



Manitoba Labour Board

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Case No. 183/24/ESC

File No. 139166

IN THE MATTER OF: *THE EMPLOYMENT STANDARDS CODE*

BETWEEN:

D.T.

Employee,

- and -

**5091293 MANITOBA LTD., trading as
ADAMS BROTHERS AUTOMOTIVE,**

Employer.

BEFORE: K. Pelletier, Chairperson

B. Black, Board Member

G. Bouchard, Board Member

<p>This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.</p>
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SUBSTANTIVE ORDER

Introduction

1. This matter involves an Appeal of a Dismissal Order issued by the Employment Standards Branch (the “ESB”), dated August 20, 2024. The referral from the ESB was received by the Manitoba Labour Board (the “Board”) on September 20, 2024.
2. The Employee claimed that he was entitled to wages in lieu of notice. The Employer asserted that the Employee had voluntarily left employment, or elected to quit his job, on June 14, 2023, and therefore was not entitled to wages in lieu of notice.
3. The hearing proceeded on January 15, 2025. Both parties were self-represented. The Employer, represented by I.F., one of the owners of the company, testified and called two additional witnesses. The Employee testified and made submissions at the hearing.

Background facts

4. The Employee started employment as a mechanic with the Employer in 2008.
5. Two witnesses who were called to testify on behalf of the Employer provided information about the events that unfolded on June 14, 2023, outlining that the Employee had engaged in a shouting match with I.F.'s uncle, who is also a co-owner of the company. The witnesses testified that it was not uncommon for the two to engage in disrespectful exchanges, specifically as it related to personal property that the Employee was storing on the Employer's premisses. One of the witnesses testified that it was "a regular day for" him.
6. On the day in question, the Employee was seen leaving the shop a few times before ultimately returning. The Employee testified that he recalled leaving the shop a couple of times to de-escalate, as the uncle had been at him since he had arrived that morning. At some point, the Employee went to the kitchen to fill up his cup with fresh coffee. The Employee returned to his workstation with the uncle in tow. One of the witnesses, who was standing a few meters away, recalled seeing the Employee throw his coffee in the uncle's face and on his arms, leading to severe injury. The Employee testified that he had done so after having been yelled at and harassed continuously that morning, and after having been shoved in the back by the uncle. The Employee also stated that it was an act of self-defence.
7. After this altercation, there was an escalation. One of the witnesses testified that he got between the two to try to calm them down. He recalled informing the Employee to head home to cool off. He recalled that I.F. also told him to leave to calm down.
8. I.F. testified that later that day, the Employee was asked to return to work. The Employee refused and did not return that day or any day thereafter, with the exception of picking up his toolbox about a month later. I.F. testified that it was his understanding that the Employee no longer wished to work for the Employer. In any event, I.F. says that he would have been terminated for his conduct.
9. The Employee states that he was terminated when, following the coffee incident, he was told by the uncle to leave. He recalled the uncle informing him that he was terminated.
10. In cross-examination, the Employee acknowledged that the uncle had informed that he was terminated several times before but noted that this time was different.

Analysis

11. The Employer denies that it terminated the Employee. Rather, the Employer states that, following the violent encounter of June 14, 2023, the Employee was asked to leave, but was subsequently contacted both that day and the next, to see if he would return to work. He refused to return and, on that basis, the Employer states that the Employee voluntarily left employment.
12. On the other hand, the Employee argues that he was terminated on June 14, 2023, following the coffee incident, and was told not to come back. He does not deny refusing to come back to work once contacted, but states that he was already terminated.
13. The Board has myriad cases in which a resignation versus a quit are discussed. In the leading employment text, *Employment Law in Canada*, at paragraph 13.12, the authors Geoffrey England, Innis M. Christie and Peter Barnacle distinguish a quit from a dismissal as follows:

“It may sometimes be difficult to determine whether the employment relationship has been terminated by a quit on the employee’s part or by a dismissal on the part of the employer. The courts and statutory adjudicators, echoing the approach of collective agreement arbitrators, have held that a valid resignation must have a subjective as well as an objective component. The former requires conduct on the employee’s part that unequivocally manifests that he or she had the subjective intention of quitting. The latter requires conduct on the employee’s part that would lead a reasonable person in the position of the employer to believe that the employee had carried out his or her subjective intention.”
14. There was not any particular conflict in the evidence presented about the events that transpired on June 14, 2023. The evidence from the two employees was credible and clear. The Employee, who would often have verbal exchanges with the uncle, threw hot coffee in his face and on his arms. The Employee was then asked to leave, with the words “you’re fired” likely having been uttered.
15. The Employee acknowledged that he was contacted thereafter and requested to return to work. He stated that he did not return as it was his understanding that he had been terminated.

16. On these facts, the Board is satisfied that the Employee was initially fired on the worksite on June 14, 2023, following the physical altercation, but was subsequently recalled to work later that day and the following day.
17. Having considered carefully all of the evidence, the Board is satisfied that the Employer has met the onus of establishing on a balance of probabilities that the Employee was not fired, and that the Employee refused a recall to work, and thus abandoned his employment.
18. Notwithstanding this conclusion, even if the Board were to accept that the Employee had been terminated, as he alleges, it is without dispute that the Employee responded in a manner that was disproportionate to any provocation when he threw coffee at one of the owners after being jostled. On that issue alone, the Board would have been satisfied that the Employer had just cause to terminate his employment without notice.
19. As a result, the Employee is not entitled to notice or pay in lieu of notice.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the claim of D.T.

DATED at **WINNIPEG**, Manitoba, this 19th day of February, 2025, and signed on behalf of the Manitoba Labour Board by

“Original signed by”

K. Pelletier, Chairperson

“Original signed by”

B. Black, Board Member

“Original signed by”

G. Bouchard, Board Member