

Can You Make Employees Reschedule a Vacation at the Last Minute?



Sometimes employers approve an employee's vacation request weeks or even months in advance and then ask the employee to cancel her plans at the last moment. Things change. Business picks up or maybe another worker quits or is out sick. Suddenly, the company can't afford to be without the employee even for a short time. Can employers force employees to reschedule their vacations? *The general rule:* Absent an express policy or contract clause to the contrary, employers can't require an employee not to take an approved vacation. But there are exceptions. The cases below illustrate the factors courts use to determine whether employers can force an employee to scuttle her vacation plans at the last minute even if there's no written contract or policy giving the employer this right.

Employer Loses

An operations manager for a small company requests a two-week vacation months in advance so she can visit her family in Barbados. Her employer approves and she books two plane tickets. But a week before the trip, the boss tells her to postpone her vacation or cut it short a week. A hurricane at another plant has completely undermined schedules and the company can no longer cover for the manager's absence. The manager tells the boss that the airline tickets aren't refundable. He promises to reimburse *her* ticket, but not her husband's. So she goes on the vacation anyway. When she returns, there's a paycheque waiting for her with her Record Of Employment indicating that she "quit." She sues for wrongful dismissal.

Decision

The Ontario Superior Court rules that the manager was wrongfully dismissed and orders the employer to pay her \$50,000 in lieu of notice.

Explanation

The court based its decision on two factors:

1. **Employer approved vacation in advance.** The court acknowledged that taking an unauthorized vacation could amount to willful disobedience justifying summary dismissal without pay. But this vacation wasn't unauthorized; it was approved. Vacation time is a "very important benefit" which "should not be interfered with

lightly," the court said.

2. **Employer should have made contingency plans.** Even though the employer didn't foresee the hurricane when it approved the manager's vacation request, it was "unfair and unreasonable" to expect her to change her plans at the last minute and at her own expense because of the disaster. The employer should have had contingency plans to provide coverage in case of an emergency, the court reasoned.

Watson v. Summar Foods Ltd., [2006] CanLII 38233 (ON S.C.), Nov. 14, 2006

Employer Wins

Facts

A regional EI officer with HRSDC has requested and received the same four weeks of July and August off for nine years in a row. She assumes she'll get the same time off this year. But she's in for an unpleasant surprise. HRSDC has decided to implement a new policy of allowing employees to take only three consecutive weeks in July and August, the agency's busiest months. The officer files a grievance, arguing that HRSDC can't change its longstanding practice and that unilaterally implementing the new vacation policy violates the collective agreement.

Decision

The Public Service Labour Relations Board dismisses the complaint.

Explanation

The Board applied the same factors as the Ontario court in *Watson* but with a different result:

Past approvals didn't amount to approval of current request. Past practices—no matter how many—didn't guarantee future approvals of similar vacation requests. The employer informed its employees a few weeks before the summer started that it was implementing a new vacation policy; and it never made any promise to treat future vacation requests the same way that it had treated them in the past.

Employer's refusal was part of company contingency plan. Unlike the employer in *Watson*, HRSDC created its new policy to meet existing service levels during peak periods. The agency recognized the need to give employees a break and found a fair way to do it: by limiting the number of consecutive vacation weeks each employee could take. This wasn't a case of a last-minute fix to make sure the agency would run smoothly. The new policy was applied in advance and to all employees across the board.

Lisett Pronovost v. Treasury Board (Dep't of Human Resources and Skills Development), 2007 PSLRB 93, Aug. 31, 2007