Case Name:

Zoldy v. OK Transportation Ltd.

IN THE MATTER OF an Adjudication under s. 242 of Division XIV of the Canada Labour Code, Part III, R.S.C. 1985, c. L-2 as amended
Between
Goldwin T. Zoldy (the "complainant"), and
OK Transportation Ltd. and Canadian Professional Recruiters Inc. (the "respondents")
RE: Complaint of Alleged Unjust Dismissal (HRDC File No. YM2707-5150)

[2002] C.L.A.D. No. 58

Canada
Labour Arbitration
B. Etherington, Adjudicator

Heard: Chatham, Ontario, March 30, May 2 and 8, and November 22, 2001.
Decision: February 8, 2002.
(25 paras.)

Appearances:

Goldwin T. Zoldy, the complainant, for himself.
Steve Taylor, OK Transport Ltd., and Robert Ryan, Canadian Professional Recruiters Inc., for the respondents.

AWARD

¶ 1 The complainant, Mr. Goldwin Zoldy, filed a complaint alleging unjust dismissal with Human Resources Development Canada on January 12, 2000. The complaint alleged unjust dismissal against both OK Transportation Ltd. (hereinafter OK Transport) and Canadian Professional Recruiters Inc. (hereinafter CPR). The complaint was not settled and on June 19, 2000 the complainant requested that it be referred to adjudication under s. 241(3) of the Canada Labour Code. By letter dated October 4, 2000, I was appointed as Adjudicator to hear the complaint under the unjust dismissal provisions found in Division XIV, Part III of the Code.

¶ 2 After hearing opening statements from all three parties it became apparent that there were several serious preliminary issues concerning the application of the unjust dismissal provisions of the Code to this complaint that would have to be resolved. Although the complainant's primary claim was that he was an employee of OK Transport and was dismissed by them without just cause in October of 1999, OK Transport alleged that he was in fact an employee of CPR during the time that he drove trucks owned by OK Transport. OK Transport further argued that Mr. Zoldy had driven its trucks during a period of 5 months or less, far less than the minimum of "twelve consecutive months of continuous employment" required under s. 240(1)(a) for the unjust dismissal provisions to be applicable. In response the complainant asserted that he could prove 12

months continuous employment by OK Transport on the basis that it and CPR should be treated as one employer.

¶ 3 The complainant's alternative claim was that if it was found that OK Transport was not his employer he had been unjustly dismissed by CPR in October of 1999. In response, CPR acknowledged that it had been the employer of the complainant from January 11, 1998 to October 22, 1999, but argued that the unjust dismissal provisions in the Code could not be applied to it because it is a provincially regulated Class A employment agency which is subject to provincial jurisdiction for the regulation of its employment relationships. CPR also argued that even if it were to be found to be subject to federal labour legislation, the unjust dismissal provisions could not be applied in this case because the complainant was not dismissed by CPR in October of 1999. CPR indicated that it would lead evidence that would show that Mr. Zoldy was removed from driving on the OK Transport account in October of 1999 but was told that CPR could place him as a driver on other accounts and that Mr. Zoldy refused to accept driver placement with any client other than OK Transport. The complainant was given a Record of Employment (ROE) sometime after October 22/99 which indicated that he was laid off for lack of work, but CPR alleged that this statement of reason for the issuance of the ROE was included at the request of the complainant for employment insurance purposes.

¶ 4 After consideration of the opening statements I determined that there were significant preliminary issues affecting the applicability of ss. 240 to 246 of the Canada Labour Code on which the complainant must bear the burden of proof. Was the complainant an employee of OK Transport in October of 1999? If so was the complainant employed by OK Transport for twelve consecutive months of continuous employment as required by s. 240 of the Code? If the complainant was an employee of CPR in October of 1999, is CPR an employer which is subject to federal regulation of its employment relationships under the Canada Labour Code? If so, was the complainant dismissed by CPR on October 22/99? Further preliminary issues raised by the last issue are whether the complainant quit his employment with CPR or was laid off for lack of work. It should be noted in regard to the last question that s. 242(3.1)(a) provides that there can be no complaint considered if the employee has been laid off for lack of work. Given the significant number of preliminary issues on which the complainant would bear the burden of proof, I ruled that the complainant should proceed to present his case first, to be followed by OK Transport and CPR, and I indicated to the complainant the necessity for him to present evidence to address these preliminary matters. I also indicated to the respondents that they would bear the burden of proving just cause for dismissal if the complainant succeeded on the preliminary issues which were relevant to the complaints filed against them.

FACTS

¶ 5 The complainant is a qualified A-Z driver of transport trucks and also is qualified to drive trucks containing dangerous goods under the federal Transportation of Dangerous Goods regulations. He has considerable experience driving transport trucks in both Canada and the United States while working for several different employers. Mr. Ryan, the president of CPR testified that the complainant was a good driver and that he had never had any problems with his driving. In January of 1998, the complainant became one of several drivers who were retained by CPR for placement with various trucking company clients of CPR on a temporary or replacement basis. From that point until May of 1999 the complainant was placed as a truck driver with at least eight different client companies by CPR on a temporary basis. These companies included Waltec Engineering, Harold North Trucking, Ryder Integrated Logistics, and Purolator.

¶ 6 At the hearing CPR submitted all invoices to OK Transport for drivers placed there in 1998 and 1999 and they indicate that the complainant was placed there on a very regular basis for a period of approximately five months commencing in the week ending on May 29/99 and terminating on October 22/99. Those records also indicate that prior to Mr. Zoldy there were two other CPR drivers, Dave Eldridge and Bernie Willson, who were regularly assigned to drive for OK Transport for several months at a time in the 14 to 15 months prior to the week of May 29/99. Mr. Zoldy's replacement of his predecessor, Mr. Dave Eldridge, was accomplished simply by Mr. Ryan sending a letter on behalf of CPR, dated May 19/99, to Mr. Quirk of OK Transport to

inform him that "Mr. Sandy Zoldy will be replacing our current driver Dave Eldridge effective Wednesday, May 26/99" (Exh. 10). There was no evidence of any application or approval process required by OK Transport at that time. The letter also advises OK Transport that Zoldy will be under the same contract as Eldridge as agreed upon by CPR and OK Transportation. Both Mr. Ryan for CPR and Mr. Quirk, Manager of Major Accounts for OK Transport, testified that there was no written contract covering the placement of Mr. Zoldy. However, Mr. Ryan produced a copy of a letter of understanding written to Mr. Quirk on October 17/97 (Exh. 11) which indicated advantages of retaining CPR agency drivers and the general terms of their placement. The letter indicated that CPR was a Class A employment agency providing temporary, permanent and contract personnel, specializing in the transportation industry. It stressed the qualifications of CPR drivers and their proximity to the ethanol plant in Chatham, a major customer of OK Transport for which it frequently needed drivers on a temporary basis. It also noted that CPR was responsible for payment of all employee wages and burdens such as EI premiums, EHT, CPP, Workers Compensation and income tax. The letter also enclosed a schedule informing the customer of the wages CPR was paying to the driver and the cost per hour that would be billed to OK Transport for the drivers.

¶ 7 The evidence at the hearing indicated that the OK Transport placement filled by the complainant and his two predecessors was primarily required to help OK Transport service its client Commercial Alcohol of Chatham (the ethanol plant). There were considerable problems being experienced by the ethanol plant from week to week and consequently the needs of OK Transport for drivers to service that plant were somewhat inconsistent. This is apparent from looking at CPR's invoices to OK Transport for the complainant's services during the May 26th to October 22nd, 1999 period. There were significant fluctuations in the hours worked from week to week during that period and several weeks in which there were no hours driven by Zoldy for OK Transport. Mr. Quirk, Manager of OK Transport, indicated that his primary reason for asking CPR to provide an agency driver for the truck operated by Zoldy and his predecessors at the ethanol plant was that it was a new contract with the ethanol plant for an add-on vehicle and they were very unsure how long it would be needed or how many hours would be required from week to week.

¶ 8 CPR is not a trucking company. It does not own or operate transport trucks and it does not hold any of the operating licences required to operate such a business. It is in the business of recruiting and placing qualified drivers with enterprises which are engaged in the truck transportation business or have need of drivers to assist in the operation of their manufacturing or service business. It generally places drivers on a temporary basis, although occasionally a driver assigned on temporary basis will be hired as a permanent employee by CPR's client. In such cases CPR may be entitled to a finder's fee for assisting the client to recruit a permanent employee. In the case of temporary placements, CPR requires the employee to submit trip sheets and time records to it on a weekly basis so that it can prepare an invoice to submit to the client for the driver's services. CPR then submits invoices to the client for payment for the driver's services on an hourly basis. The rate charged by CPR for the driver's services will normally be several dollars per hour higher than the wage rate it pays to the driver. This of course is the primary manner in which CPR makes money. CPR pays all wages directly to the drivers based on their trip sheets and time sheets and also makes all required statutory deductions and remits them to the appropriate authorities. CPR takes steps to ensure the driver possesses the necessary qualifications, including requesting a Commercial Vehicle Operator Record driver abstract from the provincial Ministry of Transportation, prior to hiring by CPR. CPR determines when and where the drivers will be placed on driving assignments and when a driver will be removed from an assignment. Mr. Ryan acknowledged that while the decision to change or withdraw a driver from an assignment is ultimately his, he gives great importance to client preference and will remove a driver from an assignment if the client indicates they no longer wish to use that driver. Drivers could also refuse assignments when offered and often have other commitments such as farming or another job that prevent them from accepting an assignment during particular times of the year. Although the complainant argued that he was terminated by OK Transport in October 1999, he seemed to acknowledge under cross examination that decisions concerning the placement, withdrawal or reassignment of drivers at CPR were made by Ryan, subject to the right of a driver to refuse a particular assignment if he or she chose not to accept it for some reason.

¶ 9 After being assigned to drive for OK Transport, the complainant was directed by OK Transport with regard to the runs it wanted him to make. During the period in question he was assigned primarily to drive an OK Transport truck which was servicing the ethanol plant in Chatham. In terms of daily direction, primarily in the form of dispatching, the complainant received more than 75% of his daily direction from Ms. Nora Rogers, a dispatcher who works for Commercial Alcohol of Chatham at their ethanol plant. Occasionally he would be dispatched by a dispatcher at OK Transport in Toronto for the odd weekend run, but the complainant admitted that this was a relatively rare occurrence. He submitted his trip sheets and other time records to both OK Transport and CPR on a weekly basis. These records were required by OK Transport so they could bill their customers accurately and check them with the invoices submitted by CPR for its driver's services, and they were required by CPR to provide the basis of payment of wages to Zoldy and the preparation of invoices to OK Transport. The complainant occasionally received directions from OK Transport concerning the location of customers and the best routes to take to a particular destination. Zoldy was given a fuel card by OK Transport to use to fill the truck while on the road and a bridge toll card to cover tolls at bridges between the Canada and the U.S.. He was also given OK Transport log books and trip sheets to keep the required records of his runs while operating the company's vehicles. Mr. Quirk indicated that these cards and record keeping sheets were provided to all persons who drove for OK Transport, whether they were permanent employees, temporary drivers provided by a driver agency such as CPR, or independent owner-operator drivers who were driving their own trucks. OK Transport used a mix of all three types of drivers to enable it to provide the trucking services required by its clients.

¶ 10 In September and October of 1999 there were several events which Mr. Zoldy argues are indicative of OK Transport having decided to hire him as a permanent driver. In September of 1999 he was authorized to purchase an OK Transport driver uniform and he did so. OK Transport witnesses said that they require such uniforms to be worn where they have customers that request it and noted that this has been done in the past for all three types of drivers used by them to provide trucking services to their customers: permanent employees, independent owner-operators, and driver service agency drivers. OK Transport also presented evidence that in the case of personnel agency drivers the agency is informed that if the driver does not continue to drive for them for a certain minimum period the agency will be required to reimburse them for the uniform and there was evidence that CPR was notified that it would have to pay for the complainant's uniform following Mr. Zoldy's departure from the OK Transport account a few weeks after he received the uniform.

¶ 11 Mr. Zoldy also pointed to the fact that OK Transport required him to write the test for a Transportation of Dangerous Goods certificate and administered the test and provided the certificate. The Dangerous Goods Certificate in question was dated October 6/99 and signed by Mr. David Davis, the head of driver training for OK Transport. The Certificate also has "OK Transportation Ltd" printed in the space reserved for the employer's name. Zoldy also pointed to the fact that OK Transport sent him for drug and alcohol testing in early October to comply with drug and alcohol testing for drivers who drive in the U.S.. The drug test certificate issued on October 4/99 also indicates OK Transportation as the employer and indicates that the reason for the test is "pre-employment". On both issues the witnesses from OK Transport indicated that they required dangerous goods testing and certification and drug and alcohol testing for all of its drivers from time to time, whether those drivers were permanent employees, independent owner-operators, or driver service agency drivers. Mr. Davis also indicated that in all cases OK Transport puts its name and address in the space reserved for "employer name" to ensure that the results and necessary forms are sent to it so it can ensure it is in compliance with government regulation in both Canada and the U.S.

¶ 12 Mr. Zoldy was called by Mr. Ryan of CPR on the morning of October 22/99 and told that he was no longer assigned to the OK Transport account. While there was some discrepancy between the testimony of Ryan and Zoldy concerning the content of the October 22/99 phone call, they both indicated that Ryan told Zoldy he would no longer be driving for OK Transport but that he could not be terminated by OK Transport because he worked for CPR. They also both agreed that Ryan asked Zoldy not to call anyone from OK Transport. And they both agreed that Zoldy told Ryan that he now worked only for OK Transport and not for CPR. Ryan testified that he also made it clear to Zoldy that he still worked for CPR and could be placed on

driving assignments with other clients of CPR. Although Mr. Zoldy refused to agree that Ryan made this statement, I find that Ryan did indicate that Zoldy's employment with CPR continued and that he could be assigned on other accounts. This version of events is the most consistent with Mr. Zoldy's admission that during the conversation he told Ryan that he worked only for OK Transport at that point.

¶ 13 Mr. Zoldy speculated at the hearing that he was taken off the OK Transport account for one of two reasons. The first was that he had been contacted by Nora Rogers, the dispatcher for Commercial Alcohol, during his run on October 21/99 and asked to cover for an additional unscheduled run on October 22/99 because they were short on drivers due to illness. Mr. Zoldy had refused because he knew he would not finish unloading his October 21st load in Chatham until very late that night and that he had driven too many hours that week and needed some rest before taking on another load. He felt it would be illegal and unsafe for him to take another load on October 22/99 because of the hours he had driven on October 21/99. He felt he was being punished by OK Transport for his refusal. He also speculated at one point that he had been taken off the OK account because Ryan had demanded a commission/finder fee when he learned that OK Transport was hiring Zoldy as a full time OK employee. There was no evidence tendered to support the latter assertion. Ryan testified that Zoldy was removed from the OK Transport account due to expressions of dissatisfaction by officials from OK Transport and Commercial Alcohol. Mr. Quirk indicated that he had discussed complaints concerning Mr. Zoldy by Commercial Alcohol and OK Transport personnel with Mr. Ryan and was told by Ryan that he was replacing Zoldy with another CPR driver on that account. Quirk and Ryan denied any attempt by CPR or OK Transport to force Zoldy to work a double shift. Mr. Quirk denied ever asking Zoldy to submit an application for full time employment with OK Transport. However, Quirk testified that Zoldy had called him on numerous occasions to complain about the failure of CPR to provide extended medical benefits to cover him while driving in the United States and that Zoldy had pestered Quirk to hire him as a full time driver for OK Transport so that he could be covered by the medical benefits plan which covered full time OK Transport drivers. Quirk's testimony indicated that he was concerned by these frequent approaches by Zoldy concerning benefits and employment with OK Transport. But Quirk stressed that although he communicated his concerns to Ryan it was Ryan's decision to replace Zoldy as the agency driver on the OK Transport account and that he simply asked that Ryan ensure the replacement driver had the necessary qualifications.

¶ 14 On October 25/99, Ms. Tracy Ellis, administrative assistant to Mr. Ryan, issued a Record of Employment (ROE) (Exh. 47) indicating that Mr. Zoldy had been laid off for lack of work. On that day Mr. Zoldy had come into the office to get his ROE and demanded that the ROE should indicate that he had been dismissed. Ms. Ellis testified that Ryan told Zoldy he was not dismissed as there were other CPR accounts where he could be placed as a driver. Ms. Ellis testified that Zoldy kept insisting that he had been trained and employed by OK Transport and would only drive for OK Transport. Ms. Ellis said that she made a mistake by indicating on the ROE that Zoldy was laid off for lack of work because she in fact had other driving jobs to which he could be assigned. However, she indicated lack of work as the reason for lay off because Zoldy refused Ryan's offer to accept assignments at any account other than OK Transport and Zoldy requested that an ROE be issued so that he could use it for employment insurance purposes. Ms. Ellis also testified that Zoldy stormed out of the office on October 25/99 but left the ROE behind so she mailed it to his home address that day. Mr. Zoldy returned on October 28/99 with the ROE to complain once again that he wanted it changed to indicate that he was dismissed on October 22/99. CPR declined to change the ROE and on November 25/99 they received a letter from the Windsor office of HRDC asking about the circumstances of Zoldy's termination by CPR. On November 29/99 Ms. Ellis wrote a letter to the Windsor HRDC office (Exh. 49) indicating that Zoldy had not been dismissed and was given the opportunity to be placed with another transportation company after being taken off the OK Transport account. The letter also indicated that Zoldy had declined other assignments and indicated that he would work only for OK Transport, which required CPR to put him on lay off until OK Transport required his services again. The letter concluded by suggesting that Zoldy had since quit his employment with CPR due to its inability to place him with OK Transport.

DECISION

¶ 15 The complaint against OK Transport must be dismissed due to the complainant's failure to establish twelve consecutive months of continuous employment by OK Transport as required under s. 240 of the Canada Labour Code. The relevant provisions of the Canada Labour Code are as follows:

> Unjust Dismissal
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> Complaint to inspector for unjust dismissal
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> 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.
>
> R.S., 1985, c. L2, s. 240; R.S., 1985, c. 9 (1st Supp.), s. 15.

¶ 16 Section 240(1)(a) of the Code makes continuous employment for a period of twelve consecutive months an absolute prerequisite to the Code's legislative protection against unjust dismissal. This in effect gives the employer a probationary period of twelve months in which to assess the suitability of individual employees before statutory protection against unjust dismissal will commence. Mr. Zoldy did present some evidence which might suggest that OK Transport had become his real employer for the purposes of this legislation by the time of his being removed from the OK Transport account. There are recent employment law decisions which indicate that a company which uses temporary employees supplied by a personnel agency may be held to be the real employer for the purposes of statutory regulation of the employment relationship in appropriate circumstances when factors such as subordination and control over the everyday terms and conditions of work are taken into consideration. In Point-Claire (City) v. Quebec (Labour Court), [1997] 1 S.C.R. 1015, the Supreme Court of Canada held that the temporary worker supplied by the personnel agency could be held to be the employee of the client corporation for the purposes of collective bargaining legislation in Quebec given the circumstances of subordination and control in the workplace. However, the Court also held that the temporary employee would continue to be an employee of the personnel agency for the purpose of other forms of statutory regulation like employment standards regulation.

¶ 17 Nevertheless, I need not decide whether OK Transport was in fact the employer of Mr. Zoldy for the purposes of this case. It is apparent that if Zoldy were found to be an employee of OK Transport he was only employed by them for a period of approximately five months from May 23/99 to October 22/99. There was no evidence of any relationship between CPR and OK Transport that could be said to support a finding that they should be treated as one employer for the purposes of the Code. There was no evidence of any common ownership or control of either corporate entity by the other or by individual owners or officers of either entity.

Although OK Transport had used a few CPR drivers on a temporary basis since 1997, it had also used drivers supplied by other temporary driver service agencies during that period. Nor was there any evidence to indicate that CPR was an integral part of OK Transport's operations as the drivers supplied by it to OK Transport represented a very small fraction of the total number of drivers used by OK Transport to service its customers. It was also apparent from the evidence that OK Transport was merely one of many customers serviced by CPR and CPR was not dependent on business provided by OK Transport for its future viability or profitability. Hence the complaint against OK Transport is dismissed because of the absence of the statutory prerequisite of twelve consecutive months of continuous employment.

¶ 18 I find that the complaint against CPR must also be dismissed, but for very different reasons. Here the main issues are whether or not CPR's employment relationships are subject to federal jurisdiction concerning the regulation of employment and if so whether Mr. Zoldy was dismissed by CPR when he was removed from the OK Transport account in October of 1999.

¶ 19 The regulation of employment relationships is generally viewed as falling within provincial jurisdiction as a matter of contract law falling under the province's jurisdiction to deal with property and civil rights under s. 92 of the Constitution Act, 1867. Federal jurisdiction over the regulation of employment has been limited to employment on or in connection with any federal work, undertaking or business. This limitation on federal jurisdiction is reflected in the wording of sections 2 and 167 of the Canada Labour Code, which defines a federal work or undertaking as "any work, undertaking or business that is within the legislative authority of Parliament". Since federal jurisdiction in labour relations matters is viewed as the exception, some courts have held that the burden of proof rests with the party that asserts federal jurisdiction (Montcalm Construction Inc. v. Minimum Wage Commission, [1979] 1 S.C.R. 754.

¶ 20 An undertaking is generally held to fall under federal jurisdiction for the regulation of employment relationships in two scenarios: it may be a federal undertaking itself or it may be found to be a vital and integral part of a core federal work or undertaking. Interprovincial trucking companies have long been held to be federal undertakings or businesses subject to federal jurisdiction where their interprovincial activity is regular and continuous. OK Transport is an interprovincial trucking company and its status as a federal business which was subject to the provisions of the Canada Labour Code was not contested. Here we are faced with a situation in which an undertaking which appears at first glance to be provincial in nature (CPR as an employment agency) is associated with or provides services in a subsidiary fashion to another undertaking which is clearly federal. In such cases the courts have looked at the core business of the federal undertaking and the business carried on by the subsidiary operation and asked whether the subsidiary operation was vital, essential or integral to the core federal undertaking. Is the necessary degree of functional integration between the two operations present in this case such that I can say CPR's operations are an integral, vital or essential part of OK Tranport's operation?

¶ 21 It is difficult to provide a conclusive answer to this question on the evidence before me. There was a paucity of evidence demonstrating operational and functional integration between the two operations sufficient to describe CPR's operation as an integral, vital or essential part of OK Transport's regular business operations. CPR was not a trucking company and held none of the trucking licences required to carry on such a business. As an employment agency it provided employees, many of whom were truck drivers, on a temporary basis to both trucking companies and non-trucking companies. Some of its trucking company clients, including OK Transport, operated interprovincial routes but others only required drivers to run routes within the province of Ontario. As indicated above, OK Transport has asked CPR to provide a few temporary drivers from 1997 to the present, but the number supplied were a very small percentage of the total number of drivers used by OK Transport to service its customers. OK Transport had also obtained drivers from other driver service agencies and there was no evidence of it being dependent on CPR for temporary drivers or of CPR being dependent on OK Transport for driver placements. In some cases companies which provide services to interprovincial trucking companies have been found to possess the necessary degree of operational integration to be considered integral, vital or essential and therefore subject to federal regulation (see for example, Bernshine

Mobile Maintenance Ltd. v. Canada (Labour Relations Board), [1986] 1 F.C. 422 (C.A.). However, I do not have sufficient evidence of operational integration to make a similar finding in favour of federal jurisdiction in this case. I find it difficult to contemplate that an otherwise provincially governed employment agency could become the subject of federal regulation of its employment relations simply because it has provided a few temporary employees to a core federal undertaking such as a bank or interprovincial transportation company. It may well be that in other cases one can prove that an employment agency or driver service agency has become sufficiently integral or vital to an interprovincial trucking enterprise that it should be held to fall under federal jurisdiction for the purposes of regulation of its employment relationships. The complainant has failed to prove that this is such a case.

¶ 22 However, it is not necessary to base my decision to dismiss the complaint against CPR solely on this point. Even if there were constitutional facts to support a finding that CPR is a federal business or undertaking for the purposes of the Code, the complaint is also deficient in that the complainant was unable to prove that he was dismissed by CPR on October 22/99 when he was removed from driving on the OK Transport account. The evidence given by both Ryan and Zoldy revealed that if Zoldy was in fact an employee of CPR he was working under an agreement which allowed Ryan to place him with various clients of CPR on a temporary basis to enable him to meet the needs of CPR's customers. Zoldy acknowledged that while he worked for CPR he could be called by Ryan and offered a particular driving assignment and he could accept or reject such an assignment depending on his own schedule and personal preferences. Mr. Zoldy also acknowledged that Ryan was the person who generally informed him when he was no longer needed on a particular driving assignment, although he also could tell Ryan at any time that he could no longer continue with a particular assignment. Mr. Zoldy had in fact worked on eight or nine different assignments during his time at CPR and had also refused at least one assignment offered by Ryan. But under the arrangement between Zoldy and CPR it was Ryan who made the decisions concerning where and when Zoldy would be assigned and how long he would remain on a particular assignment, subject to the right of Zoldy to reject an assignment or decide that he no longer wished to drive on a particular assignment.

¶ 23 On October 22/99 the complainant was informed that his services were no longer needed on the OK Transport account but he was advised that CPR could place him on other accounts. Tracy Ellis also testified that when Zoldy came to CPR's office on October 25/99 he was told that Ryan had accounts other than OK Transport where he could be placed as a truck driver. While Mr. Zoldy refused during his testimony to admit that statements of this nature were made by Ryan on October 22nd and October 25th, he testified that on those days he had told Ryan that he worked only for OK Transport. I find it very likely that such a statement was made in response to statements by Ryan that Zoldy could be placed in a driving position with other clients of CPR. Tracy Ellis testified that on October 25/99 she heard Zoldy say that he now worked only for OK Transport in response to an offer by Ryan of placement on another driving account. I find it difficult to understand what could trigger such a statement by the complainant other than an offer of placement on other accounts by Ryan. Although Mr. Zoldy asserted that he did not receive an ROE until almost two months after October 22/99 and refused to admit that he had asked Tracy Ellis to change the ROE to indicate that he had been dismissed, he indicated in his cross-examination that he went to see Ellis after receiving the ROE to say it was wrong because it should indicate that he was terminated by OK Transport and not by CPR. This evidence is consistent with a finding that Mr. Zoldy rejected an offer of continued placements with CPR clients other than OK Transport on the basis that he was employed by OK Transport and not CPR when he was notified that he was being taken off the OK Transport account. This version of events is also supported by the letters sent by Tracy Ellis to the Windsor HRDC office on November 29/99 (Exh. 49) and by Mr. Ryan to Mr. Fortner of the London office of HRDC on February 2/00 (Exh. 15).

¶ 24 Having considered the evidence before me, I am unable to conclude that the complainant has established that he "has been dismissed" by CPR as required by s. 240(1) for the unjust dismissal provisions in the Code to be applicable. Nor was it established that CPR is a federal undertaking or business or a business which is sufficiently integral to a federal undertaking such that it is subject to federal jurisdiction for the regulation of its employment relations. Thus the preliminary conditions for application of the unjust dismissal

provisions in the Code have also not been established in relation to the complaint against CPR.

¶ 25 For all of the foregoing reasons, I dismiss the complaints of unjust dismissal against both OK Transport and CPR considered herein. I note that both the complainant and CPR requested that they be awarded their costs in this matter. However, I find that this is not an appropriate case for an order for costs and none are awarded.

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