

Court Rules In Favour Of Employee In Dismissal Dispute



The Ontario Superior Court ruled in favour of a dismissed employee and found the employer breached their duty of good faith and fair dealing based on a surreptitious recording of the termination meeting. Employers should always act in good faith in their dealings with employees and failure to do so could result in a successful claim for bad faith damages.

In *Teljeur v Aurora Hotel Group*, the Ontario Superior Court ruled in favour of a dismissed employee, finding the reasonable notice period was seven months, notwithstanding he had a relatively short service period of three years. Additionally, the court awarded him \$15,000 in moral damages.

Background

The employer dismissed a 56-year-old senior manager after three years of employment. The employee was terminated without cause in a closed-door meeting. In the meeting the employee was promised eight weeks of reasonable notice, which exceeded his minimum entitlements under the employment standards legislation. Despite this, the employer limited him to his minimum entitlement.

The employee surreptitiously recorded the termination meeting. A transcript of the meeting was later used as evidence against the employer.

What the Court Said

During the summary judgment hearing, the judge requested a transcript of the surreptitious recording and relied on it to assess whether the employer breached their duty to act in good faith, and whether the employer had in fact provided the employee with an employment opportunity that would have assisted in mitigating his damages.

The employee was awarded seven months' in lieu of reasonable notice notwithstanding the judge found the duration of his employment to be relatively short and dismissed the employer's failure to mitigate argument.

The employee was also awarded \$15,000 in moral damages for employer conduct that was found to be untruthful, misleading, or unduly sensitive. The conduct included:

1. The employer failed to give the employee written notice of termination after the

employee specifically asked on at least three occasions for something “in writing”, contrary to Ontario’s employment standards legislation.

2. The employer failed to deliver the employee’s employment standards entitlements within the prescribed time period set out in the employment standards legislation.
3. The employer failed to promptly reimburse the employee for company expenses he incurred prior to termination in the amount of \$16,680.03. Finding this was a significant financial burden for the employee to carry.
4. The employer promised the employee eight weeks of severance, but then subsequently limited him to his minimum entitlements under the employment standards legislation.

The judge accepted that the above factors added significant stress to the employee’s life on top of the baseline stress associated with being terminated, finding that the employer breached their duty of good faith and fair dealing in the manner in which the employee was dismissed.

Takeaways

Adhering to statutory obligations at all stages of employment is crucial, including in the context of employee terminations. Should an employer make promises and representations to employees, they should be prepared to follow through on them. Failure to do so could result in a successful claim for bad faith damages by a former employee.

The trend of employees surreptitiously recording meetings in the employment context is becoming more prevalent. While there are various considerations regarding the use of such recordings, this decision serves as an important reminder that a surreptitious recording by an employee might be used as evidence against an employer in litigation. In any event, whether an employee is recording a meeting or not, employers should always act in good faith in their dealings with employees.

Link to decision: [Teljeur v Aurora Hotel Group, 2023 ONSC 1324](#)

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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