

Work Refusal Was Motivated by Employee's Dislike of Work Assignment, Not by Safety



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An arbitrator has upheld the dismissal of an employee who tried to use the *Occupational Health and Safety Act's* work refusal provisions to avoid undesired work assignments.

The employee worked for the City of Hamilton cutting grass, picking litter and doing road maintenance. He had a long history of illnesses and accidents and had certain work restrictions. On one particular day, the employee refused to pick litter on the basis that his truck did not have an air-ride seat which he said was required by his work restrictions. The employee then failed to attend for work for several weeks afterwards. After another incident later in the year, the employer dismissed the employee.

The union grieved the dismissal. The arbitrator decided that the work refusal was motivated by the employee's dislike of the work assignment rather than by any pain he was feeling or fear for his health and safety. There was no indication that the employee saw his physician or chiropractor due to the pain. He did not call in sick, nor did he go off work and file a WSIB claim, a procedure "with which he was well familiar". He did not mention the OHSA on the date of his work refusal. He did not contact the Ministry of Labour until two months later, after the WSIB had determined that the work that he refused was appropriate given his restrictions. Also, he had frequently been assigned a vehicle without air-ride seats in the past and had not objected.

As such, the work refusal was not based on an honestly-held belief that his health or safety was in jeopardy, nor was it objectively reasonable. A one-day suspension was justified for the work refusal alone.

Further, there was no good reason for the employee not to return to work the next day, and his failure to do so justified an additional five-day suspension. After he received another suspension later in the same year, the employee's overall discipline record justified his dismissal.

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