Case Name:

Curtis v. All Rig Towing Service Ltd.

IN THE MATTER OF a Complaint of Alleged Unjust Dismissal - Adjudication under Division XIV - Part III of the Canada Labour Code
Between
Gordon Curtis, employee, and
All Rig Towing Service Ltd., employer
H.R.D.C. File No. YM2707-6095

[2004] C.L.A.D. No. 28

Canada
Labour Arbitration

B.P. Schwartz, Adjudicator

Heard: Winnipeg, Manitoba, October 29, 2003.
Decision: January 16, 2004.

(21 paras.)

Appearances:

Gordon Curtis, the employee, on his own behalf.
Douglas Stratychuk, President, All Rig Towing Service.

AWARD

1 Mr. Gordon Curtis ("Mr. Curtis") has brought this complaint of unjust dismissal under the Canada Labour Code. The only remedy he seeks is two weeks severance pay.

2 Mr. Curtis represented himself, testified and brought no other witnesses. The President for All Rig Towing Service Ltd. ("All Rig"), Mr. Douglas Stratychuk ("Mr. Stratychuk"), also appeared by himself and testified.

3 Despite their past differences, Mr. Curtis and Mr. Stratychuk conducted themselves at the hearing in a courteous, calm and reasoned manner.

4 Mr. Curtis commenced work as a driver for All Rig in April, 2001. Mr. Stratychuk agreed at the hearing that Mr. Curtis was an excellent and hardworking driver. The two parties also agreed that there was an ongoing tension in the employer-employee relationship.

5 Mr. Curtis testified as follows.

6 He had complained to the employer frequently that he was constantly being called in for work assignments. He was never allowed time off. He was called in at all hours and over Christmas. Mr. Curtis believed he was called upon unduly because he lived close to the office, and that other drivers were not subjected to comparable treatment. Exchanges with All Rig over this point often involved the expression of strong opinion and emotion on both sides. Sometimes both sides would use rude language.

7 Mr. Curtis made inquiries of other employees to try to assess the overall distribution of work assignments. He was often told in response to his complaints that something would be done. But nothing changed.

8 All Rig at one point asked all employees to sign a written employment contract. Mr. Curtis refused because there were "unfair terms" contained therein.

9 On January 25th, 2003, Mr. Curtis and Mr. Stratychuk had a heated argument about "the whole situation". Out of frustration, Mr. Curtis began swearing. Mr. Stratychuk swore back. Mr. Curtis could not recall his precise words, but agreed that he said something to the effect that he was so angry, he felt like punching Mr. Stratychuk. He did not intend to actually threaten Mr. Stratychuk and made no threatening gestures.

10 All Rig's communications with Human Resources Development Canada over this dispute included allegations apart from those connected with the January 25th encounter. These included "bad mouthing other employees" and lying about it afterwards. Mr. Stratychuk declined to pursue these points at the hearing. He agreed that Mr. Curtis had been an excellent and hardworking driver. Mr. Stratychuk submitted for my consideration, however, that the January 25th encounter justified Mr. Curtis' dismissal. Mr. Stratychuk stated that he was concerned about how Mr. Curtis would be with customers if he behaved in such a manifestly angry manner with his own employer.

11 The burden on an employer in proceeding such as these is to prove that the dismissal was justified. The onus is based on the civil standard of proof, not the criminal standard of "beyond a reasonable doubt". Applying the civil standard to the evidence, it was not shown at the hearing that any discipline against Mr. Curtis was warranted. It was not shown that he had any history of actual violence towards anyone in any context. It was not established that Mr. Curtis intended to threaten Mr. Stratychuk with actual violence, as opposed to providing a vivid way of expressing how angry he was.

12 From the evidence of both witnesses, it was clear that it was not unusual for both sides to use heated language when arguing. Mr. Curtis himself acknowledged that he wished that arguments had been conducted in cooler, more "professional" terms. I am sure the employer takes the same view. The reality is both sides engaged in heated arguments and sometimes used strong language. There is no evidence whatsoever that the employer had a policy about decorum during discussion, consistently practised such decorum itself, or warned Mr. Curtis to use more restrained language. There is absolutely no evidence that Mr. Curtis was anything but thoroughly professional in dealing

with customers. Mr. Curtis' conduct on January 25th must be assessed in the context of the working relationship as a whole and did not warrant dismissal, or indeed any penalty.

13 At the hearing both sides introduced evidence about other proceedings. None of it has influenced my decision.

14 Mr. Curtis introduced the ruling in his favour by the Employment Insurance Board of Referees concerning his dismissal. The Board found he should not be disqualified from benefits in any way as a result of his dismissal. It concluded that All Rig did not dismiss him because of the January 25th incident, but rather because of conflict over hours of employment. The employer should have "immediately acted" to resolve the conflict. The Board concluded that "there was insufficient evidence to support the claim of misconduct as defined by the Act and case law".

15 While the Board's ruling might favour the conclusion I have reached, it has not influenced it. No legal argument was presented about how or why the ruling should be relevant. It is not clear that the results of that proceeding can properly have any impact here. The meaning of "misconduct" might be different for EI purposes. Furthermore, the employer did not appear at the Board hearing and it was not shown to me what legal right the employer had to participate in those proceedings. Both sides did appear and presented evidence at the hearing before me, and I believe I can and should decide this matter without taking into account the conclusions of the Board.

16 Mr. Stratychuk introduced a letter from Mr. Grant Krenkevich ("Mr. Krenkevich") from D.M. Krenkevich Incorporated. It stated that Mr. Curtis worked for the latter for about a year. There was, as stated in the letter, an incident in which Mr. Curtis crossed the picket line at Buhler Versatile Inc. Mr. Curtis, it is stated in the letter, was approached by angry strikers and he responded by threatening to shoot them. He was questioned by police, states the letter, but resumed employment a short time later and left on good terms.

17 The letter is entirely hearsay for the purposes of these proceedings as Mr. Krenkevich did not appear at the hearing and was not available for cross examination. The letter was not backed up by any oath. It is also not clear at all from the letter whether Mr. Krenkevich actually witnessed any of the episodes related. Was he present at Buhler when the alleged incident occurred? Was he present when Mr. Curtis was interviewed by police?

18 Mr. Curtis responded to the letter by testifying at the hearing that he had been ordered to cross the picket line, was angrily confronted by the picketers at Buhler, but did not make any threats. He also stated that no charges were laid by police.

19 I indicated at the hearing that it would be unlikely that I would give any weight to the letter from Mr. Krenkevich, and I have not in fact done so.

20 I find that Mr. Curtis was unjustly dismissed.

21 I retain jurisdiction, however, to conclude the remedial part of this proceeding. The remedy requested - two weeks' severance - is reasonable. No argument or evidence was entered at the hearing about the precise meaning of "two weeks severance" - would it include expected commissions? - or about the amount of regular pay involved. I would invite the parties to agree on the amount of compensation by January 30th, 2004. One or the other can then notify me and I will, if necessary, issue a supplement to this Award confirming the amount. If the parties cannot agree, either may notify me by February 9th, 2004 and I will schedule a further proceeding to fix the precise amount of compensation that I would order. Given the fairly small amount of money involved, I expect the

parties will in fact agree; if not, a further brief proceeding, possibly by a teleconference, should be sufficient to dispose of this matter.

qp/d/qlklc