

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Carlos Moreno
("Moreno")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 97/105

DATE OF HEARING: May 13, 1997

DATE OF DECISION: May 27, 1997

DECISION

OVERVIEW

The appeal is by Carlos Moreno (“Moreno”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 005255 of the Director of Employment Standards (the “Director”), a decision dated January 27, 1997. In the Determination, Richport Ford Sales Limited (“Richport”) is found to have had just cause for the termination of Moreno.

APPEARANCES

Carlos Moreno	On His Own Behalf
William Jones	Assisting Moreno
Al Slack	For Richport Ford

ISSUE TO BE DECIDED

The sole issue is whether the employer had just cause to terminate the employee Moreno. If it did not then Moreno is owed compensation for length of service.

Moreno is an auto body technician and was fired on discovery that he sectioned a new body panel instead of installing the complete panel. Moreno argues that what he did is entirely appropriate and was approved by his immediate supervisor. Richport says that Moreno’s work was not what was required, contrary to company policy and fraudulent, the latter because installing a sectioned panel takes less time than the full panel replacement ordered by ICBC.

FACTS

Carlos Moreno started working for Richport on January 13, 1995. He was told that he was fired on arriving at work on September 10, 1996.

On August 12, 1996, Moreno was assigned the repair of a Ford Ranger pickup truck by Mike Cooper, body shop manager at the time. Damage to the truck was extensive. As work progressed

on the truck's cab, it was determined that the corner panel on the passenger's side was beyond repair. Richport asked ICBC to re-inspect the damage. ICBC did so and ordered replacement of the corner panel. A Claim Estimate Supplement amends the original work order and sets 10 hours for the installation of the new panel.

The upper part of the panel which had to be replaced was undamaged. Moreno removed the damaged lower part, cut away the upper part of a new corner panel and spliced the two together. The splice was just above the bottom of the cab's quarter window, just below the seat belt anchor. In splicing panels in that way, the cab's rear window did not have to be removed. The parties agree that the installation of a sectioned corner panel is rated as an eight hour job, not the ten allotted by ICBC.

According to Moreno, Cooper knew of his approach to repairs, approved of it, and was to tell ICBC of the reduced need for 'glass time'. I am unable to determine whether Moreno's work was or was not approved by Cooper. It may have been but I am presented with no hard evidence on the point. And I am for the same reason unable to determine whether the time allotted for cab repairs would have been reduced if it were not for some failure on Cooper's part.

During the course of Moreno's repairs to the truck, Mike Cooper left Richport. The new body shop manager, Al Slack, began work on the 25th of August.

Moreno was welding the box of the truck on Friday, September 6, 1996. On that day, Slack told Moreno that Richport was terminating his employment. He was given two week's notice.

Moreno did not work the following Monday. He called in sick. But on that day an inspector from ICBC visited the body shop and reviewed, with Slack present, work underway in the shop, Moreno's included. Moreno's work on the truck's cab was all covered up, by welding blankets draped over the cab as protection from sparks generated during the course of welding the box. Slack and the inspector removed the cover and discovered the sectioned quarter panel. Knowing that ICBC had ordered a full panel replacement, and believing that Moreno had performed less than that, Slack did two things. He told ICBC that a new panel would be ordered and that Richport would perform a full panel replacement. Secondly, he fired Moreno when he reported for work on Tuesday, for sectioning the replacement panel instead of performing what he considers a full panel replacement.

The repair of vehicles is set out in manuals, one of which the parties call the "*Mitchell Book*". Procedure Explanation 18 of that book covers repairs to the corner panels of pickup trucks. At the bottom of it is a note on side or quarter panel sectioning. It refers the reader to a note on quarter panel sections which forms part of Procedure Explanation 20. That note states, "Sectioning of a panel may or may not be recommended by vehicle manufacturer".

There is no evidence indicating that Ford does not recommend the sectioning of corner panels in the case of repairs to its Ranger pickups. The reason that panels are sectioned and not installed as a whole is because of the nature of factory seams between panels. Some overlap. The seam between the corner panel and the roof panel on a Ford Ranger is overlapping. In the absence of any hard evidence to the contrary, I conclude that a quarter panel section is what should have been performed by Moreno.

Procedure Explanation 20 has a further note on repairs where a seam is overlapping. It is as follows:

NOTE: FULL PANEL REPLACEMENT PROCEDURE - Labour times are for replacement at factory seams if feasible. However, many quarter panels cannot be replaced at roof seams because the roof panel overlaps the quarter. If a quarter panel is designed in this manner and a section time is not listed, the time in the text represents replacement of the panel at the most practical area - usually below the roof seam. This method is considered a full panel replacement provided the back glass and, if applicable, the quarter glass is removed for splicing in the pillar/sail areas.

The above makes two things clear. One, where the sectioning of a panel is required, the splice is to be in the most practical area. Two, the installation of a sectioned panel is the equivalent of a full panel replacement where windows are removed. Elsewhere in Procedure Explanation 20 it is made clear that where there is no need to remove windows, the installation of a sectioned panel is to be considered a full panel replacement except for the removal and installation of glass.

As Richport made final repairs to the cab, it did not reproduce the factory seam but rather it welded a new corner panel to the truck's roof panel. Whether that is more practical than a splice just below the seat belt anchor is a matter which I am unable to determine. Again there is no hard evidence on the point.

ANALYSIS

The onus remains on the employer to show just cause.

A single deliberate act of a most serious nature can cause such damage to the employment relationship that there is just cause for an employee's termination. Less serious infractions, when repeated, or a consistent failure to perform work may also constitute just cause but in such cases the Tribunal requires that the employer show that:

- a) Reasonable standards of performance have been set and communicated to the employee,
- b) the employee was clearly and unequivocally warned that his or her employment was in jeopardy if such standards were not met,
- c) the employee is given reasonable time to meet the standards, and
- d) the standards are not met by the employee.

Moreno was terminated for sectioning a panel, a single act. Richport argues that his splicing of panels is less than what ICBC ordered and therefore fraudulent. Even if that were true, it is not clear to me that it is sufficiently serious as to justify Moreno's termination. But as Richport presents matters, it fails to establish that Moreno's work was either inadequate or fraudulent.

Given that the recommended course of repairs for some trucks is the installation of a sectioned corner panel with a splice in the most practical area, Richport must show that a quarter panel section is not recommended for Ford Rangers, or that a splice just below the seat belt anchor is clearly not what is the most practical. It has not done either.

Richport makes much of the fact that the installation of a sectioned panel is rated an eight hour job, not ten. But is that evidence of fraud or merely a failure on the part of the former manager to report the reduced need for glass time to ICBC? Richport does not convince me that it is the former. I find it unlikely that Moreno would risk his job for the sake of two hours' pay. I find it likely that a manager that was about to leave Richport might have failed to draw such a small matter to ICBC's attention before leaving. And clearly, the number of hours allotted a job is a matter for Richport and ICBC and not up to the employee.

The Determination finds that a full panel replacement was ordered by ICBC and that Moreno knowingly installed only part of the panel, contrary to a Richport policy of which he was fully aware. But the evidence before me indicates that a quarter panel section in the most practical area may be exactly what was required in the way of repairs, and that the installation of a sectioned panel is to be considered a full panel replacement except for glass time. Richport fails to show me that Moreno's repairs are in any way contrary to industry practise. Moreover, the employer leaves open the matter of whether its former body shop manager approved of Moreno's approach to repairs.

The above leads me to conclude that Richport did not have just cause to terminate the employment of Moreno. As such the employee is found to be owed compensation for length of service of two weeks less the day(s) for which he was paid after receiving notice of termination on September 6, 1996. I leave it to the Director to make the necessary calculations.

ORDER

I order, pursuant to section 115 of the *Act*, that Determination No. CDET 005255 be varied. Richport is unable to show just cause for the termination of Carlos Moreno and the employee is owed compensation for length of service as a result.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal

LDC:lc