Health And Safety Manager Dismissed For Cause For Improper Reporting And Handling Of Her Own WSIB Claim



Bottom Line

Last week, the Superior Court of Justice (the "Court") dismissed a wrongful dismissal claim brought by a Health, Safety, and Training Manager whose employment was terminated for cause. She was dismissed without notice as a result of how she handled her own claim to the Workplace Safety and Insurance Board (the "WSIB") (See *Lagala v. Patene Building Supplies Ltd*, 2024 ONSC 253). The Court found the employer had grounds to have lost confidence in the employment relationship and to therefore terminate that relationship without providing reasonable notice. The employer was not required to pay any damages to the dismissed employee (and its own counterclaim for an alleged unpaid loan was dismissed).

Background Facts

The employee, Ms. Shari Lagala (the "Plaintiff"), was employed as a Health, Safety, and Training Manager for Patene Building Supplies Ltd. (the "Defendant"). She had been in that role for over thirteen years. Patene terminated the Plaintiff's employment after she submitted an employer's claim form (i.e. Form 7) to the WSIB on her own behalf alleging that she was injured while at work. Specifically, she asserted that she fell in the Defendant's parking lot but did not report this to her supervisors until about 6 months afterward. Instead, the Plaintiff initiated a WSIB claim for herself by completing a Form 7 and submitting it to the WSIB without notifying the employer, and received a decision granting her entitlement to physiotherapy benefits. The Plaintiff also asked another supervisor to "sign off" on the Form 7 by dictating to him what to write in an email. The Defendant, having learned of the WSIB claim and the manner in which it was reported, conducted an investigation during which the Plaintiff failed to tell the employer the truth. The employer concluded that it lost trust in the Plaintiff and terminated her employment for cause.

Before these events, the Plaintiff did not have a disciplinary record and was, in fact, a valued member of the Defendant's management team. Her responsibilities included ensuring that the Defendant met its requirements under the *Workplace Safety*

and Insurance Act, 1997 (the "*WSIA*"), that the Defendant had an effective system to certify that all accidents and incidents were properly investigated, and for establishing appropriate policies and procedures to minimize accident costs, including WSIB claims and administration. Indeed, one of the Plaintiff's responsibilities was to prepare company policies in respect of WSIB reporting, and the reporting of injuries and accidents.

The Decision

The Court concluded that the Plaintiff's misconduct, and her dishonesty when confronted with that misconduct, destroyed her ability to carry out her employment responsibilities to the Defendant. The Court noted that while the Plaintiff's misconduct stemmed from one incident, it was "not a one-off lapse in judgment". Instead, the Plaintiff engaged in a "continuing pattern" in her attempts to hide the fact that she did not initially report the alleged accident to her employer. She also failed to protect the employer's interests by delaying in reporting this accident and put the employer in a position where it may have been in breach of the WSIA:

[75] When the Plaintiff went to the emergency department in August of 2019, she had received medical treatment that was, at least arguably, related to the accident. At law, this triggered the notification requirement and the accident had to be reported by the employer within three days. The Plaintiff purported to report the accident on behalf of the employer on September 13th, 2019, weeks later. **By failing to report this accident to the WSIB in a timely manner, the Plaintiff put her employer at risk of being found in violation of section 21 of the WSIA. Section 152(3) of the WSIA states that an employer who fails to comply with section 21 is guilty of an offence. In other words, the sanctions that could have flowed from the Plaintiff's failure to report her alleged accident in a timely way are significant. It was part of the Plaintiff's job to protect the Defendant from these sanctions by ensuring that accidents were reported promptly.[Emphasis added]**

In addition, the Court found that the Plaintiff knew, or ought to have known, that reporting her own accident to the WSIB on behalf of the employer—in her role as the Defendant's representative vis-à-vis the WSIB—placed her in a clear conflict of interest. The fact that she was willing to put herself in this conflict, while denying that it was a conflict, was a "significant reason" why the Defendant was correct to have lost confidence in her. Finally, all of this misconduct was considered in light of the fact that she was directly responsible for the administration of the Defendant's health and safety policies and failed to follow those policies. The Court stated:

[85] The Plaintiff'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. [Emphasis added]**

The Plaintiff's wrongful dismissal action was dismissed (as was the Defendant's counterclaim for an allegedly unpaid loan). The Court also confirmed a longstanding principle that the Defendant's onus to establish just cause was not a "higher standard" of proof because the reasons were of a "fraud or misfeasance" nature. The Court rejected the Plaintiff's argument that the standard of proof was "somewhat higher" than the usual civil standard of a balance of probabilities, instead stating that there is nothing to differentiate an employment law case, even one with a serious allegation of misconduct, from any other civil case.

Takeaway

This decision highlights the importance of having clear and well-communicated policies, procedures, and expectations, including those related to accident reporting and management. It also illustrates the value of having clearly outlined job duties and responsibilities for employees that are consistent with the work that the employee(s) normally performs in that role. Finally, the Court explicitly noted that the employer had conducted a full investigation into the Plaintiff's WSIB claim and obtained all of the relevant documentation. This evidence assisted the employer in establishing the basis for its serious – and substantiated – claims of just cause.

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.

by Diane Laranja
Filion Wakely Thorup Angeletti LLP