

RATZLAFF V. MARPAUL CONSTRUCTION

OLIVYA STRILOFF
LINDEN THIBAUT
BRITTNEY WANDLER
KELLY YANG

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SUMMARY

ISSUES

REMEDIES

ACTIVITY

INTRO // AGENDA

Parties involved
Timeline of events
Issues
Remedies
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SUMMARY // PARTIES

COMPLAINANT: Tammy Ratzlaff

ON COMPLAINANT'S BEHALF: M. Jeanne Meyers

DEFENDANTS: Marpaul Construction Limited
& Albert Rondeau

ON DEFENDANTS' BEHALF: No one

TRIBUNAL CHAIR: Heather M. MacNaughton

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SEPT. 11, 2007

Ms. Ratzlaff commences employment at Marpaul Construction

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SEPT. 11, 2007

Ms. Ratzlaff commences employment at Marpaul Construction

OCT. 13, 2007

Mr. Rondeau makes first sexual comments to Ms. Ratzlaff

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SEPT. 11, 2007

Ms. Ratzlaff commences employment at Marpaul Construction

NOV. 17-18, 2007

Mr. Rondeau makes inappropriate comments on a work trip to Kamloops

OCT. 13, 2007

Mr. Rondeau makes first sexual comments to Ms. Ratzlaff

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NOV. 25, 2007

Mr. Rondeau assaults Ms. Ratzlaff in her motel room

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Ms. Ratzlaff commences employment at Marpaul Construction

NOV. 17-18, 2007

Mr. Rondeau makes inappropriate comments on a work trip to Kamloops

NOV. 26, 2007

Ms. Ratzlaff quits her job

OCT. 13, 2007

Mr. Rondeau makes first sexual comments to Ms. Ratzlaff

NOV. 25, 2007

Mr. Rondeau assaults Ms. Ratzlaff in her motel room

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Mr. Rondeau makes first sexual comments to Ms. Ratzlaff

NOV. 25, 2007

Mr. Rondeau assaults Ms. Ratzlaff in her motel room

JAN. 11, 2010

Hearing date

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ISSUES

MAIN ISSUE: Sexual harassment

COMMON LAW: Sexual harassment has been long established to be a form of sexual discrimination

BC HUMAN RIGHTS CODE S.13 - DISCRIMINATION IN EMPLOYMENT

- (1) A person must not
 - (b) discriminate against a person regarding employment or any term or condition of employment because of the race, colour, [...] **sex**, [...] or age of that person [...].

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ISSUES // EXAMPLES

Supervisory employee abuses their position of authority and threatens another employee to submit to sexual advances in order to keep his/her job and/or employment-related benefits

Employees that may be required to work in hostile, offensive, or intimidating work environments



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ISSUES // DEFINITION [1]

Janzen v. Platy Enterprises Ltd., [1989] 1 S.C.R. 1252 outlines a court definition of sexual harassment:

“UNWELCOME conduct of a sexual nature that DETRIMENTALLY AFFECTS THE WORK ENVIRONMENT OR LEADS TO ADVERSE JOB-RELATED CONSEQUENCES for the victims of harassment [...]”



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ISSUES // CIRCUMSTANCES

NOT necessary for an employee to expressly object to harasser before complaint

A SINGLE incident is SUFFICIENT

TEST FOR SEXUAL HARASSMENT:

The alleged discriminatory conduct is “reasonably perceived to create a negative psychological and emotional environment for work”

Customary boundaries of social interactions in the circumstance

No action if due to the COMPLAINANT'S INNATE SENSITIVITY OR DEFENSIVENESS

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ISSUES // CIRCUMSTANCES

LIMITS OF REASONABLENESS to consider:

- (1) Nature of conduct
- (2) Workplace environment
- (3) Type of prior personal interaction
- (4) Whether a prior objection/complaint was made

NO DEFENCE that harassing behaviour was traditionally tolerated in the workplace

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ISSUES // DEFINITION [2]

The court also quoted the following descriptions of sexual harassment:

“...Harassment behaviour may manifest itself blatantly in forms such as LEERING, GRABBING, and even SEXUAL ASSAULT. More subtle forms of sexual harassment may include INNUENDOS, and PROPOSITIONS for dates or sexual favours [...] (para. 49)”

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ISSUES // DEFINITION [3]

The Supreme Court of Canada also went on to say:

“...Sexual harassment is NOT LIMITED to demands for sexual favours made under threats of adverse job consequences should the employee fail to comply with the demands [...]”



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ISSUES // DECISION

The Tribunal Chair, Heather M. MacNaughton, ruled that:

- (1) the complaint under s.13 of the BC Human Rights Code is JUSTIFIED, and
- (2) Ms. Ratzlaff was sexually harassed by Mr. Rondeau

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ISSUES // LIABILITY

JOINT LIABILITY

Each of the parties involved are liable up to the full amount
Can only sue for the debt once
If one party pays the liability, the creditor cannot pursue other parties for further amounts

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SEVERAL LIABILITY

Also known as proportionate liability
Parties are liable for respective obligations

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Parties are liable for respective obligations

JOINT & SEVERAL LIABILITY

Can pursue obligation against any party involved (as if jointly liable)
Defendants responsible for sorting out the proportions
Usually used with negligence cases

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VICARIOUS LIABILITY

A plaintiff is afforded a remedy against a third party (usually an employer) for the wrongful acts of another

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ISSUES // LIABILITY

Marpaul Construction Ltd. is **JOINT AND SEVERAL LIABLE** for the discrimination Ms. Ratzlaff suffered

This means that **ALL PARTIES** are each liable for the entire amount, **REGARDLESS OF** the degree of responsibility.



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SECTION 37 (2)

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SECTION 37 (2)



Order the individual who breached this Code to cease the contravention and to refrain from committing the same or a similar contravention

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SECTION 37 (2)

- A** Order the individual who breached this Code to cease the contravention and to refrain from committing the same or a similar contravention
- B** May declare that the conduct in question is discrimination contrary to this Code

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- A** Order the individual who breached this Code to cease the contravention and to refrain from committing the same or a similar contravention
- B** May declare that the conduct in question is discrimination contrary to this Code
- C** May order the person responsible to ameliorate the effects of the discriminatory practice by:

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- A** Order the individual who breached this Code to cease the contravention and to refrain from committing the same or a similar contravention
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Taking individual and specified steps

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- C** May order the person responsible to ameliorate the effects of the discriminatory practice by:

Taking individual and specified steps

Adopting and implementing an employment equity program

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- D** May order the individual to compensate the discriminated party for:

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Rights, opportunities and privileges that were denied

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Rights, opportunities and privileges that were denied

Wages lost or expenses incurred

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Wages lost or expenses incurred

Injuries to dignity, feelings and self-respect

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ACTIVITY

Spongebob has worked at the Krusty Krab for 3 years at an average wage of \$800 per month.

He was wrongfully dismissed and received none of the 3 months of notice that he was entitled.

After his dismissal, Spongebob looked hard for a comparable job but was unable to find one.

AS THE COURT, HOW MUCH WOULD YOU AWARD HIM?



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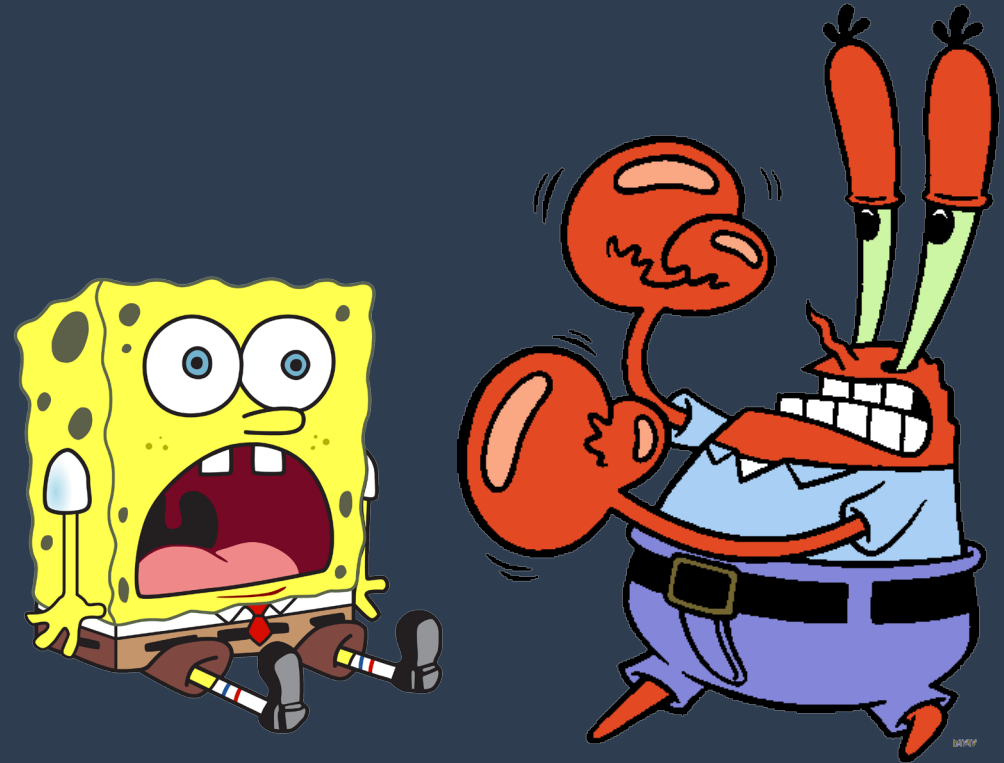
ACTIVITY

Spongebob has worked at the Krusty Krab for 3 years at an average wage of \$800 per month.

He was wrongfully dismissed and received none of the 3 months of notice that he was entitled.

After his dismissal, Spongebob was emotionally devastated by the dismissal and was unable look for a job until the end of the 3 months.

AS THE COURT, HOW MUCH WOULD YOU AWARD HIM?



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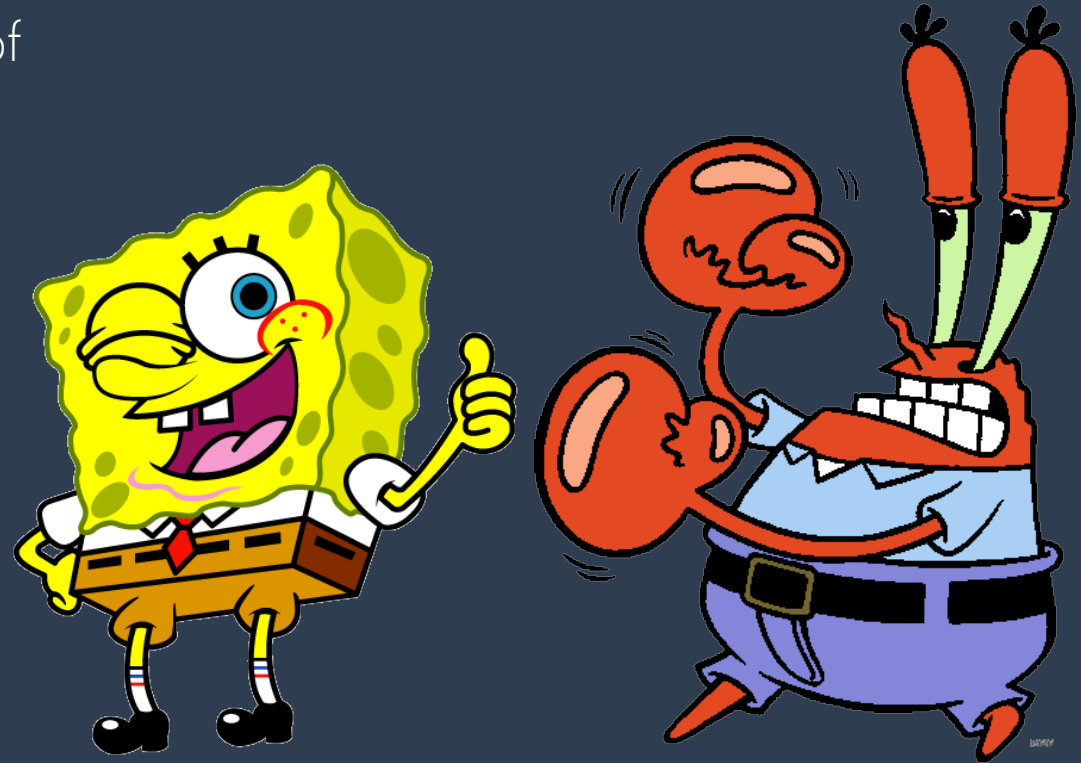
ACTIVITY

Spongebob has worked at the Krusty Krab for 3 years at an average wage of \$800 per month.

He was wrongfully dismissed and received none of the 3 months of notice that he was entitled.

After his dismissal, Spongebob found a comparable job working at another restaurant after one month. At his new job, he earned an average wage of \$600 per month.

AS THE COURT, HOW MUCH WOULD YOU AWARD HIM?



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Wages lost or expenses incurred

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AT MARPAUL

She was paid an average of \$2,100 per month

She was paid \$2,500 for her last month of work

There was evidence that her wages were increasing

AFTER LEAVING MARPAUL

She was unemployed for 4 months

She worked for 7 months at her old job

She earned approximately \$1,900 from one employer

She earned approximately \$3,000 from another employer

HOW MUCH WOULD YOU AWARD MS. RATZLAFF IN LOST WAGES FOR THE 11 MONTHS? HOW WOULD YOU CALCULATE THIS?

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REMEDIES // WAGES

FOR 4 MONTHS OF UNEMPLOYMENT

She was awarded \$10,000 in lost wages

FOR REMAINING 7 MONTHS

She was awarded \$12,000 in differential wages

Ms. Ratzlaff was awarded \$22,000 in loss of wages

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REMEDIES // CONSIDERATIONS

Tribunal uses considerations set from *Torres v. Royalty Kitchenware Ltd.* (1982) to determine appropriate compensation

Considerations set is a guideline and is non-exhaustive

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CONSIDERATIONS SET:

1. Nature of harassment (verbal, physical)
2. Degree of aggressiveness and physical contact
3. Ongoing nature (time period - how long did it go on?)
4. Frequency
5. Age of victim
6. Vulnerability of victim
7. Psychological impact upon victim

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REMEDIES // ANALYSIS

NATURE OF
HARASSMENT

Physical
Verbal

DEGREE OF
AGGRESSIVENESS

Started as hand-holding
More aggressive over time
Last incident most aggressive

ONGOING NATURE/
FREQUENCY

Started at the beginning of the employment
Took place in virtually all interactions with Mr. Rondeau
Harassment only ended because Ms. Ratzlaff resigned

AGE OF VICTIM

Ms. Ratzlaff more mature than some victims
However, Mr. Rondeau much older and viewed as mentor

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PSYCHOLOGICAL IMPACT

Traumatized; sought help from family doctor & counsellor
Changed mind about her career, after 3 years of education

VULNERABILITY OF VICTIM

Extremely high, because:

- (a) Mr. Rondeau had authority over Ms. Ratzlaff
- (b) Impossible to avoid Mr. Rondeau
- (c) Away from support network
- (d) The only woman on the crew
- (e) Family needed the income

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REMEDIES // PRECEDENTS

These 2 cases used to determine the monetary amount that should be awarded, after taking the previous considerations into account

Tribunal can award a wide range of amounts

IN HARRISON, \$15,000 was awarded

IN SENYK, \$35,000 was awarded

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REMEDIES // TOTALS

WAGES

\$10,000
Lost wages

\$12,000
Differential

OTHER LOSSES

\$25,000
Injuries to dignity, feelings and self-respect

AND, the individual who breached this Code is to **CEASE** the contravention and to **REFRAIN** from committing the same or a similar contravention

PRE-JUDGEMENT INTEREST ON THE AWARD FOR LOST WAGES & POST JUDGEMENT INTEREST ON ALL AMOUNTS ORDERED FROM THE DATE OF THIS DECISION UNTIL THE DATE OF PAYMENT

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SUMMARY // CRITICISMS

WE ALL AGREE WITH JUDGE'S RULING, BUT BELIEVE THAT...

KELLY

...more remedies should be awarded, and should order Mr. Rondeau to ameliorate the situation

OLIVYA

...Marpaul Construction should be ordered to implement an Employment Assistance Program (EAP) or other resource.

LINDEN

...more consideration should have been given to the time & money already spent on years of training for this position.

BRITTNEY

...Mr. Rondeau should have been punished more severely.

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SUMMARY // TAKEAWAYS

EMPLOYER TAKEAWAYS

Be aware of your employees' actions as much as possible, and ensure they have somewhere to turn in case they do not feel comfortable telling you (e.g. EAP)

Consequences affect not only liability outcomes, but your company's reputation



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EMPLOYER TAKEAWAYS

Be aware of your employees' actions as much as possible, and ensure they have somewhere to turn in case they do not feel comfortable telling you (e.g. EAP)

Consequences affect not only liability outcomes, but your company's reputation

EMPLOYEE TAKEAWAYS

Be aware of the resources available to you - if there are none, ask!

Know your rights, and what immediate actions you can take to remedy a negative situation

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QUESTIONS?



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