

Jordan v North Coast Area Health Service (No 2) [2005] NSWADT 258

1) Reference Details

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

Date of Decision: 16 November 2005

Link to full case: <http://www.austlii.edu.au/au/cases/nsw/NSWADT/2005/258.html>

2) Facts

In 2002 Ms Jordan worked as a blood collector at Lismore Base Hospital. She collected blood from patients of the hospital as required by the Northern Rivers Pathology Service (NRPS), a part of what was then the Northern Rivers Area Health Service and was since renamed the North Coast Area Health Service (NRAHS). In about January 2002 Ms Jordan became pregnant and in the later stages of her pregnancy she began to find it difficult to perform her duties. In July 2002 she asked the operations manager of NRAHS, Mr David Newell, for what she called 'light duties' because, she told him, she was finding it difficult to perform her duties due to her late stage pregnancy. She requested light duties a number of times, but was told by her employer that there were no suitable positions available for her to fill on a temporary basis. Instead her employer suggested that she make use of "appropriate annual, sick and long service leave or leave without pay".

In November 2002 Ms Jordan complained to the Anti-Discrimination Board about Mr Newell's rejection of her request for light duties. The President of the Anti-Discrimination Board accepted the letter as a complaint of discrimination. In March 2003 Ms Jordan complained to the Anti-Discrimination Board that, through its officers, the NRAHS had engaged in particular conduct towards her. It was implicit in Ms Jordan's letter of complaint that the NRAHS's alleged conduct was connected with her having made a discrimination complaint, and the President of the Anti-Discrimination Board accepted the letter as a complaint of victimisation.

3) Law

- Anti-Discrimination Law 1977

4) Legal Arguments

The Applicant

The applicant alleged she had been discriminated against on the grounds of her sex and her pregnancy as her employer was prepared to provide light duties to employees on workers' compensation but not pregnant employees.

The Respondent

The respondent argued that steps were taken to find light duties to the applicant, but that this was not successful because there was no light work to be done, or because legal or budgetary constraints would not have allowed the applicant to fill the position.

5) Decision

The Tribunal found that the respondent could have provided light duties the applicant, and that it had no policy dealing with requests such as Ms Jordan's nor any system in place that explored the possibility of alternative arrangements in response to requests such as Ms Jordan's. The Tribunal also found that it was illogical for the respondent to provide light duties to employees when required by workers' compensation legislation but not to provide light duties to pregnant employees when required by anti-discrimination legislation. The Tribunal opined that the allegation of victimisation had not been substantiated. The respondent was ordered to pay \$7,500 in compensation.