Case Name:

A.D. Ventures of Linden Inc. v. Antonation

IN THE MATTER OF a Wage Recovery Appeal under Division XVI - Part III of the Canada Labour Code
Between
A.D. Ventures of Linden Inc., appellant (employer), and
Darren Antonation, respondent (employee)
Human Resources Development File No. YM2727-2013

[2004] C.L.A.D. No. 413

Canada
Labour Arbitration

B.P. Schwartz, Referee

Heard: Winnipeg, Manitoba, June 25, 2004.
Decision: September 8, 2004.

(9 paras.)

Appearances:

Dan Skjaerlund, for the appellant (employer).

AWARD

1 Darren Antonation ("Mr. Antonation") worked for A.D. Ventures of Linden Inc. ("the Employer") as a truck driver. Prior to his last trip, Mr. Antonation and the Employer amicably agreed that it would be his final task, as Mr. Antonation had decided to pursue another opportunity. The parties were agreed that Mr. Antonation was a capable employee who had performed well on the job.

2 After picking up the assigned load in the United States, Mr. Antonation discovered that his truck was overweight. The customer of his goods directed him to unload the whole order, and Mr. Antonation acted accordingly.

3 The Employer took that position that Mr. Antonation did not take reasonable steps to discuss the situation directly with the Employer, and obtain further directions. If Mr. Antonation had done so, the employer believed, he could have picked up another order in the United States. Instead, the Employer argued, Mr. Antonation returned with some unused capacity. The Employer, therefore, lost some of the money it originally expected to make from contracts to do the pick up and was not able to replace the losses with other work.

4 Mr. Antonation testified that he acted reasonably in the circumstances, including taking all reasonable steps to communicate with the Employer.

5 The parties were in some disagreement about the sequence and content of electronic and phone messages that passed between them during the trip.

6 After returning, communications between the Employer and Mr. Antonation broke down. Mr. Antonation was concerned that the Employer was going to act unreasonably and unfairly by not paying him the remaining compensation owed. The Employer was concerned that Mr. Antonation was going to hold on to crucial company property, such as credit cards, until he was paid in full. The Employer recalled that it wanted to discuss the situation with Mr. Antonation and determine precisely what happened and whether some deduction was appropriate. Mr. Antonation did return the company property, but felt that there was no point at that time in discussing matters further with the Employer. Mr. Antonation had had a previous experience in which an employer made unreasonable deductions and thought that he was going to see a repeat of such conduct. His anxiety was reinforced, as he recalled matters, by what he perceived as the hostile and discourteous demeanor of the Employer on his return.

7 With the benefit of hindsight, both parties at the hearing were finally able to discuss the situation in some detail and with some dispassion. Both finally had a chance to appreciate the other's perspectives and concerns at the time of the incidents and immediate aftermath. I believe by the end of the discussion that each party agreed and accepted that the actions of both parties which were initially regarded as unfriendly or high-handed were in fact the product of some misunderstandings and miscommunications, and not as a result of any improper motives.

8 As I explained at the hearing, I do not have to determine precisely whose recollection of the precise events was more accurate. The appeal must be dismissed in any event as there was no written agreement authorizing any deductions. Such an agreement is legally required before an employer can unilaterally make deductions, as opposed to bringing a legal action against an employee.

9 The Employer's appeal is therefore dismissed.

cp/d/qlamb