

IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

PRESTEVE FOODS LIMITED

- The Employer

-and-

NATIONAL AUTOMOBILE, AEROSPACE AND GENERAL WORKERS UNION OF
CANADA (CAW - CANADA) LOCAL 444

- The Union

AND IN THE MATTER OF the discharge grievance of Chris Bailey

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

no one

On behalf of the Union:

Ken Lewenza

- President, Local 444

Chris Bailey

- Grievor

Hearing held September 5, 2007, in Windsor, Ontario.

AWARD

I. INTRODUCTION

This is a dismissal grievance. The grievor reported that he was dismissed after he missed one day of work.

The Employer did not attend the hearing.

II. EVIDENCE

August 23, 2007, I was appointed as arbitrator under Section 49 of the *Labour Relations Act, 1995* by a delegate of the Ontario Minister of Labour to hear this discharge grievance of Chris Bailey. The letter of appointment was copied to, among others, Jose Pratas, the owner of Presteve Foods Limited, in Wheatley, Ontario, the Employer in this matter. That letter informed Mr. Pratas that I would schedule a hearing for September 5, 2007, and that I would advise him of the time and location. I scheduled a hearing for 10:00 a.m. September 5 at the Holiday Inn Select in Windsor. August 27 I faxed a letter to Mr. Pratas advising him of the details of the hearing, and later mailed him a copy of that letter.

Representatives of the National Automobile, Aerospace and General Workers Union of Canada (CAW - Canada) Local 444, the Union in this matter, were at the hearing location before 10:00 a.m. September 5. Ken Lewenza, the President of the Local, advised that he did not expect the Employer to attend the hearing.

At 10:00 a.m. no representative of the Employer was present. Shortly after 10:00 a.m. I placed three (3) telephone calls to the Employer seeking to speak to Mr. Pratas.

In the first call placed at 10:06 a.m. the person who answered the phone asked my name and the reason for the call, placed me on hold, and soon returned to the telephone to advise that Mr. Pratas was in a meeting. I then sought to leave a longer message. At that point I heard a male voice in the background which seemed to urge the person to hang up the telephone. In any event, the call was then terminated.

In the second call at 10:08 a.m. I asked to speak to Mr. Pratas, was put on hold, and the telephone call was disconnected.

On my third attempt at 10:11 a.m. I again asked to speak to Mr. Pratas, was placed on hold for some five (5) minutes, and was then advised that Mr. Pratas could not be found. I left a message advising that the hearing was scheduled for 10:00 a.m. at the Holiday Inn, that no one from the Employer was in attendance and that I might proceed in the Employer's absence. The person with whom I left the message refused to provide me with her name.

For the reasons set out later in this award, I decided to proceed.

The grievor testified under oath that he had been employed by the Employer for more than four years. He worked as a fish filleter, made \$13.10 per hour, and regularly worked 44 hours per week.

The grievor testified that he had not previously been disciplined for any attendance problems. However, he said he was absent from work for medical reasons July 26, 2007. The grievor identified a copy of a note from a physician dated July 26, 2007, which indicated the grievor was "unfit for work July 26/07 due to medical reasons." He said he returned to work July 27 only to be told he was discharged.

Finally, the grievor testified that after his discharge he made one prescription drug purchase which would have been covered under his drug benefit plan.

III. THE AGREEMENT

The key provision of the parties' 2002-2006 collective agreement, which remained in force at the time of the events leading to this grievance, is as follows:

ARTICLE 5 - MANAGEMENT RIGHTS

5.01 The Union acknowledges that it is the exclusive function of the Company to . . .

- (a) . . . discharge employees for just cause subject to the right of a seniority employee to lodge a grievance . . .

IV. UNION SUBMISSION

Regarding the Employer's absence from the arbitration hearing, Mr. Lewenza advised that the Employer had on several recent occasions failed to appear at Labour Relations Board proceedings or at arbitrations and that the Employer was avoiding all dealings with the Union. Mr. Lewenza reported that the Employer had declined to respond to this grievance and that the copy of the Union's request for the appointment of an arbitrator sent to the Employer by Registered Mail had been returned by Canada Post unopened. The Employer refused to accept the envelope.

Mr. Lewenza provided copies of five recent awards between these two parties - that is, a decision of the Ontario Labour Relations Board (April 25, 2007), and the awards of Arbitrator Samuels in the *Dorogi* grievance (April 20, 2006), of Arbitrator Stephens in the *Pimental* grievance (June 24, 2006), of Arbitrator Etherington in the *Neufeld* grievance

(February 16, 2007), and of Arbitrator Samuels in the *Heide* grievance and two policy grievances (May 4, 2007). Those awards note that this Employer had either failed to attend (Labour Board, *Pimental*, and *Heide*), or had attended to advise that the Employer “had no proof whatsoever nor any valid argument to provide just cause for the dismissal” and “the owner of the Company wanted it made clear that he would not allow the grievor back onto Company property” (*Dorogi*, above, at page 1), or had attended but declined to call any witnesses in support of discharge (*Neufeld*).

Mr. Lewenza asked me to proceed in the absence of the Employer.

Regarding the grievance itself, the Union asked for a declaration that the grievor had been discharged without just cause, for an order reinstating him, an order of back pay, and an order for compensation for any benefit losses such as the grievor’s prescription drug purchase.

Mr. Lewenza also raised the issue of my fees. He said that, based on the Employer’s recent practice, he anticipated that the Employer would neither pay its half of my account for the hearing nor implement my award. He then advised that the Union would pay my entire account provided that I ordered the Employer to pay its half to the Union. As the Union anticipated having to initiate court proceedings in order to enforce the award, Mr. Lewenza said that the Union would recover the amount in the enforcement proceeding. Mr. Lewenza noted that the Union had made this same arrangement with Arbitrator Samuels.

V. CONCLUSIONS

At the hearing I ruled that I would proceed in the absence of the Employer. Based on the facts outlined above, the facts noted in the several recent unreported decisions between these two parties (above) and the Union submission, I concluded that the Employer had received

notice of the hearing and had a pattern of ignoring the Union and ignoring scheduled arbitrations. Moreover, I saw no benefit in delaying the matter to another day in the unlikely event that the Employer might attend. To impose a delay seemed to simply penalize the Union.

At the hearing I concluded that the grievor could only be discharged for just cause under Article 5 of the collective agreement, above, and that he was a “seniority employee” who was entitled to file a grievance protesting that discharge. I reached that conclusion based on the evidence of the grievor and the Union submissions. I confirm that ruling.

Since an Employer must prove cause when it discharges an employee who is covered by a just cause provision in a collective agreement, and this Employer did not attend the arbitration, at the hearing I concluded that the Employer had not proven just cause for the discharge of the grievor. I confirm that ruling.

My order follows. I will remain seised to deal with any difficulties which may arise in the implementation of this award.

ORDER

1. As the Employer did not have just cause for the discharge of the grievor, I order the Employer, Presteve Foods Limited, to reinstate the grievor, Chris Bailey, in his employment promptly after the date of this award, without any loss of seniority.
2. I order the Employer to compensate the grievor for all lost wages (i.e. \$13.10 per hour times 44 hours per week, for a total of \$576.40 per week) from July 27, 2007, the date of the discharge, until the date of reinstatement, as well as interest on those lost wages calculated in accordance with the approach used by the Ontario Labour Relations

Board. In the event that the Employer does not promptly reinstate the grievor, I note that my order is for full compensation from July 27, 2007, until the actual date of reinstatement, subject to the usual rules regarding mitigation.

3. I order the Employer to compensate the grievor for any benefit losses he may have incurred between July 27, 2007, and the date of his reinstatement.
4. Finally, I order the Employer to pay to the Union, CAW Local 444, the Employer's one-half share of my account for fees and disbursements, that one-half amount being \$1,705.75.

Dated at London, Ontario this 24th day of September, 2007.

Howard Snow, Arbitrator