

Cited as:
Lynch and United Grain Growers

**IN THE MATTER OF an Adjudication under Division XIV - Part
III of the Canada Labour Code - Complaint of Alleged Unjust
Dismissal
Between
Mr. Albert Lynch, Employee, and
United Grain Growers, Employer**

[1998] C.L.A.D. No. 844

Canada
Labour Arbitration

B.P. Schwartz, Adjudicator

Heard: Winnipeg, Manitoba, November 30 and December 1 and
2, 1998
Decision: December 3, 1998

(7 pp.)

Appearances:

Albert Lynch, for the Employee.

John M. Scurfield, Q.C., and Kent Paterson, Counsel for United Grain Growers, the Employer.

DECISION

Overview

1 As counsel for the company, United Grain Growers, said himself at the hearing, this is a sad case.

2 A mutually beneficial working relationship disintegrated over a disagreement over a matter of principle. The rupture was a source of dismay to both parties. The employer genuinely regretted being placed in a position where it felt it had no choice but to dismiss Mr. Lynch. The company valued him as a capable and productive employee. He was a Supervisor at a production plant, and he

was appreciated for his overall quality of work and the ingenuity he had shown on occasion at solving production problems.

3 Both the company and Mr. Lynch are committed to producing high quality products that had the confidence of consumers and are in conformity with all applicable laws and regulations.

4 Mr. Lynch was greatly upset and distressed by being dismissed, but felt that he could not, in good conscience, be a party to carrying out a particular operational decision of management. He feared that if he did so, there was an unacceptable risk that a product would be marketed that would not be up to the high standard of quality on its label. He was concerned that the decision to go ahead might damage the company's reputation for high quality products as well as violating Mr. Lynch's own sense of integrity. He felt that he should only lead his staff on missions that were consistent with the company's general commitment to high quality.

5 Mr. Lynch represented himself at the hearing. It is no easy task to represent yourself in any proceeding, even if you have extensive legal training and experience. As the hearing took place in Winnipeg, it turned out that he did not have family or friends in attendance to provide him with support and feedback. Mr. Lynch served as his own counsel, testified himself and underwent a fair but rigorous cross-examination from one of the most experienced and skilled members of the bar of this province. I must express my admiration for the stamina and resourcefulness that Mr. Lynch exhibited in presenting his case.

6 I also must state that I have no doubt that Mr. Lynch declined to carry out the company's directions because he felt that doing so would not be sufficiently consistent with the commitment on his part, and that of his company, to maintaining both the appearance and reality of marketing only quality products.

7 Mr. Lynch is, in my view, a man of conscience.

8 The law is clear, however, that an employee must generally accept an operational directive even if it conflicts with his own sense of how the job ought to be done. The employee may choose to resign if his or her personal sense of values differs from that of the company, but does not generally have the right to both decline the order and retain his or her job; see *Re: Seneca College and Civil Service Association of Ontario*, 12 L.A.C. (2d) 26. (For a useful listing of the factors necessary to justify a dismissal on the basis of insubordination, see *Amos v. Alberta*, 9 C.C.E.L. (2d) 69, at page 77). I have found that all the necessary elements exist in this case.

9 Mr. Lynch's declining to follow directions could not be justified in law merely because he found them contrary to his own sense of standards. In the factual circumstances, moreover, I think it was premature for anyone to conclude, at the time of Mr. Lynch's dismissal, that the company was going to market any product that would be below its own high standards or inconsistent with legal requirements. The company had no intention of marketing a product that was substandard in any sense. Indeed, it aimed to market a product that was significantly above minimum requirements for its grade and it tried to assure Mr. Lynch that it would test samples of the product at a lab before any product left the warehouse. Any conceivable breaches would have resulted only from failure by the company to realize that there might be problems with the production or sampling techniques. Mr. Lynch himself was in a good position to identify the potential problems in these respects, and find ways to carry out the company's directions while minimizing or eliminating the risk of failures in the process of production and testing.

10 Mr. Lynch was concerned that the company might be engaged in a production process that might, even if rationally justified, create the misimpression on the part of his staff that the company was somehow departing from its commitment to high quality. But senior management was prepared to visit the production plant and explain their reasoning to the staff and had Mr. Lynch "hung in there", he could have contributed to the discussion. In any event, whether it was worth taking the risk of leaving any misimpressions was a business decision that the company had a right to make.

11 In some situations, an employee may justifiably decline to carry out an order because doing so would result in a breach of the law. Mr. Lynch's objections to carrying out the project were based on an intuition that it was bad practice, not that it was illegal. But he argued at the hearing that following the directions could actually have led to the marketing of a product that was below the legal standards for its label.

12 I have concluded that the legal concerns raised by Mr. Lynch could not constitute a valid defence in this case. I am not sure that the defence fails merely because Mr. Lynch initially had a sense that the order was bad business practice or unethical, as opposed to being outright illegal. But the defence does fail on the facts, for reasons I have already sketched. That is, the company had no intention of violating the law, it was premature to believe it was going to do so accidentally, and Mr. Lynch could actually have been a valuable contributor to ensuring that no slip-ups occurred.

Detailed analysis

13 The company produces Canola seeds for planting by farmers. Top grade canola seed ("certified number one") must have at least a 90% rate of germination. Second grade must have 80%. The company aims to produce seed that actually has a 95% rate of germination. Early in 1998 it had a shortage of top grade seed. There was a market demand for such seed that it could not meet - unless it mixed its top grade seed with a smaller amount of lower quality seed.

14 It is lawful and proper to produce a batch of seeds that is a mix of higher quality and lower quality batches. The key thing is that the resulting mix should be properly labeled. If a company mixes nine kilograms of seed that has a 99% germination rate with one kilogram of seed that has only a 70% germination rate, the overall mix still has a germination rate of over 90%. The company still has every legal and moral right to call it top grade seed.

15 Mr. Lynch, the Supervisor at a production plant, was asked to blend a batch of very high-grade seed (germination rate well over 95%) with a batch of seed that was of lower quality. How low? That was hard to say for certain. The lower quality batch had been tested and the results varied from over 86% at the highest of five tests to 51% at the lowest. The company was itself puzzled by the variance. The testing results were not steadily declining; the last two results were actually quite high (70% and 81% respectively). To be on the safer side, the company proposed to treat the batch according to the least favorable result - 50% - and then try to mix it with the batch of very high quality seed. The company was further aiming to produce an end product that had a 95% germination rate, which was actually 5% above the floor for qualifying as top grade seed.

16 Mr. Lynch was very concerned about the decision to mix the batches in question.

17 He did not at all like the idea of using seed that in earlier years would have been discarded entirely. He was concerned that his staff or the farm community might misunderstand the use of such seed as a betrayal of UGG's commitment to quality. But the fact is that the company was prepared to send out senior managers to the plant to explain the decision to the staff. Mr. Lynch did not, at

the time, think that the offer would "do any good". But it seems to me that the offer was sincere and could have been effective in explaining how mixing in lower quality seed can sometimes be sound practice. In any event, any risk of misunderstanding by staff or consumers was one that the company had a legal right to take. A company has the right to make its own business judgments, whether they prove to be objectively right or wrong.

18 Mr. Lynch believed that even the higher quality seed would have a lower germination rate after it was treated with insecticides, which would increase the risk that the resulting mix would be below top grade. But the company promised to test the blended product to make sure it met standards. Indeed, the company was aiming for a germination rate of 95% in the blended product. Perhaps Mr. Lynch did not absorb or believe the company's message to him that it was aiming at a 95% quality level and that it would test the product before it was marketed; he might have been too upset by his "gut level" intuition that something wrong was going on. But a highly credible witness¹, Ms. Lorna Binions (who had been Mr. Lynch's immediate superior) made it clear that she had conveyed to him the company's 95% internal target and the company's promise to send samples to a lab before the blended product left the warehouse.

19 At the hearing, Mr. Lynch presented an interesting analysis of the technical difficulties associated with the employer's proposal for blending. Mr. Lynch suggested given the relatively low quality of the 50% seed and potential difficulties with achieving the right ratios of high to low quality seed in all bags, there was a risk that some market-ready bags of mixed seed would be substandard. If the usual sampling process were employed some of these substandard bags might not be identified as such and would end up in the marketplace with a label that overstated their quality.

20 Mr. Lynch's analysis showed a high level of technical understanding on his part. Counsel for UGG readily agreed that Mr. Lynch is an intelligent man, and indeed has demonstrated on occasion a flair for solving production problems. I agree with counsel. However, Mr. Lynch could have put his talents to trying to solve the precise difficulties he identified. It seems quite possible that the blending problem could have been overcome by fairly simple means and at little or no incremental cost. Mr. Lynch could have at least stayed with the company long enough to see if he could help them overcome the difficulties that he himself had identified with respect to blending. He could also have helped the company identify any problems with its techniques for sampling product and he could have suggested solutions. It seems quite certain that the testing problem could have been entirely overcome by simple and inexpensive means. (For example, the company could have drawn samples from each batch before it left the mixer).

21 I would note that the company, for whatever reason, did not end up marketing any of the proposed blends that was the cause of the rupture between itself and Mr. Lynch. Was it a good business decision to even attempt the blend? I cannot say. What I can do is reiterate that it was the company's right to make that call.

22 Mr. Lynch had a strong sense of pride in his personal commitment, and that of his staff, to producing high quality product. I think that the notion of using even a small amount of 50% quality seed in a top grade product upset him at some intuitive level. He may have been frustrated by an inability he perceived on the part of management to fully understand the risks that he himself foresaw with its proposal.

23 Mr. Lynch had concerns that were reasonable as well as sincere: the possibility that misimpressions might be created, that there could be glitches with production or sampling, the risk that

treatment might reduce the germination rate of even the higher quality seed. But as noted earlier, he was working with a company that was itself committed to quality and which had no subjective intention of producing substandard product. He could have chosen to work with the company to ensure that the blending project either succeeded in producing top quality product or that any defects were detected before substandard product was marketed. He could have contributed to the process of discussing with the staff the reasoning of senior management.

24 The company did not discipline Mr. Lynch for voicing his concerns. He was given several opportunities to state them. He was disciplined for not carrying out the decision of management once his concerns had in fact been voiced. In my view, every company has a duty to give an employee a hearing, without retaliation, when the employee reasonably believes that a proposed course of action is illegal, unreasonably harmful to employees or third parties, or contrary to the company's own specific or standing instructions. If the company disagrees, it should make a reasonable effort to explain its reasoning to that employee.

25 In this case, a number of managers spoke to Mr. Lynch before he was dismissed. And the company did make it clear to Mr. Lynch, even after he was dismissed, that he could return without further penalty if he would comply with their directions on this matter. It is true that by this point, Mr. Lynch was so upset at being fired that he might not have been able to view the chance to return with proper perspective. But the offer to return, without further penalty, is still one factor in considering whether the employer's overall course of conduct was below legally permissible standards.

Conclusion

26 Mr. Lynch made it clear that he was not seeking reinstatement. Nor was he asking me to find that a lesser penalty than dismissal was appropriate. He wanted me to decide one simple question: was his dismissal lawful?

27 My view is that it was. The company acted within its legal rights when faced with Mr. Lynch's sustained refusal to carry out the direction to attempt a blend.

28 Mr. Lynch was motivated by his conscience and not any personal ambitions or grudges or material interests. Indeed, from his point of view, he was sacrificing his own personal interests in order to preserve his integrity. I believe that at the time he declined the company's orders, he was somewhat overcome by the threat he perceived to his own sense of "how things should be done", and he may not have adequately appreciated the assurances the company was offering about aiming high, testing the result, and bringing management down to the plant to explain the company's reasoning to the staff.

29 For what it is worth, I will also again say that:

- The company viewed Lynch as a valued employee and regretted that a parting of ways appeared to be necessary;
- Counsel for UGG noted, and I agree, that Mr. Lynch is an intelligent man who has on occasion exhibited a real ingenuity at solving production problems;
- I was impressed with the Mr. Lynch's resolve and adaptability when faced with the daunting task of appearing, alone, to make his case at the hearing;

30 There are no "bad guys" in this case on either side. There are two well intended and intelligent parties, both committed to quality and respect for legal standards, who unfortunately arrived at a sincere disagreement. The employer was within its legal rights to terminate the relationship, and the complaint of unjust dismissal is dismissed.

qp/s/clw

1 Ms. Binions, I would note, was by no means unsympathetic to Mr. Lynch either during the break-up or at the hearing. It is clear to me that she had been anxious that Mr. Lynch not jeopardize his career with UGG, and that she had hoped that Mr. Lynch and UGG would find a way to bridge their differences. Ms. Binions was a careful and precise witness. She was forthright about acknowledging what she could not recall as well as what she could. It is also clear from the testimony of Ms. Binions and other managers who testified at the hearing that Mr. Lynch understood that he could be subjected to disciplinary consequences if he declined to carry out the company's directions. According to Ms. Binions, Mr. Lynch acknowledged to her that his job could be on the line.