

Noteworthy Decision Summary

Decision: WCAT-2003-02559 **Panel:** H. McDonald **Decision Date:** September 18, 2003

Alternative Dispute Resolution –Section 246(2)(g) of the Workers Compensation Act

The worker made a complaint to the Workers' Compensation Board (Board) under section 151 of the *Workers Compensation Act* (Act), alleging that her employer had unlawfully discriminated against her by terminating her employment because she had raised occupational health and safety concerns. The employer's position was that it had dismissed the worker solely because she had engaged in insubordinate and disruptive behaviour at the workplace. At the oral hearing of this matter the panel, pursuant to section 246(2)(g) of the Act, requested that the parties meet with a mediator. The parties agreed and came to a consensual resolution of their dispute. The panel held that the terms of the settlement agreement were not inconsistent with the Act and varied the earlier decision of the Board to be consistent with the settlement agreement.

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Panel: Heather McDonald, Vice Chair

Introduction

The employer is in the business of providing floral bouquets to retail outlets. It commenced operations in British Columbia in June of 2001. The complainant, "C", began working for the employer in early September of 2001. C's job title was "Flower Arranger." Her duties involved unpacking flowers, preparing flowers (cleaning, cutting and peeling petals, packaging the product), arranging jumbo bouquets, and maintaining a clean working area.

On February 4, 2002, C made a complaint to the Workers' Compensation Board (Board) under section 151 of the *Workers Compensation Act* (Act), alleging that her employer had unlawfully discriminated against her. Specifically, C alleged that the employer had terminated her employment in January 2002 because she had raised occupational health and safety concerns to the employer. The employer's position was that it had dismissed C solely because she had engaged in insubordinate and disruptive behaviour at the workplace.

A Board safety officer investigated the complaint and unsuccessfully attempted to mediate a settlement between the parties. Ultimately, the complaint proceeded to a formal adjudication by a reviewing officer in the Prevention Division's Review & Penalty Section. In his written decision dated June 10, 2002, the reviewing officer dismissed C's complaint. He found that the employer had met the burden of proving that it had terminated the worker's employment for reasons wholly unrelated to her having raised concerns about the occupational environment.

C appealed the reviewing officer's decision within the Prevention Division. Her appeal was dismissed in a decision dated February 28, 2003. The second reviewing officer who issued the decision confirmed the finding of the first reviewing officer, namely, that the employer had established that it had not terminated C's employment for any reason referred to in section 151 of the Act.

In these proceedings, C appealed the decision dated February 28, 2003. Her position was that the employer unlawfully terminated her employment contrary to section 151 of the Act, because she raised health and safety concerns about the workplace.

On Thursday, September 11, 2003, I convened an oral hearing at the Richmond premises of the Workers' Compensation Appeal Tribunal (WCAT). An interpreter was present to translate the proceedings into C's first language. C appeared, representing herself, and gave evidence on her own behalf. The employer also appeared, represented by an employers' adviser, and provided evidence on its own behalf.

During the proceedings, pursuant to section 246(2)(g) of the Act, I requested that the parties meet with a mediator in order to consider whether mediation might be an appropriate way to resolve their dispute. They agreed to meet with a mediator. The mediator was Paul Petrie, a WCAT vice chair. I adjourned the oral hearing, pending the mediation between the parties. With the assistance of mediation, the parties were able to achieve a consensual resolution of their dispute. The parties entered into a written settlement agreement dated September 12, 2003.

I have reviewed the terms of the September 12, 2003 settlement agreement between C and the employer. I am satisfied that the agreement is not inconsistent with the Act. Accordingly, pursuant to section 6.00 of the *Manual of Rules, Practices and Procedures*, I confirm that C and the employer have reached a consensual settlement of the section 151 complaint, and that their September 12, 2003 written settlement is lawful under the Act. Pursuant to section 253(1) of the Act, I vary the February 28, 2003 decision of the Board's second reviewing officer by confirming the parties' lawful, consensual settlement of C's section 151 complaint as the final resolution of the appeal.

Heather McDonald
Vice Chair

HM/gk