

Jones, Hallett, and Roscoe, JJ.A.

Judgment Delivered:
January 26, 1993

THE COURT: Appeal dismissed, per oral reasons for judgment of Roscoe, J.A.; Jones and Hallett, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

ROSCOE, J.A.:

The issue in this appeal is whether the Labour Standards Tribunal committed an error in law or jurisdiction in its decision dated May 19, 1992. It determined that the respondent, Michelin Tires (Canada) Ltd., had just cause to dismiss the appellant from his employment as a senior security officer.

After hearing the evidence of witnesses for the appellant and Michelin, the Board found the facts to be as follows:

"The Complainant was employed by Michelin as a senior security officer at the Granton Plant. The Granton Plant is fenced. Employees and visitors must pass through a security gate or checkpoint to enter or leave the plant. Michelin is very security conscious. Company policy requires that you must have authorization to remove company property. If an employee is taking company property out of the plant he is to declare such at the gate house to security.

Prior to Mr. Walton's termination Michelin became concerned that Mr. Walton might be taking property from the Company. Michelin decided to set up an operation to observe Mr. Walton.

In the early morning hours of December 6, 1991 Mr. Walton was observed taking a package out of the fire hall and placing it in the Company van. Mr. Walton drove the van out of the gate and continued his patrol visiting other Company property. Mr. Walton was observed driving the Company van into the shift parking lot. Mr. Walton was observed turning out the lights on the van as he moved in the direction where his own car was parked. Mr. Walton was then observed to place the package taken from the fire hall in his own car. It was later confirmed that the package was a package of paper towels or wipes.

Michelin has a policy of progressive discipline. Michelin's policy is to discharge for theft.

Mr. Walton had a spotless employment record. The only reason for Mr. Walton's termination was the alleged theft of the paper towels.

The solicitor for the Complainant argued that because the Complainant's car was on Michelin property (the parking lot) the paper towels while in the car were never really removed from Michelin property. The solicitor suggested this was not the case of theft.

The Complainant did not testify or offer any explanation of his conduct at the Hearing. The Tribunal heard evidence that he told management when questioned about the paper towels that he had some windows to clean. The Tribunal heard theories from witnesses who testified for the Complainant as to why the towels might have been placed in the car however the Tribunal did not hear any credible explanation for Mr. Walton's conduct.

The Tribunal is satisfied that in placing the paper towels in his own automobile parked outside of the plant gate, Mr. Walton was committing an act of theft. The paper towels were now outside the control of Michelin and under the sole control and possession of Mr. Walton. In the absence of any credible explanation for his conduct the Tribunal is satisfied that this was a case of theft."

The appellant contends the Tribunal erred in law by finding Michelin had established just cause, by applying the wrong standard of proof, by not properly considering the evidence and by finding dismissal to be appropriate in the circumstances.

The burden of proving just cause for dismissal was on the employer on a preponderance of the evidence. A review of the entire record persuades us that there was ample evidence to support the findings of fact and conclusions of the tribunal, specifically that the appellant committed theft from his employer and that the dismissal was justified in the circumstances.

There being no error in law or jurisdiction, the appeal is dismissed without costs.

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J.A.

Concurred in:

Jones, J.A.

Hallett, J.A.