Industrial Relations Court of Australia

[Index] [Search] [Context] [Help]

Saifudin Boru & Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union v Toyota Motor Corp Australia Ltd (970230)

DECISION NO:230/97

INDUSTRIAL RELATIONS COURT OF AUSTRALIA

INDUSTRIAL LAW - complaint of UNLAWFUL TERMINATION -

VALID REASON - physical altercation in the workplace - whether physical contact initiated by applicant - whether respondent investigated and took account of all mitigating factors - whether OPPORTUNITY TO RESPOND -

Workplace Relations Act 1996 ss170DC, 170DE(1), 170EA

Yew v ACI Glass Packaging Pty Ltd (unreported, IRCA, Wilcox CJ, 11 December 1996)

BORU & AFMEPKIU -V- TOYOTA MOTOR CORPORATION

AUSTRALIA LIMITED

VI 1068 of 1997

PARKINSON JR

MELBOURNE

3 JULY 1997

GENERAL DISTRIBUTION

IN THE INDUSTRIAL RELATIONS COURT

OF AUSTRALIA)

VICTORIA DISTRICT REGISTRY) VI 1068 of 1997

)

B E T W E E N: Saifudin BORU

Applicant

AND: AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING &

KINDRED INDUSTRIES UNION

Applicant

AND: TOYOTA MOTOR CORPORATION

AUSTRALIA LIMITED

Respondent

JUDICIAL REGISTRAR : PARKINSON

PLACE : MELBOURNE

DATED : 3 JULY 1997

MINUTES OF ORDER

THE COURT ORDERS THAT:

1. The application pursuant to Section 170EA of the Workplace Relations Act 1996, be dismissed.

NOTE: Settlement and entry of orders is dealt with by Order 36 of the Federal Court Rules

GENERAL DISTRIBUTION

IN THE INDUSTRIAL RELATIONS COURT)

OF AUSTRALIA)

VICTORIA DISTRICT REGISTRY) VI 1068 of 1997

B E T W E E N: Saifudin BORU

Applicant

AND: AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING &

KINDRED INDUSTRIES UNION

Applicant

AND: TOYOTA MOTOR CORPORATION

AUSTRALIA LIMITED

Respondent

JUDICIAL REGISTRAR : PARKINSON

PLACE : MELBOURNE

DATED : 3 JULY 1997

REASONS FOR JUDGMENT

This is an application made pursuant to Section 170EA of *the Workplace Relations Act 1996*. (`the Act') The respondent manufactures and assembles vehicles for the domestic and export market at its plant at Altona in Victoria. The applicant was employed by the respondent as a welder on its re-spot welding line. He was employed on 19 April 1994 and the employment was terminated by the respondent on 18 November 1996.

The respondent contends that it had valid reason for the termination of the employment based upon the applicant's conduct. The respondent contends that on 15 November 1996, the applicant, contrary to published company policy, engaged in a fight with another employee, resulting in injury to that other employee.

The respondent contends that as a consequence of the report of the fight various steps were taken by it to investigate the incident and that those steps resulted in a reasonable and thorough investigation taking place, as a consequence of which it was satisfied, not only that the applicant was engaged in the fight, but that he had been the protagonist on the day in question.

Whilst the applicant contends that he was engaged in a brief scuffle with the other employee, it was submitted that it was initiated by the other employee. It is further contended that the respondent acted capriciously in applying a blanket policy of termination of employment for fighting, in circumstances where there were mitigating circumstances about which it should have been aware and informed itself. Further it is contended that the respondent failed to comply with the obligations arising from Section 170DC of the Act.

It is appropriate to set out briefly the background to this matter, together with my findings of fact.

The Toyota Plant at Altona is a state of the art manufacturing plant, created as a `greenfields site' and incorporating modern production processes. The plant is a 24 hour production facility. The applicant was employed in the body shop and his duties involved spot welding on the finishing line. There were other spot welder positions on the line at which the applicant was employed. The applicant was located in a position which was on the opposite side to Mr Maddigan at the other end of the line.

The production facility, including the spot welding line was cooled and heated by an integrated system. The system operating in the applicants area was designed to automatically operate when the line was in production. However the evidence was that on occasions the system had been insufficient to maintain comfort of some employees, so additional cooling fans had been installed for the purpose of improving air circulation.

There were three fans installed and one which operated at the applicant's end of the production line operated off a power point which was also used to operate a radio brought in by one of the production employees. The power point in question was in use for the radio when the applicant commenced his duty. The evidence of the applicant was that he proceeded along the production line and removed the connection for the radio from the power point and instead connected the fan at his end of the line. This he did without any discussion with Mr Maddigan or his supervisor. Immediately after he did so, Mr Maddigan again disconnected the fan and reconnected the radio. The applicant then again proceeded down the production line and repeated the connection of the fan. When it was disconnected again by Mr Maddigan he reported the matter to the supervisor, Mr Lay.

When it appeared to the applicant that this complaint had not resulted in the reconnection of the fan he proceeded to the other end of the production line where he forcefully removed the radio from the electrical connection, causing it to fall onto the floor and be damaged. The applicant's evidence was that as a consequence of this action by the applicant, Mr Maddigan swore at him, calling him a "*motherfucker*". The parties then engaged in a physical altercation.

Mr Maddigan's evidence is that the applicant grabbed him by the front of his overalls and began to punch him and wrestle him to the floor. His evidence was that the fight continued for some minutes and continued outside of the direct production line area. As a consequence of the fight, Mr Maddigan's evidence was that he suffered lacerations to his head and bruising. His evidence was that he reported the fight to his supervisor and attended the medical centre where he was treated by the Occupational Health and Safety Nurse for the lacerations and bruising.

The applicant says that Mr Maddigan sustained the laceration to his head as a result of hitting his head as he stooped to exit the vehicle shell he was working on shortly before the altercation between them. The applicant concedes that a brief altercation took place, however says that it was a minor scuffle with no resulting injury to either party.

The evidence is that the injury and its cause was reported by Mr Maddigan to the Occupational Health Nurse shortly after it occurred and the medical records and incident sheets held on file reveal that the injury was reported as having been inflicted by the applicant. An account of the incident consistent in all material respects was also given immediately by Mr Maddigan to Mr Lay the shift supervisor.

The evidence of the applicant and Mr Maddigan as to the events surrounding the altercation was at odds. The applicant's evidence was that Mr Maddigan came rushing out of the vehicle shell he was working on and rushed towards him in and tried to hit him. The applicant's evidence is that he then grabbed Mr Maddigan by the front of the overalls. The applicant's earlier advice to the respondent contained in the record of interview between the applicant and Ms Saunders, on 15 November, did not contain any reference to the applicant having believed he was about to be hit by Mr Maddigan. The applicant, in cross examination, gave conflicting evidence as to his failure to provide such an explanation at the earlier time. Initially his evidence was that he did not give such an explanation because he was not asked by Ms Saunders and he did not volunteer this information, however subsequently his evidence was that he had provided this explanation to Ms Saunders and that he didn't know whether it had been written down by her.

Ms Saunders evidence as to the nature of the discussions was clear. The applicant had explained that he had grabbed Mr Maddigan by the front of the overalls and that this had been as a result of his continuing to turn off the fan and reconnect the radio. Her evidence was that at no time did the applicant inform her that he had believed himself to be in danger of being hit by Mr Maddigan. Nor does Ms Saunders record of the meeting on 15 November make any reference to a physical threat by Mr Maddigan. I accept Ms Saunders evidence as to the explanation initially given to her and I accept that the minutes of the interview were an accurate record of the substantive matters in discussion and explanations provided on that occasion.

I also accept the account of the actual incident as given by Mr Maddigan in evidence. I find that the physical contact which occurred on 15 November 1996 was initiated by the applicant and not Mr Maddigan and that in so doing the applicant caused slight injury to Mr Maddigan which required medical attention. I am satisfied that the incident did not arise out of a self defence to an unprovoked

attack upon the applicant in the sense discussed by Wilcox CJ in *Yew v ACI Glass Packaging Pty Ltd* (unreported, IRCA, Wilcox CJ, 11 December 1996). The applicant in this case was intimately involved in the matters in dispute which led to him leaving his workstation and proceeding towards Mr Maddigan's work area in an angry and frustrated state of mind. The applicant was a participant in the fan versus radio dispute and was a protagonist in this regard. I am not satisfied that there was an occupational health and safety issue involved which warranted the extremity and severity of action taken by the applicant. I am satisfied that any occupational health issue raised by the circumstances could conveniently have been dealt with by the utilisation of more appropriate and moderate dispute resolution procedures.

Whilst I accept the applicant's evidence that there was some history to the poor relationship between he and Mr Maddigan and I accept that there were aspects of Mr Maddigan's conduct towards the applicant, which were on at least 2 occasions unacceptable, nevertheless the particular circumstances of the incident in question did not warrant or entitle the applicant to react in the manner in which he reacted. In my view that applicant's reaction was extreme. The applicant reacted in what I accept was a violent and blind fury, in circumstances where he had available to him alternative methods to resolve the problem. These alternatives included to approach the supervisor, utilise the call procedure on the electronic signalling system, the *Andon* system, or stop the line. I am satisfied that these processes applied equally to personnel difficulties as they did to production difficulties. The respondent is entitled to expect and require that the dispute resolution mechanisms put in place by it in the workplace will be utilised. It is also entitled to expect that employees will comply with those procedures to ensure that the general and individual safety of employees in the workplace is protected.

The respondents induction procedures clearly set out the manner in which disputes were to be resolved. I am satisfied that it is probable that the applicant had these procedures and processes explained to him during the induction training held when he commenced the employment. The policy document is also a document provided to all employees upon commencement and the employees are taken to the detail of the document in the induction.

Further I am satisfied that this is not a case where the respondent has merely applied the policy provisions as to physical altercations without a proper and due consideration of the circumstances surrounding the incident. The effect of such a blind application of policy is conveniently the subject of consideration by Wilcox CJ in *Yew v ACI Packaging Pty Ltd* (unreported, IRCA, Wilcox CJ, 11 December 1996) and may in my view where there are mitigating circumstances result in a finding that the termination of the employment was capricious and thus not for valid reason. The evidence of Mr Elkin, the Industrial Relations Manager, was that it was never intended that the policy be applied without regard to mitigating circumstances and a consideration in that context of the appropriateness of disciplinary action being taken.

I am satisfied that the respondent investigated and took into account all possible mitigating factors including a previous incident between the applicant and Mr Maddigan occurring in August, 1996. The respondent in considering the matter, also had regard to the applicant's work record and performance. Notwithstanding his good work record, the respondent did not consider that the mitigating factors were

sufficient to justify the according of a penalty other than termination of the employment. I am satisfied that the respondent has established that no factor mitigated the applicant's conduct sufficiently and that in applying the penalty of termination of employment the respondent has not acted capriciously.

As to the issue of extenuating circumstances, the respondent identified that it had investigated and acted in respect of the incident between the disputants in August,1996. The evidence was that the applicant had indicated that he did not wish the matter to be pursued further than the action already taken by the supervisor. There is no evidence of any further incident of note occurring between the applicant and Mr Maddigan between August 1996 and 15 November, 1996. The evidence of infrequent incidents between the two employees does not support a finding that the applicant had been the subject of a course of conduct which could be described as designed to provoke or intimidate or harass him. In a circumstances, where an employee may truly be described as a victim not an aggressor, such circumstances would indeed be extenuating, however I do not agree with the submission of counsel for the applicant that this is such a case.

I am satisfied having regard to the above matters that the respondent had valid reason for the termination of the applicant's employment based upon the applicant's conduct on 15 November 1996. The respondent has not contravened Section 170DE(1) of the Act. I turn now to consider matters arising under Section 170DC of the Act.

The obligation of the respondent pursuant to this Section is to accord the applicant an opportunity to be heard in relation to the allegations made as to his conduct. For an opportunity to be truly accorded the applicant must know of the allegations made against him and the information which is relied upon to found the allegations. I am satisfied that the respondent was concerned to ensure that it had a full and complete account of the incident and the circumstances surrounding the incident. I am also satisfied that the investigation was undertaken by Ms Saunders in a sympathetic and genuine attempt to establish the truth of the matter. I am also satisfied as to the adequacy of the investigation which was undertaken and the opportunity accorded to the applicant to be heard and to respond to the allegations made against him. I am also satisfied that the applicant was informed fully of the allegations made as to his conduct and the information upon which the respondent relied. There are no factors in the conduct of the investigation nor the interviews with the applicant on 15 November 1996 which establish a failure to comply with the provisions of Section 170DC of the Act. There has been no contravention of that Section.

For the reasons set out herein the application made pursuant to Section 170EA of the Act will be dismissed.

I certify that this and the preceding nine (9) pages

are a true copy of the Reasons for Judgment of

Judicial Registrar Parkinson.

Associate :

Dated : 3 July 1997

APPEARANCES

Counsel for the Applicants : Mr. M. Champion

Solicitors for the Applicants : Holding Redlich

Counsel for the Respondent : Mr. S. Wood

Solicitors for the Respondent : Freehill Hollingdale & Page

Dates of hearing : 23 & 28 May 1997