

Occupational Health and Safety Council
Appeal Hearing
February 9, 2010

Decision upon Application By:

Bradley Renton – Appellant

And

Occupational Health and Safety - North – Respondent

And

Canadian Galvanizing Ltd.

Board Members

Judy Barry–	Appeal Panel Chair, Worker Representative Occupational Health and Safety Council
Greg Harris –	Public Representative Occupational Health and Safety Council
Eugene Sarrasin –	Employer Representative Occupational Health and Safety Council

Appearances:

For the appellant:	Not Present
For the respondent:	Dawn Gray, Occupational Health and Safety Officer Sean McIntyre, Acting Manager, Compliance North Occupational Health and Safety
For Canadian Galvanizing Ltd:	Marc Lamoureux, Owner Gloria Smith, Office Manager James Smith, Operations Manager

Government of Alberta ■
Employment and Immigration
Occupational Health and Safety Council

The Appeal Panel (the Panel) convened on February 9, 2010 to hear an appeal pursuant to Section 37 of the *Occupational Health and Safety (OH&S) Act. (Act)*

Section 37 of the *Act* reads:

- 37(1) A worker who has reasonable cause to believe that the worker has been dismissed or subjected to disciplinary action in contravention of section 31(5) or 36 may file a complaint with an officer.*
- (2) An officer who receives a complaint under subsection (1) shall prepare a written record of the worker's complaint, the investigation and the action taken and shall give the worker and the employer a copy of the record.*
- (3) A worker or an employer who receives a record under subsection (2) may request a review of the matter by the Council by serving a notice of appeal on a Director of Inspection within 30 days from the receipt of the record.*
- (4) After considering the matter, the Council may by order*
- (a) dismiss the request for a review, or*
 - (b) require one or more of the following:*
 - (i) reinstatement of the worker to the worker's former employment under the same terms and conditions under which the worker was formerly employed;*
 - (ii) cessation of disciplinary action;*
 - (iii) payment to the worker of money not more than the equivalent of wages that the worker would have earned if the worker had not been dismissed or had not received disciplinary action;*
 - (iv) removal of any reprimand or other reference to the matter from the worker's employment records.*
- (5) If the worker has worked elsewhere while the dismissal or disciplinary action has been in effect, those wages earned elsewhere shall be deducted from the amount payable to the worker under subsection (4)(b)(iii).*
- (6) An appeal lies to the Court of Queen's Bench from an order of the Council on a question of law or a question of jurisdiction and on hearing the matter the Court may make any order, including the awarding of costs, that the Council considers proper.*
- (7) An appeal under subsection (6) shall be made by way of originating notice within 30 days from the date that the order of the Council is served on the person appealing the order of the Council.*
- (8) The commencement of an appeal under subsection (6) does not operate as a stay of the order of the Council being appealed from except insofar as a judge of the Court of Queen's Bench so directs.*

The specific reasons for appeal are:

- Mr. Renton believes his employment with Canadian Galvanizing Limited was terminated as a result of his acting in compliance with the *Occupational Health and Safety Act*, the regulations and adopted code.

The respondents contend that:

Canadian Galvanizing Ltd. has not contravened Section 36 of the *Occupational Health and Safety Act*.

36 *No person shall dismiss or take any other disciplinary action against a worker by reason of that worker acting in compliance with this Act, the regulations, the adopted code or an order given under this Act or the regulations.*

The Issue to be Resolved:

Was Mr. Renton dismissed or disciplined for acting in compliance of the *Act*, regulation and code?

Submissions Considered by the Appeal Panel:

From the Appellant, Bradley Renton

- Letter of complaint dated February 20, 2009
- Disciplinary Action Complaint Questionnaire

From the Respondent, Occupational Health and Safety- North

- Submission binder produced from Occupational Health and Safety containing appellant's information, Occupational Health and Safety investigation, investigating officer notes, interviews and findings
- Verbal testimony, Dawn Gray
- Verbal testimony, Sean McIntyre

- ***From Canadian Galvanizing Ltd.***

- April 24, 2009 – Letter responding to Occupational Health and Safety's request for information
- December 30, 2009 – Letter to Brad Renton Re: Employment Resignation
- Original Record of Employment
- Amended Record of Employment
- March 15, 2009 – Letter to Brad Renton from Hardman Law Office
- July 1, 2004 – Company Policy on Safety
- June 27, 2006 – Letter to Employees re: Personal Protective Equipment
- January 5, 2009 – Job Posting
- Undated list of - "Issues to discuss with Brad"
- Verbal testimony, Gloria Smith
- Verbal testimony, James Smith
- Verbal testimony, Marc Lamoureux

Facts:

The following is a list of facts agreed to by the parties and considered by the appeal panel:

- Bradley Renton was an employee of Canadian Galvanizing Limited
- Bradley Renton raised an issue with James Smith regarding the wearing of personal protective equipment.
- Bradley Renton did make a call to Occupational Health and Safety citing general workplace safety issues
- Bradley Renton's employment with Canadian Galvanizing Ltd. ended on January 3, 2009

Position of the Parties and Remedy Requested:

Appellant:

Bradley Renton feels that Canadian Galvanizing Limited terminated his employment for raising health and safety concerns.

Remedy requested: Payment of money not more than the equivalent of wages that would have been earned if I had not been dismissed (minus any wages I earned elsewhere since the dismissal). Removal of any reference to the matter from my employment records.

Respondent:

Occupational Health and Safety - North maintains their original determination that Canadian Galvanizing Ltd. has not contravened Section 36 of the *Occupational Health and Safety Act*.

Decision:

In respect to Mr. Renton's allegation that he was terminated as a result of raising health and safety concerns, the legal test to determine a Contravention of s.36 of the *Act* requires that all three of the following conditions are met:

1. The worker must have been acting in compliance with the Occupational Health and Safety *Act*, regulation, or code;
2. Dismissal or other disciplinary action must have been taken against the worker; and
3. The disciplinary action taken against the worker was by reason of that worker acting in compliance with the Occupational Health and Safety *Act*, regulation, or code.

In response to:

1. The worker must have been acting in compliance with the *OHS Act*, Regulation, or Code;

It is the decision of the Panel that Mr. Renton was acting in compliance with the *Occupational Health and Safety Act*.

2. Dismissal or other disciplinary action must have been taken against the worker;

It is the decision of the Panel that Bradley Renton was dismissed by Canadian Galvanizing Ltd.

3. The dismissal or other disciplinary action taken against the worker was by reason of that worker acting in compliance with the Occupational Health and Safety *Act*, regulation, or code.

It is the decision of the Panel that although Bradley Renton's employment with Canadian Galvanizing Ltd. was terminated there was insufficient evidence to support a causal link between his termination and his acting in compliance with the *Act*, regulation and code.

Based upon the test used above to ascertain a breach under Section 36, it is the decision of this appeal panel that the appellant was not disciplined or dismissed for acting in compliance with the *Occupational Act*, regulation or adopted code.

**Appeal Hearing
Bradley Renton/ Occupational Health and Safety – North/
Canadian Galvanizing Ltd.**

February 9, 2010

Occupational Health and Safety Council Appeal Panel

**Judy Barry, Appeal Panel Chair
Occupational Health and Safety Council
Worker Representative**

**Greg Harris
Occupational Health and Safety Council
Public Representative**

**Eugene Sarrasin
Occupational Health and Safety Council
Employer Representative**