

IN THE MATTER OF A COMPLAINT OF CONSTRUCTIVE
DISMISSAL UNDER DIVISION XIV - PART III, SECTION
240 OF THE *CANADA LABOUR CODE*, R.S.C. 1985, c.
L-2

AND IN THE MATTER OF AN ADJUDICATION OF THE
SAID COMPLAINT

BETWEEN:

SALEEM SHIVJI,

COMPLAINANT,

AND:

ATI TELECOM INTERNATIONAL / AFL
TELECOMMUNICATIONS LLC,

RESPONDENT.

ADJUDICATOR'S DECISION
June 29, 2016

T. F. (TED) KOSKIE, B.Sc., J.D.

Representatives: Crystal L. Norbeck, for the Complainant, Saleem Shivji

Robert P. James, for the Respondent, ATI Telecom International
/ AFL Telecommunications LLC

[1] Saleem Shivji (“Shivji”) lodged a complaint (the “Complaint”) pursuant to section 240 of the *Canada Labour Code*,¹ Part III (the “Code”) alleging that ATI Telecom International / AFL Telecommunications LLC (“ATI/AFL”) constructively dismissed him from his employment on January 22, 2015.

[2] ATI/AFL denies it constructively dismissed Shivji and says he resigned.

[3] The Minister of Labour (Canada) appointed me to hear and determine the Complaint.

[4] The relevant provisions of the *Code* are:

Application of Part

167 (1) This Part applies

- (a) to employment in or in connection with the operation of any federal work, undertaking or business other than a work, undertaking or business of a local or private nature in Yukon, the Northwest Territories or Nunavut;
- (b) to and in respect of employees who are employed in or in connection with any federal work, undertaking or business described in paragraph (a);
- (c) to and in respect of any employers of the employees described in paragraph (b);
- (d) to and in respect of any corporation established to perform any function or duty on behalf of the Government of Canada other than a department as defined in the Financial Administration Act; and
- (e) to or in respect of any Canadian carrier, as defined in section 2 of the Telecommunications Act, that is an agent of Her Majesty in right of a province.

Non-application of Division I to certain employees

(2) Division I does not apply to or in respect of employees who

- (a) are managers or superintendents or exercise management functions; or
- (b) are members of such professions as may be designated by regulation as professions to which Division I does not apply.

Non-application of Division XIV to managers

(3) Division XIV does not apply to or in respect of employees who are managers.

...

¹RSC 1985, c L-2

Complaint to inspector for unjust dismissal

240(1) Subject to subsections (2) and 242(3.1), any person

- (a) who has completed twelve consecutive months of continuous employment by an employer, and
- (b) who is not a member of a group of employees subject to a collective agreement,

may make a complaint in writing to an inspector if the employee has been dismissed and considers the dismissal to be unjust.

Time for making complaint

(2) Subject to subsection (3), a complaint under subsection (1) shall be made within ninety days from the date on which the person making the complaint was dismissed.

Extension of time

(3) The Minister may extend the period of time referred to in subsection (2) where the Minister is satisfied that a complaint was made in that period to a government official who had no authority to deal with the complaint but that the person making the complaint believed the official had that authority.

Reference to adjudicator

242(1) The Minister may, on receipt of a report pursuant to subsection 241(3), appoint any person that the Minister considers appropriate as an adjudicator to hear and adjudicate on the complaint in respect of which the report was made, and refer the complaint to the adjudicator along with any statement provided pursuant to subsection 241(1).

Powers of adjudicator

- (2) An adjudicator to whom a complaint has been referred under subsection (1)
 - (a) shall consider the complaint within such time as the Governor in Council may by regulation prescribe;
 - (b) shall determine the procedure to be followed, but shall give full opportunity to the parties to the complaint to present evidence and make submissions to the adjudicator and shall consider the information relating to the complaint; and
 - (c) has, in relation to any complaint before the adjudicator, the powers conferred on the Canada Industrial Relations Board, in relation to any proceeding before the Board, under paragraphs 16(a), (b) and (c).

Decision of adjudicator

(3) Subject to subsection (3.1), an adjudicator to whom a complaint has been referred under subsection (1) shall

- (a) consider whether the dismissal of the person who made the complaint was unjust and render a decision thereon; and
- (b) send a copy of the decision with the reasons therefor to each party to the complaint and to the Minister.

Limitation on complaints

(3.1) No complaint shall be considered by an adjudicator under subsection (3) in respect of a person where

- (a) that person has been laid off because of lack of work or because of the discontinuance of a function; or
- (b) a procedure for redress has been provided elsewhere in or under this or any other Act of Parliament.

Where unjust dismissal

(4) Where an adjudicator decides pursuant to subsection (3) that a person has been unjustly dismissed, the adjudicator may, by order, require the employer who dismissed the person to

- (a) pay the person compensation not exceeding the amount of money that is equivalent to the remuneration that would, but for the dismissal, have been paid by the employer to the person;
- (b) reinstate the person in his employ; and
- (c) do any other like thing that it is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal.

[5] The hearing of the Complaint was scheduled for June 27 and 28, 2016. Prior to commencement of the hearing, the parties notified me that they had negotiated a settlement of the Complaint.

[6] Because of the above, I dismiss Shivji's complaint.

[7] Under the circumstances, I do not believe this is an appropriate case to award costs and I decline to do so. I note that neither party asked for costs.

Dated at Saskatoon, Saskatchewan, on June 29, 2016.



T. F. (TED)KOSKIE, B.Sc., J.D.,
ADJUDICATOR