

Citation: *Wells v. Yukon (Department of Justice)*, 2013 YKSM 4

Date: 20130514
Docket: 12-S0098
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON
Before: His Honour Chief Judge Cozens

SHAWN WELLS

Plaintiff

v.

YUKON (DEPARTMENT OF JUSTICE)

Defendant

Appearances:
Shawn Wells
Stephanie Schorr

Appearing on own behalf
Counsel for Defendant

REASONS FOR JUDGMENT

[1] Shawn Wells claims against the Government of Yukon for \$4,143.33 in lost wages for the month of October, 2012, resulting from the circumstances surrounding the termination of his employment at the Whitehorse Correctional Center (“WCC”). In a subsequent document filed January 17, 2013, Mr. Wells purports to extend his claim to cover a three month period from October 31, 2012, although the Claim was not amended to reflect this.

[2] The Government takes the position that this Court has no jurisdiction to hear this matter and, if the Court rules otherwise, opposes Mr. Wells’ claim, stating that the Government complied with all necessary legal obligations in terminating Mr. Wells’ employment.

Facts

[3] Mr. Wells commenced employment at WCC as a Casual Corrections Officer I Training on a term contract (the "Contract"). The period of employment specified in the Contract was to be from April 9, 2012 to October 5, 2012. The Contract included the following as terms:

1. Casual personnel are entitled only to the terms and conditions of employment outlined in Policy No. 3.7 – Casual Personnel Recruitment, Terms and Conditions, and benefits, General Administration Manual, Volume 3.
.....
7. Engagement in a casual job will not be construed as leading to appointment to a permanent position in the Public Service.
8. Unless you are informed in writing that your employment period has been extended, you will cease to be employed at the end of your work day on October 5, 2012.

[4] The work schedule for the month of October, which Mr. Wells testified he saw October 2, showed him as being required to show up at work on October 3, 7, 11-14, 18, 19, 22, 24, 27 and 28. He was shown as being on leave from October 4-6. This was relevant, he states, because a three day leave period was required in order to allow for the transition from a casual employee to an auxiliary on-call employee. This further supported his belief that he was being kept on as an on-call employee for the time being.

[5] On October 3, 2012, Mr. Wells received e-mail correspondence from Clara Northcott, Deputy Superintendent of Operations for WCC, requesting to meet with him on October 4, 2012. She advised him that she was in the process of

converting casual employees to auxiliaries, and wished to ask him some questions. Mr. Wells and Ms. Northcott met on October 4 to discuss his employment status.

[6] Mr. Wells showed up for work as scheduled on October 7, but was advised that he was not on the daily roster for personnel. He subsequently noticed that an e-mail had been sent to him at his work address on October 5 advising him that he was not to show up for work on October 7. The Manager of Correctional Services allowed Mr. Wells to work for a total of 3.5 hours in the morning on October 7. Mr. Wells testified that the officer-in-charge was not aware that Mr. Wells had not been scheduled to work.

[7] On October 9, 2012, Mr. Wells received an e-mail from Ms. Northcott advising him that he would not be scheduled for work until a decision was reached regarding converting his status to auxiliary. She was awaiting further written documentation. She also stated that his casual position could not be extended beyond six months.

[8] There was further e-mail communication between Mr. Wells and Ms. Northcott on October 19. Mr. Wells stated his position that the Defendant was in breach of the Contract and Ms. Northcott replied that she would be in touch with Human Resources.

[9] On October 20, Mr. Wells received e-mails from the Defendant offering him the position of Casual Corrections Officer 1 Training, accepting the offer on

his behalf and then confirming him in this position for the period between April 9, 2012 and October 7, 2012.

[10] On October 31, Ms. Northcott sent Mr. Wells an e-mail advising him that he was not being offered an auxiliary on-call position.

Evidence and Analysis

Jurisdiction

[11] The Defendant's argument on jurisdiction is that the Public Service Commission Regulations state that a casual employee may be released at any time by the Unit or Department Head and has no right of appeal of such a release, either to the Public Service Commission or to an adjudicator appointed pursuant to the *Public Service Relations Act*, R.S.Y. 2002, c. 185 as amended. If there is no statutory remedy then there is no remedy in any court.

[12] This argument was not strongly pursued at trial or supported by case law or other authorities and, without embarking on a lengthy jurisdictional analysis, I decline to accede to it and will decide the case on the merits.

Pay for Period after October 5, 2012

[13] Mr. Wells' position is based upon a number of factors, the details of which he set out in a document entitled "Evidence of Engagement". A significant fact that Mr. Wells relies on is the schedule that had been drawn up showed him working during October. Therefore, it was reasonable for him to assume that once his casual employment ended on October 5, his employment status was being converted to that of an auxiliary on-call employee.

[14] Mr. Wells points to a number of other factors, such as the meeting he had with Ms. Northcott on October 4.

[15] He testified that he remained on the secure Government e-mail, and retained access to WCC and to his uniform.

[16] He testified that he was not paid out monies owed to him until the end of October and that this was longer than the 10 day requirement for a terminated employee, if his employment had ended on October 5.

[17] Mr. Wells states that all of these factors led him to believe that he was expected to remain on-call while his position was in the process of being converted and, as such, he did not seek other employment and remained on-call and available for work.

[18] Tracey Maher from Human Resources testified that only in unusual circumstances is the employer able to ask for and receive permission to extend the employment of a casual employee past the six months less one day time limit specified in clause 1.3.2 of Policy 3.7 in the general Administration Manual. This is done by offering a contract of up to three months. Mr. Wells' case was not one in which the Government sought to extend his casual employment.

[19] She explained that the e-mails of October 20 were intended to allow for Mr. Wells to be paid for his work on October 7, as the Contract only was until October 5. October 7 was still within the six months less one day. The

Government accepted the contract on Mr. Wells' behalf simply to facilitate this payment as, if it wasn't accepted, he would not be paid.

[20] Ms. Maher testified that there was generally a three day break between the end of casual employment and an employee being converted to auxiliary and that this was needed for several reasons.

[21] Ms. Northcott testified and provided information regarding the process of hiring individuals to work at WCC as Correctional Officers.

[22] She testified that the work schedule is done by a personnel assistant using a Schedule Soft program and is done, optimally, two weeks to a month prior to the work period covered. These work schedules can be changed.

[23] She testified that she requested to meet with Mr. Wells on October 4 in order to advise him that he would not be further employed until she received further written documentation. She states that she made it clear to him on that date that he was no longer employed. The meeting lasted approximately just in excess of one hour.

[24] At this meeting she did not offer Mr. Wells any work beyond October 5, 2012. She was surprised to hear that he showed up for work on October 7 after telling him that he had no employment after October 5. She stated that it was unfortunate that he was put to work when he showed up on that day.

[25] Ms. Northcott stated that it is her practice to only meet with individuals who are not going to be extended. She was interested in hearing Mr. Wells'

impression of his time employed as a casual employee. Ms. Northcott stated that, notwithstanding her intent as of October 4 not to employ Mr. Wells further, she was willing to wait for the written evaluations to see if these would offer her a compelling argument to offer Mr. Wells further employment. As such, she had not yet made a final decision on offering him further employment.

[26] Based upon the written evaluations she subsequently received, she decided that she would not offer him any further employment.

[27] Ms. Northcott stated that she sent Mr. Wells the e-mail October 30 regarding him not being offered an auxiliary on-call position at the request of Human Resources, with whom Mr. Wells had been communicating. In her mind his employment had already terminated as of October 5 and this e-mail was to serve as a reminder.

[28] Ms. Northcott testified that she could not explain why Mr. Wells still had his government e-mail account, his access card and his uniform. She stated that IT were responsible for terminating the e-mail, and that even with his access card he had no right of automatic entry to WCC and could have been denied entry by the Control Officer.

[29] Ms. Northcott disagreed that it was reasonable for Mr. Wells to assume from the circumstances that he was still engaged as an on-call employee who had simply not been scheduled for work.

Conclusion

[30] The terms of the Contract between the parties and of General Administration Manual Policy 3.7 that applies to casual employees are clear and unambiguous.

[31] Mr. Wells was employed as a casual employee from April 9 to October 5, 2012. His employment as a casual employee terminated on that date. No written notice of this termination was required and the Contract stipulated the termination date.

[32] Whether Mr. Wells was going to be offered continued employment as an auxiliary on-call Corrections Officer was a matter solely within the purview of the Defendant. There were no time constraints on the Defendant making this decision one way or the other, and it was clear from the evidence that Ms. Northcott had concerns about doing so. She was entitled to obtain all the necessary information she felt that she needed in order to make the decision.

[33] The fact that Mr. Wells was inadvertently scheduled for work during the month of October does not change the terms of the Contract. The evidence is that the schedules could be changed and the individual doing the scheduling was not necessarily aware of what was taking place with respect to conversion of casual employees to auxiliary on-call positions.

[34] I find that Ms. Northcott, in the October 4 meeting, did not say anything that should have caused Mr. Wells, objectively viewed, to believe that his employment was being continued and that he needed to remain on call. In fact, I

accept her evidence that she told him that no decision had been made yet and that, until one was made, he was not employed.

[35] This was further confirmed by the e-mail Mr. Wells was sent on October 5 and again on October 9.

[36] I also find that the e-mail correspondences which the Defendant sent to Mr. Wells on October 20 were simply intended to rectify the situation of his being allowed to work on October 7, in an attempt to ensure that he was properly paid for that work. Viewed objectively, these e-mails did not give rise to a reasonable belief that he was still employed in an on-call position or expected to keep himself available for work, given the clear terms of the Contract, and the information provided to him by Ms. Northcott.

[37] Mr. Wells' employment status had been determined as of October 5, 2012, although it was extended to October 7 solely in order to allow him to be properly compensated for work he had done. This is still within the six months less one day allowable for a casual employee.

[38] In conclusion, I find that the Defendant did not breach the terms of the Contract or any employment legislation or policy. Nor did the Defendant offer Mr. Wells any further employment or request him to keep himself available for work

after October 5, 2012. As such, I deny the Plaintiff's claim.

[39] I decline to award costs to either party.

COZENS C.J.T.C.