

NUNAVUT HUMAN RIGHTS TRIBUNAL

IN THE MATTER OF a Notification made under Part 4 of the Nunavut
Human Rights Act and before the Nunavut Human Rights Tribunal

BETWEEN:

Martin Blanchette

Applicant

-and-

Cecil Vendetti

Respondent

DECISION

Adjudicator: Alan Weeks

Heard at: Iqaluit

Decision Date: September 20, 2011

File Number: 05-13

Indexed as: **Blanchette v. Vendetti, 2011 NHRT 1**

APPEARANCES BY

Martin Blanchette, Applicant: On his own behalf

Cecil Vendetti, Respondent: No one appearing

INTRODUCTION

[1] This Notification was filed by Martin Blanchette (“the applicant”) against his former employer Cecil Vendetti (“the respondent”) in December 2005 under sections 7 and 9 of the Nunavut *Human Rights Act* (“the Act”). Mr. Blanchette alleges that he experienced discrimination in employment because of a disability.

[2] A pre-hearing conference took place on December 6, 2010. During the pre-hearing, both Mr. Blanchette and Mr. Vendetti indicated that they would be available to attend a hearing into this matter in July 2011.

[3] In an exchange of e-mails in April 2011, the parties confirmed their availability for a hearing during the first week of July 2011. Accordingly, a hearing was scheduled for July 5, 2011 at 10 a.m. in the city of Iqaluit, Nunavut and the parties were notified by their preferred means of communication. Based on the Tribunal’s records and information provided at the hearing by the Tribunal’s Executive Director, Marion Love, I am satisfied that both parties were notified of the hearing date and location using the contact information they provided to the Nunavut Human Rights Tribunal. There was no indication that the hearing notification was not received and no request to reschedule the hearing was made.

[4] The hearing was convened as scheduled on July 5, 2011 at Iqaluit. The applicant appeared on time.

[5] No one appeared for the respondent. Nor did the respondent contact the Tribunal to advise he would not be attending.

[6] I heard the evidence of the applicant. As the respondent did not participate in the hearing, there was no evidence before me from the respondent. I have no reason to doubt the uncontradicted evidence of the applicant and accept that the following events occurred based on the testimony of the applicant and the Exhibits filed at the hearing.

FACTS

[7] On September 2, 2004 the applicant was hired by C. Vendetti Construction and Consulting Inc. as a Power House operator at the Nanisivik mine site. The applicant worked in this position continuously until he was injured at work in early September 2005.

[8] In June 2005 the applicant advised the respondent of his intentions to leave his position effective December 17, 2005. This notice was given in June 2005 so that the respondent would have sufficient time to find a replacement.

[9] The applicant was injured at work at the beginning of September 2005. A letter from the Northwest Territories and Nunavut Workers Compensation Board (Exhibit A7) indicates that the injury, an abdominal hernia, was sustained when the applicant was lifting heavy oxygen tanks. This letter also states that his employer was in agreement with the details and circumstances of the applicant's accident and injury as noted in its report of accident dated September 1, 2005.

[10] As a result of his injury in September 2005, the applicant sought medical attention at the Arctic Bay Health Unit. Initially he was able to continue with light duties but by mid-September it was recommended that he not continue work until he could have his condition addressed "down south". A note from D. Coverton, RN Arctic Bay Health Unit addressed to Cecil Vendetti confirming this advice was marked as Exhibit A5. The applicant confirmed in his testimony that this note was provided to Mr. Vendetti.

[11] The applicant's scheduled time out was to be approximately September 21, 2005; however, he stopped work a week or so early because of his injury and the medical advice received. The applicant's Record of Employment ("ROE") which was marked as Exhibit A8 indicates the last day he for which he was paid was September 17, 2005.

[12] On September 22, 2005 the applicant saw Dr. Stamler in Thunder Bay, Ontario. Dr. Stamler diagnosed an abdominal hernia but cleared the applicant to return to work with no

restrictions. Dr. Stamler provided a note to this effect dated October 5, 2005 (Exhibit A6).

[13] After receiving his doctor's clearance to return to work, the applicant contacted Mr. Vendetti by telephone and informed him that he would be returning to work when his originally scheduled time out was due to end (somewhere around October 17, 2005) and would remain until December 17, 2005, the date he had planned to work until prior to sustaining his injury.

[14] The applicant testified that the respondent blatantly told him that he could not return to work for him. The applicant asked for a written reason as to why not and the respondent refused to provide it. The applicant stated that there is no reason, other than his injury, why the respondent would not have permitted him to return to work. The applicant further stated that the power house operator job was still there and that he should have been permitted to work the two months until he was scheduled to end his employment with the respondent's company.

[15] In response to the suggestion in the respondent's Reply that he did not take the applicant back was because he "assumed by his actions" when he left Nanisivik that he had no intentions of returning and therefore replaced him, the applicant further testified that when he left to seek medical attention for his injury, the respondent knew that he was injured and required further medical assessment "down south" but that he intended to return to work when he was medically fit to do so. At no time did Mr. Blanchette indicate, nor was it reasonable for the respondent to assume, that he was leaving the company or resigning his employment. This is confirmed by the ROE that was provided to the applicant which indicates in Box 16 that the reason for issuing the ROE is "D, illness/injury", the code to be used when the employee is leaving work temporarily because he is ill or injured.

[16] The applicant testified that as a result of the actions of Mr. Vendetti, he lost two months wages.

[17] The applicant advised, and provided a medical note confirming, that he underwent

surgery for his abdominal hernia on December 22, 2006 (Exhibit A3).

ANALYSIS AND DECISION

[18] The relevant section of the *Act* states:

9. (1) No person shall, on the basis of a prohibited ground of discrimination,
 - (a) refuse to employ or refuse to continue to employ an individual or a class of individuals; or
 - (b) discriminate against any individual or class of individuals in regard to employment or any term or condition of employment, whether the term or condition was prior to or is subsequent to the employment.

[19] I am satisfied that the applicant sustained a workplace injury, namely an abdominal hernia, in September 2005 and that this constitutes a disability for the purposes of the *Act*.

[20] I accept Mr. Blanchette's evidence, confirmed by the ROE and the Arctic Bay medical note addressed to Mr. Vendetti, that when he left Nanisivik to get medical attention it was clear that he was not resigning his employment but was leaving temporarily as a result of his disability.

[21] I find that had Mr. Blanchette not been injured, he would have worked until December 17, 2005, the date he had earlier indicated would be his last day of employment. However, as a result of his disability and his need to take some time off work to receive medical attention in the south, Mr. Vendetti refused to allow him to return to work after he was declared medically fit to do so. As a result, his last day of work was September 17, 2005 as noted on the ROE.

[22] I therefore have no trouble concluding that Mr. Blanchette experienced discrimination related to his disability. His employment was terminated two months earlier than planned because he sustained a workplace injury, which I have found to be a disability under the *Act*. As Mr. Vendetti did not participate in the hearing, there is no evidence before me that he could not have returned Mr. Blanchette back to work once he received medical clearance without

undue hardship. Instead the only evidence before me is that the position was available but Mr. Vendetti simply refused to allow Mr. Blanchette to resume his duties.

[23] In summary, there is sufficient evidence that Mr. Blanchette experienced discrimination in employment based on disability contrary to the *Act*.

REMEDY

[24] Under s. 34 of the *Act*, I have the power to order damages to compensate Mr. Blanchette for lost wages or expenses resulting from the discrimination. I can also make an award for injury to dignity, feelings or self-respect as a result of the discrimination.

[25] Mr. Blanchette only asks for lost wages. His uncontradicted evidence with respect to his monetary damages is that he lost two (2) months pay. According to pay stubs, which were submitted as Exhibit A9-A12, I accept Mr. Blanchette's calculation that the lost wages amount to \$19,500.00 gross wages.

[26] I am satisfied that the applicant is entitled to \$19,500.00. Accordingly, I order the respondent Mr. Cecil Vendetti to pay the applicant Mr. Martin Blanchette \$19,500.00 within thirty (30) days of the date of this decision. Mr. Blanchette is responsible for remitting any necessary statutory deductions. I further order the respondent to pay pre-judgment and post-judgment interest on this amount as calculated under sections 52-56 of the *Nunavut Judicature Act*, S.N.W.T. 1998, c. 34, s.1.

Dated at Iqaluit this 20th day of September, 2011



Alan Weeks
Member