

Is It Really Easier To Dismiss An Employee During His Or Her Probationary Period?



BC Supreme Court confirms the lower threshold for dismissing an employee without notice during their probationary period.

Many employers require new employees to complete a probationary period to allow the employer to assess the employee's suitability and fit within the organization. In *Langford v Carson Air Ltd.*, the B.C. Supreme Court considered an employer's ability to dismiss an employee without notice during the probationary period, and offered some guidance on the actual purpose of a probationary period.

Carson Air hired Ms. Langford as a First Officer in August, 2012. Her employment was governed by a written contract, which stated that she would be required to complete a six month probationary period, and that, at any time, she could be dismissed for cause without notice or pay in lieu of notice.

Ms. Langford was scheduled to begin training in September, 2012 but given that she initially lacked a required medical certificate, her training was only completed in November, 2012.

Ms. Langford's first flight was with Carson Air's director, who concluded that Ms. Langford's radio skills were "atrocious" and that her previous flying experience was not relevant to the role. Ms. Langford then completed other flights, always under watchful supervision, and only with experienced captains.

In December, 2012, Ms. Langford brought her dog to work, even though she was scheduled to fly on that day. It was a company requirement that anyone scheduled to fly be available to leave within 30 minutes of being called upon. More significantly, Carson Air also discovered that Ms. Langford was missing a particular qualification which Transport Canada required of all pilots before

allowing them to fly commercially. This meant that Ms. Langford had been flying unlawfully for approximately six weeks.

Carson Air decided to end the employment relationship, on the basis that Ms. Langford was not willing to take responsibility for her actions, and because they were concerned about her lack of judgment. Ms. Langford was informed that she had not successfully completed her probationary period, and was dismissed without further notice or pay in lieu of notice.

Ms. Langford brought a civil action against Carson Air, claiming damages for, amongst other things, wrongful dismissal. The trial judge found that Ms. Langford was dismissed for the following reasons (at para 70):

[...] a failure to fit in with other employees, and a failure on the part of the plaintiff to take responsibility for the difficulties that arose during her employment [...]

Citing an earlier Court of Appeal Case, *Jadot v Concert Industries Ltd. (1997)*, the Court held that the test for dismissal of a probationary employee is "suitability". This is in contrast to the higher "just cause" standard for a regular employee. An employer must ensure that its decision is reasonable and properly motivated, and that the probationary employee is given a fair opportunity to demonstrate suitability. In this case, all of Ms. Langford's claims were dismissed. Interestingly, the trial judge found that Ms. Langford's "sweeping criticisms" of her colleagues at trial confirmed that she did not fit with Carson Air's operations and employees.

Lessons for Employers

- Probationary periods are an excellent tool to assess an employee's suitability for a job, both technically and for "fit".
- The terms of a probationary period, including the employee's entitlements on termination, should be set out in a written employment contract.
- A new employee may be dismissed during his or her probationary period, without notice, on the basis of "suitability", so long as that decision is reasonable, properly motivated, and the employee has been given the chance to prove his or her suitability.

Article by Danny Bernstein