

**IN THE MATTER OF THE EMPLOYMENT ACT 2000 (THE ACT) BEFORE
THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL (THE TRIBUNAL)**

BETWEEN:

**EARDLEY SIMONS
(as the Employee)**

Complainant

-and -

**ERNEST WEBB
(as the Employer)
(trading as Webb's Body and Paint Shop)**

Respondent

RULING

Hearing Date: July 22nd 2024

Tribunal Members: Derrick V. Burgess, Chairman
Valerie Young, Deputy Chair
Paget Wharton (unforeseen circumstances prevented his presence at the hearing, with the provisions of the Act and agreement of all parties the matter was heard).

Present: Eardley Simons, the Employee self-represented
Ernest Webb, the Employer self-represented

BACKGROUND/HISTORY

The Dispute was filed under Sections 6 and 5 of the Act and referred in accordance with Section 37 (4) of the Act.

The Employee is seeking:

1. 26 Weeks for unfair dismissal; and

2. 1 Weeks' notice pay

The Complainant's position is that he was unfairly terminated after informing his Employer that he could no longer complete a specific job due to a medical condition. The Complainant also contended that he did not receive a Statement of Employment.

The Parties were offered an opportunity to settle amongst themselves, it was refused by both parties.

Complainant's Testimony:

The Complainant presented additional documents at the Hearing on July 22nd 2024 -- documents dated January 31st 2024, February 13th and 14th 2024 and March 28th 2024.

The Complainant's position is that he was unfairly terminated after informing his Employer that he could no longer complete a specific job duty due to a medical condition. He also stated that he did not receive a Statement of Employment.

Per the Complainant's written Statement of Claim dated June 26th 2024 he stated that he was wrongly terminated on January 25th 2024, by his Employer. Termination was in fact January 23rd 2024. He said that he had a verbal conversation with the Respondent on January 23rd 2024 about his ability to work on the assigned job (a truck) due to his vertigo and that he was made aware of this weeks ago. During examination by the Panel, the Complainant admitted that he never explained to the Respondent about his Vertigo, nor did he produce a medical certificate/letter at that time explaining his condition. This occurred after his termination. A letter from his doctor dated February 14th 2024 explained the Complainant's medical condition, this was not presented to the Respondent. Also presented to the Tribunal was a certificate from his doctor stating that he was unfit for work from January 22nd 2024 until February 2nd 2024. This certificate is dated January 31st 2024.

In a written statement dated February 13th 2024, the Complainant said that he was asked by the Respondent to work on a dump truck, he said that he explained to the Respondent that due to his Vertigo he cannot work on top of the dump trucks and was unable to get under it to remove the

fenders, this occurred on January 23rd 2024. The Respondent stated to him that if he doesn't do the truck he will be fired. This was a shock to him after 25 years of working for the Respondent.

The Complainant stated he had already scheduled a doctor's appointment on January 25th 2024 to find out more about his health status, in which he was informed by his doctor that he had developed a bad chest infection, and was diagnosed with Vertigo. After that he informed the Respondent what the doctor had stated. The doctor gave him a few days off to rest and return to work on Monday. The Respondent's response was he will see him then and the work status will be determined after he had spoken to his Supervisor. On that Monday when he returned to work, he received a letter of termination. Upon receiving the termination letter, he asked about severance and holiday pay and then the Complainant reported the Respondent to the Social Insurance Department.

Another document presented to the Tribunal on July 22nd 2024 and dated March 28th 2024 stated that in December 2023 during the Christmas holiday, he was diagnosed with Vertigo. When he returned in the New Year, he informed his Employer.

The Complainant under oath admitted that he never explained his medical condition (Vertigo) to the Respondent

Respondent's Position:

The Respondent presented his Defense dated July 20th 2024 at the Hearing on July 22nd 2024.

The Employer ("the Respondent") states that the Complainant was terminated for refusing to perform his job duties and was adamant that he was not informed of the Complainant's medical condition until after the termination.

The Respondent admitted that the Complainant did not receive a Statement of Employment in accordance with Section 6 (7) of the Act which states the following: "*An Employer who contravenes this section shall be liable to a civil penalty as may be imposed by the Manager or Tribunal*". The Respondent was informed by the Panel that as per the law not giving an Employee a Statement of Employment could warrant a fine as much as \$10,000.00.

Per the Respondent's statement dated July 20th 2024 he has been in business for the past 47 years and employs three (3) full-time workers. Their function is in auto body repair including panel beating, and spray painting and as a small garage, services on average ten (10) vehicles per week.

He states that the Complainant was employed with his business for over twenty (20) years as a Junior Mechanic, Panel Beater/Spray Painter. On January 23rd 2024 the decision was made to terminate him for insubordination. The decision was not made in haste, but after a range of offences where the Complainant had been given numerous chances over the years.

He states that on January 23rd 2024 the Complainant was assigned to work on a truck, the assignment was to prepare and paint the flatbed of the vehicle. The next day they arrived for work and the truck had not been started and the Complainant was nowhere to be found. When the Complainant did appear and was asked of his whereabouts, he responded "*I've been about.*"

The Complainant was asked by the Respondent "*When will you be starting the truck?*" The Complainant refused to comply and did not start the work. The Complainant stated, "*You know I do not work on trucks*" and walked off. He then stated, "*I will work on the other vehicles on the premises.*" The Respondent said, "*No you will not, you have been assigned the truck and if you do not work on it, then go home.*" The Complainant then left and never returned to the body shop. A letter was drafted informing the Complainant of his termination. The Complainant's refusal to carry out a work assignment from the Respondent has been adjudged by the Respondent as insubordination and therefore terminated the Employee.

It is noted that the Complainant visited his physician January 31, 2024 after the event and received a certificate to be off work from January 22nd to February 2nd 2024 (backdated), which does not specify any illness, just that he was unfit for work.

Despite the termination, the Respondent in good faith allowed the Complainant to weld a muffler at the shop in July 2024 for his vehicle.

The Respondent showing good faith has stated that "*I've had a discussion with the Complainant regarding the arrears of his Private Pension and Social Insurance deductions and I am presently making payments to eradicate the arrears, and this was agreed by both parties. Also, the Complainant is still part of our group Health Insurance Policy.*"

When asked how long this will continue, the Respondent said when the Tribunal gives their report.

Under oath the Respondent stated the Complainant never informed him about the nature of his sickness. *"If I had known I would have possibly given him something else to do."*

The Respondent is presently on a payment plan to erase the arrears in Social Insurance and Private Pension for the Employee.

Decision:

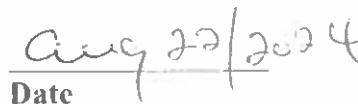
1. The Employer is liable to a civil penalty of \$500.00 for contravening Section 6, subsection 7 of the Employment Act 2000.
2. The Employee's presentation to the Tribunal is contradictory and unreliable, therefore the decision by the Employer is upheld and the request for compensation is denied.
3. The civil penalty must be paid within 30 days upon receiving this report to the Accountant General office on Parliament Street Hamilton.

NOTE:

Determination and Order of this Tribunal are binding. It was made clear to the parties in the matter that in accordance with Section 440 of the 2000 Act, a party aggrieved by a Determination or Order of the Tribunal may appeal to the Supreme Court on a point of law.



Mr. Derrick Burgess, Chairman



Date



Ms. Valerie Young, Deputy Chair



Date

