

**IN THE MATTER OF the  
Occupational Health and Safety  
Act and a complaint pursuant to  
Section 51 of the Act affecting**

**Ryan Simms**

**Applicant**

**-and-**

**13910 Newfoundland & Labrador Inc.  
(Operating as Fewer's Ambulance Service)**

**Respondent**

**Before:** **Sheilagh M. Murphy, Q.C. Chairperson**  
**Geralyn Hansford**  
**Grant Barnes** **Board Members**

**REASONS FOR DECISION**

Summary

1. This matter is an application to the Labour Relations Board pursuant to section 51 of the *Occupational Health and Safety Act* R.S.N.L. 1990, Chapter O-3 (the "*Act*") brought by Mr. Ryan Simms, ("the Applicant") who alleged that his employer (13910 Newfoundland & Labrador Inc. "Fewer's" or "the employer") has taken discriminatory action against him, pursuant to Section 49(c) and (d) of the *Act* when it terminated his employment. He sought damages in the form of one year's salary.
2. On July 20, 2016, the board considered the file, including a review of the application, the reply, response to the reply, attached affidavit evidence, the board's investigation report, and the parties' responses to the report. The board determined that the Respondent did not violate the *Act* as alleged and ordered that the complaint be rejected.
3. Mr. Simms asked that the Board provide reasons for that order. The following are those reasons for that decision.

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## Facts

4. From September 11, 2015 – February 12, 2016 the Applicant was employed as a full-time primary care paramedic (“PCP”) for the employer. He was primarily based at the employer’s location in Holyrood, NL. His direct supervisor was Mr. Cole. The applicant worked a regular rotation. His shifts included non-emergency calls for tasks like patient transfers, as well as emergency calls that would come in over the course of the shift.
5. The employer alleged in its affidavit that it had had a series of incidents with the applicant whereby the employer was not satisfied with the applicant’s performance at work. While the employer was satisfied with the actual hands- on PCP work the applicant was doing, the employer described a series of incidents where the employer was not pleased with the applicant’s behaviour at work. These incidents included the applicant’s behaviour during an ambulance call on New Year’s Eve (December 31, 2015) and an incident concerning his car. The evidence was brought in support of the employer’s argument that the applicant was not a good fit for the company.
6. On February 12, 2016 the applicant was scheduled to work as a primary care paramedic (PCP). He arrived at work inappropriately dressed for his shift, ultimately refused to work, and was terminated as a result of his ultimate refusal to work that day unless the employer provided him with new jeans to work in. This incident formed the basis of his complaint.
7. All parties agreed that industry regulations require that ambulance personnel wear a uniform on ambulance calls. In particular, section 6.09 of the *Ambulance Operations Standards Manual* published by Government of Newfoundland and Labrador Department of Health and Community Services states:

All drivers / attendants must wear a clean uniform or other clothing that readily identifies them as ambulance personnel.
8. The employer noted and the board finds as a fact those industry regulations do not describe the items of clothing that are required, such as shirt, pants, jacket, reflective stripes, etc. or whether it is the employer or the employee who is responsible for supplying the clothing that is to be worn.
9. As a matter of practice, the employer has provided uniforms to its ambulance attendants prior to the start of their employment, in the form of two pairs of pants, two shirts, and an all-season jacket. All parties agree that at all times material to this matter the employer had been experiencing difficulty obtaining new uniforms from its supplier. The Applicant admits he had been supplied with the shirts and pants, albeit used ones, when he commenced work at Fewer’s. Heh was aware that the employer was waiting for new uniforms and had requested new pants for the applicant.



10. All employees of this employer are required to sign a dress code memo before they begin their employment. The applicant received and signed a copy of that dress code memo on September 11, 2015. The memo is on the employer's letterhead, signed by Mr. Simms and witnessed by a representative of the employer. It states:

Company Dress Code

All employee's [sic] must wear the company uniform only when on emergency stand by and on the Ambulance. This includes EMS pants, shirts, jackets and epaulettes that has being [sic] provided. Staff must also wear Black over the ankle steel nose work boots at all times.

Other clothing will not be permitted, i.e. school jackets, sweaters, ball hats. **Only items approved by the company can be worn** and this will identify all our staff, with a professional appearance.

[emphasis added]

11. At some point during his shift on February 11, 2016, Mr. Simms ripped his uniform pants while working. He notified his supervisor (Mr. Power) and the supervisor arranged for two pairs of pants in his size to be delivered to the Holyrood station for him to wear on his shift the next day. Mr. Simms tried on the pants at the end of his February 11 shift and realized they had been hemmed too short. At 18:11 on February 11, 2016 Mr. Simms emailed Mr. Robert Power, the OHS officer at Fewer's, and Mr. Wayne Melendy of Fewer's asking whether he was allowed to wear his jeans to work the next day, as he did not have other pants that were suitable. Mr. Simms admits that he knew another employee had been permitted to wear jeans on a previous ambulance call and this was why he initially suggested in the email that he wear his own jeans until he could be provided with a new uniform.
12. Mr. Simms arrived at work at approximately 07:00 on Friday February 12, 2016. He was wearing jogging pants. He had decided not to wear his own jeans or other pants because he was afraid he would damage them during work and that the employer might not replace them. He waited at the dispatch office in the jogging pants without telling the employer or the dispatcher that he was not wearing appropriate pants and could not therefore answer a call for an ambulance. The employer was unaware that he had no other pants to wear, or that he refused to wear any of his own pants, until 8:45 am when there was a call to pick up a patient and complete a patient transfer.

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13. Mr. Simms took the call and noted all pertinent information for completing the call. The employer's dispatch then thought that Mr. Simms was responding to the call, as he had taken all call information.
14. Mr. Melendy replied to the applicant's email of February 11, 2016 via email at 9:20 am on February 12 and said, "Robert Cole should be able to get something for you. I do believe he has uniforms on order." Mr. Simms replied at 9:25 am saying: "He said to go in jogging pants ? I don't have a stripe can I have this confirmed by ohs? Ryan" .
15. Mr. Simms then called the Occupational Health and Safety Officer, OHS Division, of the Government of Newfoundland and Labrador, at approximately 09:30 and asked whether he could wear his jogging pants in the ambulance. Through a series of telephone calls between Mr. Simms and OHS and the employer and OHS, Mr. Simms was notified by both OHS and the employer that he could wear his jeans on the ambulance call. The employer told him he could go home on the way to the call and pick up a pair of his jeans if he wished.
16. At 10:04 on Friday February 12, 2016, Mr. Robert Power, of Health & Safety, Fewer group, replied to Mr. Simms via email, stating:

Hey Ryan,

Just want to confirm that it is safe for you to do that run without striped pants. Those striped pants are an added security and as long as you have safety vest on along with other required Ppe (goggles gloves and helmet) you are good to go.

As long as it's not jogging pants or any other loose fitting pants.  
If if [sic] you have any further questions. Feel free to contact me.

Robert Power  
Health and Safety  
Fewer Group

17. At 10:09 am Mr. Simms replied to Mr. Power stating:  
  
Thank you for this clarification,  
can you please provide proper pants for me to do this trip?  
Ryan
18. Mr. Simms, in spite of being told by OHS and by the employer that it was safe to wear his jeans in the ambulance, was refusing to work until the employer provided him with pants.
19. The board notes that by then, the patient had waited nearly an hour and a half before Mr. Simms had notified the employer that he was refusing to wear appropriate pants unless they were supplied by the employer, and therefore not



actually taking the call. The employer contacted another PCP to take the ambulance call at approximately 11:30 that morning when MR. Simms ultimately refused to go in the ambulance unless the employer purchased a pair of jeans for him to wear on that call.

20. Mr. Simms admits that after he received the email from Mr. Power he refused to complete the ambulance call in his own jeans because he did not want to risk ruining his own jeans on the call. Mr. Simms alleges that in a subsequent telephone call with OHS the OHS representative said that he didn't have to do the run in his own jeans if he didn't want to and that the representative advised him not to wear his own jeans but request that the employer provide him a pair to wear.
21. The employer states that it received four telephone calls from OHS representatives that morning regarding the pants issue. The employer agreed with the applicant that OHS said it was inappropriate for him to wear jogging pants on the ambulance, and that OHS said jeans would be acceptable to wear in the circumstances. The employer denies being told by OHS that it had to supply the applicant with a pair of jeans to wear that morning, and notes for the record that no OHS order was issued against this employer as a result of the pants issue that morning. In his affidavit, Mr. Power denies that there was ever any conversation between Fewer's and OHS as to who had to provide the jeans or pants Mr. Simms was permitted to wear to work that morning.
22. In his application, Mr. Simms quotes a telephone conversation that purportedly happened between OHS and Mr. Power. Mr. Simms was not a party to that conversation and did not overhear it. Mr. Power, in his affidavit, denies the comments attributed to OHS by Mr. Simms with respect to who had to supply the jeans and whether the OHS officer agreed with Mr. Simms' refusal to wear his own pants that day. Respectfully, the board prefers the evidence of Mr. Power's affidavit as to what Mr. Power discussed in his telephone call with OHS over Mr. Simms' purported evidence of a conversation to which he was not a party and did not overhear.
23. Mr. Simms alleges that he was terminated from his employment as a result of having called OHS about the employer's requirement that he wear his own pants on the ambulance. He argued that the employer has provided false information to the board with respect to the employer's progressive discipline policy and with respect to incidents he had had with the employer in the past. None of that was relevant to the determination of this matter. Nonetheless, Ms. Simms failed to articulate what that alleged false information was or how it could have related to a determination of whether the employer breached the *OHS Act*.
24. The employer noted that it was Mr. Simms who had asked the employer the day before the shift, as evidenced by the email above, whether he could wear his own jeans to work the next day. The employer further noted that while his uniform

pants tore during his previous shift, the employer had provided Mr. Simms with two other pairs of pants in his waist size later that day but Mr. Simms claimed the pants were hemmed too short. Mr. Simms arrived at work at 07:00 on Friday February 12, 2016 wearing jogging pants.

25. The employer terminated Mr. Simms' employment on February 12, 2016 as a result of his "unacceptable" actions that morning, namely refusing to work when OHS told him that it was safe to do so because he wished to have new jeans provided to him by the employer.
26. The employer added that in addition to Mr. Simms' refusal to work on the morning on February 12, 2016, the employer had had a previous issue with Mr. Simms giving less than 24 hours' notice that he would not be able to attend his shift, because of car trouble he knew about well in advance, leaving the employer with reduced ambulance coverage for November 19, 2015. The issue was a car repair, was not an emergency, and left the employer and the community at large short-handed with respect to ambulance coverage. Mr. Simms admits the incident, but argued that the car trouble was worse than anticipated. This incident, along with the February 12 incident, commentary Mr. Simms made on New Year's Eve 2015, and his use of the emergency telephone number to have lengthy conversations with the ambulance dispatcher, was the reasons behind the termination.

#### Arguments and analysis

27. Mr. Simms' essential argument was that he had not been progressively disciplined and ought not to have been terminated as a result of the incident on February 12, 2016. However, it is not for this board to determine whether the employee's employment was terminated appropriately by the employer from the perspective of whether there was progressive discipline, whether appropriate statutory notice was given, etc. The question before this board is whether he was terminated as a result of having refused unsafe work or as a reprisal against him for having contacted the provincial OHS office.
28. The employer noted that both Fewer's OHS representative (Mr. Power) and the Government of NL OHS department, whom Mr. Simms telephoned on the morning of February 12, 2016, advised Mr. Simms that it was safe to wear his jeans to work on that date.
29. Mr. Simms did not wish to work in his own jeans, as he was afraid that they would become stained or otherwise ruined at work. He therefore refused to take a "routine" ambulance call (a routine call is a patient transfer, as opposed to an emergency call) from 8:45 that morning and demanded that the employer provide him with a new pair of jeans to wear on his call. The patient who was awaiting ambulance transportation was made to wait while Mr. Simms refused to put on his own pants to transport the patient and instead argued with the employer that it

should go to a store and buy him new jeans to wear for the call, given that the employer's uniform supply was too far away to practically access at the time.

30. Mr. Simms was of the view that if he wore his own jeans to work and they were ruined during his shift, the employer would not replace those jeans. He did not provide the board with any evidence to suggest that the employer has a policy of not reimbursing employees for the cost of clothing damaged on shift, nor did he provide any evidence that he asked the employer in advance for confirmation that it would pay for the jeans in the event he ruined them that day. Instead, he speculated that they would not be replaced and he refused to work based on the chance that they might have been ruined and the chance that he might not have been reimbursed for them. In the meantime, the patient waited. The employer confirmed that this disregard for the patient was the reason Mr. Simms was terminated and that his termination had nothing to do with occupational health and safety.
31. Given that the OHS office agreed with the assessment of the OHS officer at Fewer's – Mr. Simms could work while wearing his jeans – and Mr. Simms continued to refuse work not because of a safety reason but because he didn't want to soil or damage his personal clothing, and that he kept a patient waiting for an ambulance for hours, the employer terminated his employment.
32. Mr. Simms alleges that the employer terminated his employment because he contacted the OHS office to discuss appropriate pants to wear on his ambulance shift that day. The board found no evidence to support the allegation that he was terminated as a result of his call to the OHS office. The employer did not reference the multiple calls Ms. Simms made to OHS in its ROE or letter of termination or in its discussions with him after her was terminated. He was clearly and unequivocally terminated for having more regard to the cleanliness of his jeans than for the patient who was waiting for ambulance transportation. Mr. Simms evidence was clear – he admits that he refused to work because he didn't want to ruin his clothing, not because he thought it was unsafe to work in his jeans. His evidence of his ultimate refusal to work and the employer's evidence are identical, in spite of his allegations that the employer's information is false.
33. Mr. Simms alleges that he was terminated as a result of telephone calls he made to the Occupational Health and Safety (OHS) Division of the Occupational Health and Safety branch of Service NL. The employer denied that that was the reason for the termination. There was no evidence of discrimination against this employee as a result of his having refused unsafe work: there was no unsafe work to have refused. There was no evidence of the employer having discriminated against him for having called OHS.
34. The employer stated that while it had no issue with Mr. Simms' competency as a paramedic or the quality of the care he provided when he provided it, it was of the opinion that Mr. Simms created unnecessary drama in the workplace, tied up



emergency services telephone lines when advised not to, and was constantly questioning company policy. The employer ultimately terminated his employment, advising him that he was not a good fit with the company, after his refusal to work on February 12. The argued that while its management could have done a better job prior to his termination of documenting and following up with Mr. Simms about the employer's issues with him, his unwarranted refusal to work on February 12 while a patient was waiting was the culminating incident. It terminated his employment.

35. Mr. Simms argued that no one ever advised him that it was improper for him to call the emergency lines to carry on conversations with ambulance dispatch staff, and that he had never had a performance review prior to his termination. These issues are not within the jurisdiction of the board to consider under the OHSA complaint.

Has the employer violated Section 49 of the *Occupational Health and Safety Act*?

36. Sections 49 and 51 of the *Occupational Health and Safety Act* state:

**49.** An employer or union shall not take a discriminatory action against a worker by dismissing him or her or by deducting wages, salary or other benefits, or by taking other disciplinary action against him or her

(a) because of the worker's participation in or association with the committee, worker health and safety representative or workplace health and safety designate at the workplace, or because the worker is a worker health and safety representative or workplace health and safety designate;

(b) because the worker has testified or is about to testify in a proceeding or inquiry under this Act or regulations;

(c) because the worker has given information to the Workplace, Health, Safety and Compensation Commission, an officer or another person concerned with the administration of the Act or the regulations concerning the health, safety and welfare of workers at his or her workplace; or

**(d) because the worker has reasonably refused to work under his or her right to do so under section 45.**

51. (1) Where a worker alleges that his or her employer has taken discriminatory action against the worker for a reason set out in section 49, the worker may,



(a) where a collective agreement is in force between a union, of which a worker who alleges discrimination is a member, and the employer, and the collective agreement provides for the use of a grievance procedure where discrimination is alleged, follow that grievance procedure;

or

(b) apply to the board for a determination as to whether the action was discriminatory.

37. Plain reading of s 49 of the *Act* in the context of the facts in the application is that an employer shall not take a discriminatory action against a worker by taking disciplinary action against him because the worker has given information to another person concerned with the administration of the *Act* concerning the health, safety and welfare of workers at his or her workplace or because the employee has reasonably refused work. The employer has explained why it was of the opinion that the employee did not reasonably refuse to work. The board, after analyzing the file, agreed.
38. The facts in this case show that Mr. Simms' behaviour at work had become a matter of concern with this employer in the months before the date on which his employment was terminated. On the morning of February 12, an incident occurred where an employee refused to work and the employer terminated his employment. Whether the employer rightly or wrongly terminated the employee for cause or without notice was not relevant to the determination of the matter pursuant to the *OHS Act*.
39. There was no evidence presented to show any animosity on the part of the employer as a result of Mr. Simms' telephone calls to OHS. Following his conversations with OHS, Mr. Simms was told it was fine for him to wear jeans on the ambulance run- whether they were his or supplied by someone else. The employer's issue with Mr. Simms was that in spite of his having been reassured by OHS, he then demanded that the employer send someone out to purchase him a pair of jeans to wear, instead of wearing his own clothing, all while a patient was waiting for ambulance transportation.
40. The employer clearly and unequivocally explained that it was the callous disregard for the patient safety and the potential that, throughout the entirety of that morning (7 am – 11:30 am) until he outright refused to board the ambulance unless someone purchased him some pants and was terminated, the employer had an ambulance that was not capable of responding to a call.
41. While the timing of his termination may look suspect to Mr. Simms because he was terminated within hours of having called the OHS office, he must remember that OHS did not consider there to have been a breach of the OHS legislation: he was told and the employer was told that it was safe to work in jeans. In spite of



this, he essentially held the employer ransom that morning – attending work but refusing to work even though he was told it was safe to do so because he didn't want to ruin his personal clothing, all while leaving a patient without ambulance transportation. He was terminated for cause, not for having called OHS.

42. Mr. Simms was unable to show that he was terminated as a result of his calls to OHS and not as a result of his behaviour. The employer was able to show that it terminated his employment for reasons unrelated to his calls to OHS.
43. Mr. Simms alleged that the employer made false statements to the labour relations board with respect to its reason for his termination. He cited the coincidence of the timing of his calls to OHS and his termination and alleged the calls were the sole reason for the termination. The employer denied having made false allegations and reiterated that the termination was based on Mr. Simms' refusal to work because he didn't want to damage his clothing, as discussed above. Mr. Simms failed to show how the employer's statements to the board were apparently false with respect to the *OHS*A determination. On the issue of why he refused to work, the evidence was unequivocal from both sides – he refused not because it was unsafe, but because he didn't want to risk damaging his clothing.

#### Request for a hearing

44. Mr. Simms requested that the board conduct a hearing in this matter. The employer did not. The board considered that the information it had before it allowed it to make the necessary findings of fact and to apply the law to the facts of the application. When possible, the board will choose this manner of proceeding because it is more expeditious and far less costly for all parties than proceeding with a full hearing. (See, as examples, *Ahmad and College of the North Atlantic*, 2016 L.R.B.D. 6; *Pierre Neary v. Pan Maritime Services Ltd* LRB file 4807; 4816 and *Locke's Electrical* [2008] L.R.B.D. 24).
45. This board has, where appropriate, adjudicated matters without hearings with oral evidence. For this application, the board had before it all the documents, emails and statements germane to the issue of whether Mr. Simms was terminated as a result of the calls made to OHS. While a significant amount of the information and arguments put forward in this matter were not relevant to the issue of whether the employer breached the *OHS*A, the evidence with respect to the complaint pursuant to the *OHS*A was also provided and the board was able to consider the merits of the application itself.
46. Mr. Simms filed his application with information attached by way of statutory declaration, then the employer filed a reply to the application, again with affidavit attached, and Mr. Simms filed a response to that reply, with a supporting affidavit attached. The labour relations board officer, in accordance with the provisions of the *Labour Relations Act*, then conducted an investigation into this application and provided an investigation report. That report was then sent to each of the parties for their responses. Combined, the application, replies, responses to the

replies, the investigating officer's report and the responses to the report, along with all exhibits attached thereto, is the evidence and information upon which the board made its findings of fact and upon which it applied the law in this case. The labour relations board is not bound by the rules of evidence in the same manner in which a court is. Specifically, section 15 (2) of the *Labour Relations Act* states unequivocally that the board or a panel may receive or accept evidence and information on oath, affidavit or otherwise that it considers appropriate, whether or not that evidence or information is admissible as evidence in a court of law. For these reasons, and based on the information before it, the board declined to conduct a hearing into the complaint and made its decision.

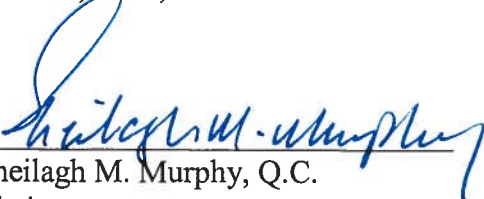
#### Remedy

47. Mr. Simms advised the board that in the event the board found in his favour, he did not wish to return to work with this employer. Instead, he asked that the Board provide him with financial compensation of \$38,000 (approximately one year of his wages at \$18.50/ hour). He then upgraded the claim to one year of wages at \$21.50 / hour (to reflect the new hourly wage rate for ambulance attendants), for a total of approximately \$44,162.00.
48. Because the board did not find in favour of the applicant, it did not need to consider the appropriateness of the request for lost wages.

#### Conclusion

49. Mr. Simms alleged that his employment with this employer was terminated as a result of his having telephoned OHS and refused to work pursuant to s 49 of the *Act*. The facts in this case do not support that allegation. Board therefore dismissed the complaint and made its order accordingly.

Dated at St. John's in the Province of Newfoundland and Labrador this 31<sup>st</sup> day of October, 2016, for the Board

  
Sheilagh M. Murphy, Q.C.  
Chairperson