Federal Court  Cour fédérale

Date: 20180222

Docket: T-496-17

Citation: 2018 FC 206

Ottawa, Ontario, February 22, 2018

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

CARON TRANSPORT LTD.

Applicant

and

QUENCY WILLIAMS

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of the Adjudicator which upheld the complaint of unjust dismissal by Quency Williams against Caron Transport Ltd. (Caron), under s. 240 of the *Canada Labour Code*, RSC 1985, c L-2 [*Labour Code*].

[2] Caron dismissed Mr. Williams from his employment as a truck driver because of an alleged threat he made against a co-worker. As will be described in more detail below, Mr. Williams wanted to have a discussion with the co-worker about personal items which had been

stolen from his truck. After obtaining a ten-pound sledgehammer from an employee in the shop, he brought the co-worker to an area where they could not be overheard or seen by other employees. Mr. Williams expressed his concerns about theft of his personal items to his co-worker, and said that he would be "watching him". The co-worker denied taking anything from Mr. Williams' vehicles. There are two contradictory versions of what happened next, but there is no dispute that there was a discussion involving the sledgehammer, and a reference to "breaking bones". Caron dismissed Mr. Williams on the basis of this incident. The Adjudicator found that while Mr. Williams' behaviour warranted discipline, Caron's investigation into the incident had been inadequate, and that Caron had not established that the dismissal was justified given the gaps and contradictions in the evidence before him. The Adjudicator ordered Caron to pay severance to Mr. Williams.

[3] Caron submits that the Adjudicator's decision is unreasonable and incorrect because (i) key credibility findings are unclear, (ii) the Adjudicator failed to apply the correct legal tests to the evidence and to the post-dismissal allegations, and (iii) the Adjudicator denied Caron procedural fairness during and after the hearing. It further argues that the Adjudicator's decision cannot stand in light of contemporary attitudes towards workplace violence, as reflected in changes in statutes, regulations, and case-law. Caron says it acted as a responsible employer in adopting a workplace violence policy, taking steps to ensure that all employees were aware of the policy, and then acting on it when Mr. Williams threatened one of their employees. For these reasons, Caron asks that the Adjudicator's decision be set aside and that this Court issue a decision in its favour rather than sending the matter back to another adjudicator.

[4] Mr. Williams, who represented himself before the Adjudicator and at the hearing of this application, maintains that he was unjustly terminated because he did not make any threats against anyone and the employer's investigation was inadequate. He submits that the decision should be upheld.

[5] For the reasons that follow, I am dismissing Caron's application for judicial review.

I. Background

[6] Quency Williams was born and raised in Georgia, in the southern United States. He came to Canada in 1986 and played professional football in Calgary and Winnipeg. Mr. Williams was hired as a truck driver by Caron in July 2014. Before the Adjudicator, he testified that this was the best job he ever had, and that he sent much of the money he earned to support his family in the United States. He often slept in his truck. He also testified that he could "barely read and write" and that he had "never read a whole book" or used a computer. Mr. Williams is a big man. He testified that he was aware his size could intimidate other people and that, for that reason, when talking with others he preferred to be seated or to stand on a lower step than the person he was talking with.

[7] On April 17, 2016, Mr. Williams wanted to have a private conversation with Pierre Fortin, who was the Crew Supervisor of the Heavy Equipment Technicians at Caron's Sherwood Park location. Specifically, he wanted to discuss his concern over personal items which had been stolen from his personal and work vehicles while they were parked on Caron's property. To understand this, it is necessary to go back to the day before.

[8] On that day, Mr. Fortin arrived early at the shop. His evidence before the Adjudicator was that he found a truck blocking an entrance to the shop. He retrieved the keys for the truck in order to move it, and, when he opened the door was surprised to find Mr. Williams sleeping inside. Mr. Fortin testified that he apologized for disturbing Mr. Williams and that he then closed the door and left without moving the truck.

[9] Mr. Williams testified that as the day progressed he thought about this incident and previous thefts of personal items from his truck. Mr. Williams did not think his truck had been blocking the entrance, so he questioned why Mr. Fortin had really obtained the keys and opened the door. I note that it appears Mr. Williams was effectively living in his truck, and so he would have had more personal items in the vehicle than would be common for other drivers and therefore more reason to be concerned about thefts.

[10] In the afternoon of the following day, Mr. Williams drove his truck to the yard, and approached a group of co-workers. He obtained a ten-pound sledgehammer from one of the employees in the yard (although there is some discrepancy in the evidence as to exactly how he did so). The evidence before the Adjudicator was that Mr. Williams then approached Mr. Fortin, and either put his arm around him or put his hand on his shoulder, directing him away from the group of employees and out behind a truck, so that they could neither be seen nor heard by the other employees. Mr. Williams testified that he did this because he wanted to discuss the thefts from his vehicles and he did not want to embarrass Mr. Fortin by raising the matter in front of other employees.

[11] The co-workers testified that they found it “strange” and “intimidating” that Mr. Williams took Mr. Fortin behind the truck; several said they expected to hear screams or shouting. None of them witnessed the discussion between the two men. Mr. Williams testified that he told Mr. Fortin that items had been stolen from his vehicles. Mr. Fortin denied taking anything from the truck. Mr. Williams said that he was not accusing Mr. Fortin of theft because he had not personally witnessed him stealing, but he added that he “would be watching” Mr. Fortin. Following this relatively short conversation the two men walked around the truck back towards the other employees in the yard.

[12] On the way back, a conversation happened about the sledgehammer. Mr. Fortin says he asked Mr. Williams why he had the sledgehammer with him, and that Mr. Williams replied he would “bust up [his] knee and cripple [his] spine”. Mr. Fortin did not present this in his testimony as a direct threat of immediate violence, but rather as a threat of what would happen if Mr. Williams caught him stealing from his truck.

[13] Mr. Williams gave a completely different version of this exchange. His evidence was that he used the sledgehammer as a “walking stick” and put it down during the conversation. He testified that, on their way back, Mr. Fortin had asked him what a sledgehammer was used for, and that he had listed a number of uses, including that “in the old days a slave master would break ankles and legs and crack backs to teach slaves a lesson”.

[14] Mr. Fortin returned to the group of employees and Mr. Williams got into his truck and drove away. Mr. Fortin testified that he was “anxious, frightened and freaked out” by this

sequence of events. When the other employees inquired what had happened Mr. Fortin told them, and several of them said he should report this to management because it was a threat. Mr. Fortin acted on this advice and filed a report with management.

[15] The following day, Mr. Williams was called in to see the Terminal Manager, Kent Dewart, who asked him to write out his version of the events and to hand it in by noon that day. Mr. Williams asked if they could discuss the matter, but Mr. Dewart said no, that he should just write out his statement. Mr. Williams provided a written statement later that day and a supplementary one three days later, on April 21, 2016. The company investigated this incident by asking all of the employees who were present in the yard to write out statements.

[16] Mr. Williams' statement recounts the events of the two encounters described above, and in relation to the exchange about the sledgehammer, he states:

> [Mr. Fortin] ask me what was the slughammer was four and I said that a slughammer is four braking up things like rock and driving spike in the ground and sometime people use it's on then to brake bones of legs and Back Bones! And also be used to fix things (with) that are bent or to straighten things out.
>
> [Spelling as in original.]

[17] The Adjudicator found that this statement was the basis for Caron's decision to terminate Mr. Williams' employment: "Based on Quency Williams admitting to having threatened an employee he was terminated." This is consistent with Mr. Dewart's testimony as summarized in the Adjudicator's decision at para 15:

> Exhibit 7, Mr. William' statement was entered into evidence and in it Mr. Dewart stated Quency Williams threatened Mr. Fortin with a sledge hammer [*sic*]. "You grabbed a sledge hammer [*sic*] and said

> it is used for breaking bones. That looks like a threat to me," Mr. Dewart testified. Pierre Fortin said the same thing in his letter, stated Mr. Dewart.

[18] Mr. Williams' employment was terminated on April 21, 2016, and he was given a short time to gather up his personal effects. The termination letter states the reason for termination in the following way:

> Upon investigation, the information has remained consistent and indicates that acts of intimidation were used by yourself and directed towards your coworker [*sic*]. As defined by the Canadian Centre for Occupational Health and Safety, intimidation is a form of workplace violence and is considered grounds for dismissal.

[19] The letter also includes the following sentence: "Any act of retaliation is considered a criminal offence and will be reported immediately to the appropriate authorities." Mr. Dewart testified that this was an unusual addition to these sorts of letters, and that it was inserted because Mr. Fortin feared that Mr. Williams might retaliate against him.

[20] After Mr. Williams' dismissal, several Caron employees filed a police report, alleging that Mr. Williams had a handgun and had threatened to kill five Caron employees who had been involved in his termination. The RCMP filed a criminal charge against him, and Mr. Williams signed a "common law" peace bond undertaking to stay away from Caron's premises. The criminal charges were dropped. As a result of these allegations Caron adopted supplementary security measures.

[21] Mr. Williams filed a complaint of unjust dismissal with Labour Canada on May 13, 2016. Following a brief investigation process which did not resolve the complaint, he requested that the

matter be referred to an adjudicator. The Adjudicator considered the evidence of ten witnesses and the documentary record, and determined that Caron had unjustly dismissed Mr. Williams. The Adjudicator found that reinstatement was not appropriate in the circumstances of the case; instead, he ordered the payment of eight months' severance pay, less amounts Mr. Williams had earned through alternative employment.

II. Issues

[22] There are two issues in this case:

(i) Is the decision unreasonable, based on the facts and the law?

(ii) Did the Adjudicator breach the requirements of procedural fairness?

[23] I would observe here that the first issue involves a number of elements, which will be outlined below.

III. Analysis

[24] The standard of review of the Adjudicator's decision regarding whether the dismissal was unjust, and in relation to the appropriate remedy, is reasonableness: *Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29 at para 15 [*Wilson*]; *Yue v Bank of Montreal*, 2016 FCA 107 at para 5; *Payne v Bank of Montreal*, 2013 FCA 33 at paras 32-34 [*Payne*]. The standard of review regarding procedural fairness is correctness: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12. While the Federal Court of Appeal has indicated that the matter is not finally

settled (*Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 at para 13) I do not need to delve further into this question given my findings on this issue.

A. *Is the decision unreasonable, based on the facts and the law?*

[25] Caron submits that the Adjudicator's decision is unreasonable because of a variety of errors. It argues that the Adjudicator failed to make clear credibility findings in the face of contradictory evidence, misapplied the test for unjust dismissal, particularly in a case of workplace violence, and failed to take into account Mr. Williams' post-discharge conduct. For all of these reasons, Caron urges me to find that the Adjudicator's conclusion does not fall within the range of possible, acceptable outcomes defensible in fact and law.

[26] Caron urges this Court to step back and look at the incident between Mr. Williams and Mr. Fortin in the context of evolving attitudes toward workplace violence, which are reflected in the evolution of this area of law. Caron submits that while, at one time, society and the law took a relatively permissive approach towards workplace threats – based perhaps on the assumption that such behaviour was normal in male-dominated industrial workplaces and that it was preferable to just let employees "sort it out amongst themselves" – today we find it unacceptable when individuals come to work and are afraid of what might happen to them. This shift in societal attitude is reflected in employers' contemporary legal obligation to adopt and enforce workplace violence prevention policies: s. 125(z.16) of the *Labour Code*; Part XX of the *Canada Occupational Health and Safety Regulations*, SOR/86-304 [*OHSR*]. Against this backdrop, Caron argues that the decision of the Adjudicator simply cannot be allowed to stand.

[27] In my view, the various issues raised by Caron as to the reasonableness of the decision are encompassed in whether the Adjudicator erred in applying the test for unjust dismissal set out in *McKinley v BC Tel*, 2001 SCC 38 [*McKinley*]. The Adjudicator's task in a complaint of unjust dismissal under the *Labour Code* is to apply the *McKinley* test to the facts. This involves an assessment of: (a) whether the evidence establishes, on a balance of probabilities, that the misconduct which forms the basis for dismissal actually occurred, and (b) if so, whether the nature and degree of misconduct warranted dismissal. As explained in *McKinley*, both branches of this test involve a factual inquiry. The test was summarized in a slightly different way in *National Bank of Canada v Lavoie*, 2014 FCA 268 at para 9:

> …[T]hree issues arise when determining whether there was good and sufficient cause for a dismissal, namely, whether the employee committed the impugned act, whether this act warranted a disciplinary action by the employer, and, if so, whether the act was serious enough to warrant the dismissal (*Heustis v. New Brunswick (Electric Power Commission)*, [1979] 2 SCR 768, at page 772 (*Heustis*).

[28] The contemporary approach to reasonableness review begins with *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]:

> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

[29] A reviewing court should approach administrative decisions "as an organic whole, without a line-by-line treasure hunt for error", and should not disturb an administrative decision unless it finds, based on the record, that the decision falls outside the range of reasonable outcomes (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54).

[30] In assessing whether a decision falls within the range of reasonable outcomes, one consideration is whether the reasons for it are adequate. Inadequate reasons are thus not a stand-alone basis for quashing a decision, but rather form part of the reasonableness review itself: "It is a more organic exercise – the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14 [*Newfoundland Nurses*]).

[31] Because the reasons must be read together with the record to determine whether the outcome is reasonable, there are limited circumstances in which a decision which is silent on an issue may be found to be reasonable on the basis of the reasons which "could be" provided in support of a decision (*Newfoundland Nurses* at paras 11-12). In other words, a reviewing court should try to supplement a decision's reasons before it seeks to subvert them (*Newfoundland Nurses* at para 12). Courts have been reluctant to overturn decisions on the basis that the decision-maker did not "check all of the boxes" of a particular legal test, where there is "justification, transparency and intelligibility within the decision-making process": *Bergeron v Canada (Attorney General)*, 2015 FCA 160 at paras 57-63 (application for leave to appeal to

Supreme Court of Canada dismissed: SCC Docket 36701, 2016 CanLII 20436); *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65at para 3; *Antrim Truck Centre Ltd v Ontario (Transportation)*, 2013 SCC 13 at paras 53-54; *Canada (Social Development) v Canada (Human Rights Commission)*, 2011 FCA 202 at para 19.

[32] However, there are limits to this approach. First, as explained in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61:

> [54] …The direction that courts are to give respectful attention to the reasons "which could be offered in support of a decision" is not a "carte blanche to reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result" (*Petro-Canada v. Workers' Compensation Board (B.C.)*, 2009 BCCA 396 (CanLII), 276 B.C.A.C. 135, at paras. 53 and 56)…

[33] Second, a reviewing Court will have difficulty supplementing a decision if there is a complete absence of reasons on a key issue. Without some explanation as to how a result was reached, a reviewing court simply has no basis on which to assess whether the outcome was reasonable, as explained in *Leahy v Canada (Citizenship and Immigration)*, 2012 FCA 227:

> [121] If the reasons for decision are non-existent, opaque or otherwise indiscernible, and if the record before the administrative decision-maker does not shed light on the reasons why the administrative decision-maker decided or could have decided in the way it did, the requirement that administrative decisions be transparent and intelligible is not met: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII), [2011] 3 S.C.R. 708 at paragraphs 14 and 15 (adequacy of reasons is to be assessed as part of the process of substantive review and is to be conducted with due regard to the record ; *Public Service Alliance of Canada v. Canada Post Corp.*, 2011 SCC 57 (CanLII), [2011] 3 S.C.R. 572 and *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 (CanLII), [2011] 3 S.C.R.

> 654 (within limits, the decision can be upheld on the basis of the reasons that could have been given).
>
> [122] Any reviewing court upholding a decision whose bases cannot be discerned would blindly accept the decision, abdicating its responsibility to ensure that it is consistent with the rule of law.

[34] Thus, it is possible to uphold a decision for which the reasons are lacking if the decision is sufficiently grounded in the record because, in such cases, the reviewing court can infer the rationale. On the other hand, a decision may also be overturned where it is silent on the basis for a key legal or factual finding, because the reviewing court is not then in a position to assess whether the decision falls within a range of reasonable outcomes: *Canada v Kabul Farms Inc*, 2016 FCA 143 at paras 31-39; *Wall v Office of the Independent Police Review Director*, 2014 ONCA 884 at paras 59-63; *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 27 [*Delios*]; *Canada v Long Pine First Nation*, 2015 FCA 177 at para 143.

[35] With respect to how a decision-maker's factual and credibility findings figure into the judicial review analysis, it is a core aspect of reasonableness review that courts pay deference to an administrative decision-maker's fact-finding role. Further, it is trite law that making credibility findings and assessing whether a dismissal was "unjust" pursuant to s. 240 of the *Labour Code* lie at the core of the specialized expertise of an adjudicator: *Wilson*; *Payne*; *Patanguli v Canada (Citizenship and Immigration)*, 2015 FCA 291 at para 21[*Patanguli*].

[36] As was recently stated in *British Columbia (Workers' Compensation Appeal Tribunal) v Fraser Health Authority*, 2016 SCC 25 at para 30, "a court must defer where there is evidence *capable of supporting* (as opposed to *conclusively demonstrating*) a finding of fact…Simply put,

this standard precludes curial re-weighing of evidence, or rejecting the inferences drawn by the fact-finder from that evidence, or substituting the reviewing court's preferred inferences for those drawn by the fact-finder." (Emphasis in original.)

[37] A sub-set of fact-finding, which is particularly important in this case, relates to whether it is a reviewable error for an adjudicator to fail to give explicit reasons for preferring one witness' testimony over another's. Unexpressed or unclear credibility findings relate to the adequacy of reasons, and raise a number of considerations.

[38] First, in the face of two contradictory versions of key evidence, a decision-maker must choose which one is to be believed. A decision-maker cannot simply "duck" making credibility findings: see for example *Carewest v Alberta Union of Provincial Employees* (2016), 269 LAC (4th) 177, 127 CLAS 114 at para 76 [*Carewest*]; *Bell Canada v Halle* (1989), 99 NR 149, [1989] FCJ No 555 (QL) (FCA); *Webber Academy Foundation v Alberta (Human Rights Commission Director)*, 2016 ABQB 442 at paras 102-03.

[39] Courts have recognized, however, that credibility assessments can be particularly challenging to articulate and that a fact-finder is not required to detail all conflicting evidence in doing so. The Supreme Court of Canada has dealt with this in the criminal law context, in *R v REM*, 2008 SCC 51 at paras 49-50, though the point is not limited to that domain:

> [50] …However, as *Dinardo* makes clear, what is required is that the reasons show that the judge has seized the substance of the issue. "In a case that turns on credibility… the trial judge must direct his or her mind to the decisive question of whether the accused's evidence, considered in the context of the evidence as a whole, raises a reasonable doubt as to his guilt" (para. 23). Charron

> J. went on to dispel the suggestion that the trial judge is required to enter into a detailed account of the conflicting evidence: *Dinardo,* at para. 30.

[40] Turning now to the case before me, as noted above, the Adjudicator's task was to apply the *McKinley* test to the facts before him. The key conclusions reached by the Adjudicator are expressed in the following paragraphs:

> (59) Caron's investigation of the matter was superficial and amounted to only getting written statements from those involved. There were no face to face meetings with those involved to gather the facts. When Mr. Williams asked to tell his story to Kent Dewart, Mr. Dewart refused to listen and stated, "No, just write out a statement." By Mr. Williams' own admission he can barely read or write.
>
> (60) On the other hand, having a sledge hammer [*sic*] and walking with Mr. Fortin out of the site [*sic*] of any witnesses was not a very smart thing to do. Nor was explaining to Mr. Fortin the uses of a sledge hammer [*sic*] including the breaking of bones. The physical size of Mr. Williams plus the fact he had a hammer in his hand and the mention of breaking bones was blameworthy conduct. That alone constituted grounds for disciplinary action. But it did not constitute sufficient cause for dismissal. Mr. Williams should have received a stern written reprimand and a warning of dismissal if any further incident of a like manner was to occur in the future. The company has the onus of proving there was sufficient cause to terminate the employment of Mr. Williams. In order to prove there was sufficient cause for dismissal there must be evidence that is clear, cogent and convincing. In the case before me there was no such evidence. There were enough gaps in the stories and enough inconsistencies in the evidence of the witnesses to make them less than convincing.

[41] This is the foundation of the Adjudicator's decision. Caron submits that there were a number of errors made, including the failure to make explicit credibility findings, the failure to consider the law regarding threats of workplace violence, an error in rejecting evidence of post-

dismissal conduct, as well as an error regarding the remedy awarded to Mr. Williams. I will consider each of these submissions.

(1) Failure to make credibility findings

[42] Caron points to a number of inconsistencies in the evidence considered by the Adjudicator: how Mr. Williams obtained the sledgehammer (whether he "took it" or it was "handed" to him); whether Mr. Williams put his arm around Mr. Fortin's shoulder, or simply put his hand on his shoulder; whether the two men were in physical proximity and contact, or whether there was space between them when they walked to have their conversation; and what exactly was said about the sledgehammer. Caron argues that the Adjudicator made no explicit findings on these points, and that therefore the Adjudicator simply "ducked" making credibility findings in the face of contradictory evidence, rendering the decision unreasonable. I am not persuaded.

[43] The Adjudicator reviews the evidence in some detail, including the discrepancies noted earlier. The Adjudicator began by outlining the differences between Mr. Fortin's and Mr. Williams' evidence regarding Mr. Fortin's opening of Mr. Williams' truck the previous day: Mr. Fortin said he was accompanied by another employee, Mr. Williams said he was alone; Mr. Williams said his truck was unlocked, and that it was not blocking the entrance, while Mr. Fortin testified that he had to unlock the truck door and that he did so because it was blocking the entrance and needed to be moved. The Adjudicator noted that the other employee who Mr. Fortin said accompanied him that morning was not called to testify.

[44] In relation to the sledgehammer incident, the Adjudicator found that the evidence was "inconsistent and contradictory just like the evidence around the incident of April 16" (at para 56). After reviewing some of the key discrepancies in the witnesses' testimony, the Adjudicator noted that he was "faced with two very different renditions of what took place. There were no witnesses to the events behind the truck. The crew members just saw the two men walk out of the shop and walk back in" (at para 57). The Adjudicator stated that he was left with "one man's word against the other's" (at para 58).

[45] The Adjudicator found that Mr. Fortin was reluctant to make a complaint about the situation, and had to be "talked into it" by the shop crew members (at para 58), and then posed a series of rhetorical questions, including "Was [Mr. Fortin] reluctant because there was not much to the situation? Could it be that Mr. Williams' version of the events is correct and Mr. Fortin was in fact not threatened? Did the incident take on a life of its own with Mr. Fortin not able to stop things without losing face, after the complaint was made?" (at para 58).

[46] Each of these questions reflects the evidence and argument put forward by Mr. Williams:

> [49] Mr. Williams said, "Yes I had a hammer. Yes, I played with it and joked with Dan about it. Yes, I received it from him. Mr. Fortin knows he was never in any threat at any time. That was the reason he did not want to make a complaint in the first place. He knew I didn't do anything. He was in a path he couldn't get out of without losing face. The other witnesses in the shop didn't show any concern for him because they had no reason to be concerned…"

[47] The Adjudicator noted that Mr. Fortin stated the following in cross-examination:

> [10] …Mr. Fortin admitted that Mr. Williams was not a person to be afraid of and that he did not have a problem with him. Nor had

> Mr. Williams ever yelled or swore at him. Mr. Fortin did say he felt threatened about the incident of April 17th and still feels threatened by Mr. Williams now…

[48] Finally, in addition to the findings in relation to the incident, the Adjudicator made the following key finding regarding the adequacy of Caron's investigation of the incident:

> [59] Caron's investigation of the matter was superficial and amounted to only getting written statements from those involved. There were no face to face meetings with those involved to gather the facts. When Mr. Williams asked to tell his story to Kent Dewart, Mr. Dewart refused to listen and stated, "No, just write out a statement." By Mr. Williams' own admission he can barely read or write.

[49] In assessing the credibility of the two accounts, the Adjudicator noted that only Mr. Williams' written statement was entered into evidence, despite the evidence that Mr. Fortin and the other shop crew members had also provided written statements following the incident. The Adjudicator stated: "I find this curious and draw an adverse inference from this" (at para 58). Caron argues that this was an error, because it had provided copies of all of the written statements to the Labour Canada investigator, and had assumed that this material would have been provided to the Adjudicator as part of the file. It states that it was not given notice of the adverse inference, and claims that this amounts to a denial of procedural fairness. I will address this argument below. At this stage, I am satisfied that the adverse inference permits me to understand the Adjudicator's reasoning process.

[50] The case before me can be contrasted with those in which there is either a complete absence of evidence in support of a decision-maker's conclusion, or where the decision-maker gives no indication of which version of events he or she preferred. Here, I find that the

Adjudicator did make and express his findings of fact on the key incident that was relied on by Caron as the basis for the dismissal, and that he also found that Caron's investigation was inadequate, a matter which I will address below.

[51] The Adjudicator's findings on credibility are rooted in a number of factors: the testimony of Mr. Williams (supported by his written statement), the testimony of Mr. Fortin and his co-workers, the failure to introduce their written statements, and the failure to call the employee who Mr. Fortin said witnessed the events of the day prior to the sledgehammer incident. These findings are supported in the record and fall within the range of reasonable alternatives open to the Adjudicator under the *McKinley* test.

(2) The findings relating to the alleged threat

[52] Caron contends that the Adjudicator had to determine whether threats were made and, if so, whether they warranted the dismissal of Mr. Williams: *Awuah v Bank of Nova Scotia*, 2016 CLAD No 8 [*Awuah*]. Caron cites a number of decisions where an employee's threats of workplace violence were found to justify dismissal, and argues that the Adjudicator erred by not following these precedents. I would note that in these cases the threats were established on the evidence, in contrast to the case before me.

[53] For example, in *Canadian National Railway Co v National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 100 (Day Grievance)*, [2013] CLAD No 251 [*CNR*], an arbitrator upheld the dismissal of a long-time railway yard employee for threatening violence towards company officers, in the context of

expressing his frustration with the way that supervisors were managing the yard. The arbitrator found that the grievor had made threats such as saying "no I am not upset but if I was upset there would be bodies laying all over", and also saying "no I am not upset but if I was, I would just shoot somebody" (at para 25).

[54] Similarly in *Awuah*, an adjudicator upheld the dismissal of an employee for making threats. The adjudicator found that the employee was agitated and frustrated because of a problem with a difficult client and, more generally, he had expressed dissatisfaction with his employment situation. The culminating incidence occurred when the employee said the following in an angry tone to a co-worker: "Man, I really need to find a new job. I just want to shoot someone right now" (at paras 80, 93). The decision sets out a number of factors to be considered in assessing whether a dismissal is justified and if not, whether reinstatement is appropriate in a case where there have been threats of workplace violence.

[55] One final example will suffice. In *Dilg v Dr D Sarca Inc*, 2007 BCSC 1716, the decision to dismiss an employee was found to be justified in a situation where a long and somewhat acrimonious employment relationship between a dentist and one of his employees deteriorated after a series of angry confrontations. The employee was found to have said that her husband was angry with the dentist and had told his wife "he wanted to 'kill him'." The adjudicator accepted the evidence of several co-workers that Ms. Dilg had said to them "that if Werner [her husband] ever came through the office door, the staff should hide because Werner was angry. She said that Ms. Dilg used the word "kill" at least two or three times" (para 12). On the basis of this the dismissal was found to be justified.

[56] In all of these cases, there were direct threats of violence made by an employee – either against a specific co-worker or supervisor, or more generally, in circumstances where it gave rise to immediate concerns on the part of the other employees or the employer. These decisions are an indication of the evolution in the social and legal approach to workplace violence, as outlined above. The factual findings that serve as the foundation for these decisions stand in contrast, however, to the findings of the Adjudicator as to what occurred in the case before me.

[57] I do not find that the Adjudicator's failure to enumerate all of the factors listed in *Awuah* or similar decisions cited by Caron amounts to an error which makes the decision unreasonable. The Adjudicator was clearly aware of the key precedents relied on by Caron – they are summarized earlier in the decision. Also, the Adjudicator makes findings relating to both branches of the *McKinley* test. That is what he was required to do, and the failure to specifically address all of the decisions is not, in itself, a reversible error. As the Federal Court of Appeal stated in *Patanguli* (at para 21): "Contrary to what the appellant is suggesting, the adjudicator did not need to examine case law which simply reiterates the general principles applicable to the case."

[58] I can find no error in the Adjudicator's conclusion on this point. This leads to the next alleged error, the failure to consider the post-discharge conduct.

(3) Whether the Adjudicator erred in refusing to consider post-dismissal evidence

[59] Caron argues that the Adjudicator erred in giving no weight to the post-discharge conduct of Mr. Williams, particularly given the employer's legal responsibilities relating to workplace

safety and the maintenance of a violence-free workplace. Here there were allegations of direct threats of violence by Mr. Williams directed towards a number of Caron employees, which resulted in criminal charges. The employer took additional security measures following this, as they were required to do by law. Given that Mr. Williams was discharged for making a threat against a co-worker, the post-discharge conduct was obviously relevant and further confirmation that dismissal was warranted.

[60] As the Adjudicator notes in his decision, the Supreme Court of Canada has ruled that post-discharge conduct can be considered by a decision-maker in the context of an unjust dismissal proceeding "but only where (the subsequent-event evidence) is relevant to the issue before him. In other words, such evidence will only be admissible if it helps to shed light on the reasonableness and appropriateness of the dismissal under review at the time it was implemented" (*Cie minère Québec Cartier v Quebec (Grievances arbitrator)*, [1995] 2 SCR 1095 at para 13 [*Cartier*]; *Toronto (City) Board of Education v OSSTF, District 15*, [1997] 1 SCR 487 at para 74 [*Bhadauria*]).

[61] In applying this test to the facts of this matter, the Adjudicator concluded that the post-discharge evidence does not meet the test, because "it related to a totally different matter and had no bearing on the dismissal of Mr. Williams." I can find no error in this conclusion. In the two cases cited above, the subsequent conduct was factually related to the employer's basis for discharging the employee. In *Cartier* the Court found it was an error for an arbitrator to find that the dismissal for repeated absences caused by alcohol abuse should be "annulled" due to the successful completion of an alcohol abuse program after the employee was fired. In that case, the

employer had repeatedly sought to support and encourage the employee to enter such a program, but the employee had not done so. The employer eventually terminated his employment. The arbitrator found that the dismissal was justified on the facts as they stood at the time of termination. However, the arbitrator also ruled that the dismissal should be "annulled" because the employee had subsequently completed a treatment program. The Court ruled that the justification for the dismissal could not be erased by the post-discharge conduct of the employee.

[62] In *Bhadauria*, the Court found it relevant that an employee who was dismissed for repeatedly expressing extreme and intemperate criticism of his employer in a series of letters had continued his letter-writing campaign after his discharge. This course of conduct was found to be a relevant consideration in assessing whether the dismissal was justified.

[63] Here, there is no factual connection or similarity between the incident which gave rise to the dismissal and the alleged threats that were reported to Caron and which gave rise to the criminal charges. There is no allegation that Mr. Williams actively threatened Mr. Fortin with the hammer or anything else on the day in question; there was no reference to a firearm, no threat of imminent harm. Even if the Adjudicator accepted Mr. Fortin's evidence in its entirety, it amounted to a potential threat of future violence if Mr. Williams found Mr. Fortin stealing things from his truck. As noted earlier, however, the Adjudicator did not accept this version of events.

[64] Caron argues that the statement by Mr. Williams that he "would be watching" Mr. Fortin itself constituted an insidious threat, and the link between these incidents and the post-discharge conduct is the making of threats against Caron employees. Furthermore, Caron submits that the

Adjudicator erred in finding that "because of the ruling in *Cartier*, I am prohibited from relying on the evidence" related to post-discharge conduct. They argue that this was an incorrect statement of the law, and that this warrants a reversal of the decision. The law is that evidence of post-discharge conduct is only admissible if it helps shed light on the reasons for the dismissal. Here the Adjudicator has clearly found that the evidence did not meet this test, and thus he did not rely on the post-discharge conduct. I find no error in this analysis.

(4) Failure to assess appropriate factors regarding remedy

[65] The final aspect of the decision challenged by Caron relates to the Adjudicator's decision on remedy. Caron argues that it was an error not to consider the relevant factors regarding whether misconduct warrants dismissal, as required by *McKinley*. The relevant considerations in a case involving workplace violence are set out in *Awuah*, and Caron submits that the Adjudicator erred in not examining these in light of the facts of this case.

[66] There is no indication that the Adjudicator failed to consider the relevant factors in this case. The Adjudicator took into account the following considerations in assessing the appropriate remedy: the request of the employer that witnesses testify via videoconference because they expressed fear of Mr. Williams; the testimony of Mr. Dewart to the effect that reinstatement would be a major issue given the environment at the workplace; the fact of the common law peace bond; and, most importantly, the fact that Mr. Williams himself had not asked to be reinstated. The Adjudicator concluded that Mr. Williams' conduct was blameworthy and merited discipline, but that it was not sufficient to support immediate dismissal. The Adjudicator did not, however, order reinstatement, in light of all of the circumstances of this particular case. As stated

by the Federal Court of Appeal in *Patanguli*, at para 21: “Moreover, the assessment of the proportionality of the sanction imposed is at the very heart of the adjudicator’s competency and expertise.”

[67] I find that the Adjudicator considered all of the evidence, and applied the correct legal test. I can find no basis to overturn the conclusion of the Adjudicator on this point, given the deference which is due an adjudicator in relation to questions of mixed fact and law.

(5) Adequacy of the investigation

[68] I find there is one other issue relating to the reasonableness of the decision, and that is whether the Adjudicator erred in assessing the adequacy of the investigation. This point was not raised by Caron and, while Mr. Williams referred to it in his submissions, he did not elaborate upon it. In light of the key passage of the Adjudicator’s decision, quoted earlier, I find that this is a key issue which supports my finding that his decision is reasonable.

[69] While there is no general duty on an employer to conduct a thorough and impartial investigation of workplace misconduct, “an employer that fails to conduct an adequate and fair investigation into an allegation of sexual harassment or other misconduct and does not afford the employee a reasonable opportunity to respond to the allegations of misconduct, runs the risk that it may not be able to discharge the burden of establishing cause for dismissal” (*van Woerkens v Marriott Hotels of Canada Ltd*, 2009 BCSC 73 at para 150). This point has been confirmed in a number of other decisions: see *Paulich v Westfair Foods Ltd*, 2000 ABQB 74 at paras 11-14; *Dziecielski v Lighting Dimensions Inc*, 2012 ONSC 1877 at paras 35-41; more generally: Gillian

Shearer, *The Law and Practice of Workplace Investigations* (Toronto: Emond Montgomery Publications Limited, 2017) at 16-22.

[70] This is also reflected in the *OHSR*, which provides a framework to guide employers in conducting these sorts of investigations (the relevant provisions are in the Appendix to this decision). In summary, these provisions require that the employer undertake efforts to resolve a situation of alleged workplace violence as soon as the employer becomes aware of it, and failing that, to conduct an investigation. The relevant provisions set out minimum requirements for such an investigation, including that the employer is to appoint a "competent person" (meaning someone who is impartial and seen by the parties to be impartial) to conduct it, and to report the results to the employer. Although the provisions do not prescribe in detail the particular manner in which the investigation shall be conducted, they reflect an expectation that an investigation of an allegation of workplace violence is to be done in a professional and thorough manner: *Canada (Attorney General) v Public Service Alliance of Canada*, 2015 FCA 273 at paras 28-32; see also *Jacobs v Mohawk Internet Technologies/Sports Interaction*, [2004] CLAD No 322, rev'd on other grounds 2005 FC 123, aff'd 2006 FCA 116, aff'd 2007 FC 38, aff'd 2007 FCA 396.

[71] A further reason to demand an adequate investigation arises from the evolution in society's attitudes on this topic, which means that today it is reasonable to conclude that both the individual bringing the matter forward, and the person accused of wrongdoing, have important interests that should be reflected by the employer's response. As is evident from the facts before me, being accused of threatening a co-worker is a very serious charge, which should require an equally serious and even-handed investigation into the facts. I agree with the following statement

of Arbitrator Monteith in regard to the employer's obligations where workplace violence is alleged: see *CNR* at para 22:

> As with all discipline cases, the employer bears the onus of establishing, on the balance of probabilities, that the employee, in fact, committed the alleged offence. In order to meet the balance of probabilities standard of proof, the employer is required to establish that the misconduct occurred with clear, cogent and convincing evidence. This is, particularly, the case where, as here, the allegations are very serious and egregious.

See also *Carewest* at para 82, where the same point is made regarding the employer's duties in relation to allegations of sexual harassment.

[72] In summary, although Caron's argument on these issues have some force, given the way in which the Adjudicator crafted his reasons, I am satisfied that the both the findings on the key facts and the reasoning process behind those findings are "intelligible". On this point, I would adopt the following guidance from Justice Donald Rennie: "*Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn" (*Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11). I find that in this case it is possible for me to connect the dots because I understand the lines and direction of the Adjudicator's reasoning.

[73] Having reviewed the record and the jurisprudence, and being guided by the deferential approach called for in *Dunsmuir* and subsequent decisions, I find that the Adjudicator's application of the *McKinley* test falls within the range of reasonable alternatives open to him on the facts and the law, and I am not prepared to disturb the decision on this basis. Fact-finding is a task that Parliament has assigned to an expert adjudicator appointed under Part III of the *Labour*

Code, as reinforced by the clear language of s. 243, and an adjudicator's findings should not lightly be disturbed on judicial review.

[74] On this point, I would adopt the following passage from Justice John Evans of the Federal Court of Appeal in *Payne* at paras 80-82:

> [80] It may seem surprising that the facts of the present case would not have been found to warrant dismissal for cause. However, this is a question that Parliament has committed to the Adjudicator. It is not the function of a reviewing court to substitute its view of the merits of a dispute for that of an Adjudicator. The court is limited to the residual role of ensuring that the reasons given by the Adjudicator justify the outcome, and demonstrate that it falls within the range of acceptable outcomes. That range may well include a decision that appears "counter-intuitive" (*Newfoundland Nurses*, at para. 13) to the non-specialist.
>
> [81] Two factors serve to underscore the need for judicial deference in this case: the preclusive clause in subsection 243(1) of the Code, and the degree of discretion inevitably left to the Adjudicator in weighing and balancing the multiple factors of the contextual inquiry mandated by *McKinley*. That context includes the fact that the Code conferred statutory protection against unjust dismissal on non-unionized employees (unionized employees are protected from arbitrary dismissal by "just cause" clauses in collective agreements), in recognition of the power imbalance in the employment relationship and the importance of work in individuals' lives. Dismissal for cause not only summarily terminates an employment relationship, but may also make it very difficult for the employee to obtain comparable employment in the future.
>
> [82] Hence, despite the Adjudicator's finding that Mr[.] Payne's misconduct had been dangerous, reckless, and foolish, his reasons, in my view, justify his conclusion that dismissal for cause was an excessive penalty: the outcome fell within the range of outcomes reasonably open to him on the facts and the law.

(6) Whether the Adjudicator breached the requirements of procedural fairness

[75] Caron raises several concerns regarding the way in which the Adjudicator conducted the proceedings: it was unfair to draw an adverse inference against the company about the failure to introduce the written witness statements into evidence without giving it any notice or opportunity to respond; Caron was denied the opportunity to cross-examine Mr. Williams in relation to a document that he produced after the hearing, at the request of the Adjudicator; and the way that the hearing was conducted gave rise to a reasonable apprehension of bias. I will deal with each of these in turn.

(a) *Adverse inference*

[76] As noted previously, once the incident was reported to management all of the employees were asked to prepare written statements; that was the extent of the investigation conducted by the company. However, only Mr. Williams' statement was entered into evidence. Mr. Fortin and other employees gave oral testimony under oath, but their written statements were not entered into evidence by the company. As I have previously noted, Mr. Dewart referred in his testimony to the written statement of Mr. Fortin, but this document was not introduced into evidence. On this point, the Adjudicator stated: "The written statements of Mr. Fortin and the shop crew members were not submitted into evidence. I find this curious and draw an adverse inference from this. I am left with one man's word against the other's" (para 58).

[77] Caron submits that drawing an adverse inference is unfair, because the Adjudicator never gave them notice of this nor an opportunity to provide this evidence. The written statements had

been provided to the Labour Canada official who conducted the investigation, and Caron states that they had assumed that this would have been included in the information provided to the Adjudicator pursuant to ss. 241(3)(b) and 242(1) of the *Labour Code*. They argue that it was open to the Adjudicator to have issued a subpoena for the written statements, under the provisions of ss. 16 and 242(2)(c) of the *Labour Code*, and that the failure to do so or to give notice of the possible adverse inference amounts to a denial of procedural fairness.

[78] In this case, the written statements could have served as useful evidence of the contemporaneous versions of the events recorded by the key witnesses. The oral testimony before the Adjudicator clearly indicated a number of key discrepancies in the versions of the events and the decision to terminate Mr. Williams rested largely on Caron's interpretation of his version of the events (see para 17, above).

[79] While it was open to Caron to rely mainly on the oral testimony of its witnesses, and only to submit into evidence the written statements provided by Mr. Williams, in my view it is not a breach of procedural fairness for the Adjudicator to note this and to draw an adverse inference. Several factors bolster this conclusion. First, even if the documents had been provided to the Adjudicator pursuant to ss. 241(3)(b) and 242(1) of the *Labour Code*, Caron could not rely on this as a means of them becoming part of the "record" before the Adjudicator. I accept that this was a misunderstanding, but the onus lies upon Caron to put its case into evidence, and it took no steps to verify whether the written statements were in the possession of the Adjudicator.

[80] In addition, the written statements were relevant both in relation to the adequacy of the investigation undertaken by Caron, as well as to the consistency of the witness' version of the key events. The fact that they were not introduced into evidence, in the face of obvious contradictions in the testimony of the witnesses who provided these statements, merited mention by the Adjudicator: see *Aydin v Canada (Citizenship and Immigration)*, 2012 FC 1329 at para 21.

[81] While it would undoubtedly have been preferable for this to have been dealt with by counsel or the Adjudicator at the hearing, I do not find that it was unfair for the Adjudicator to state that it was curious that the written statements had not been introduced into evidence, or to draw an adverse inference from that. As Caron notes, it is not entirely clear what the nature of the adverse inference was, given the other findings of the Adjudicator.

[82] Caron relies on *Norway House Indian Band v Canada (Adjudicator, Labour Code)*, [1994] 3 FC 376, as authority for the proposition that it is a denial of procedural fairness to draw an adverse inference against a party without notice. In that case, however, this Court found that failing to draw adverse inferences against a party who did not testify gave rise to a reasonable apprehension of bias when combined with other procedural errors. The Court ruled that the adjudicator should have given the complainant notice of the consequences of her failure to testify. This is an entirely different situation than the case before me, where a party represented by counsel did not introduce a contemporaneous written record of key evidence, and instead relied mainly on the oral evidence of the witnesses. That was a choice that was entirely open to Caron to make, but it was then open to the Adjudicator to draw his own conclusions from the

fact that, out of all of the written statements that were provided to Caron, only Mr. Williams' written statement was put into evidence.

(b) *Cross-examination*

[83] The next argument regarding a denial of procedural fairness relates to the Adjudicator's denial of Caron's request to cross-examine Mr. Williams on one document about his subsequent employment, a document that Mr. Williams provided after the hearing at the request of the Adjudicator. At the close of the hearing, the Adjudicator asked Mr. Williams to provide documents relating to his past earnings with the company, as well as documents relating to employment he obtained subsequent to the termination. Mr. Williams produced a record of employment from Caron (which Caron had previously provided to the Adjudicator), as well as an earnings statement from a new employer, RSB Logistics. Caron made a request to the Adjudicator to cross-examine Mr. Williams on these documents, which was denied on the following basis at para 62 of the Adjudicator's decision:

> Counsel for the Respondent, subsequent to the hearing and prior to the date of this award, requested the opportunity to question the Complainant on these documents. This request was denied. The documents from Mr. Williams relative to his costs incurred for the hearing and other costs were not considered, given my ruling mentioned above on costs. Secondly, the ROE from Caron was sent to me by the Respondent before the hearing. Third, the RSB Logistic statement of earnings speaks for itself.

[84] Caron argues that the right to cross-examine witnesses is a core aspect of procedural fairness, and the denial of this opportunity in relation to the document was unfair. It says that it wanted to test the credibility of Mr. Williams in regard to his employment, and in relation to

whether he was in the vicinity of Caron's premises after his dismissal. It says that the Adjudicator mis-apprehended the purpose of the request for cross-examination.

[85] It is true that the opportunity to cross-examine witnesses has been found to be a fundamental element of procedural fairness in these types of proceedings. However, the cases tend to involve situations where there was no cross-examination, or it was interrupted or significantly affected by the interventions of the decision-maker. The following statement from *Royal Bank of Canada v Siu*, 2005 FC 1483 at para 58, summarizes the law regarding the situation where there has been a denial of an opportunity to cross-examine:

> In *Noel, supra*, the Court held that inadmissible evidence that was improperly elicited in cross-examination may be subject to re-examination. Similarly, in other labour arbitration jurisdictions, it has been held that a refusal to permit cross-examination or the exclusion of admissible and relevant evidence will provide grounds for review and may result in an order quashing the award if a substantial injustice has resulted therefrom; [citations omitted].

[86] In examining whether a "substantial injustice" has resulted from the denial of the opportunity to cross-examine, it is necessary to consider all of the circumstances of this case. Here Caron undertook a thorough cross-examination of Mr. Williams during the hearing. The complaint here relates to the denial of the opportunity to cross-examine Mr. Williams on one document, relating to his subsequent employment, after the hearing had been completed. I do not find that this amounts to a breach of procedural fairness, in particular where Caron had a full opportunity to test Mr. Williams' credibility on all other aspects of his testimony during the hearing itself.

(c) *Reasonable apprehension of bias*

[87] The final argument on procedural fairness is that the Adjudicator's conduct during the hearing gave rise to a reasonable apprehension of bias. The test for bias is well-known: Committee for *Justice Liberty et al v National Energy Board et al*, [1978] 1 SCR 369 at p 394:

> … the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly."

[88] I will deal with this argument briefly, since I do not accept the argument advanced on this point given the circumstances of this proceeding. Here, Caron was represented by counsel, and Mr. Williams represented himself. As noted earlier, Mr. Williams testified that he can barely read or write and that he has never read an entire book or used a computer. In the circumstances, the fact that he did not follow the accepted rules regarding examination and cross-examination of witnesses, or that the Adjudicator said at one point in the hearing "He's doing pretty well so far, don't you think?" are not the basis for a finding that a reasonable person would think that the Adjudicator was demonstrating bias, real or perceived, against Caron.

[89] I should mention that during the hearing before me, and despite my cautions, Mr. Williams made a number of statements that went beyond the scope of relevant considerations on judicial review. I advised him of that on a number of occasions during the proceedings, and he did not pursue these points. I give no consideration or weight to these matters, and simply note

them for the record. Like the Adjudicator, I view them in the context of an individual seeking to represent himself in a proceeding that is entirely unfamiliar to him.

[90] In addition, Caron argued that the Adjudicator was unduly lenient with Mr. Williams during the hearing – Mr. Williams was permitted to ask leading questions, give evidence when asking questions, repeat questions, and call a witness not on the list. I will not review these points in any detail; suffice it to say that I do not find that the alleged errors, individually or cumulatively, are of such a nature as to give rise to a reasonable apprehension of bias in all of the circumstances of this case.

IV. Conclusion

[91] For all of the reasons set out above, I am dismissing this application for judicial review. In the circumstances, I will make no order as to costs, in exercise of my discretion under Rule 400 of the *Federal Courts Rules*, SOR/98-106.

[92] As will be evident from my reasons, while I am dismissing the application for judicial review, the arguments of Caron have some force, given the way in which the Adjudicator's decision is worded, and in view of the wider context of concerns relating to workplace violence. In particular, given the social and legal context in relation to appropriate responses to workplace violence, the approach of the company is, in many ways, commendable: it has treated workplace violence seriously, it has adopted and implemented a policy, and it reacted when a concern arose.

[93] However, it is the Adjudicator who heard the witnesses and applied the law to the evidence, and this is the task Parliament has assigned to him. My task in reviewing this is not to apply my own view of the matter, but rather to assess whether the decision was within the range of reasonable alternatives in view of the law and the facts, and doing so leads me to conclude that the decision should not be reversed.

JUDGMENT in T-496-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no order as to costs.

"William F. Pentney"
Judge

APPENDIX

Canada Occupational Health and Safety Regulations, SOR/86-304:

Notification and Investigation	**Notification et enquête**
20.9 (1) In this section, competent person means a person who	20.9 (1) Au présent article, personne compétente s'entend de toute personne qui, à la fois :
(a) is impartial and is seen by the parties to be impartial;	a) est impartiale et est considérée comme telle par les parties;
(b) has knowledge, training and experience in issues relating to work place violence; and	b) a des connaissances, une formation et de l'expérience dans le domaine de la violence dans le lieu de travail;
(c) has knowledge of relevant legislation.	c) connaît les textes législatifs applicables.
(2) If an employer becomes aware of work place violence or alleged work place violence, the employer shall try to resolve the matter with the employee as soon as possible.	(2) Dès qu'il a connaissance de violence dans le lieu de travail ou de toute allégation d'une telle violence, l'employeur tente avec l'employé de régler la situation à l'amiable dans les meilleurs délais.
(3) If the matter is unresolved, the employer shall appoint a competent person to investigate the work place violence and provide that person with any relevant information whose disclosure is not prohibited by law and that would not reveal the identity of persons involved without their consent.	(3) Si la situation n'est pas ainsi réglée, l'employeur nomme une personne compétente pour faire enquête sur la situation et lui fournit tout renseignement pertinent qui ne fait pas l'objet d'une interdiction légale de communication ni n'est susceptible de révéler l'identité de personnes sans leur consentement.
(4) The competent person shall investigate the work	(4) Au terme de son enquête, la personne compétente

place violence and at the completion of the investigation provide to the employer a written report with conclusions and recommendations.

fournit à l’employeur un rapport écrit contenant ses conclusions et recommandations.

(5) The employer shall, on completion of the investigation into the work place violence,

(5) Sur réception du rapport d’enquête, l’employeur :

(a) keep a record of the report from the competent person;

a) conserve un dossier de celui-ci;

(b) provide the work place committee or the health and safety representative, as the case may be, with the report of the competent person, providing information whose disclosure is not prohibited by law and that would not reveal the identity of persons involved without their consent; and

b) transmet le dossier au comité local ou au représentant, pourvu que les renseignements y figurant ne fassent pas l’objet d’une interdiction légale de communication ni ne soient susceptibles de révéler l’identité de personnes sans leur consentement;

(c) adapt or implement, as the case may be, controls referred to in subsection 20.6(1) to prevent a recurrence of the work place violence.

c) met en place ou adapte, selon le cas, les mécanismes de contrôle visés au paragraphe 20.6(1) pour éviter que la violence dans le lieu de travail ne se répète.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-496-17
STYLE OF CAUSE:	CARON TRANSPORT LTD. v QUENCY WILLIAMS
PLACE OF HEARING:	EDMONTON, ALBERTA
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APPEARANCES:

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Quency Williams	FOR THE RESPONDENT (ON HIS OWN BEHALF)

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