The Dangers of Self-Represented Employers



On September 28, 2022, The Alberta Human Rights Commission released its decision in Euchner v. EZ Motors which presents an example of everything that can go wrong when an employer is unaware of their human rights obligations and then represents themselves in a Human Rights hearing; with a total of $50,000 in damages to dignity and self-respect being awarded.

In February 2017, the Complainant began working as a red-seal and blue-seal mechanic for the employer. The Complainant stated that she advised the employer in her initial interview that as methods to managing ADHD and PTSD she talks to herself and taps while working. The employer denied knowing this when it encouraged the Complainant not to take prescribed medication and made comments telling the Complainant to stop talking.

In mid-June 2017 the Complainant began a medical leave of absence. On June 23, 2017 the employer gave the Complainant notice that when she returned to work she would be given two week's working notice of termination, and that she would need to work without pay for those two weeks in order to *"… complete repairs she screwed up…."*

Discrimination Complaints

On August 17, 2017 the Complainant filed and delivered a human rights complaint to the employer alleging discrimination on the basis of her disability. On August 23, 2017 the employer filed a complaint with the licensing body for mechanics about the Complainant, resulting in a Retaliation complaint being filed by the Complainant. The tribunal found the timing of the licensing complaint to be indicative of retaliation. The licensing body ultimately determined *"As a result of our investigation the department determined that, we have not discovered any evidence that would support the cancellation or suspension of your certificate in the automotive service technician trade."*

Self-Representation and Human Rights Complaints

Unsurprisingly, the Tribunal found that the termination of employment was discriminatory and the licensing body complaint was retaliatory.

A large portion of the decision is reserved to address the procedural failings of the employer in the conduct of the hearing and the employer's lack of credibility. The employer's submissions were frequently found to be inaccurate in light of the

employer's own records and actions. For example, the employer claimed that the Complainant had been terminated from previous positions as a result of dishonesty. The employer stated they would present witnesses to support this claim; but on cross examination the employer admitted to never having spoken to any of the Complainant's previous employers and having no such witnesses. Similarly, the employer claimed that the Complainant's actions were distracting to other workers, but no evidence or witnesses were presented to corroborate such a claim. Additionally, the employer's witnesses repeatedly attempted to backtrack and change their story in an effort to deliver only self-serving evidence, resulting in their evidence lacking credibility and being given no weight.

The full scope of procedural failings is difficult to sum up, but a partial list is that the employer:

- Failed to make hearing submissions in advance as requested;
- Made late submissions repeatedly;
- Was not diligent in presenting their case;
- Failed to explore whether accommodations to suit a proposed witness's medical circumstances could be achieved, despite being given numerous opportunities to do so;
- Lacked any credibility in their evidence;
- Did not understand its obligations in relation to disabilities or privacy;
- Made baseless accusations against the Complainant with no evidence;
- Failed to produce witnesses with pivotal evidence;
- Sought to advance altered documents as evidence;
- Made allegations against the complainant that were an exaggerated attempt to discredit the Complainant;
- Presented evidence that was both internally and generally inconsistent ; and
- Submitted entirely inconsistent positions regarding the complainant's work performance to the point that no weight was given to the respondent's submissions regarding the complainant's quality of work.

Tribunal Decisions

The Tribunal found that the employer's witnesses' evidence was tailored to what they thought the Tribunal would want to hear and was shaken and amended on examination. The Tribunal concluded that:

> *"The respondent appears to have no awareness that its approach and statements are not only inconsistent with respectful behaviour, but are hurtful allegations directed at the complainant's character without any evidentiary foundation."*

The Complainant was awarded $30,000 in damages to dignity and self respect for the initial discrimination complaint, $20,000 for the retaliation complaint and an additional award for lost earnings.

One confusing aspect of the decision is found in the lost earnings discussion, where the Tribunal sets out that

> *"… the complainant is entitled to receive lost wages resulting from the respondent's discriminatory treatment for the full 45 weeks. In my view, discounting lost wages is not justified as the complainant acted promptly and diligently regarding replacement employment, despite her depression and*

> *loss of confidence. If lost wages were discounted, it would be tantamount to a penalty to this complainant for securing a lower income earning job in a different field that would allow her time to focus on her recovery and have her license cleared."*

But then in the next paragraph, the Tribunal does the exact opposite and discounts the lost earnings by $27,876.43.

Source: Lexology *Author: Dylan Snowdon*