

BC Supreme Court Affirms High Threshold When Dismissing An Employee For Just Cause



The BC Supreme Court recently affirmed the high threshold required of employers when purporting to dismiss an employee for just cause. In *Chu v China Southern Airlines Company Limited*, 2023 BCSC 21, the court found that the plaintiff employee had been dismissed without cause and awarded \$150,000 in aggravated and punitive damages in addition to the 20 months reasonable notice period.

In this case, the plaintiff, Mr. Chu, was employed for 8+ years by China Southern Airlines (“CSA”). For most of this time, Mr. Chu was employed full-time as the Marketing and Business Development Manager. The trouble began when CSA’s general manager was replaced in January 2018. The new GM was immediately dismissive of Mr. Chu’s role, started excluding him from management meetings and soon after appointment eliminated the marketing department overseen by Mr. Chu.

In March 2018, Mr. Chu was demoted to a customer service position and his pay reduced by 25%. A few months later, in October 2018, Mr. Chu was demoted again and CSA eventually terminated his employment on February 1, 2019. In the termination letter issued to Mr. Chu, CSA alleged just cause in the form of incompetence and time theft. Prior to the new GM’s arrival, CSA had no complaints about the plaintiff’s work.

Ultimately, the court disagreed with the employer and found that Mr. Chu had been wrongfully dismissed. After determining that a 20 month notice period was reasonable given Mr. Chu’s age (68 years old), level of responsibility and the limited availability of comparable employment, the court went on to award \$50,000 in aggravated damages and \$100,000 in punitive damages. In coming to this conclusion, the court pointed to the “pattern of bad faith abusive conduct” by the employer, including: (1) unilateral demotions to entry-level positions which were humiliating given Mr. Chu’s age, experience and former position; (2) public reprimands; (3) compelling Mr. Chu to sign letters of reprimand he did not agree with; and (4) concocting a memorandum falsely stating that the plaintiff would voluntarily resign if his performance did not improve.

Key Takeaways

While the behaviour of the employer in this case was particularly egregious, this decision serves as an important reminder of the risks associated with improperly alleging just cause for dismissal. Specifically, when considering whether to dismiss an employee for just cause, employers should keep in mind the following:

1. Always ensure that there is an honest and good faith basis to allege just cause. Improperly alleging just cause can result in aggravated and punitive damages in addition to damages for wrongful dismissal; and
2. It is particularly difficult to establish just cause based on incompetence, especially in the case of a long term employee with a good record of performance and only isolated incidents of incompetence. To establish just cause based on incompetence the employer needs to: (1) advise the employee of the performance deficiencies (preferably in writing); (2) advise the employee on how to overcome the deficiencies and provide the employee with support to overcome the deficiencies; (3) give the employee a reasonable amount of time to improve; and (4) warn the employee that their job is in jeopardy if they fail to improve in time.

Also, exercise caution when unilaterally demoting employees as there is a significant risk that this may constitute a constructive dismissal and could lead to additional damages if there is an improper motivation for the demotion.

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