

Canadian Border Services Agency discriminated against employee when it refused to accommodate employee's child-care request, court rules ^[1]

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EXCERPTS:

In a landmark decision that may help thousands of Canadian parents juggling work and child care, the Federal Court says employers must try to accommodate employees with family obligations.

The ruling, released late last week, upholds a 2010 Canadian Human Rights Tribunal decision against the Canadian Border Services that found the federal agency discriminated against a former Toronto airport customs inspector when it denied her request for regular hours so she could make child-care arrangements.

Fiona Johnstone filed a human rights complaint against the agency in April 2004 after her son was born. Prior to her maternity leave, both Johnstone and her husband, who was a customs supervisor at the time, worked full-time on rotating, irregular shifts at Pearson International Airport.

But with a new baby, the constantly changing work hours made it impossible for Johnston to arrange child care. The only fixed shifts available, however, were part-time and Johnstone wanted to continue working full-time.

Johnstone, whose children are now aged 10 and 8, cried "tears of joy and relief" when she learned the federal court upheld her case.

"I'm thrilled. I'm happy that colleagues in my position won't have to fight the battle I had to fight," she said in an interview from her home outside Ottawa where the family now lives.

"I knew it was wrong. I had great support, so I had the ability to wait this out. Not everybody has that," she said of her nine-year battle.

Johnstone, 42, plans to return to full-time work in August as a boarder services officer at Ottawa International Airport.

"This is a huge win for all Canadian workers with family obligations," said Robyn Benson, national president of the Public Service Alliance of Canada, which represents about 9,000 workers at the federal agency and helped Johnstone with the case.

"It is clear now that employers must carefully consider each and every family status accommodation request and accommodate them short of undue hardship," Benson said.

A spokeswoman for Canadian Border Services said the agency revised its policies in June 2011 to address requests such as the one made by Johnstone. The agency is reviewing the decision and has 30 days to decide whether to appeal, Esme Bailey added in an email.

The Canadian Human Rights Act protects employees from discrimination on the basis of family status, but the agency argued that child-care responsibilities do not trigger a "duty to accommodate."

In its 2010 decision in Johnstone's favour, the tribunal chided Canada Border Services for treating parenting as a mere lifestyle choice and for ignoring a previous 1993 tribunal decision that ordered the agency to change its policies to accommodate family obligations.

In his ruling last week, Federal Court Justice Leonard Mandamin reaffirmed the tribunal's decision.

"I find there was evidence before the tribunal supporting its conclusion that Ms. Johnston was discriminated against on the basis of her family status," he wrote.

The federal agency's policy was "based on the arbitrary assumption that the need for accommodation on the basis of family obligations was merely the result of choices that individuals make, rather than legitimate need," Mandamin added.

Mandamin upheld the tribunal's order to Canadian Boarder Services to pay Johnston the difference between her part-time and full-time wages and benefits from 2004 until August 2007 when the family relocated to Ottawa and she took unpaid leave. He also upheld the tribunal's order for the agency to pay Johnstone \$20,000 in special damages.

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