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Preaching on the Job Results in Termination for Cause

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Dealing with an employee's religious beliefs is a delicate matter, not only for employers but also for tribunals. The case *Friesen v. Fisher Bay Seafood and others, 2009 BCHRT 1* demonstrates the importance of employers fulfilling their duty to accommodate to the point of undue hardship.

In this case, an employee was fired when he refused to stop preaching to co-workers during working hours. He claimed discrimination on the basis of religion. His human-rights complaint was dismissed. The Tribunal ruled that the employer's demand was a *bona fide* occupational requirement. The employer had treated the employee with respect and had made sufficient attempts to accommodate his religious beliefs.

The Facts

Mr. Friesen was a fish plant cleaner working for Fisher Bay Seafood Ltd. It operated a plant that processes seafood. Friesen worked the night shift with several other employees. He was a good and reliable employee, and as a result was promoted to a supervisory position.

Friesen is a member of the Sidney Pentecostal church. He believes that Jesus Christ is his lord and savior and that he should share his beliefs with others. The problem was that he also worked diligently and persistently at preaching to his co-workers. Complaints from co-workers against this unwanted preaching became more numerous and strenuous, even to the point of threatening to quit. The employer repeatedly warned Friesen to stop preaching on the job, but he wouldn't.

For instance, a night-shift cleaner complained that Mr. Friesen would not show him how to operate a pallet jack, and instead told him "that if he found the Lord, the Lord would show him the way."

The last incident occurred when the day manager came to work to find that production could not start due to a broken sump pump. Friesen had refused to tell the night shift cleaner how to fix the pump, telling him instead to, "ask the Lord for his help".

Friesen was called to a meeting. He explicitly refused to stop preaching during his work hours. He said that "he worked for the Lord and the Lord was his boss." It was, "more important ... to preach God's word than clean a fish plant." He was fired.

The Decision

The Human Rights Tribunal that considered Mr. Friesen's complaint first determined that the Mr. Friesen suffered the adverse impact of termination because of his religious practice. It was not disputed that the only reason for his termination was his refusal to stop preaching during his work hours. Mr. Friesen established that he was sincere in his beliefs that his religious practice required him to preach. He believed that, "if you don't preach people will never know what Jesus Christ is about".

The Tribunal then found that the prohibition against preaching on the job constituted a *bona fide* occupational requirement. It was adopted for a purpose rationally connected to maintaining a mutually respectful, functioning work force at the plant. The Tribunal then reviewed the numerous steps taken by the employer to resolve the matter and accommodate Friesen's religious beliefs. It concluded that, "Fisher Bay could do no more. They offered all that is required to achieve the point of undue hardship."

For instance, the employer tried on several occasions to discuss with Mr. Friesen and to explain that others have their own religious beliefs and did not wish to be preached to or converted. He was told he could preach if he wished during his lunch hour but not while working, when his audience was captive. Fellow employees were transferred from the night-shift to a day-shift so that they would no longer be subject to the preaching. Even after termination, the Company was ready to re-engage Friesen if he stopped preaching on the job.

Lessons for Employers

Human rights law plays an increasingly important role in Canadian employee relations. This case demonstrates that *bona fide* occupational requirements can still be enforced. They must have a purpose rationally connected to the proper functioning of the workplace. The case

also shows that respect and sensitivity to employees' human rights will assist an employer in defending such occupational requirements, in addition to demonstrating that the duty to accommodate has been fulfilled.

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