

Date Issued: 2024/March /1

File: 3920-01

Indexed as: Johnson v. TRU, 2022 BCHRT 101

**IN THE MATTER OF THE HUMAN RIGHTS CODE**

**R.S.B.C. 1996, c. 210 (as amended)**

**AND IN THE MATTER of a complaint before the**

**British Columbia Human Rights Tribunal**

**B E T W E E N:**

Tessa Johnson

**COMPLAINANT**

**A N D:**

**Thompson Rivers University**

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: \_\_\_\_\_Kylie Larson\_\_\_\_\_

Student Number: \_\_\_\_\_T00694172\_\_\_\_\_

Counsel for the Complainant:

Rudy Guliani

Counsel for the Respondent:

Michael Cohen

Date of Hearing:

February 1, 2024

Written Submissions:

January 21, 2024

**Decision:**

[39] I must first consider whether there is Prima Facie discrimination against Ms. Johnson related to her refusal to be vaccinated. In that regard, I find as follows:

[40] In the case of Johnson v. TRU, I find there is prima facie found in this matter. Ms. Johnson was suspended because she was following a sincerely held religious belief, she is a part of the Faith Tabernacle Congregation Church ("FTC"). Prima Facie is proven by proof of someone being discriminated against at "first look". Now since there is Prima Facie the onus falls on the employer to show a BFOR.

[41] As we filter the facts through the "Meiorin" case, the employer must now show that on the balance of probabilities if this vaccine requirement was a) Rationally connected to her job b) Adopted in an honest and good faith belief it was necessary and c) Not able to be accommodated without undue hardship. The "undue hardship" would be of course the duty to protect the health of unvaccinated young children. TRU had a duty to accommodate, and they say they met the BFOR, but TRU shows no indication of that, no alternate options were given. Though the Occupational Health and Safety Regulation and Workers Compensation Act, R.S.B.C. 1996, c. 492. (the "WCA") regulations at the time during Covid-29 were to have everyone vaccinated but it states the everyone must feel safe at work and employers must follow the standard duty of care for everyone employed. TRU didn't follow that duty of care for Ms. Johnson by suspending her and not allowing any other solutions in place.

[42] With all the facts being present in this Human Rights Tribunal I hear by announce there is Prima Facie found in this matter. TRU did not do their due diligence and follow proper protocol

[43] I now turn my attention to whether or not requiring Ms. Johnson to be vaccinated against COVID-19 as a condition of her employment constitutes a bona fide occupational requirement that cannot be accommodated without undue hardship. In that regard, I find as follows: TRU had a duty to accommodate after considering the steps concerned by the "Meiorin" case, no indication that TRU tried these steps of undue hardship or to the point of undue hardship: O'Malley, para. 23.

[44] To determine whether refusing the COVID-19 vaccine constitutes a bona fide occupational requirement (BFOR), we must apply the three-step test for evaluating whether a discriminatory standard is justified:

1. Rational Connection to Job Performance: The employer must show that the standard was adopted for a purpose rationally connected to job performance.
2. Good Faith Belief: The employer must establish that the standard was adopted in an honest belief that it was necessary to fulfill a legitimate work-related purpose.
3. Reasonable Necessity and Undue Hardship: The standard must be reasonably necessary to achieve the purpose, demonstrated by showing that accommodating individuals with the claimant's characteristics would impose undue hardship.

#### Question 1: Rational Connection

The vaccine mandate was implemented to ensure a safe working and learning environment, particularly in Ms. Johnson's role as an Early Childhood Educator (ECE). This rationale is consistent with the university's duty to protect public health.

#### Question 2: Good Faith Belief

TRU's implementation of the vaccine mandate aligns with public health directives and a good faith belief that this measure was necessary to minimize the risk of COVID-19 spread among students and staff.

#### Question 3: Reasonable Necessity

To determine reasonable necessity, we must consider whether alternative accommodations could have been made without imposing undue hardship. TRU claimed no alternatives were viable, citing students' aversion to online learning and the risk to unvaccinated individuals in close-contact settings. However, alternative measures such as weekly rapid testing, personal protective equipment (PPE), and limiting Ms. Johnson's in-person interactions could have been explored. This approach mirrors decisions in "Fraser Health Authority v. Workers' Compensation Appeal Tribunal" (2022), where employers were expected to exhaust all reasonable accommodations before concluding undue hardship.

*Another case where COVID-19 and religious beliefs came head-to-head:*

"Ontario Human Rights Commission v. Hamilton-Wentworth District School Board (2023)" In this case, an employee was terminated for refusing the COVID-19 vaccine due to religious beliefs. The court ruled that the employer failed to adequately accommodate the employee, as alternative measures like regular testing and remote work could have mitigated the risk. This precedent emphasizes the importance of exploring all viable options before termination.

[45] TRU's failure to consider alternatives such as regular testing, adjusted responsibilities, or hybrid work environments suggests that the termination of Ms. Johnson was premature. Religious beliefs, as protected under human rights law, require that employers explore all reasonable accommodations unless it imposes undue hardship.

## **VII CONCLUSION**

[46] While TRU had a legitimate purpose in implementing the vaccine mandate, it may not have sufficiently demonstrated that accommodating Ms. Johnson would impose undue hardship. The availability of alternative measures, as illustrated in comparable cases, supports the argument that her dismissal was not justified under the BFOR framework. TRU could have maintained its health and safety objectives while respecting Ms. Johnson's rights through less discriminatory means. With that I order TRU to give Ms. Johnson a letter of apology and she get an extra two-week vacation pay.