

Employee's Right To Be Heard When Terminated: Analyzing Procedural Fairness And Just Cause



In the workplace, employee terminations, especially those involving just cause, can be contentious. A recent Ontario Labour Relations Board decision reaffirmed a crucial aspect of termination law: employers are not necessarily required to provide an employee the opportunity to respond to allegations when terminating for just cause.

Case Overview

In *Max Aicher (North America) Limited v Richard Bell*, 2024 CanLII 78929 (ON LRB), the Ontario Labour Board re-confirmed the common law principle that employers are not necessarily obliged to provide an employee with an opportunity to respond to allegations for just-cause.

In this case, the employer operated a steel rolling mill in Hamilton, Ontario. The employee was hired by the employer in March 2016 as a “roller” who was responsible for operating the portion of the mill that turns billets of steel into rebar, and then cooling the rebar after it has been created. In January of 2023, the employee turned off the water pumps, without telling his colleagues which caused a loss of \$50,000 in production because the rebar was not cooled to meet the client’s request.

This act was investigated, as the water-cooling pumps should have never been turned off in the first place. Accordingly, an investigation was completed because the employer suspected the employee of sabotage. At the end of the investigation, the employer concluded that the employee had attempted to sabotage the work-product of the employer.

However, the employee was not afforded an interview during the investigation, nor was he provided with an opportunity to explain his version of events. He was ultimately terminated with cause, and therefore was not provided any severance.

The employee filed a claim for termination pay and severance pay, arguing that he was not afforded an ability to speak to the allegations. The Ontario Labour Relations Board reviewed the case law on this point.

In *Filion v. The Religious Hospitallers of St. Joseph of Cornwall*, 2016 ONSC 1008, the Court held that, at common law, the question of procedural fairness is not

relevant to the issue of just cause:

The Court's view is that, in common law, the question of "procedural fairness" is not relevant to the issue of just cause. It may be significant to other issues such as general damages flowing from the unfair manner in which the employee was treated by the employer when summarily dismissed. However, it cannot stand as a shield against just cause in existence prior to termination, whether known or not by the employer.

Likewise, the Supreme Court of Canada in *Nicholson v. Haldimand-Norfolk (Regional) Police Commissioners*, [1979] S.C.R. 311, explained in an employment relationship (referred to as a "master-servant" relationship in the case), an employer is not obliged to abide with principles of natural justice, which would include procedural fairness:

The holding of the Divisional Court depended on regarding a police constable as holder of an office, and not as being in an ordinary master-servant relationship qua the Board and the Regional Municipality. **A master-servant relationship would not, per se, give rise to any legal requirement of observance of any of the principles of natural justice.** [Emphasis mine]

Accordingly, the Ontario Labour Relations Board explained that an employer does not owe a duty of procedural fairness to an employee under the Ontario Legislation, when they are terminating them for wilful misconduct:

There is nothing in the Act or the Regulations which imposes a duty of procedural fairness (including the opportunity to be heard) upon an employer who seeks to rely upon an employee's wilful misconduct, disobedience or wilful neglect of duty in invoking sections 2 (1) 3 and 9 (1) 6 of *Regulations 288/01*.

Although employers are not always legally required to provide employees with an opportunity to respond to allegations, it is advisable for employers to conduct interviews with employees facing potential just cause terminations. Providing this opportunity can help ensure a fair process and demonstrate a commitment to thorough and transparent decision-making.

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.

Author: [Mitchell Hayward](#)

Reynolds, Mirth, Richards & Farmer