

SUPERIOR COURT OF JUSTICE
BARRIE SMALL CLAIMS COURT
75 MULCASTER STREET
BARRIE, ONTARIO L4M 3P2

B E T W E E N:

ALFRED ENMAN

Plaintiff

- and -

999959 ONTARIO INC., operating as
ZENETEC COLLISION CENTRE

Defendant

AND

Court File No. SC-0425-13-D1

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B E T W E E N:

999959 ONTARIO INC., operating as
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Plaintiff
by Defendant's Claim

- and -

ALFRED ENMAN

Defendant
by Defendant's Claim

November 5, 2014

This matter arises from an employer/employee relationship between the plaintiff and the defendant. The defendant operates an auto body shop in Barrie and the plaintiff was employed as an auto body technician with the defendant for over 11 years. The plaintiff had been employed prior to his employment with the defendant for about 25 years in the same field.

On June 21, 2012 the defendant terminated the plaintiff's employment without notice based on an incident which occurred the previous day. When a customer complained about work which had been done by the plaintiff, it was found that there was unrepaired damage which had been on the work order but not done by the plaintiff. The defendant's position was that the failure to do the work was willful misconduct by the plaintiff. The damaged rebar was to have been replaced with a used assembly. I am satisfied on the basis of the evidence at trial that the plaintiff was aware of the instructions and the need to replace the rebar and made a choice not to do so. The plaintiff made a conscious decision not to complete the repair as directed.

The defendant alleges that there had been a series of incidents in the plaintiff's employment which resulted in disciplinary action of one kind or another. Specifically, the incidents put forward at trial were the following:

<u>Date of Incident</u>	<u>Incident Reported</u>	<u>Discipline</u>
September 11, 2003	damage to moulding during repair	verbal warning
October 27, 2007	radiator hose mis-connection	verbal warning
December 6, 2007	fender bolts not tightened	written warning
December 7, 2007	step pad not installed	written warning
December 11, 2007	damaged cooling lines	written warning
January 7, 2008	mis-installation and damage to panels	written warning
June 11, 2010	wiring damage	verbal warning
August 16, 2010	multiple incidents	verbal warning
May 14, 2012	car returned three times	verbal warning
June 20, 2012	un-replaced rebar	termination

On a couple of occasions the plaintiff was warned that any further failure by him would result in termination of his employment. This was particularly emphasized in the verbal disciplinary meeting held just five weeks prior to his termination.

The defendant's position is that it was entitled to terminate the plaintiff's employment for cause. It argues that that single incident alone provides adequate grounds for dismissal for cause in and of itself. While the incident was significant, it did not, in my view, constitute grounds for dismissal on its own. However, when this incident is considered together with all of the other disciplinary incidents, including the verbal intervention just a few weeks previously, I find that the defendant had proper cause to terminate the plaintiff's employment. I recognize, as noted by counsel for the plaintiff, that the disciplinary process was inconsistently documented and enforced, but I find that the plaintiff had received clear notice, particularly in the meeting on May 14, 2012, that his actions on June 20, 2012 would result in termination by the defendant.

Both counsel referred to caselaw which specifically endorsed the three part test set out by the Supreme Court of Canada in *McKinley v. BCTel* [2001] 2 S.C.R. 161, 2001 SCC 38. When I consider the conscious choice of the plaintiff not to complete the repair as directed, the potential harm to the employer and customer, the long history of disciplinary issues with the employee, and the recent warning about possible termination for cause, I find that the three part test in *McKinley* is satisfied. I also find that the standard set out in paragraph 3 of Section 2(1) of the Employment Standards Act, 2000, Ontario Regulation 288/01 is satisfied for termination without entitlement to notice of termination or termination pay.

In the result, the Claim by the plaintiff is dismissed with costs to the defendant of \$1,250.00.

The Defendant's Claim is also dismissed, but without costs.



Peter R. Deacon, Deputy Judge