Employer Awarded Damages For Remote Worker's Time Theft



The advent of remote work has introduced various risks for employers — including the risk that employees may not actually be performing the work they log hours for.

In a recent case heard by British Columbia's Civil Resolution Tribunal (CRT), a terminated employee's claim for unpaid wages and severance pay in lieu of notice was rejected after the CRT found the employee engaged in time theft by logging dozens of hours for work that was never done.

The CRT concluded that the employer had just cause for terminating the employee, who was ordered to pay damages for time theft. While CRT decisions are not binding on the British Columbia Supreme Court or Court of Appeal — or on future CRT decisions — this case nonetheless represents an unusual instance of an employee being ordered to pay damages for stealing time from their employer.

Time-tracking software revealed unaccounted hours

The employee in this case worked remotely for the respondent from October 2021 to March 2022. After the employee raised concerns about her own productivity, the employer installed TimeCamp — a time-tracking software — on the employee's laptop on February 21, 2022.

In March 2022, the employer noticed the employee had logged 50.76 hours in TimeCamp that did not appear to be related to any work-related tasks. On March 29, 2022, the employer had a meeting with the employee to discuss the discrepancy. The employer offered the employee time to consider her response to the information she had been presented with during the meeting. She declined and was terminated later that day.

Employee claimed to be working from hard copies

The employee argued she had trouble getting TimeCamp to differentiate between time spent on personal tasks and work-related tasks. The CRT rejected that argument after viewing evidence that showed TimeCamp automatically recorded her personal- and work-related activities without needing her to differentiate between the two.

The employee also argued she spent much of her time working from hard copies of files. However, TimeCamp's logs showed she hadn't printed enough documents to perform the amount of work she claimed. Furthermore, even if she had been working from hard

copies, she would have had to upload her work at some point, which she never did.

The CRT also considered video evidence from the employer's March 29, 2022, meeting with the employee, in which she said "Clearly, I've plugged time to files that I didn't touch and that wasn't right or appropriate in any way or fashion" after being confronted with the 50.76-hour discrepancy in her time logs.

"Very serious form of misconduct"

The CRT concluded the employer had just cause for terminating the employee, noting that time theft is a "very serious form of misconduct" and granting the employer's counterclaim for damages.

"Given that trust and honesty are essential to an employment relationship, particularly in a remote-work environment where direct supervision is absent, I find [the employee's] misconduct led to an irreparable breakdown in her employment relationship with [the employer] and that dismissal was proportionate in the circumstances," the CRT stated in its decision.

The employee was ordered to pay her former employer a total of $2,756.89, which included payment of her hourly rate for the 50.76 hours and damages for time theft, $28.82 in pre-judgment interest and $125 in CRT fees.

While it's uncommon for employers to be awarded damages for time theft, these awards could become more frequent now that remote work is entrenched in many workplaces.

Privacy considerations

The right for employers to manage employees, including through the use of monitoring technology, must be balanced against the privacy interests of those employees and comply with privacy and employment legislation. Employers looking to implement monitoring technology should first conduct a privacy impact assessment to minimize the risk of non-compliance associated with such technology.

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