Court Upholds Employer's Dismissal Of Health And Safety Manager For Cause



In *Lagala v. Patene Building Supplies Ltd, 2024 ONSC 253 (CanLII)*, the employee was dismissed for cause and commenced a wrongful dismissal action against her former employer (the employer also commenced a counterclaim alleging that the employee failed to pay back money that she had borrowed from the employer).

The employee was the Health, Safety and Training Manager for the employer and had been employed with the employer for more than 13 years. She was 53 years old when her employment was terminated for cause on December 18, 2019. The employee was terminated for her management and reporting of a WSIB claim that she made on her own behalf.

The employee alleged that she fell in the parking lot of the employer's Brantford facility on March 28, 2019. However, the employee did not report this accident to her supervisors until October 2019. Prior to reporting the accident to her employer, the employee had initiated a WSIB claim by completing the employer's claim form and had received a decision granting her physiotherapy benefits. WSIB requested that the employee have a supervisor sign off on the employer's claim form, which the employee then sought at the end of October 2019.

The employee's claim then came to the attention of the company's president who investigated the alleged accident and corresponding employee WSIB claim. As a result of the investigation, the employer concluded that it had lost trust in the employee and terminated her employment for cause on December 18, 2019.

The Decision

The Court dismissed the employee's claim (and the employer's counterclaim) and concluded that the employer had cause to dismiss the employee. The Court found that there were significant credibility and reliability issues with the evidence provided by the employee. For example, the employee stated in her evidence that she was too embarrassed by the accident to report it to a supervisor but then also said that she advised another employee of the incident. Furthermore, this individual said that the employee had never told him about the alleged accident in March until she asked him to write an email regarding the incident on October 24, 2019. In addition, the evidence provided at trial did not support the employee's allegation that she had told this individual about her alleged fall in March of 2019.

The Court found that the employee was untruthful to the company about reporting this incident and then attempted to conceal the lie using her relationship with the other

employee who she asked to send the email.

The Court found that the employee's failure to report this accident prior to October 2, 2019 was not only a breach of the employer's policies on accident reporting but also a breach of the *WSIA*. The Court further noted that employee's decision to report her own accident on behalf of the employer also put her in a conflict of interest, which the employee failed to acknowledge. On this aspect, the Court wrote: " [t]he fact that the [employee] was prepared to put herself in this conflict, while denying that it was a conflict, is a significant reason why the [employer] was correct to have lost confidence in the [employee]" (para 77).

The Court noted that the while the employee's misconduct flowed from one incident, it was "…not a one-off lapse in judgment. Instead, the [employee] engaged in a continuing pattern of attempting to hide her failure to report the alleged accident to her employer. The [employee] compounded her misconduct by suborning … a lower-level employee, to help her cover up her failure to report the alleged accident in a timely manner" (para 82).

The Court further elaborated that the "… employee's misconduct, and her dishonesty when confronted with that misconduct, irretrievably destroyed her ability to carry out her employment responsibilities. Put simply, an employer cannot be expected to employ a Health and Safety manager who does not comply with health and safety policies when those policies affect her, and then is dishonest with her employer about what happened after the fact" (para 85).

Key Takeaways for Employers

This case is a welcome decision for employers and demonstrates a circumstance where an employee's misconduct warranted the termination of her employment for cause. Nonetheless, employers must be mindful that courts will consider the whole context of the dishonest misconduct to determine whether termination for cause is warranted and that not every case of employee dishonesty justifies termination for cause.

The team at CCPartners can assist employers experiencing difficulty navigating their termination obligations, with expert legal advice and ways to minimize liability. Please contact one of our **lawyers** who can assist with all of your workplace concerns.

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