Is Moonlighting Without Permission Just Cause to Terminate?



Don’t let employees compete or use company time for their personal businesses.

Moonlighting can be a tricky issue for HR. While you want to be supportive of full-time employees who must work multiple jobs to make ends meet, moonlighting can also take a toll on energy and productivity. In a worse-case scenario, it can even compromise your business, especially if the employee’s second job happens to be running his/her own business. But as with any other employee transgression, the question of whether you can terminate employees for moonlighting or running a second business depends on an array of factors, as illustrated by the following cases.

Moonlighting Is Not Just Cause to Terminate

Situation

A newspaper advertising sales rep who took up bass fishing as a hobby decided to form a professional bass fisherman’s association. To attract new members, he created a 16-page brochure providing information about the association and general articles about fishing. But the brochure also contained ads to cover the cost of printing, including from advertisers that were also clients he serviced for the newspaper. When the boss found out, he fired the rep, concluding that contacting the newspaper’s advertisers for his own publication was in conflict with his job duties.

Ruling

The Ontario Superior Court of Justice disagreed and awarded the sales rep damages for wrongful dismissal.

Explanation

The Court cited the following factors in concluding that the second job wasn’t just cause to terminate:

- The newspaper didn’t have an HR policy banning employees from moonlighting;
- Running the association and creating the brochure was a hobby and not a competing business;
- He used the phone book and not company resources to contact the newspaper’s clients; didn’t use company re

- He carried out the venture purely on his own time in a way that didn't interfere with or his duties as an ad rep.

Atkins v. Windsor Star, 1994 CanLII 7529 (ON SC)

Moonlighting Is Just Cause to Terminate

Situation

IBM Canada fired a full-time senior salesperson earning $193,000 per year for operating his own private corporation on IBM time. IBM knew of the company because the salesperson disclosed it when he was hired. But via butt dials, it learned that the salesperson was secretly dedicating time he owed to IBM to the personal venture.

Ruling

The Alberta Court of Queen's Bench dismissed the salesperson's wrongful dismissal lawsuit.

Explanation

Key factors supporting the Court's conclusion that IBM had just cause to dismiss for conflict of interest:

- Unlike the newspaper in Atkins, IBM had clear and detailed guidelines for business conduct, including prohibitions on using company time to advance personal interests;
- The salesperson knew of these guidelines and understood that as a senior employee making just under $200,000 was expected to devote all his work energies during the working day to IBM;
- The 3 to 4 hours per week of IBM time that the salesperson spent running his personal corporation was a clear violation of the guidelines;
- The transgressions weren't an isolated incident but a long-term pattern of behaviour.

Ross v IBM Canada Limited, 2015 ABQB 563 (CanLII)

Takeaway

The moral of the Atkins and Ross cases is that employers must have clearly written moonlighting policies so employees understand how far they can go in pursuing their own personal business interests. Totally banning moonlighting may be unreasonable and unnecessary. However, you can impose restrictions, especially for full-time employees, banning engaging in competitive business and using company time for personal business. You should also have clear policies and guidelines for conflict of interest.