

**UNION LIABLE FOR DISCRIMINATION IN DISCOURAGING WOMAN FROM  
APPLYING FOR POSITION**

*Oster v. International Longshoremen's and Warehousemen's Union, Local 400*  
[2000] C.H.R.D. No. 3 (C.H.R.T.)

**Facts**

The Claimant registered for employment with Local 400 as a Cook/Deckhand. During a 2-1/2 year period, she received approximately 75 days' work from the Union. The complaint arose in the context of a position as a Cook/Deckhand on a vessel that did not have separate accommodations for women. The Claimant went to the Union Hall to apply for the position and was discouraged from doing so by the Union President. The Claimant filed a complaint alleging discrimination on the basis of sex.

**Canadian Human Rights Tribunal**

The Commission concluded that a *prima facie* case of discrimination arose out of the meeting between the Claimant and the Union President when the Union President informed the Claimant that she could not be awarded the position in question because of the unsuitable sleeping quarters. The Claimant was thus discouraged from participating any further in the process of applying for that position.

The Commission further concluded that the Respondent had not justified its conduct on the grounds of a *bona fide* occupational requirement. The Respondent Union was found to have discriminated against the Claimant notwithstanding its conclusion that the Claimant had insufficient experience to actually be selected for the position in question.

The Commission analyzed the Union's practice in accordance with the Supreme Court of Canada's decisions in *Meiorin* and *Grismer*, which set out the test to be applied to determine if a particular standard is discriminatory. The standard in question was that women are not dispatched to vessels where sleeping accommodations are shared with men.

In applying the *Meiorin* test, the Commission concluded that the Respondent had not advanced persuasive evidence that the standard was adopted for a purpose that was rationally connected to the function being performed, nor that the standard was adopted in the good faith belief that it was necessary for the fulfillment of the purpose or goal.

Furthermore, there was no evidence that the Union could not accommodate the Claimant without undue hardship. In particular, sleeping shifts on the vessel in question alternated such that the Claimant would not have to share the same sleeping quarters at the same time as any male employees. The Commission also suggested several other methods of accommodation. For example, the Union President could have refused to sanction the vessel owner's opinion that the ship could not accommodate a woman, by refusing to participate in a conversation to that effect

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with the vessel's General Manager. The Union President should have challenged the General Manager's position. The Union was found to have acquiesced in denying the position on the basis of sex when it could have phoned the ship and advised them of the implications of refusing a woman a position. Further, the Union was found to have breached an article of the collective agreement prohibiting discrimination on the basis of sex.

The Claimant was not awarded lost wages because the Commission concluded that she would not have been awarded the position in any event due to her lack of qualifications. However, she was awarded \$3,000 in special compensation. The Commission declined to order the Union to direct a letter of apology to the Claimant.