

## **Abdulrahman v Toll Pty Ltd trading as Toll Express ([2006] NSWADT 221)**

### **1) Reference Details**

Jurisdiction: Equal Opportunities Division of the New South Wales Administrative Decisions Tribunal, Australia

Date of Decision: 1 August 2006

Link to full case:

<http://www.austlii.edu.au/au/cases/nsw/NSWADT/2006/221.html>

### **2) Facts**

Mr Abdulrahman, the applicant, was a Muslim. His family originated from the South of Lebanon and he is first generation Australian. His parents came to Australia from Lebanon in the late 1960s. He identified himself as Australian with a Lebanese background. He was married with three children. The applicant commenced his employment with the respondent in the second half of 2001 as a casual employee. After one year he was made a permanent employee. He was employed as a forklift driver and he reported to Troy Wallace.

According to the medical report of Dr Bajpe dated 5 July 2005 the applicant consulted him regarding a shoulder problem on 27 July 2004. In the report Dr Bajpe stated that the applicant also complained to him about his working environment. Dr Bajpe stated that the applicant *"was being subjected to a prejudicial, racial and provoking working environment, where he felt the danger if he unleashed his hurting emotions in retaliatory verbal reaction"*.

On 12 August 2004 the Anti-Discrimination Board (ADB) received a complaint from Mr Abdulrahman alleging that he had been discriminated against on the ground of his race in employment. Following an investigation of the complaint, the President of the ADB was satisfied that the complaint could not be conciliated and referred it to the Equal Opportunity Division of the Administrative Decisions Tribunal under s. 94(1) of the Anti-Discrimination Act (1977) (ADA).

### **3) Law**

- Section 7(1)(a) of the Anti-Discrimination Act 1977 (definition of discrimination)
- Section 8(2)(a) of the Anti-Discrimination Act 1977 (it is unlawful to discriminate against an employee on the grounds of race in the terms or conditions of employment which the employer affords the employee)
- Section 8(2)(c) of the Anti-Discrimination Act 1977 (it is unlawful to discriminate against an employee on the grounds of race by dismissing the employee or subjecting the employee to any other detriment)

### **4) Legal Arguments**

#### *The Applicant*

The applicant claimed that Troy Wallace, his manager, and Kel Brown, another employee laughed at him. He claimed that Troy Wallace asked him to change his name from "Mohamed to John or whatever" and on many occasions he referred to him as "Mokaakaakaahomed" as if he could not say his name properly. He alleged that this

behaviour occurred throughout his employment with the respondent. The applicant also alleged that when the US invaded Iraq and then whenever Iraq was in the news, Mr Wallace would make comments to the applicant such as "What happened to your cousins?" The complainant claimed that Les Ponting, the TWU union delegate, called him names such as "Osama Bin Laden" or "bomb chucker" and that when he handed in his first medical certificate for his back, neck and shoulder injury on 28 July 2004 he had to attend a meeting in Mr Wallace's office with Mr Wallace, Mr Ponting and Andy, Dean Harris and Greg McCormick.

The applicant claimed that during this meeting, Mr Ponting became very angry and in front of everyone called the applicant a *"fucking bombchucker...what do you think you want to go home with \$1,000,000 and chuck bombs around Australia?"* The applicant said that he was the only Muslim on his shift and the only person treated in this way, though he conceded that there were a few other Muslims employed by the respondent. The applicant claimed that when he started working in the office on light duties he had problems with Leonie Lloyd, who worked as the return to work co-ordinator in administration in the office. He claimed that she complained that he was threatening her. The applicant alleged that his treatment amounted to harassment and discrimination on the basis of race.

#### *The Respondent*

The respondent claimed that when the complaint was made by Mohamed to the companies' management it was dealt with straight away. All employees involved were interviewed and it was found that the discrimination complaint was without foundation. It highlighted the fact that there were a number of other employees of the same race in management and staff. It rejected the complainant's claims that he had been discriminated against, and asserted that the complainant had acted aggressively towards other employees. The union delegate, Mr Ponting, conceded that he had heard about the complainant being called "bombchucker" but denied calling him this, or "Osama bin Laden", himself.

#### **5) Decision**

The tribunal found that the conduct complained of constituted unlawful discrimination on the ground of the applicant's race within the meaning of s. 8(2)(c) and that the conduct constituted both a discriminatory condition of employment within the meaning of s. 8(2)(a) and a detriment within the meaning of s. 8(2)(c). The Tribunal found that the applicant was treated less favourably than employees of a different race were or would have been treated in circumstances that are the same or are not materially different within the meaning of s. 7(1)(a). The Tribunal was satisfied that the respondent had a discrimination and harassment policy in the workplace but that throughout the relevant period it was not properly implemented, and that the respondent through its agents, Mr Wallace and Mr Ponting, endorsed and condoned a discriminatory atmosphere in the workplace. Therefore, the Tribunal ordered that the respondent pay the complainant \$25,000 in relation to the claim of race discrimination.