

ANTI-DISCRIMINATION COMMISSION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

IN THE MATTER OF

RAY RENOUF
Complainant

AND:

**AUSTRALIAN BROADCASTING
COMMISSION**
And
GARY GIBSON
Respondents

REASONS FOR DECISION

(Delivered 14 September 2001)

Mr David LOADMAN, HEARING COMMISSIONER

1. The Complainant in this matter is a homosexual. He asserts that he has suffered ongoing discrimination by the First and Second Respondents in the work place on the ground of the attribute of his homosexuality. He contends that the discrimination he alleges has caused him distress and humiliation. He consequently seeks by way of remedy, amongst other things, compensation for loss and damage arising from conduct prohibited by the *Anti-Discrimination Act* (herein after referred to as “the Act”).
2. Subsection 19 (c) of the Act prohibits a person discriminating against another on the ground of the attribute of sexuality unless exceptions found in parts 4 and 5 of the Act apply. Discrimination is defined in Section 20 of the Act. The Complainant particularly relies on subsection 20 (2) (a) which provides that *discrimination will take place if a person treats or proposes to treat another person who has had, or is believed to have had an attribute*

less favourably than a person who has not, or is believed not to have, such an attribute.

3. Sexuality is defined in Section 4 of the Act to include the sexual characteristic or imputed sexual characteristic of homosexuality. The Complainant also relies on the provisions of Section 31 (2) (a) (b) & (d) of the Act to allege that he has suffered discrimination in the work area. The thrust of his case in that respect was that he had been employed with the First Respondent as a Television Officer-Production Operations and that discrimination on the grounds of his homosexuality resulted in him being rostered to work in the video interchange area at all times which deprived him of the opportunity to develop his skills by being rotated into other positions.
4. The Complainant also complains of an atmosphere of homophobia being present in the work place which the First and Second Respondents have taken insufficient action to dispel. That atmosphere is said to include the uttering of derogatory and disparaging remarks about the Complainant's sexuality by work place associates. The Complainant says that the behaviour was not discouraged by employees of the First Respondent when they had a responsibility to do so. He says the First Respondent is vicariously liable for the discrimination that arose from that failure.
5. The Complainant is a forty-seven year old man. He was employed by the First Respondent in April of 1995 as a Television Officer-Production Operations which is generally referred to by the sobriquet TOPO. Mr Renouf described a TOPO as a "general job" in television production operations. It is apparently a multi skilled position which involves rotation to a variety of areas of work, however the evidence did not advance the job description of a TOPO beyond that.
6. The Complainant while remaining an employee of the First Respondent has not worked at his place of employment since 20 March 1998. In addition to

the dispute Mr Renouf has referred to this tribunal, he has made a workers compensation claim for a stress condition that he claims to have suffered since September 1997. In the early part of 1998 the First Respondent was working in consultation with doctors and other rehabilitative personal to put in place a suitable return to work program for the Complainant.

7. The Complainant's evidence in chief is set out in Exhibits C4 & C5 being Affidavits sworn by him on 8 February 2001. Exhibit C5 is an amended Affidavit that in all respects is identical to Exhibit C4 but with four controversial paragraphs deleted by consent. Mr Renouf also gave additional oral evidence of instances of abusive and discriminatory behaviour directed to him and of conversations he had had with management regarding that behaviour.
8. A remarkable feature of this case is that the Complainant asserts he was unaware of the fact that he was being discriminated against until he was advised by a Mr Michael Alsop in late 1997 that conduct amounting to discrimination had been taking place for a considerable period of time. Indeed Mr Renouf went as far as to say that "...I was totally unaware of what the attitude was at the ABC until I received a - you know, since this started, the Comcare thing and this discrimination thing started". By the "Comcare thing" I take the Complainant to be referring to his claim for compensation due to a stress related injury that caused him to be away from work in the period 8 September 1997 to 19 December 1997. Mr Michael Alsop had been the Complainant's direct supervisor for almost the entire time he had been in the employ of the First Respondent. Apparently Mr Alsop took it upon himself to tell Mr Renouf "about all the things that had been going on".
9. According to Mr Alsop who was called to give evidence by the Complainant he "had never seen anybody persecuted as much as Ray Renouf was in my entire working life". He went on to say that "management should have

stopped it but they did not”. During the period of which Mr Alsop speaks, he was employed as part of management of the First Defendant as the Complainant’s immediate supervisor. I had the opportunity to observe Mr Alsop giving evidence and being cross-examined by both counsel for the Respondents and counsel assisting me and I have no hesitation in rejecting his evidence where it conflicts with any of the other witnesses. I find his assertion that the Complainant had been persecuted in the way he suggests, on all the evidence, entirely without foundation. Further his failure to address the persecution that he says took place within his immediate sphere of responsibility over, according to him, a period of years is completely unexplained on his own evidence.

10. The difficulty faced by the Complainant is that almost all of his allegations and hence the success of his application is directly dependant upon this Tribunal accepting the characterization of what took place in the work environment that is placed upon it by Mr Alsop.
11. I have been told by Roxsean Edwards who gave evidence, that the Complainant was a “highly emotive person”. That is also the impression I gained from my observations of him in the witness box and from the manner and style in which he gave his evidence. Without doubt the revelations of persecution relayed to Mr Renouf by his superior Mr Alsop had a substantial impact upon the Complainant. Any person with an appreciation of Mr Renouf’s disposition would expect as much. The circumstances in which the conversations allegedly took place between Mr Alsop and Mr Renouf included a change in the relationship between Mr Alsop and his employer. That change was in November 1997. Mr Alsop accepted a voluntary redundancy package and left the Australian Broadcasting Corporation. I accept the evidence of Roxean Edwards as reliable and accurate.
12. Mr Alsop insists that he advised the Complainant of the fact that he was being discriminated against in the work place out of concern for the

Complainant's well being. I do not accept that explanation. The precise motive for Mr Alsop's activities remains somewhat unclear, but I am left to conclude that the mischief he engaged in during his discussions with the Complainant regarding discrimination in the work place was entirely germane to his own personal agenda and utterly removed from being in the interests of Mr Renouf. I have been drawn to the conclusion that Mr Renouf is very much the unfortunate victim of Mr Alsop's mischief and that much of the evidence presented on behalf of the applicant is the product of that mischief.

13. Another issue that arose in the course of Mr Alsop giving evidence was the existence of a second set of diaries kept by Mr Alsop in the period he was employed by the First Respondent. He said he maintained two sets of diaries. One set was kept only to record "work roster matters" in. The second set was kept to record detailed notes of conversations and telephone calls. Alsop said that the diaries were left open on the desk and that any member of staff could have access to them. He said when he left the employ of the First Respondent he did not take the second set of diaries with him. The diaries have now gone missing and although searches have been carried out they cannot be located. The tribunal was told that in those diaries there are written notes of conversations regarding the discrimination, harassment and abuse suffered by the Complainant. I am left to doubt whether there ever was a second set of diaries after hearing the evidence of Mr Alsop. None of the material which he now says was in them was ever acted upon by him. There was no practical need for a second set of diaries. However Mr Alsop gave the reason that as a public servant of long standing he thought "it wise to keep a set of relevant things that happen to you ... in case you ever need it". Mysteriously the diaries went missing shortly before he left his employment with the First Respondent. He said in his affidavit, Exhibits C7&8, "I went to find them before I left my employment with the ABC and have been told they were lost". In his evidence he said that prior to his

departure “I was going to pick them up earlier, I didn’t.” Roxean Edwards said that when Mr Alsop left the ABC he did not ask her for the diaries he had used. When she received the complaint she went to the cupboard where she “knew the diaries were”. She went on to say the diaries had been there since the departure of Alsop. Edwards went through the diaries and was unable to find any notes of discussions Alsop had held with the Complainant. Ms Edwards was a careful witness and I accept her account of her dealings with the diaries used by Mr Alsop from 1995 to 1997 inclusive. The question of whether or not there was a second set of diaries does not need to be resolved but I highlight the issue as another unsatisfactory aspect of Mr Alsop’s evidence which has caused me particular concern.

14. Although the Complainant preferred to complain about his situation in a non specific manner he did descend into particulars in relation to a couple of instances of behaviour he attributed to discrimination. One of those instances arose out of a conversation allegedly held between the Second Respondent and Mr Alsop in 1996 while they were outside the ABC building smoking during which it is alleged that the Second Respondent announced that “he hated poofers”. The Complainant was told of the announcement by Alsop in the period leading up to Alsop’s departure from the employ of the First Respondent. When pressed about the context in which this rather startling announcement was made Mr Alsop was vague and rejected the terms of his own affidavit. The following excerpt from the evidence is revealing.

So you were out the back smoking and you say in your affidavit Mr Gibson announced that he hated poofers?--- Yep

He just made this announcement?--- No. it wasn’t perhaps as blatant as that there but there is definitely reference to homosexuals or - and the word “poofers” was used and has been used.

Were you talking about homosexuals at the time were you Mr Alsop?-- I don’t remember what the subject was at the time when it came up. We were quite possibly talking about Ray at the time.

I see. You don't recall though?--- No I don't recall that specific incident.

So you don't recall the context of the conversation but you do have a recollection that in 1996 Mr Gibson made the announcement to you that he hated poofers?--- Yes.

I see. And you don't recall the context of the conversation?—No.

You don't recall whether for example you might have said: "Yes. So do I"?--- No, I didn't say that. In fact, much to the contrary. I have on occasions corrected Gary on that type of thing being said.

Well can we just stay with this incident. Some time after Mr Gibson commenced, you say you protested then and there about this sentiment. You don't recall what you said to him?--- Yes I do. It was words to the effect that we have got to be very careful these days what we say in the work place, especially in relation to this matter, gay people, or whatever, generally discriminating against people in the work place.

So you now recall that's what you said to Mr Gibson by way of response?--- Well along those lines, yes. Sorry I don't remember the exact words I used at the time, but to that effect.

15. I have already said that I do not accept the evidence of Mr Alsop and it is apparent that in relation to a conversation he says he specifically recalls he is unable to provide any explanation for why it may have arisen. When closely questioned he was prepared to back away from the terms of the conversation set out in his affidavit. It is another example of the unreliability of Mr Alsop's evidence. In contrast Mr Gibson denied that any such conversation took place. I accept his evidence. He was a forthright witness who had no reason to suddenly announce to Mr Alsop, a person with whom he had a "strained relationship", that he "hated poofers". Mr Gibson described Mr Alsop as a "gross individual" who had been the subject of many complaints about his managerial style, his abilities to prepare a roster, and his ineffective management. I accept this testimony of Mr Alsop's behaviour in the work place, particularly his displays of profanity before the

roster board situated in a corridor of the building and observed by staff,. Such facts lend some support for Mr Gibson's assessment of the man.

16. The Complainant insisted that he had made "many" complaints about discriminatory behaviour which he had experienced directly such as being called "*You fucking little poofter*", persons "*laughing and giggling about 'the poofter'*" and comments being made like "*Oh careful, don't touch that. Rays touched it. You'll get aids off it*". He said he made those complaints to Ms Claire Witham.
17. Claire Witham's affidavit was admitted into evidence as Exhibit R21. Ms Witham was a conscientious witness. In the period 1997 to April 1998 she said she spoke to Mr Renouf on many occasions. During that period it was her evidence that the Complainant did not make any complaint to her regarding any harassment or victimization he now alleges he was experiencing on the basis of his sexuality. She was very clear that it was only after Mr Renouf had lodged his Comcare complaint that he made any allegation on the basis of his sexuality.
18. On 25 March 1998 a meeting took place to discuss two issues of importance. The first was an incident that had apparently arisen on 20 March 1998 in which Renouf was in breach of technical procedures. The second issue was the Complainant's request that he be permitted to videotape operations in the interchange area in support of his Comcare claim. Persons present at that meeting were Mr Renouf, Ms Edwards, Mr Bowden and a Mr Hathaway a representative of the Commonwealth Public Sector Union. It was during that meeting Mr Renouf first commented that he had experienced harassment on the basis of his sexuality. Ms Witham regarded the allegation as an alarming statement. Efforts were then made by her to obtain some particularization of the allegation so steps could be taken to deal with it. Try as she might Ms Witham was unable to obtain any further information from the Complainant that would allow her to embark on any investigation.

The allegation had, to use the vernacular, come out of the blue during the course of a meeting designed to settle matters unrelated to sexual harassment.

19. Claire Witham had numerous dealings with the Complainant during which he spoke volubly and negatively about other people and the factors that were having a bearing on his life. She recalled that on one occasion he referred to the atmosphere in the Electronic News Gathering area as “blokey and homophobic” but the comment was not made in the context of a complaint of harassment due to sexual preference. If Mr Renouf had suffered the sort of discrimination he now asserts I am confident that he would have complained early and often about it. I reject the allegation that the Electronic News Gathering area was a homophobic environment.
20. In 1997 the Complainant had found himself in dispute with a Mr Anthony Furnell. The gravamen of that complaint was an altercation which had taken place between he and Mr Furnell and in which Mr Furnell had berated Mr Renouf in front of colleagues in that part of the First Respondent’s operation known then as Australia Television. There was some attempt by the Complainant to characterize the incident as one relating to sexuality. However the matter was resolved. Furnell later apologized to Mr Renouf. At the time there was no suggestion of sexual discrimination arising from the incident and I do not propose to accept its portrayal as having any sexual connotation at this juncture.
21. The First Respondent had a grievance procedure in place. Part of that procedure was to require a serious allegation to be put in writing. The obvious need for such a procedure was to ensure the allegation was accurate so that if other employees were to be questioned about it it could be put to them in detail. It was also important that the subject matter of the complaint in specific terms be put, so that persons alleged to have been the perpetrators of the incident would be in a position to respond to the specific

allegations made. I accept the evidence of Ms Witham when she says that Mr Renouf was able to talk to her freely about things that may have been bothering him in the work place. I conclude that as she was in contact with the Complainant on a daily basis in the period late 1997 through to 1998 for the purpose of dealing with issues regarding his Comcare claim. It is inevitable, if there had been any sort of discrimination in the work place that affected the Complainant, she would have heard about it from him. That is particularly so having regard to the fact that throughout the same period Mr Renouf harboured a “belligerent attitude” towards the First Defendant. I conclude that if any allegation pertaining to any sort of behaviour the Complainant viewed as negative and therefore in his interests to complain about and was available to him he would have conveyed details of it to his employer.

22. The other witnesses called by the Respondents affirmed the position as outlined by Claire Witham. Roxsean Edwards was an “harassment contact officer”, which is the nomenclature for a designated person to whom complaints about problems arising in the work place could be made. She gave evidence of what occurred at the 25 March meeting. She said that the Complainant had made what appears to have been a raft of non specific allegations. At one point she said he claimed to have been approached by “senior people for sexual favours”. I have no doubt that if Mr Renouf had experienced such an incident it would have formed part of the matters brought before this tribunal for consideration. Incidents of that nature, in the context of these proceedings, would not have been overlooked if there was even the slightest substance to them in my view. Self evidently no such allegation is made in these proceedings.

23. Due to the problems associated with finding work suitable for the Complainant to carry out consistent with constructing a viable return to work program in the context of his Comcare claim Ms Edwards spoke to Mr Paul Bouchier. She asked him to make enquiries as to whether personnel

in the “transmission area” would have any objections to Mr Renouf working in that environment. The Complainant had expressed a desire to work in the transmission area. However that part of the broadcasting operation entailed working in a pressured environment and Ms Edwards was concerned that the position be assessed as suitable for the Complainant to work in given his stated medical diagnosis which included a determination of whether he would get on with the people he would be working with. That is the sort of enquiry that any person responsible, as Ms Edwards was, for designing a return to work program for a member of staff, would make. I accept that the Complainant had made known his sexual preference and that there could be no doubt of his stated homosexuality by late 1997. I do not accept that the enquiries made by Ms Edwards were for the purpose of ascertaining whether the personnel in transmission objected to gay men working with them.

24. I accept the evidence of Ms Edwards that the issue of a homophobic environment was mentioned by Mr Renouf in the course of efforts to get him back to work. The options available to management to complete that task were few as almost every area had its problems as far as the Complainant was concerned. The complaint that the work environment at the ABC was homophobic was never made specific which thwarted any opportunity for management to undertake an investigation of the matter. It was also made in circumstances where the Complainant claimed the return to work program required him to carry out menial work. I reject entirely the allegation by the Complainant that there was a homophobic work environment at the First Respondent’s work place. I have already referred to the fact that the Complainant is given to histrionics and I find that his allegations fall within that expression of his character and have no factual substance whatsoever.
25. The Complainant also asserted that he had suffered discrimination in that the employer had not provided multi skilled rotation in his position of TOPO. He said he had raised the problem with Mr Gibson on many occasions. For his part Mr Gibson told the tribunal that Mr Renouf was very open about his

sexuality. He gave evidence that he had employed the Complainant. He says he was never involved with rostering TOPOS and denies giving instructions to Mr Alsop to roster Mr Renouf on interchange at all times thus depriving him of the opportunity to develop other skills. I accept Mr Gibson's account of his relationship with the Complainant and the duties that he carried out. Mr Renouf described Mr Gibson as a liar. I reject that designation of Mr Gibson and rely upon it only in so far as it is a further example of the Complainant's preparedness to make unfounded allegations against his fellow work mates when it suits him and without any consideration for the consequences.

26. At no time prior to making a complaint to the Anti-Discrimination Commission did the Complainant make a written complaint to his employer. He was aware of the procedure that where serious allegations were to be made they had to be reduced to writing. Mr Renouf's explanation for not doing so is indicative of the tenor of the rest of his evidence, "No, because I was - the way the ABC operates I felt that if I put something in writing I would end up straight in Court being sued for defamation". The more likely explanation is that the Complainant well understood the allegations would be thoroughly examined by his superiors and their lack of substance would be readily exposed.
27. By the time Mr Renouf's allegations of sexual discrimination arose his relationship with his employer was under severe strain. Mr Renouf's doctors cleared him to be able to carry out a range of particular duties by 17 November 1997. Rather than return to interchange as a TOPO Mr Renouf decided he needed a break and went on annual leave in February 1998 for a month. His return to work in March of that year saw a couple of altercations with other employees. One involved a Ms Rosemary Church (he was alleged to have moved her microphone during a broadcast and she "smirked" at him) and another involving a Mr Haslett (Mr Haslett had yelled at him to shut up). Neither of those incident's included any specific sexual

discrimination of any type. The general allegation that he had been victimized due to his sexual preference at the meeting of 25 March 1998 was made in circumstances where he had left the work place in an environment of continued disputation with the First Respondent and of his own motion had gone on extended leave. As can be seen from the minutes of the meeting, the allegation of harassment due to sexual preference did not emerge until late in the meeting, almost as a second thought, and in the context of Mr Renouf being reminded that if he was going to make allegations of harassment they needed to be formalized and put in writing. The evidence discloses that if such allegations had any foundation they would not have been left to emerge so late and then only as a second consideration in the context of the Complainant's litany of accusations. In May 1998 the Complainant made a further Comcare claim which I understand has been rejected.

28. For the reasons I have outlined I find that the Complainant has not been discriminated against in the work place as a result of his sexual preference. Accordingly I dismiss the application. I will hear the parties upon the question of costs.

Dated: 14 September 2001

DAVID LOADMAN
Hearing Commissioner