K-C Recycling Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2019 BCSC 2405
Result	Petition Dismissed
Judge	Madam Justice Fleming
Date of Judgment	August 14, 2019
WCAT Decision(s) Reviewed	A1602826 (April 13, 2017)

Keywords

Judicial review – Discriminatory actions – Section 151 of the Act [now section 48] – Procedural Fairness – Proceeding by way of written submissions instead of oral hearing

Summary

K-C Recycling Ltd. (the employer) operated a recycling plant. It employed Mr. Cardoso on a periodic basis, in lead battery recycling. The employer terminated Mr. Cardoso's employment, after Mr. Cardoso raised concerns with his supervisor about the employer's new method of cleaning certain equipment in the recycling plant. Mr. Cardoso brought a complaint against his employer, pursuant to section 151 of the *Workers Compensation Act* (the *Act)* [now section 48].

The Workers' Compensation Appeal Tribunal ("WCAT") found that Mr. Cardoso (the worker) had established a prima facie case of discriminatory action pursuant to section 151. He had been dismissed from his employment, he had reported conditions that he had considered to be unsafe to his employer, and there was a reasonably close temporal connection between reporting his concerns and his dismissal (see para 35, Court decision).

WCAT then went on to consider whether the employer has rebutted the prima facie case. It found that it had not. The employer had provided little to no evidence to support its assertion that it dismissed Mr. Cardoso due to various performance concerns. The employer's allegations about the problems with Mr. Cardoso were vague and unspecified. WCAT was not satisfied that no part of the employer's reasons for terminating Mr. Cardoso's employment was related to a prohibited ground in section 151 of the *Act.* (paras 37-40, 75).

The Court found that WCAT's finding that the employer had not rebutted the prima facie case of discriminatory action did not approach the patently unreasonable standard. WCAT's finding was not clearly irrational. (para 77)

WCAT had also found that an oral hearing was not required. WCAT noted that neither the employer nor the worker had requested an oral hearing. WCAT essentially found that the employer's evidence was not detailed or believable enough to give rise to a factual dispute requiring an oral hearing to resolve.

The Court considered WCAT's decision to hear the appeal by way of written submissions to be a discretionary decision, because section 246(1) of the *Act* [now section 297(1)] grants WCAT the discretion to hear an appeal in writing or orally, or by other means. The Court said that there was nothing patently unreasonable in WCAT's exercise of discretion to hear the appeal by way of written submissions. (paras 78-84)

The Court essentially said that if it was wrong in treating this as a discretionary decision, but should instead treat it as a matter of procedural fairness, then it adopted WCAT's written submissions on this point (para 85). In those submissions, WCAT said that it was not procedurally unfair for the panel not to hold an oral hearing in the circumstances.

The Court dismissed the petition for judicial review.