

Ruling backs working mother's case ^[1]

Family rights victory hailed as 'groundbreaking'

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During her six-year battle for fair treatment from the Canadian Border Services Agency (CBSA), there were "stomach-churning moments," Fiona Johnstone admits. "There have been times where I just put my hands up and thought, 'why did I do this?'"

But when the Canadian Human Rights Tribunal upheld her complaint against her employer last week, the Osgoode woman says it was all worthwhile.

The tribunal ruled Friday the CBSA discriminated against Johnstone, a border services officer, by failing to accommodate her needs after the birth of her two children.

At the time, Johnstone was employed at Pearson International Airport in Toronto, where full-time employees rotate through a complex 24-hour, seven-day-a-week work schedule with no predictable pattern.

When she returned to work in January 2004 after the birth of her first child, Johnstone asked to work full time on a fixed shift so she could arrange child care.

But she ran up against what the tribunal called an "arbitrary unwritten policy" that limits CBSA employees who seek fixed shifts for reasons of child care to part-time hours.

That forced her into part-time work, with a resultant loss of income, benefits, pension rights and opportunities for advancement.

She's been on leaves of absence without pay since August 2007.

The CBSA's treatment of Johnstone, the tribunal ruled, violated a section of the Canadian Human Right Act that prohibits discrimination on the basis of family status in employment matters.

It ordered the CBSA to cease its discriminatory practices and establish written policies to address family status accommodation requests within six months.

It also ordered the agency to pay Johnstone \$35,000 in special compensation and general damages for pain and suffering - the maximum allowed by law - as well as back pay from 2004 to the present.

"CBSA's conduct has been willful and reckless, showing a disregard for Ms. Johnstone's situation and denying that a duty to accommodate exists on grounds of family status arising for childcare responsibilities such as hers," the tribunal said.

John Gordon, president of the Public Service Alliance of Canada, hailed the decision as "groundbreaking" for Canadian families.

"It's a huge victory. It tells employers that when it comes to accommodation on issues such as this, they have to be taken very seriously."

Johnstone originally filed her complaint in 2004. One reason it took so long was that the Canadian Human Rights Commission, which screens complaints, initially dismissed it.

It was only after Johnstone successfully appealed that decision that the human rights commission referred the case to the tribunal for a hearing.

Johnstone, who has worked for the CBSA since 1998, says the whole dispute has been difficult "because to me it was blatantly obvious that it was unfair.

"To be treated unfairly by a group of people who are supposed to respect the laws and protect the Canadian people seems such an affront to me," she says. "That really is what burned me most."

Still, she says, taking on the fight "really felt good in a lot of ways" because she knew she was fighting on behalf of others in the same situation. "I'm very pleased overall that I did it. There are a lot of happy people today."

At the tribunal hearing, Johnstone testified she could only work three days a week because her husband, who is also a border services officer, had an unpredictable work schedule.

To maintain full-time hours, she initially proposed a three-day, 13-hour work week. When that was rejected, she suggested she work three 12-hour days instead, to keep her hours as close to full-time as possible. But the CBSA turned that down, too.

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