



Human Rights Tribunal finds employer liable despite finding no discrimination

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In the recent decision of [Morgan v. Herman Miller Canada Inc.](#), the [Ontario Human Rights Tribunal](#) (the Tribunal) awarded an applicant 14 months' lost wages and \$15,000 damages for injury to the applicant's dignity, feelings, and self-respect despite finding that the applicant suffered no discrimination under the [Human Rights Code](#).

The applicant, Aldeen Morgan (Mr. Morgan), was employed from July 2007 until his termination on March 30, 2010 as an installation scheduler with Herman Miller Canada Inc. (Herman Miller), a company in the furniture design and installation business. In this role, Mr. Morgan was responsible for scheduling and supervising subcontracted furniture installation crews. In or about February 2010, Mr. Morgan complained to a number of Herman Miller representatives that he had been experiencing discrimination during the course of his employment as a result of his being a "black man." Mr. Morgan heard nothing further regarding his complaint and was terminated shortly thereafter for cause, allegedly for engaging in conversations with coworkers wherein he deliberately misrepresented the financial situation of the company and lowered employee morale.

Mr. Morgan subsequently launched a human rights claim against Herman Miller as well as Mr. Corrado Fermo (Mr. Fermo), who was the Vice-President of Finance/Operations and later a divisional President with Herman Miller during Mr. Morgan's employment. In his claim, Mr. Morgan specifically alleged that due to his colour he was routinely required to work outside of his regular assigned hours and to perform "menial" tasks. According to Mr. Morgan, such duties were given to him because Mr. Fermo thought it was Mr. Morgan's duty to act like a "servant" because he was a "black man." He also alleged that following a 2008 disciplinary incident he was unfairly put on probation and ignored by Mr. Fermo in light of his status as "black man." Mr. Morgan also pointed to another 2008 incident, whereby he complained to Herman Miller following his discovery of a company email that commented that a particular "all black" subcontracted furniture installation team looked like they were, "picked up off a street corner." He finally alleged that when he complained about his mistreatment he was ignored by Herman Miller and later terminated as a result of his complaint.

The Tribunal's Findings as to Discrimination

In its decision, the Tribunal held that Mr. Morgan offered no evidence in support of his position that he was assigned menial tasks in a discriminatory manner. In fact, the Tribunal held that as Mr. Morgan's role as installation scheduler was a new position, it was not unreasonable that the role could involve a range of tasks. With respect to his probationary incident, Mr. Morgan had disclosed confidential business

information to a subcontractor of Herman Miller which could have had serious business implications for Herman Miller. As such, the Tribunal found there was no evidence to support Mr. Morgan's allegation that any fallout after such incident was due to his colour. The Tribunal further disagreed with Mr. Morgan's allegations relating to the "all black" furniture installation team, as there was no evidence that there were any racial undertones to such email. Instead, the comments related to the unprofessional nature of the installations team. In addition, the comments in the email were merely repeating comments made by one of Herman Miller's clients.

The Tribunal's Findings as to Herman Miller's Investigation and Mr. Morgan's Reprisal Claim

Despite these findings, however, the Tribunal held that Herman Miller was nonetheless liable for its inadequate investigation into Mr. Morgan's internal complaint and his termination shortly thereafter.

With respect to the investigation, Mr. Morgan approached three (3) Herman Miller representatives with his concerns, including the human resources manager, yet he did not receive a formal response to such concerns and no representative of Herman Miller approached Mr. Morgan to address his concerns or to better understand them. Although Herman Miller's human resources manager communicated Mr. Morgan's complaint to Herman Miller's corporate headquarters in the United States, she heard nothing further on the matter and took no steps to follow up with the corporate office. The Tribunal held that as Mr. Morgan genuinely believed that he was subjected to differential treatment because of his colour, Herman Miller had a duty under the *Human Rights Code* to conduct a proper and diligent investigation into such allegations and failed to do so, which was an organizational failure.

With regard to Mr. Morgan's termination, the Tribunal held that the reasons chosen by Herman Miller to establish cause were not credible and merely a pre-text to terminating his employment as a result of his complaint. In particular, while Mr. Morgan had engaged in conversations with his co-workers about the ongoing feasibility of Herman Miller, a number of other employees were having such conversations and Herman Miller never approached Mr. Morgan to insist that he cease such discussions or give him an opportunity to address the allegations.

Although Herman Miller also attempted to argue that a decision had been made to terminate Mr. Morgan's employment prior to his internal complaint, the Tribunal found that any evidence relating to the timing of Mr. Morgan's termination was inconsistent, and this argument was particularly weakened by the fact that Herman Miller attempted to raise this argument mid-hearing. It was not mentioned in its formal response to Mr. Morgan's allegations. As such, after examining the totality of the evidence the Tribunal held that the decision to terminate Mr. Morgan was a reprisal because he raised issues of harassment and discrimination.

The Tribunal then turned to deciding the appropriate relief to grant Mr. Morgan. While Herman Miller did not take issue with Mr. Morgan's mitigation efforts, it argued that in light of his past misconduct Mr. Morgan likely would have been terminated at some point in the future and thus, any damages owing should have been accordingly reduced. The Tribunal, however, dismissed this argument as speculative and awarded Mr. Morgan lost wages for the period of 14 months, equaling approximately \$56,000. The Tribunal did not state in its decision what this 14 month period represented. He was also awarded \$15,000 for damages for injury to his dignity, feelings, and self-respect as a result of the uncertainty and anxiety he faced following the raising of his internal complaint. Finally, the Tribunal ordered that Herman Miller and Mr. Fermo undergo human rights-related training.

Our Views:

This decision demonstrates for employers the importance of properly conducting a diligent investigation into all human rights-related complaints raised by employees, notwithstanding the fact that there may be no merit to such complaints. Even where a particular complaint does not establish differential treatment on the basis of enumerated grounds, an employer can still be liable if it fails to fulfill its procedural obligations under human rights legislation.

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