent's race or national origin but what the Third Respondent perceived as an attack on her business. This is not to criticise the Complainant for sending the email complaining about the level of service. The Tribunal accepts that the Complainant experienced poor service in her dealings with the Bermuda School Uniforms Shop. As this was the only shop that catered to the needs of the Francis Patton School, coupled with the difficulties the Complainant had encountered, the Complainant turned to the principal of the school to express her frustration with respect to her dealings with the shop. What the Tribunal does not accept, however, is that the Third Respondent discriminated against the Complainant because of her race, place of origin, colour, or ethnic, or national origins. The Tribunal finds that it is far more likely that the Third Respondent's conduct was a reaction to seeing the Complainant's email and being called to a meeting with the principal.
24. The Tribunal therefore dismisses the first Complaint against the Second and Third Respondents.
25. Before going on to deal with the second complaint, the Tribunal notes that there was no evidence that the Bermuda School Uniforms Shop was incorporated and was therefore a legal entity in the eyes of the law capable of being sued in its own name. It was likely just



a trading name under which the Second Respondent and Third Respondent traded. In those circumstances, the case against the named First Respondent is dismissed on both Complaints.

Second Complaint

26. The Tribunal considered the evidence carefully in the relation to the second complaint which was framed as follows:-

The Complainant alleges that the Respondents, with intent to incite or promote ill will or hostility against any section of the public, used words which were threatening, abusive or insulting and were likely to promote or incite ill will or hostility against a section of the public distinguished by colour, race, ethnic or national origin, in contravention of Section A(1) of the Human Rights Act 1981.

27. The Tribunal found that there was clear evidence to support this charge as framed originally in the complaint as against the Third Respondent on the basis that the words used were insulting to a section of the public as distinguished by national origin. The Tribunal did not feel that the words used were threatening given the demeanor of the parties. Clearly the Complainant was not intimidated by Mrs Cyrus as evidenced by her reaction to the “barrage”. The Third Respondent’s references to words to the effect that – “you people come to Bermuda with nothing and disrespect Bermudians and that you people are what’s wrong with Bermuda” were words referring to foreign nationals (as opposed to Bermudians) and were clearly insulting and designed to promote ill will against a section of the public, namely foreign nationals.
28. As stated above, there was no evidence that the Second Respondent ever used any words that could fall within the complaint and therefore there is no evidence at all against Mr. Cyrus to support this complaint against him. The complaint against the Second Respondent is hereby dismissed. There was, however, cogent evidence to found a complaint against the Third Respondent on the complaint that was drafted in the Particulars of Complaint.
29. The Tribunal went on to review the law as set out in Human Rights Act 1981 and in particular Section 8A(1) which read as follows:-

8A1 Publication of racial material and racial incitement prohibited

No person shall, with intent to incite or promote ill will or hostility against any section of the public distinguished by colour, race or ethnic or national origins use in any public place or at any public meeting words which are threatening, abusive or insulting, being matter or words likely to incite or promote ill will or hostility against that section on grounds of colour, race or ethnic or national origins.



30. When reviewing Section 8A(1) of the Act and comparing it to the second complaint as set out in the Particulars of Complaint, it was evident that the complaint drafted had omitted to include the words “*in any public place or at any public meeting*” as highlighted above in Section 8(A)1. This is a material element in order to found a complaint under Section 8A(1). The Tribunal are bound to apply the law as set out in the Human Rights Act 1981 and therefore consideration had to be given to whether the incident of the 22nd September 2012 happened in “a public place”. The Human Rights Act defines public place as follows:-

In this section—

the expressions “public meeting” and “public place” respectively have the same meaning as in the Public Order Act 1963;

31. The Human Rights Act 1981 therefore adopted the interpretation of the Public Order Act 1963 which reads as follows:-

Public Order Act 1963

“public place” means any highway, public park or garden, any sea beach, and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not; and includes any open space to which, at the material time, the public have or are permitted to have access, whether on payment or otherwise;

32. The Tribunal therefore had to consider the location of where the “barrage” occurred. The Third Respondent’s outburst clearly occurred within the confines of the Bermuda School Uniforms Shop. The definition of “public place” as set out in the Public Order Act 1963 refers to only out-door public places. Given that the “barrage” occurred inside the shop, the words were not spoken in a “public place” as defined in the legislation. Therefore, a key element of the complaint, if properly drafted, could not be made out on the evidence before the Tribunal.
34. The Tribunal would have found the complaint made out as against the Third Respondent but for this legal requirement that the words have to be used in a public place as defined in the Public Order Act 1963 That is, the Tribunal would have held that the Third Respondent used words that were insulting and likely to promote or incite ill will or hostility had it not been for this technicality of law. The Tribunal would urge the Attorney General to consider amending the legislation so as to address this anomaly. The definition of “public place” as defined in the Criminal Code Act 1907 should possibly be adopted which states:-

“public place” includes any highway or estate road and any other premises or place to which at the material time the public has or is permitted to have access, whether on a payment or otherwise;



This definition would have included the inside of the Bermuda School Uniforms Shop, and the complaint would have been made out.

35. The Tribunal is bound to apply the law as it presently stands, and it is clear that the complaint against the Third Respondent must also be dismissed as the offensive words were not spoken in a “public place” as defined in the Human Rights Act 1981.

DATED this 30th day of June, 2014

Richard Horseman – Chairman of Tribunal

Naomi Schroter – Tribunal Member

Millard Thompson – Tribunal Member