

BC Employer Awarded Damages for Employee Time Theft Captured by Time-Tracking Software



The recent decision of the BC Civil Resolution Tribunal (the “**Tribunal**”) in *Ms. Besse v. Reach CPA Inc.*, 2023 BCCRT 27, provides a cautionary tale for employees, including those working remotely. The Tribunal dismissed the employee’s claim of wrongful dismissal, and awarded damages to the employer for time theft committed by the employee, who had over 50 hours in discrepancies, as evidenced through a time-tracking software program.

Background

Karlee Besse was hired as an accountant by the firm Reach CPA (“**Reach**”) in September 2021. The parties agreed, among other things, that Ms. Besse could work from home and that Reach would, over time, forgive an advance it made to her for the purchase of home office equipment.

In February 2022, Ms. Besse began having weekly meetings with Reach to discuss time management issues. Reach subsequently installed TimeCamp, a time-tracking program, on Ms. Besse’s work laptop, with her knowledge.

In March, things took a turn for the worse. Ms. Besse was behind schedule and over budget on files, prompting a meeting during which the parties created a performance improvement plan. After the meeting, Reach became concerned about a timesheet entry Ms. Besse had made for a file she had not worked on. Reach analyzed Ms. Besse’s TimeCamp data and discovered about 50 hours reported on timesheets that she did not appear to have spent on work-related tasks. Reach met with Ms. Besse and offered her time to explain the discrepancy in her hours. Ms. Besse declined that offer. Later that day, Reach terminated her employment for just cause.

Ms. Besse filed a claim for wrongful dismissal, seeking \$5,000 in unpaid wages and severance. Reach counterclaimed \$1,506.34 for paid wages that it said amounted to time theft, as well as \$1,096.73 owed on the advance Reach had provided to Ms. Besse for her purchase of home office equipment.

The Decision

Reach submitted that its analysis of Ms. Besse's timesheets and TimeCamp data identified irregularities, and that it had just cause for termination of employment, based on theft of time. It provided the Tribunal with videos showing how TimeCamp tracked Ms. Besse's time and activity.

Ms. Besse contended that TimeCamp was difficult to use and that she could not get the program to differentiate between time spent working and time spent on the laptop for personal use. However, based on the evidence submitted by Reach on the use of TimeCamp, the Tribunal found that Ms. Besse did not have to take steps to get TimeCamp to differentiate between her work and personal activities once she was logged onto the program. TimeCamp automatically recorded activities in such a way that Reach could identify and classify them as work or non-work related. The Tribunal concluded that Ms. Besse did not work on certain files for which she recorded time in her timesheets, and accepted Reach's calculation of 50.76 hours of time theft.

Ms. Besse also argued that she spent considerable time working with paper copies of client documents that would not have been captured by TimeCamp. Ms. Besse said she did not tell Reach that she was working in paper copies because she "knew they wouldn't want to hear that", and she was afraid of repercussions. In response, Reach submitted TimeCamp data to show that the time Ms. Besse spent printing meant that she could not have printed large volumes of documents, which she would have needed to work in hard copy. Additionally, she would have had to enter information into the software eventually, even if working in hard copy, which the TimeCamp data did not show. The Tribunal accepted Reach's evidence, and found that Ms. Besse's printing volume did not add up, and that she did not upload work that she claimed to have done on paper.

The Tribunal concluded that Reach had proved Ms. Besse engaged in time theft. It held that time theft in the employment context is a "very serious form of misconduct", and that the employment relationship had been irreparably broken by Ms. Besse's misconduct, such that Reach had just cause to terminate her employment.

The Tribunal dismissed Ms. Besse's claim for pay in lieu of notice and unpaid wages. It ordered her to reimburse Reach for the amount outstanding under the advance agreement, as well as damages for time theft, plus interest and Tribunal fees.

Key takeaways for employers

This decision is a welcome one for employers, many of whom are concerned about employee time theft, especially in the increasingly common remote work context. In this case, since information in the employee's submitted time sheets did not match the data captured by the time-tracking software, the employer was able to prove not only that it had just cause for termination, but that it was entitled to damages for the employee's theft of time.

We note that in this case, the employee appears to have been aware that the software was installed, since she gave evidence about not fully understanding, and having difficulty using, the program. Employers considering covertly installing software to track employee activity should be cognizant of privacy-

related and other legal risks, and are encouraged to obtain legal advice before acting.

Source: Laura DeVries & Taraneh Ashrafi