

Occupational Health and Safety Council

Disciplinary Action Complaint

Shafiulla Baig Mirza

Appellant

and

Shell Canada Limited

Respondent

ORDER

Panel Members: Peter Bowal (Chair), Andrew Smith and Wally Baer

Appeal Decision: February 03, 2014

 Jobs, Skills, Training
and Labour

Occupational Health and Safety Council

Background

The appellant, Mr. Shafiulla Mirza, a Product Quality Technologist / Lab Technologist employed by the respondent Shell Canada Ltd, pushed valuable instrumentation equipment off the bench in one of its labs on May 2, 2013.

The ensuing investigation revealed that Mr. Mirza had some human resources concerns at the time. He was negotiating two days off. He was feeling overworked, distrustful and under-appreciated. He did not sense he was being heard or understood, and consequentially struggled with change and the submission to authority at his workplace.

The employer took a serious view of the act of pushing the equipment off the counter. It was done in anger or frustration. As a consequence, Mr. Mirza was suspended with pay, pending an investigation which followed.

About the incident that led to his suspension, Mr. Mirza wrote (in the narrative that accompanied his appeal): *[original text]*

I have got very un-comfortable with this words that management keep asking to go to team lead and team lead saying he does not want to support. I felt very insecure and got very anxious. So in the situation I have just pushed the instrument that was just next to me.

By June 20, 2013, agreement with Mr. Mirza was reached to lift the suspension. Mr. Mirza would return to work in a different lab role at the Albian site. His return was scheduled for June 25, 2013 which would include a discussion of the outcome of the investigation and resolve any outstanding questions.

Mr. Mirza later viewed the new work assignment as less favourable (“total punishment”). He asked for, but did not receive, a copy of the investigation report. He seems to have agreed to the return to work, but then had a change of mind based upon a sense of distrust and a secretive or unfair investigation. He alluded to general stress and health concerns. He was warned that refusing to return to work on June 25th would put his job in jeopardy. He did not report for work on June 25th. His employment was terminated the next day.

Mr. Mirza filed a disciplinary action complaint with Alberta Occupational Health and Safety (“OHS”) on August 8, 2013.

OHS Decision

OHS investigated and reported its decision on September 19, 2013. The officer concluded that Mr. Mirza had been terminated (disciplinary action had taken

place). However, the officer found that there was insufficient evidence that his termination had been caused by any act of compliance with the Act on Mr. Mirza's part. Accordingly, his disciplinary action complaint was dismissed.

On October 15, 2013, Mr. Mirza filed his appeal to this Council.

Nature of this Appeal to the OHS Council

Mr. Mirza states the grounds for his appeal thus:

I believe that the termination of my employment is unjustified. I have not received the investigation report yet and I have been trying to get a copy of the report and I was told it takes some more time. Finally, I would like the opportunity to defend myself.

I have been trying to get the phone conversation copy also, which led to my termination. The process is complicated and would be very happy if you provide some time to listen to me. Thank you.

Applicable Jurisdiction and Law

The *Occupational Health and Safety Act*¹ mandates workers to refrain from what they reasonably believe to be imminently dangerous work. If they do so, and are then disciplined in any way for that, they have access to the OHS officer and, by appeal, to this Council for a remedy. This duty to refrain from the dangerous work is set out in section 35 of the Act:

Existence of imminent danger

35(1) No worker shall . . .

(b) carry out any work if, on reasonable and probable grounds, the worker believes that it will cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site . . .

(2) In this section, "imminent danger" means in relation to any occupation

¹ RSA 2000, c O-2, <http://canlii.ca/t/5246j>

- (a) *a danger that is not normal for that occupation,*
or
- (b) *a danger under which a person engaged in that*
occupation would not normally carry out the
person's work.

(3) *A worker who*

- (a) *refuses to carry out work . . . pursuant to*
subsection (1) shall, as soon as practicable, notify the
worker's employer at the work site of the worker's
refusal and the reason for the worker's refusal.

If a worker has reasonable cause to believe one was disciplined for reporting an imminent danger and refusing to work in the face of it, one may file a disciplinary action complaint under section 37(1) which will be investigated and reported upon by an OHS officer.

An officer's decision may be appealed to this Council [*OHS Act*, section 37(3)] and "the Council shall . . . hear appeals in accordance with this Act and the regulations" [*OHS Act*, section 7(b)]. The 30 day time period for filing the appeal was met in this case [*OHS Act*, section 37(3)].

Analysis

The OHS Council has discretion to dismiss the request for a review without a hearing. Section 37(4) reads:

- After considering the matter, the Council may by order*
- (a) *dismiss the request for a review . . .*

Council exercises this preliminary discretion to decline review of the officer's decision on occasion. Grounds for doing so include failure of the appellant to state a case within the legal authority of the Council, or one which has on its facts or the law essentially no chance of success, incomplete Notice of Appeal, refusal of the appellant to participate in the appeal or remain in contact with the Council, where the relief requested or obtainable is *de minimis*, the appeal is frivolous, vexatious, filed with improper motives or otherwise an abuse of process, where the original event that gave rise to the complaint is substantially dated and other varieties of mootness where any Order of Council would have little practical effect.

Council dismisses Mr. Mirza's request for review of the September 19, 2013 OHS decision under section 37(4). In his grounds for appeal, Mr. Mirza is asking for

Council to assist him “to get a copy of the report” and a transcript of a phone call. OHS Council has no legal authority to order that.

Moreover, in the facts as alleged and the legal framework which governs this Council, this is not an occupational health and safety case. Nowhere in his appeal, nor in the Hearing Package of documentation leading up to the appeal, is there even a *prima facie* case that Mr. Mirza has positioned himself within section 35 of the *OHS Act*, even if one were to accept as true everything he stated.

Simply summarized, there is no basis for this employment matter to be viewed as an “imminent danger” case under this legislation and under this Council’s jurisdiction.

Order

We all agree that Mr. Mirza’s request for a review of the OHS officer’s decision contained in the September 19, 2013 letter is dismissed under section 37(4)(a) of the *Occupational Health and Safety Act*.
