

# Occupational Health and Safety Council

## Disciplinary Action Complaint

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**John Ramos**

**Appellant**

and

**1481639 Alberta Ltd. (operating as TEMPS Services)**

**Respondent**

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## ORDER

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**Panel:** Peter Bowal (Chair)

**Appeal Decision:** April 27, 2016

 Jobs, Skills, Training  
and Labour

**Occupational Health and Safety Council**

## **Background**

Mr. Ramos was hired by the Respondent, TEMPS Services, on a day-to-day basis as a casual labourer. He would be assigned to a job and paid at the end of every day. Flexible by design, neither party guaranteed work or service on any day.

On his first day, November 17, 2015, Mr. Ramos was posted to a demolition site where he expressed concerns about a possible electrical hazard arising from some exposed wires. He was assured they were not dangerous. The next day, Mr. Ramos says he inadvertently contacted electrical wires and “got an extreme electrical shock.” Although he would indicate he was “electrocuted” several times in his report to OHS, he also apparently told TEMPS Services that he was not injured and he did not seek medical assistance. An incident investigation was conducted. TEMPS Services informed Mr. Ramos at the end of that second day that he would be assigned to another project site the next day, November 19, 2015.

Reasons for this job re-assignment were apparently not given by TEMPS Services. Nor does it appear that Mr. Ramos asked for reasons. Mr. Ramos, however, assumed the reasons for his re-assignment was “disciplinary action toward me for raising health and safety concerns” [Notice of Appeal]. Without venturing too far into speculation, any one or more other reasons could have been operating, including the need for a break in the work due to the incident investigation, the practice of TEMPS Services to move workers around jobs, client preferences, work shortage at that location, matching skills to jobs, being bumped by another worker, mere randomness, and so on.

Mr. Ramos, despite his safety concerns at the demolition site, did not want to be reassigned to any other job. He did not show up for day labour at TEMPS Services on November 19, 2015 or on any date since. He filed a Disciplinary Action Complaint with Alberta Occupational Health and Safety.

## **OHS Decision**

Two OHS officers investigated the Disciplinary Action Complaint and rendered their written decision on February 3, 2016. They found that TEMPS Services had not disciplined Mr. Ramos because his “worker information profile” was still active in their system. He could be assigned to a day job if he wanted it. The day labour model where every day brings a new work assignment, if any, meant the worker held no property in work at one site beyond a given day. The OHS officers found that Mr. Ramos had not been disciplined by TEMPS Services.

## **Nature of this Appeal to the OHS Council**

In his Notice of Appeal, the Appellant repeats the allegations and claims the OHS officers placed too much emphasis on the Respondent’s evidence. However, his

focus in this appeal appears to be on law enforcement. Mr. Ramos seeks to use the OHS Council ‘to hold TEMPS Services (and its agent Everett) accountable’. A personal or compensatory remedy is not requested.

In his Notice of Appeal, Mr. Ramos included as “specific reasons and grounds for this appeal . . . the fact that [the OHS officers] failed to hold [TEMPS Services and Everett] accountable . . .”. He adds [original emphasis]:

Please note: In regard to your question number 7 (please indicate what relief you are seeking from this appeal), no box applies to what I seek and so I put in my own box simply requesting TEMPS Services (Everett) be held accountable for their actions of disciplining a worker (me) for complaining about unsafe work conditions; for violating subsection 36 of the OHS Act, Regulation and Code.

In the Relief section of the Notice of Appeal, where the personal remedies authorized by law are listed, namely wage compensation, cessation of discipline, reinstatement and removal of reprimand, etc. from employment records, Mr. Ramos passes on all of them and creates a remedy category of his own, *to wit*:

√ for Everett (TEMPS Services) to be found guilty and in contravention of subsection 36 of the OHS Act, Regulation and Code.

TEMPS Services, in its Respondent Statement, repeated its position that the Appellant was not terminated:

TEMPS Services did not fire or discipline John Ramos for any reason. We did offer John Ramos a job; John Ramos chose not to come in and take the job that was offered to him.

### **Applicable Jurisdiction and Law**

The *Occupational Health and Safety Act*<sup>1</sup> protects workers who are disciplined in any way for acting in compliance with the legislation. They can access an OHS officer to objectively investigate and decide on their allegations of illegal discipline. If one has reasonable cause to believe one was disciplined for complying with the applicable occupational health and safety legislation, 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”

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

[*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, filing an incomplete Notice of Appeal, asserting for the first time on appeal new material facts or issues without adequate justification, 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*, where there it is clear that the appellant's matter has been adequately reviewed and decided in another forum with overlapping jurisdiction (such as a union grievance), where the appeal is frivolous, vexatious, filed with improper motives or otherwise an abuse of process, where the Appellant requests a remedy that is not in this Council's statutory jurisdiction to provide, where the original event that gave rise to the complaint is substantially dated and other varieties of mootness where any Order of this OHS Council would have little practical effect.

Mr. Ramos' request for review of the OHS officers' decision dated February 3, 2016 is dismissed under section 37(4). OHS Council is unable, due to lack of authority under section 37 of its enabling statute, to grant the relief sought. This Council is not an investigatory, prosecutorial or judicial body. It is an appellate body only, with jurisdiction to review administrative decisions of OHS officers for reasonableness, fairness and error. OHS Council is without legal jurisdiction to adjudicate on issues of guilt under the regulatory mandates of the legislation.

### **Order**

Mr. Ramos' request for a review of the OHS officers' decision contained in the February 3, 2016 letter is dismissed under section 37(4)(a) of the *Occupational Health and Safety Act*.