

IN THE MATTER OF A DISPUTE BEFORE THE EMPLOYMENT & LABOUR
RELATIONS TRIBUNAL
PURSUANT TO PART VA SECTION 44B OF THE EMPLOYMENT ACT 2000
(‘THE ACT’)

BETWEEN

Complainant

-and-

LTD.

Respondent

Members of the Tribunal:	Charlene A Scott FCI Arb Yolanda O Outerbridge Paget Wharton	Chair Deputy Chair Member Panelist
Directions Hearing:	23 January 2023	
Hearing Dates:	22 and 23 May 2023	
Final Submissions Due:	7 June 2023	
Hearing: Venue:	Workforce Development Training Room 23 Parliament Street Hamilton HM 12	
Complainant’s Attorney	Ms. Sarah Ann Tucker LLb Trott & Duncan 17A Brunswick Street Hamilton HM 10	
Respondent’s Attorney	Mr. Johnathan White LLb Marshall, Diel & Myers 31 Reid Street Hamilton HM 12	

STATUTORY AUTHORITY TO HEAR THE MATTER

1. A Directions Hearing was convened on 23 January 2023 and the actual Tribunal Hearing was convened on 22 May 2023. The main issue to be considered by the Tribunal was whether the Complainant, Mr. _____, was unfairly terminated by the Respondent company. This Employment Tribunal hearing was to be conducted in accordance with the Employment Act 2000 (the '2000 Act') and more particularly, sections 44B (2) and (3), 44C of the General Powers and section 44D Power to Obtain Information, if required. More importantly, the Tribunal has the ability to regulate its own proceedings as it sees fit pursuant to Schedule 2(20) of the 2000 Act.
2. On 22 May 2023, after brief introductions from the Tribunal and comments from the parties, they were then afforded an opportunity to meet privately in an effort to reach a settlement without the Tribunal's assistance. When we resumed the hearing, the Tribunal was informed by the parties that no such settlement could be had. The Respondent Employer agreed to use the bundle of documents (hereinafter referred to as the 'evidence binder') submitted by the Complainant Employee.
3. Both parties agreed that there shall be no publication of names and that there shall be no public or press allowed pursuant to section 44E and 44F of the 2000 Act at any time during the hearing.

BACKGROUND

4. This matter was referred to Employment & Labour Relations Tribunal on 3 October 2022 via the Labour Relations Section. The nature of the complaint from the Complainant /Employee was that he was unfairly dismissed on or around 5 August 2021. The Respondent /Employer informed the Tribunal that he had every right as an employer to dismiss the Employee because of his threatening behaviour exhibited towards his fellow co-worker.

EVIDENCE UNDER OATH

Employer/ Respondent- _____ L

5. Mr. _____ (hereinafter referred to as _____) was the owner/manager for _____ Ltd., the Respondent company (hereinafter referred to as _____). _____ provided welding and metal fabrication and _____ who is currently the manager, had worked there for some thirty-three (33) years. The actual events of this matter that

precipitated this unfair termination took place back on or around 3 August 2021.

6. He informed the Tribunal that the Complainant, _____, had worked for him on three separate occasions as a welder/fabricator. He did not have the exact dates, but if we required them, he would find them in the records.
7. The Complainant was a welder at the company. He had voluntarily left the company on two prior occasions because of his behaviour- both times he was arrested and thereafter incarcerated for a couple of years for each of the offences. He was welcomed back to _____ after he completed his incarceration.
8. _____ hired the Complainant for a third time in May 2015 after he had been incarcerated and then released. The Complainant was looking to be hired because he said he had turned over a new leaf. He had sought counseling at Mid-Atlantic Wellness Institute (MAWI) for his drug addiction. Oftentimes, _____ would give him a lift to MAWI to obtain his morning dose which allowed the Complainant to focus on his work projects.
9. The Complainant had promised _____ that he would not use drugs or become violent in the workplace.
10. _____ said there was a company policy of no drugs. He said that he had given him a copy of the policy each time that the Complainant was re-employed. He stated that he verbally told the Complainant that if he was found using drugs on the job, that would be grounds for dismissal.
11. He also stated that there was to be no bullying in the workplace and if there was, there would be an immediate dismissal following. He encouraged the Complainant to read the policy; he did not explain it to him.
12. The Company policy was exhibited in the Complainant's bundle of documents at pages 18-21. It was agreed that both parties would refer to these same documents. When shown page 20 and more particularly, the heading '*OF SPECIAL NOTE*' where it stated- '*All work must be submitted through the office. No items may be worked on unless accompanied by an invoice.*' _____ denied granting permission to the Complainant to work on his own tools. When asked to explain that particular section, _____ explained that any item to be worked on had to be accompanied by an invoice. If someone was to bring in a personal item to work on, it would also need an invoice.

13. On the Wednesday morning, one of the worker's there, a Mr. (hereinafter referred to as) told him about the Complainant; that the Complainant was sharpening a personal tool (a machete) on company time and did not invoice the same. The policy was not being followed.
14. Also, allegedly told that the Complainant brandished the machete at him. Apparently, the other worker, Mr. (hereinafter referred to as), had allegedly witnessed this action as well. filed his complaint on the Thursday evening saying that he saw what the Complainant was doing. The Complainant did not show up to work that day and instead had his girlfriend call him in sick. The Complainant did not return to work until the following Monday (Friday?).¹
15. There were three employees in the small company. The Complainant had worked there for some six (6) years while the other two (2) had worked there less time: , the second welder had worked there for about seven (7) months while the helper, had worked there for about two (2) years.
16. said that this was the first altercation/inappropriate behaviour in the workplace in 30 years.
17. On the following Monday (It was later determined that this actually happened on the Friday), had a private discussion with the Complainant and handed him a letter of dismissal. said that he terminated the Complainant with immediate effect.
18. He said that the Complainant was quiet, listened to what he had to say which was that his machete was being brandished at while he (the Respondent) was alleged to have said – *I'm going to take your head off* or words to that effect; and that he, the Complainant attempted to run off of the road as he cycled home. At the end of the short conversation, the Respondent replied 'Thank you' and left.
19. When was asked how he handled discipline at L, he said through discussions. He added that the Complainant was a diligent worker; that his work was okay; that he showed up on time and that he was always in a hurry. He was happy to have him as an employee notwithstanding his behaviour.

¹ The days and dates were all mixed up in 's oral evidence and it was more probable than not that the Complainant met with sometime on the Friday after the alleged incident and not on the following Monday. However, the Tribunal takes no issue with this mix-up of dates at this stage. No witnesses were presented to corroborate 's account of 's complaint and no sworn witness statements were provided to the Tribunal either.

Letter even though the one on page 23 of the evidence binder before the Tribunal was not signed.

Cross- Examination

26. A series of possible employment years were put to [redacted] and he replied that he had no way to corroborate them. However, the dates (2001-2005; 2007-2008; 2015-2021) that the Complainant may have been employed by him sounded about right.
27. In the last instance of employment, he matched the insurance coverage that the Complainant received from another job and took him in. He said that the Complainant was moody and not talkative. In 2017, the Complainant suffered a stroke and was off for some weeks. He returned to work and in 2018, he had a leg infection that required him to be off work for 10 days. At that time, it was the Complainant, [redacted] and a Filipino worker doing the work on the floor.
28. In 2020, [redacted] did not remember if the Complainant suffered a hernia. The Complainant had to have an operation to mend it. The Filipino had to leave the island in 2020 and could not return because of Covid. The company was short one (1) man.
29. [redacted] was asked if he asked the Complainant to put off the operation and he said no. He said the Complainant's health comes first.
30. In December 2020, [redacted] married a Bermudian and [redacted] was then able to hire him. It was in January 2021 that the Complainant scheduled his hernia operation. He returned to work in February 2020.
31. The standard time for attending work was that all came in at 8:30 a.m. and returned home at 5:00 p.m.
32. Yes, when asked, that it was correct that [redacted] and the Complainant did not see eye to eye. [redacted] said that the Complainant came to him. In fact, he said that he had discussions with each of them. [redacted] said that he would always address concerns with the Complainant. However, that was later denied by the Complainant in his evidence. When asked about supporting documentation to these discussions, [redacted] said there was none.
33. He was then taken to 4 August 2021 and stated that the culminative effect of [redacted] complaint; [redacted] confirming what happened and the lies (that

20. When asked if the Complainant asked to be exempt from the policy to provide an invoice for all work done and more particularly, to be exempt for time spent sharpening his machete, [redacted] s reply was that it was being done behind his back and that he suspects it was every 2-3 weeks this happened.
21. [redacted] said that this failure to invoice effectively amounted to stealing from the company which becomes an immediate ground for dismissal. Time from the employer was also being stolen.
22. The dismissal that occurred was because the Complainant allegedly threatened [redacted] with a bladed article while at work. There could be no discussion with the Complainant that next day which was a Thursday (Wednesday?) because he was not at work. Nor was he at work on the Friday (Thursday?). The conversation between the Complainant and [redacted] took place on the Monday (Friday?).² [redacted] said he found out about the reason why the Complainant was not at work from a news story in the Royal Gazette. The Complainant was not unwell as was indicated by the Complainant's girlfriend. There was no documentation provided for the Complainant being out sick the Thursday and the Friday (the Wednesday and Thursday?).
23. On the Monday (Friday?), when they spoke, the Complainant did not protest; he accepted the conversation that he was being dismissed for misconduct and left. When asked if the Complainant was paid, [redacted] said that he believed that he was paid in full. He believed that all his sick days and all of his vacation days were taken.
24. When asked why he felt no other recourse was available, he said the brandishing of the bladed article left him no other recourse but to summarily dismiss the Complainant. Under the circumstances, the Complainant was not permitted to stay on. It would be remiss of [redacted] to leave the Complainant on the job with staff and the general public. [redacted] would not remain at the job because the violence and allegedly being run off of the road. [redacted] had to take action. Both the Complainant and [redacted] were welders. There was no other place to put them on the company floor.
25. [redacted] thought that a termination was the only thing to do in the circumstances. The Complainant failed to notify him on the Thursday and Friday. [redacted] also explained that he would have signed the Termination

² More confusion about the exact days/dates while giving evidence.

Complainant was out sick when he was in jail) from the girlfriend led to the termination of the Complainant on that date.

34. A series of questions seeking clarification were put to [redacted] and all were denied by him. He said that he did not terminate the Complainant because he allegedly attempted to run [redacted] off of the road; rather it was because of his threatening behaviour towards [redacted] in the workplace; an incident that allegedly happened at Lindo's Supermarket on the evening of 3 August 2021 which [redacted], the administrator, had brought to his attention on the morning of 4 August 2021. He said the culmination of all these events, he felt that the Complainant should be terminated.
35. There are cameras both inside and outside of the business. When asked about reviewing the CCTV to see if [redacted] was telling the truth, [redacted] said he did not feel it was necessary under the circumstances.
36. [redacted] when asked if he produced the termination letter on the morning that he met with the Complainant, he said yes he did.
37. In the evidence binder, the company policy handbook was reviewed, in particular the sections relating to Termination Notice and Disciplinary Action. The date on the last page of the handbook indicates November 2004. When asked about it, [redacted] replied that he gave the Complainant an updated version of it. He also allegedly gave the Complainant an updated version of the new law. However, when questioned further about the new law, [redacted] said that he did not feel he would have to update the information and that he would have to walk the employees through it. He added that he did change the policy and everyone received a copy of that page.
38. There was no signed Statement of Employment; everyone worked 40 hours a week; they were paid so many dollars per hour; there were tax deductions from the weekly pay; there was vacation and sick pay accounted for. All of these things were laid out in the company handbook.
39. It was put to [redacted] that in 2020, the Complainant did not take vacation or sick leave and that he was saving those days for his hernia operation. [redacted] said that if vacation time is not taken, one is paid at the end of the year in lieu.
40. [redacted] added that he paid three (3) weeks gratis in addition to sick pay for the Complainant's heart operation recovery.

41. [redacted] denied that in 2017, the Complainant went to him and sought permission to sharpen his blade. He added that there should be no personal projects and that would include sharpening a machete. If it was done, it was not done in front of him and that would amount to sneaking in something on company time.
42. When asked about disciplinary issues, [redacted] answered that he did not have any disciplinary issues with staff. He had no idea of the relationship between the other worker, [redacted] and the Complainant. It was the Complainant who advised him of [redacted] behaviour towards him. All he did was inform [redacted] that they have to work together. He did not mediate anything.
43. Taken to page 24 in the evidence binder, it is noted that [redacted] lodged a formal complaint against the Complainant. The letter was addressed 'To Whom It May Concern' and this was a copy of the letter sent to the Inspector Mr. Lightbourne in Workforce Development. The date of the complaint noted in the letter differed from the date which [redacted] indicated in his evidence. As noted earlier, the days/dates were confused in the beginning of the oral evidence and only became clearer later on. The complaint letter was dated August 4, 2021, and the letter noted the alleged incident occurred on August 3, 2021, which was a Tuesday. Save for any of the contents within the letter, the Tribunal accepts the dates as are indicated here.
44. Taken to page 26 of the evidence binder, the Tribunal was shown a written statement by [redacted] which [redacted] presented as evidence to demonstrate that the Complainant did have a machete at work and used it in a threatening manner. However, this statement did not state that [redacted] witnessed an altercation or heard anything threatening being said; he just saw the Complainant produce a bladed article, namely a machete, at his place of work. [redacted] was not presented as a witness and neither was a signed sworn witness statement from him produced. (The date of this unsworn statement was 9 December 2021, some four months after the alleged incident.)
45. [redacted] said that no other consideration was necessary to dismiss the Complainant as he had not adhered to protocol; he had a bladed article at the workplace and that he had a past history with a bladed article.

Re-Examination

46. When asked how long [redacted] keeps CCTV footage, he replied two (2) weeks. He said that the Complainant had not reached out saying that he was

innocent prior to 12 October 2022. The ability to check the CCTV was over two (2) week period.

47. On pages 18,19 and 20 of the evidence binder, the areas ticked were highlighted to all employees, including the Complainant. Areas ticked included the following: Annual Leave, Sick Leave, Hours of Work, Pay Day, Leave of Absence, Public Holidays, Salary Deductions, Disciplinary Action and Of Special Note.
48. When asked if the Complainant or his attorney provided an alternative contract to what the other employees have, [redacted] replied no.

Examination In Chief of the Complainant

49. The Complainant- [redacted], provided sworn evidence before the Tribunal. He worked as a welder/fabricator at the place of business known as Ornamental Iron Works Ltd. ([redacted]). He applied back in 2001 and remained until 2005 when he fired himself because of being involved in drugs. He received no treatment while there and sought another chance to work with [redacted]. There was a relapse in 2008 when he was convicted for a violent offence (using a knife) and found himself back in prison. Four years later, in 2012, he was released again and this time, he had to attend rehabilitation classes at the Prison Farm. He said that he asked to be in Right Living House where he had lots of help from people.
50. In 2014, he asked [redacted] for a job and was told there was nothing available at the time. To make some money, he did a series of stints with the Hustle Truck, Misty's and Four Star Pizza washing dishes three (3) nights a week.
51. In May 2015, he started work at [redacted]. He had just started working somewhere else when he received a text from [redacted] to come to work with him again. The pay was a little better at the other job and he asked [redacted] to match it, which he did.
52. He started working again at [redacted]. Somewhere along the way, the Complainant suffered a stroke and was limping. He had an operation and was off work for a month. The other welder flew out in February 2020 but could not return due to Covid. Although the Complainant was scheduled to have an operation in March 2020 and it had to be pushed back. It was just he and the helper, [redacted] working on the floor. The helper cannot do the same things as a welder.

53. That year, the Complainant worked without taking vacation or sick leave and held the operation off until 18 January 2021. He carried over the previous years' vacation time and used it while he healed which was three to five (3-5) weeks. He had three weeks' vacation to use.
54. When he returned to work, he noticed that his tools were gone and that they were given to [redacted]. The Complainant had to use some of the old tools there.
55. The Complainant let us know that he was usually the first one at work. Sometimes he had to wait for either [redacted] or [redacted], the secretary to open up the shop. With [redacted] there, it seemed that [redacted] and [redacted] would be going out in the truck to attend outside jobs and not him.
56. The Complainant would make everyone speak by saying 'Good Morning' to them and them replying. He had the stroke in 2017, just before he was due to go on a cruise. In April 2017, he needed a place to stay. He found a space at Hobby's Farm. He helped with caring for the animals. He needed to cut cane grass to feed them. He used a machete to cut the cane grass.
57. He asked [redacted] back in 2017 if he could sharpen his machete at the job and [redacted] gave him permission to do so.
58. He said that [redacted] does not work as fast as he does. [redacted] said that he actually worked faster and neater than [redacted]. One day he found a pay stub belonging to [redacted] and noted that he was being paid more than he was. He had a conversation with the [redacted] and later was given a \$7.00 raise.
59. On the afternoon of 3 August 2021, only [redacted] and the Complainant were at the jobsite. [redacted] and [redacted] returned from an off-site job around 4:55 p.m., just before closing time. He said that his machete was in the car.
60. That same afternoon, [redacted] rode his pedal bike towards Uplands Street. The Complainant passed [redacted] on the way to Lindo's Supermarket where he was headed to pick up offcuts for the animals which were housed on a farm by Alexander Road. At Lindo's, he met up with two other gentlemen and got into a verbal altercation with one of them. Police were called; they found the machete in the car and he was arrested and taken to Hamilton Police Station, where he ended up spending time there.
61. On the morning of 4 August 2021, the Complainant was informed via a text on his girlfriend's cell phone not to attend work until he had spoken with [redacted]. He obliged him and they agreed to meet outside of the job on 6 August 2021. [redacted] had already made up his decision for the Complainant

to be dismissed from the job without any explanation of his side of the story being heard. He said that he did not receive the Termination letter at that time. In fact, it was over a month later that [redacted] attempted to give him something in writing.

62. A series of clarification questions were asked of the Complainant. In summary, he said that he never threatened [redacted]; that he would help him; that he never had to sneak anything in as there were two (2) cameras pointing at him and there was a third camera behind him; that accidents along the main road could be seen by [redacted] with the cameras on the building. He also said that he could not have threatened [redacted] at the time he indicated as [redacted] was not even in the office. He was out of the office at a job site.
63. On 6 August 2021, he was outside talking to [redacted] about 'running [redacted] off of the road'. He denied doing that. As to the news about what happened at Lindo's, it did not appear in the newspaper until the next week and not the next day as [redacted] may have stated. It was more than likely that [redacted] may have witnessed what happened at Lindo's and reported it back to [redacted].
64. As for any conflict with [redacted] the Complainant brought that to [redacted] attention and all [redacted] said was to 'work it out'. He did admit that the both of them needed a job and would work together.
65. When asked to do anything on the job, he was always willing.

Cross Examination

66. The altercation at Lindo's came about when a dissatisfied customer of [redacted] accused him of working on an item and used words to the effect '*let me find out you had anything to do with this work ...*'. The Complainant's arm then went up. The Complainant was feeling hot from the heat. The person then took his helmet and hit him. Police were called and they found the machete in his car.
67. When the Complainant returned from recuperating the hernia operation, he noticed his tools missing as well as other changes. He found out that the tools were given to [redacted]. He also noticed that he was not getting outside jobs; instead, these jobs were being given to [redacted].
68. The Complainant was offered the job as a welder that third time around. He said it was illogical that [redacted] wanted to be rid of him. These past two (2) years, the company was struggling. [redacted] had suggested that the Complainant get his truck license. He felt that if he did get a truck license, it would take

away [redacted] job as a helper/driver and he wanted [redacted] to be able to work. He wanted both them to be able to have a job.

69. The Complainant had no problem with foreign workers. He was feeling unappreciated about the work he produced as he was working harder. He felt the other welder was not working as good as he was. He was told that he was over-qualified.
70. The hernia operation was in January 2021. He had saved up vacation time from 2020. [redacted] does not have the skills of a welder; he is a helper.
71. The contents of the middle paragraph on page 8 of the evidence binder was put to the Complainant. He said that it never happened and that it was all lies. He said when one lies, you have to remember; truth is easier to tell. He said that he did not run [redacted] off of the road.
72. The Complainant told the Tribunal that he had moved to the farm in 2017 to help out with the animals. He learned that Lindo's had fruit and vegetables that could be used to feed the animals. He would help with the morning feedings.
73. He asked [redacted] to allow him to sharpen the machete. He said [redacted] used to let them work on things. There were times they cleaned the truck if there was nothing to do. Sometimes, the Complainant did not take a morning break and would work through lunch with no afternoon break. When asked if he had permission to sharpen his machete, he said that he did have permission to do so. He said there were plenty of times he asked [redacted]. He said [redacted] allowed them to do personal stuff. He said that [redacted] the Filipino, even made a knife. [redacted] had allowed it all of the time.
74. The Complainant said that running [redacted] off of the road never happened. [redacted] may have seen him with the machete at the workplace to sharpen it.
75. The Complainant did admit that there was a confrontation with [redacted] I and [redacted] said to work it out. The Complainant felt the tension between the two of them and he spoke up. He said that everyone else plays dumb. He told [redacted] and the next day, [redacted] came to him and told him to work it out. He said he may have accidentally knocked something on [redacted] workstation but nothing else.
76. On the afternoon of 3 August 2021, the Complainant did not say anything to anyone. [redacted] and [redacted] were out that day and did not return until 4:55 pm. The others left before him and he locked the rear door. He did not

84. When asked again about the alleged running off of the road, the Complainant said that he would have to be really close to him; there would have been damage to cycle; would have had a rash on his arm or leg. It was all lies; it never happened; he did not do anything to . The Complainant explained the width of the road on which he passed and noted to the Tribunal that there was no way that he could have come close to . The road is too wide for that. Even with cars parked on the road there would have been more than enough space to pass by without touching
85. As for the incident at Lindo's, may have witnessed it and may have reported it back to the next morning. This is the only way that would have known about it.
86. When asked about ; statement, the Complainant said that he did not lie. In his statement, there was no mention of a threat; no mention of brandishing a machete; no mention of the Complainant 'chopping anyone'. There was only mention that he was in possession of a machete at work, which he has never denied.

Re-Examination

87. On re-examination, the Complainant did mention that he felt tensions were rising in the workplace and he thought he would bring them all together by talking to and then he, would speak to everyone. He did not plan on leaving Ornamental Ironworks to take an outside job. He would stick to the plan and retire from that job.
88. He said it takes 5 minutes to sharpen the machete blade.
89. When shown page 1 of the evidence binder, paragraph 3, he said none of what allegedly happened is true. When shown page 24 of the same bundle, there is nothing in the statement that says the Complainant attempted to run off of the road. Weeks later, this allegation came out.
90. The Complainant informed the Tribunal that there are cameras installed to show what happens at the workplace- both inside and out. If someone is threatened on the job, the police can be called in. He said none of what is alleged to have happened to is true. could have easily asked that the events of the afternoon of 3 August 2021 be reproduced on the video so that he can see for himself what occurred, copy it and save for later, if so required. Apparently, he did not seek confirmation of this alleged

attack a member of the public; at Lindo's, he was defending himself after the guy hit him in the head with as helmet.

77. The Complainant said that he wanted to retire from the job. He admitted that he was the most outspoken person at the job. He said that every 3 weeks he brought his machete to the job to sharpen. He said **he never brandished a machete at a worker** (our emphasis). He had no issue with or with the Filipino who worked there until 2020.
78. His machete was put in the car after it was sharpened. had set off on his bicycle. headed in the direction of Lindo's as did the Complainant as he went to Lindo's every day. He said he passed all of the time. He had no reason to run off of the road.
79. At Lindo's there was a verbal altercation. He pulled out his machete to protect himself and then put it back in the car. He did not start the altercation and nor did he lie to the police when questioned. He ended up in the police station for two nights.
80. When questioned again about the alleged incident in the workplace as outlined on page 24 about brandishing a machete at , the Complainant said it was all '*Bullshit*'. He said that was there at the job and why did not tell him then. The Complainant emphatically denied threatening at any time or at no time in his life.
81. The Complainant told us that his girlfriend told where he was and that he would not be at work on the Thursday. So, knew where he was. He said that spoke to/ texted his girlfriend first thing on the Wednesday morning 4 August 2021. The Complainant presented the Tribunal with a copy of a text message and confirmed that it was from and that it was on the girlfriend's old phone which they had to find and charge it to be able to find the text. The text message asked the Complainant's girlfriend to '*please have him contact me before he ever comes back to the Ironworks*'.
82. The Complainant said this was all made up (referring to the allegations made by). He was trying to figure out what it was all about because nothing had occurred. He accepted that he had a conversation with . He figured that had already made up his mind even though he, the Complainant had denied it outright. It was all '*Bullshit*'.
83. After speaking for about 5 minutes with on the 6 August 2021, he, the Complainant left crying and went back to his car.

confrontation between the two employees as it perhaps did not happen as is indicated in ; unsworn document. As an employer, if something this egregious happened on the job and there are video cameras installed in the very area, that should have been the first place to view interactions between employees.

The Law

91. As this is a case where the Complainant is alleging an unfair dismissal, the Tribunal needs to review the law in respect of that and any surrounding aspects of what lead up to this unfair dismissal.
92. The Employment Act 2000, at sections 24 (Disciplinary action), 25 (Summary Dismissal for Serious Misconduct) and 28 (Unfair Dismissal) sets out the relevant law in respect of the issue at hand. An employer is entitled to take disciplinary action when it is reasonable to do so. The operative word is 'reasonable'. The law at section 24 reads as follows:

Disciplinary action

24 (1) An employer shall be entitled to take disciplinary action, including giving an employee a written warning or suspending an employee, when it is reasonable to do so in all the circumstances.

(2) No employer may impose a fine or other monetary penalty on an employee except in cases where a requirement of restitution would be appropriate and where agreed on between the parties.

(3) In deciding what is reasonable for the purposes of subsection (1), regard shall be had to—

- (a) the nature of the conduct in question;*
- (b) the employee's duties;*
- (c) the terms of the contract of employment;*
- (d) any damage caused by the employee's conduct;*
- (e) the employee's length of service and his previous conduct;*
- (f) the employee's circumstances;*
- (g) the penalty imposed by the employer;*

(h) *the procedure followed by the employer; and*

(i) *the practice of the employer in similar situations.*

(4) *A complaint that disciplinary action is unreasonable may be made to an inspector under section 36.*

Summary dismissal for serious misconduct

25. An employer is entitled to dismiss without notice or payment of any severance allowance an employee who is guilty of serious misconduct—

(a) which is directly related to the employment relationship; or

(b) which has a detrimental effect on the employer's business,

such that it would be unreasonable to expect the employer to continue the employment relationship.

93. When we look at section 28 (1) and (2) of the 2000 Act, which largely concerns reasons for dismissal or disciplinary action, *inter alia*, aspects of race, religion, ethnicity, political opinion, participation in trade union activity, absence from work, etc., given the circumstances we heard in oral evidence given by both witnesses, there are no grounds contained within this section that we can safely refer to and use to substantiate the dismissal we have before us. Sections 28 (1) and (2) read as follows:

Unfair dismissal

28 (1) The following do not constitute valid reasons for dismissal or the imposition of disciplinary action—

(a) an employee's race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, disability or marital status;

(b) an employee's age, subject to any other enactment or any relevant collective agreement regarding retirement;

(c) any reason connected with an employee's pregnancy, unless it involves absence from work which exceeds allocated leave entitlement;

(d) an employee's trade union activity;

The following morning, August 4th 2021, I made management aware of the events of the previous afternoon.

Signed ()

Date 4/8/21'

In his oral evidence, the Complainant says none of that happened. And did not appear and give evidence to dispute this firsthand evidence. None of what he wrote could be tested at the hearing. It is also unsworn evidence. So little, if any weight, can be given to it. If is giving an account of what happened on that prior afternoon to , why is it addressed 'To Whom This May Concern' and not addressed to Mr. y. Also why is he signing off as the 'Undersigned' and not just t? It would seem that this letter is being given to an unknown person on a later date and not on the date that is signed at the bottom of the letter.

95. The Complainant said that he worked the afternoon of 3 August 2021 by himself as the others- , and , were out on a jobsite. They all returned some 5 minutes before closing. As it was that time, the Complainant used that moment to sharpen his blade. He did not as it was alleged, brandish his machete at and told him that he was going to take his head right off or words to that effect. The Complainant said it took him no more than 5 minutes to sharpen the blade and once he was done, he left the workplace (the others had already gone) and proceeded to pull down the workplace door and lock it. He saw getting on his cycle and heading home.
96. With that being said, one begins to wonder if anything that threatening took place in those last few minutes before the business was closed and if so, why would not have been aware until the following day. The Complainant wanted to go and pick up the produce from Lindo's for the animals and was not taking time to be threatening a fellow worker.
97. He proceeded along Uplands Road towards Lindo's. He said it is a wide road and yes, he did pass . He said he did not run him off of the road as alleged and that if it did happen, would have gotten scratched and something might have happened to his cycle, like it also getting scratched or get dents on it. The Complainant said none of that happened.
98. If needed proof of what allegedly happened in the workplace, he could have had , the administrator, gather the video footage of the time this was all to have happened. The Tribunal had nothing before it except hearsay from another party and unwitnessed events. No witnesses were presented

(e) *an employee's temporary absence from work because of sickness or injury, unless it occurs frequently and exceeds allocated leave entitlement;*

(f) *an employee's absence from work for any of the reasons mentioned in section 13 (public duties), or due to service as a volunteer fire officer;*

(g) *an employee who removes himself from a work situation which he reasonably believes presents an imminent and serious danger to life or health;*

(h) *an employee's participation in any industrial action which takes place in conformity with the Trade Union and Labour Relations (Consolidation) Act 2021;*

(i) *the filing of a complaint or the participation in proceedings against an employer involving alleged violations of this Act;*

(j) *the making of a protected disclosure under section 29A.*

(2) *The dismissal of an employee is unfair if it is based on any of the grounds listed in subsection (1).*

94. What the Tribunal heard was two distinct pieces of evidence. I told the Tribunal that he was told the Complainant brandished a machete at one of his employee's in the workplace on 3 August 2021 and then later, attempted to run the same employee off the road. This amounts to a situation that did not witness even though he may have been somewhere on the property. Within the Complainant's evidence binder at page 24, alleges in an unsworn statement the following:

'To Whom It May Concern

I, the undersigned, would like to publicly state that I was made to feel threatened, abused and uncomfortable at my place of employment by Mr on the afternoon of August 3rd 2021.

Mr behaved in a disturbing manner towards me, brandishing a bladed article at my place of employment, namely a machete, and indicating toward me directly that he would "take my head off" with it, or words to that effect.

These actions made me extremely uncomfortable and also made me feel extremely unsafe at my place of employment. I was so upset by his actions, I was considering not returning to work.

something on his desk. He told [redacted] about it and then [redacted] came to him the next day and told him to work it out. Perhaps, this is the kind of mediation used.

103. In respect of Para 100.3 above, the Complainant reminded us that he wanted to retire from this job. So, he used to say 'Good Morning' to his fellow workers. Oftentimes, they said nothing. He said that there were times when his leg hurt or his back was bothering him and on those days, he just did his work and did not engage with the others, even if they came and said something to him.
104. There was also mention in this termination letter of a 'zero tolerance' policy which must be maintained by employers in respect of bullying. The updated law took effect on 1 June 2021 with the amended 2000 Act. When asked if [redacted] explained this to his staff, he said he gave them the link and left it to them to review. Employers must explain the new legislation to their employees as well as mount it in a place for all to see it. It is fine to tell your employees to go and read it online, it is another thing to have a meeting, read it out to them and then place where all can see it. Employers need to explain what 'bullying' might look like in their respective workplaces. The 2000 Act at 10B (2)(a-c) says '*shall ensure*' those things take place. That was neither discussed nor done in this workplace.
105. In any event, the Complainant said in his evidence that this letter was not handed to him on 6 August 2021 as was alleged by [redacted] instead it was given to him some weeks later. This letter in the evidence binder is unsigned by [redacted]. Even if this copy on file is supposed to be what the Complainant received, one usually would sign the file copy or at the very least, initial the document in the file.

CONCLUSION

106. There are several gaps in the [redacted] evidence such as there is no supporting evidence logging the 'repeated conflicts'; no actions were followed as set out in section 24 of the 2000 Act (no evidence of written warnings or suspensions); except for one possible instance which is denied, of the aggressive and bullying, etc. behaviour toward several one staff member ... when there are only two other persons in the workspace at any given time, nothing is documented. [redacted] works in another area; [redacted] as well works in another area and does not actually witness what is going on the work floor.

to corroborate ; account of complaint and no witness statements were provided to the Tribunal.

99. said that he did not think he needed it (video footage) because he only became aware of the Unfair Dismissal complaint in October 2021. If informed that next day that the Complainant was going to take his head off, one of the first things that should have been done was to view the video footage of the previous afternoon around closing time. That was not done and it leaves room for doubt that this threatening event may not have happened as alleged.

100. There is in the evidence binder an unsigned letter from the Respondent/Employer where he sets out three (3) reasons for immediate termination of employment:

1. Repeated conflicts in the shop with other staff members, where mediation has been required on numerous occasions to try (in vain) to maintain a cohesive and peaceful work environment. Your inappropriate behaviour has escalated to the point that it can be no longer tolerated.

2. Aggressive, threatening, intimidating and bullying behaviour towards several other staff members, on numerous occasions, creating a toxic environment.

3. Unwillingness and inability to work amicably with other staff without constant conflict has become untenable.

101. In respect of Para 100.1 above, there was no evidence such as memorandums produced to show dates of meetings, what happened and outcome of the same. The 'mediations' as described by were no more than how 'a father tells his children to behave and to go and work it out'. For almost a year, the Complainant and worked by themselves. joined them in January 2021 and then the Complainant could go off and have his hernia operation in March 2021. There more than likely would not have been any conflicts with other staff upon his return.

102. In respect of Para 100.2 above, if such behaviour existed prior to August 3, 2021, would have surely dismissed the Complainant without hesitation. He would have noted it somewhere. He could easily have asked to type something up for him and then place it on the Complainant's file. Actually, with this point, the Complainant said it was he who went to help sort out the tension he was feeling in the workplace between himself and . He spoke up and all he got from was to work it out. The only other thing he could think happened with was that he knocked

was elaborating generally in a newspaper summary about bullying and sexual harassment in the workplace. It does not explain what bullying would look like in each kind of workplace. It clearly states in section 10B of the 2000 Act:

Employer to provide policy statement against bullying and sexual harassment

10B (1) *In this section—*

“bullying” means the habitual display of offensive behaviour intended to harm, intimidate, humiliate, undermine or coerce a person or group of employees and includes, but is not limited to, ostracising, ridiculing, shouting at, threatening, and verbally abusing a person or group of employees; and ...

2) *An employer shall ensure—*

(a) that there is a clear written policy statement against bullying and sexual harassment within the place of work for which that employer has responsibility;

(b) that the policy statement is presented to each employee on the commencement of his employment with that employer; and

(c) that procedures are put in place to assist every employee in understanding the policy statement.

(3) The policy statement referred to in subsection (2) must contain the terms set out in Schedule 1 (which is the Contents of Policy Statement Against Bullying and Sexual Harassment) and an employer may consult with employees, trade unions or other representatives (if any) in the establishment of the policy statement.

111. If bullying in the workplace became an important behaviour issue not to be allowed in that work environment, then sometime in June or July 2021, ought to have had a meeting and explained what it looked like in their respective workspace. When questioned what he did, he said he gave them a link and told them to read up on it. If bullying in the workplace existed at that time, he should have printed off the information as required in section 10B(2)(a) and (b) of the 2000 Act and had a short staff meeting with all the workers present and explained what kind of behaviour will be tolerated and what kind of behaviour will not be tolerated (section 10B(c) of the 2000 Act). That did not happen. So the staff cannot know what ‘zero tolerance’ at the

107. When the Complainant met with [redacted] on Friday 6 August 2021, the only thing that was discussed was that he, the Complainant, allegedly attempted to run [redacted] off of the road, which he denied. This, which is denied, is something that did not take place on the job; and in any event [redacted] never asked for his side of the story. The various reasons set out in the Termination Letter were not discussed as per the Complainant's evidence. He said the letter came weeks later and was not handed to him on the Friday when he and [redacted] met.

108. The dates on which anything was alleged to have happened, seemed to be mixed up and we take no real issue with. The Complainant, because of a conflict that took place at Lindo's on the evening of 3 August 2021, which is also outside of the workplace, was regrettably jailed for a couple of nights. Ultimately, no formal charges were ever laid against him and he was released. He asked his girlfriend to call in for him the next day. However, from a text written on August 4, 2021 by [redacted], the Complainant already knew something was amiss because of what [redacted] texted on 4 August to his girlfriend, that he, the Complainant was to 'contact him before he ever comes back to Ironworks'. They agreed to meet up outside of the workplace on the Friday and that is when [redacted] told him that he was fired.

109. There was no signed Statement of Employment. Every employee is supposed to have a signed copy and the Tribunal was presented with nothing signed. The 2000 Act at section 6(1) states as follows:

6 (1) Not later than one week after an employee begins employment with an employer, the employer shall give to the employee a written statement of employment which shall be signed and dated by the employer and employee.

We have a copy of an old 2004 Company Policy statement at pages 18-22 in our evidence binder which is unsigned and undated. We are not clear if the Complainant received a copy of the same as he had been employed at [redacted] on three different occasions, the last time was in 2015 which lasted some six (6) years. Because it is a small workplace, it does not absolve this company from not following the necessary employment protocols as laid out in the 2000 Act. Besides the Complainant being hired on no less than three (3) occasions, the latest Company Policy should have been dated to 2015 or thereabouts when he was last hired. There should have been a copy on his file with initials of both parties or at the very least, [redacted] signature.

110. There was no explanation to the staff about bullying as set out in the recent updated legislation. The link mentioned in the unsigned Termination Letter dated 4 August 2021 took one to what the Minister of Economics and Labour

workplace means in respect of the amended legislation if it has not been properly discussed and explained to them.

112. There is no supporting documentation indicating the number of times that I met with the Complainant about his alleged repeated conflicts with other members of staff and the necessary follow up behaviour going forth for each of them. Save for the statement of [redacted], which is denied by the Complainant that it even occurred, there was no documentation setting out the kind of aggressive or threatening, etc. behaviour brought to this Tribunal hearing. As each welder (and there are only two of them) must focus on the work that is before them, it leaves little or no real time to be working amicably with each other. When the welder is finished his part, it goes to the helper ([redacted]) who must do his part. Unless there is no work to do or assignments have been completed, there is no obligation to carry on private conversations with each other.

113. Thus the three (3) reasons for dismissal written up in the Termination Letter resemble boiler plate terminology and are not adapted to the kind of work that took place at [redacted]. The Tribunal finds as a matter of fact that save for an instance when the Complainant was feeling tension with [redacted] and brought it to [redacted] attention, there is no evidence supporting the repeated bullying allegation.

114. Should [redacted] have had a reason to terminate the Complainant under Section 25 of the 2000 Act – Summary dismissal for serious misconduct, the burden of proof would have rested on [redacted] as the employer to demonstrate that conduct of the Complainant either directly related to the employment relationship or had a detrimental effect on the employer's business such that it would be unreasonable to expect the employer to continue the employment relationship. As noted above the Respondent did not provide to the Tribunal any evidence that would support a termination under this section. All accounts of the incidents were hearsay.

115. Section 38 (2) of the 2000 Act states that:

'In any claim arising out of the dismissal of an employee it shall be for the employer to prove the reason for the dismissal, and if he fails to do so there shall be a conclusive presumption that the dismissal was unfair.'

In this case, after reviewing all of the evidence placed before this Tribunal, the Respondent/employer has failed to discharge the burden of proof to show that the dismissal was fair in all the circumstances.

AWARD

116. The Complainant's Statement of Facts; the oral evidence of both the Complainant and [redacted]'s evidence for the Respondent company as well as the Complainant's Written Submissions forms the basis of the Tribunal's deliberations for the Award. We received no written submissions from the Respondent company to assist us in making this award.
117. Given the evidence of both the Complainant and [redacted], we find the Complainant to be more credible. We find that on the balance of probability what he said in evidence supports his position and as such we rule in his favour. We find that [redacted] evidence was less credible and that he provided no supporting documentation to any of the allegations raised by him. Coming from a position of authority, documentation is essential to making the employer's case. The Tribunal had none. Further there were no live witnesses to support his allegations.
118. In the Complainant's evidence, he mentioned that he had spent \$200.00 on medication. It is unfortunate that he did not bring the receipt to the hearing. As such, we cannot rule on granting this amount to the Complainant.
119. In conclusion, we feel that it is just and equitable in all of the circumstances to award the Complainant the following:
- a. Unfair dismissal in the sum of \$28,800 gross (\$1,200 gross x 24 weeks) less statutory deductions;
 - b. Pension Contribution in the sum of \$1440.00 (\$60.00 x 24 weeks) to be paid into to the Complainant's current pension plan;
 - c. Social Insurance in the sum of \$862.08 (\$35.92 x 24 weeks) to be paid to the Department of Social Insurance on the Complainant's behalf;
 - d. Payment of this Award to be made on or by Friday 8 September 2023.
120. There will be No Order for Costs.

121. Determination and Order of this Tribunal are binding. It was also made clear that, in accordance with section 44J and section 44I 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*.

Dated this 13th day of July 2023



Charlene A Scott FCI Arb
Chair



Yolanda O Outerbridge, Deputy Chair



Paget Wharton, Panelist

