

IN THE MATTER OF THE *CANADA LABOUR CODE, PART III*

-and-

IN THE MATTER OF AN ADJUDICATION

BETWEEN:

RYDER LOGISTICS & TRANSPORTATION SOLUTIONS WORLDWIDE  
- The Employer

-and-

RAYMOND LYNK  
- The Complainant

AND IN THE MATTER OF the Complainant's dismissal from employment

Adjudicator: Howard Snow

Appearances:

On behalf of the Employer:

Terri Backman - Human Resources Representative  
Mark Edds - Director, Customer Logistics  
Brent Irwin - Senior Logistics Manager

On behalf of the Complainant

Raymond Lynk - Complainant

Hearing held April 23, 2007, in Cambridge, Ontario.

# AWARD

## I. INTRODUCTION

The Complainant was dismissed from his truck driver position for:

1. Failing to notify the Employer of a charge he received for a traffic violation while driving an Employer vehicle; and,
2. Failing to maintain a valid driver's licence.

This award deals with the Complainant's unjust dismissal complaint under the *Canada Labour Code*. The Complainant sought damages of \$26,000 rather than an order reinstating him in employment.

## II. THE EVIDENCE

Raymond Lynk, the Complainant, began work as a truck driver for Ryder Logistics & Transportation Solutions Worldwide, the Employer, March 2004 in Cambridge Ontario.

In late April 2006, while returning from Montreal, the Complainant contacted the Employer from the Kingston area and advised that he was sick. The Employer indicated to the Complainant that it was unable to send another driver to retrieve the truck until the next day and advised the Complainant that he should sleep in the truck and wait. Later that day the Complainant's health improved and he drove the truck to Cambridge without assistance.

This incident prompted the Employer to obtain driver information about the Complainant. April 27, 2006, the Employer obtained an abstract of the Complainant's commercial vehicle operator record and an abstract of his driver's information, both from the Safety and Regulation Division of the Ontario Ministry of Transportation. Those records disclosed two matters which concerned the Employer.

First, the Complainant had been charged April 1, 2005, with a driving violation while

operating an Employer vehicle, a charge for which he was convicted November 2, 2005. The Employer policy and the National Safety Code, 1988 indicate that a driver is to advise the Employer of any driving violations and the Complainant had been informed of this obligation during orientation. The Complainant had not advised the Employer of the charge.

Secondly, both abstracts indicated that the Complainant's driver's licence had been cancelled and that he had no driver's licence; that is the Complainant was an unlicensed driver as of April 27, 2006. The Employer attempted to determine more information about the Complainant's cancelled licence but, due to privacy concerns, was unable to obtain this.

The Employer dismissed the Complainant by letter dated April 28, 2006. Mark Edds, the Employer's Director of Customer Logistics, testified that in deciding on dismissal he had considered all the factors and had acted in a manner consistent with previous discipline and dismissals. The dismissal was based on the Complainant's failure to have a valid driver's licence in April 2006 and his failure to inform the Employer of a moving violation he incurred while driving an Employer vehicle the previous year.

At the hearing the Complainant testified that he had entered a guilty plea to the driving violation as it was too costly to fight the charge, but he had not paid the fine promptly. He said that he had renewed his own vehicle licence around the first of January 2006 and, when he did so, he had been required to pay some fines in order to renew that licence. He said he had assumed that he had paid all his outstanding fines. However, he said that in fact he had not paid his fine for the violation while driving the Employer truck and, as a result, the government had cancelled his licence. He testified that he did not know how long he had been without a licence and that he had not sought the information. He suggested that he may have only lost the licence on April 26 and that perhaps he had never driven without a valid licence. The Complainant paid his outstanding fine April 28 and he was granted a new

temporary driver's licence.

Before his employment was terminated in April 2006, the Complainant made three round trips per week to Montreal earning \$950 per week. He was paid \$16,000 by the Employer for his work in 2006 before his dismissal. He said he had worked part time from his dismissal until December and earned approximately \$13,000. He testified that he secured regular employment in December 2006.

### III. PROVISION OF THE *CANADA LABOUR CODE*

The following is the key provision of the *Code*:

#### PART III

...

#### DIVISION XIV UNJUST DISMISSAL

**240.** (1) . . . any person

(a) . . .

(b) . . .

may make a complaint in writing to an inspector if the employee has been dismissed and considers the dismissal to be unjust.

The *Code* then contains provisions for the investigation and adjudication of such a complaint.

### IV. EMPLOYER POSITION

The Employer's submission was very brief. The Employer simply said there was cause for the Complainant's dismissal and that it had acted in a consistent manner.

### V. COMPLAINANT POSITION

The Complainant's submission was similarly very brief. The Complainant said that he had been unaware of the licence issue and that he had rectified it as soon as he became aware. He said that the discipline should have been less and he suggested a one week suspension.

As for remedy, the Complainant sought \$26,000 in damages. He noted that he had been employed only part time from the end of April until December.

## VI. CONCLUSIONS

The *Code* deals with "unjust" dismissals. In assessing whether a dismissal is unjust it seems clear that the legislators intended that adjudicators adopt the approach usually applied by arbitrators operating under "just cause" for discipline provisions of collective agreements. I adopt that approach.

When dealing with discipline grievances I usually consider three questions:

1. Did the Complainant's conduct justify a disciplinary response?
2. If so, was the discipline imposed an excessive form of discipline? and,
3. If the discipline was excessive, what penalty should be substituted in all the circumstances of the case?

*1. Did the Complainant's conduct justify a disciplinary response?*

The Complainant was a truck driver who was charged with a driving offence while he operated an Employer vehicle. The Employer policy was clear that the Employer was to be notified of any driving offence and the Complainant had been informed of that policy. However, the Complainant did not notify the Employer. There was no evidence as to why the Complainant failed to notify the Employer. There was no argument by the Complainant

as to why that failure should be excused.

Secondly, the Complainant, who was employed as a driver, did not have a valid driver's licence. It had been cancelled and was only reinstated April 28, 2006, the same day as the termination.

The Complainant conceded that his actions warranted some form of discipline and I agree with him on that point.

2. *Was the discipline imposed an excessive form of discipline?*

The *Code* addresses "unjust" dismissal. There are several general concepts used in distinguishing "just" dismissals from "unjust" dismissals.

In dismissal cases under collective agreements, and thus also under the *Code*, the purpose of Employer discipline is to correct behaviour, not simply to punish an employee. If discipline is to be for just cause, then the discipline should be intended to motivate the employee to modify his or her behaviour. Discharge ordinarily suggests that there is no chance the employee will modify his behaviour.

In order to be just, the discipline must be appropriate for the particular employee, given his or her length of service, previous employment record, etc. Because of this, employees with more seniority or with better discipline records receive better treatment, in the sense that what is just for those employees may be a milder form of discipline than that given more junior employees.

Finally, just discipline must bear a reasonable relationship to the gravity of that employee's

wrong. A mild wrong ordinarily merits a mild response, and a serious wrong ordinarily merits a serious form of discipline. On occasion, the employee's misconduct alone may be so serious that, regardless of the other factors, the employee simply cannot be allowed to remain employed.

Progressive discipline is premised on the notion that most employees can and will learn from their mistakes when those mistakes are clearly pointed out to them. Discipline less than dismissal is a method by which an employer points out mistakes to the employees. At some point, however, an employee may demonstrate an unwillingness or inability to learn from his or her mistakes. Has this Complainant shown whether he can learn from discipline?

As there was no mention of any previous discipline, there was no direct evidence as to whether the Complainant had learned from prior discipline and I am left to assess this issue from the limited evidence at the hearing.

I note that the Complainant said nothing in evidence or in argument about his failure to notify the Employer of his charge while driving for the Employer. He expressed no regret, provided no suggestion that he might learn from his mistake, and gave no indication that his conduct in this area might improve.

As for his failure to maintain a valid driver's licence, the Complainant could have obtained details of his loss of licence but he seemed deliberately not to have done so. He appeared evasive on this matter and based his submission on the Employer's failure to prove when he lost his licence and the Employer's consequent failure to prove that the Complainant had driven an Employer vehicle without a valid licence.

Nothing in either incident suggested that the Complainant had learned anything or that he

might change his behaviour if he had been disciplined short of dismissal. These factors provide no support for substituting a penalty less than dismissal.

Regarding the Complainant's particular circumstances, he had been employed approximately two years. I had no evidence about whether that made him a senior employee or junior employee in this workplace. However, in a general sense, two years is not a long time in employment and I conclude that the Complainant's seniority was insufficient to entitle him to better treatment than might otherwise be the case.

I note there was no evidence of any prior discipline, but also no evidence that the Complainant had been discipline free. It appeared that neither party felt the Complainant's previous employment record was of assistance in deciding this case. That is the view I, too, adopt.

As for the seriousness of the incidents, I view both as being very serious. I accept that the Employer has a legitimate interest in knowing of any driving violations using Employer vehicles. More importantly, I accept that the Employer has a great interest in ensuring that its vehicles are only operated by persons who are lawfully entitled to operate them. I have no doubt that having drivers operating trucks without valid licences would have a negative impact on the Employer's licences and insurance, as well as on the public perception of the Employer's business. Truck drivers, for whom having a driving licence is essential in obtaining employment, have an obligation to ensure that they maintain a valid licence.

But did the Complainant drive without a valid licence? Due to privacy concerns the Employer was unable to obtain details of the Complainant's loss of licence. The Complainant testified he did not inform himself of the details. The Complainant then based his defence on the Employer's failure to prove conclusively that he had in fact driven without



a licence. In this situation where the Complainant was uniquely situated to be able to provide evidence as to the details of his loss of licence and then failed to disclose this information, I think it appropriate to draw an inference that the evidence would not have been in the Complainant's favour. I conclude on the balance of probabilities that the Complainant did operate an Employer vehicle without having a valid licence.

Was the Complainant's misconduct sufficiently serious that he should not be allowed to remain an employee? In my view, these issues are both serious matters and, in the absence of compelling factors supporting a lesser form of discipline, justify dismissal.

In summary, the review of all the above factors, that is the potential for the Complainant improving his conduct, the Complainant's seniority, and the seriousness of the misconduct itself, persuades me that dismissal was not an excessive form of discipline in this instance.

*Summary*

I find that the Employer had cause to terminate the employment of the Complainant. The termination was not in violation of the *Code*. The complaint is therefore dismissed.

Dated in London, Ontario, this 25th day of May, 2007.

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Howard Snow, Adjudicator