Laid Off From Your Job? Don’t Take It Personally



If your employment was unexpectedly terminated today, it’s important to remember it’s not personal, and there is no need to despair or panic.

You are not alone. A very large number of Canadian employees have been dismissed during their careers, many more than once. As result, there is no longer the stigma associated with dismissal (or suing of employers) that existed when I began to practise law.

A microscopic number of dismissals are for performance or conduct. Most – especially during the past several, less economically ebullient, years – are a result of downsizings or organizational readjustment, not performance. Being dismissed seldom makes it more difficult to find new work and getting on with that task is usually the best balm for your wounds.

Statistically, the vast majority of dismissed employees find work that pays close to or greater than what they were making. If you were selected for dismissal, as opposed to being caught up in a wholesale termination, it is likely the job was no longer a good fit and you are better off moving on. What is more corrosively destructive than dismissal is viewing yourself as unproductive or mediocre.

While you are not alone, how you handle the situation is important. Dismissal is not the time to react. Instead, coolly listen to what is being offered, make notes and be sure you understand the details and complexities of the package being offered. Under no circumstances should you accept it without legal advice.

Most employers do not offer as much as a court would nor is it what they are ultimately prepared to pay. Most employers prefer to save money on severances and use the money for their remaining employees. Which means, in most cases, employees can negotiate more than what was initially offered.

Many employers offer severance based on formulas. The courts adhere to none of them – not month per year, week per year or any other equation. The calculation of wrongful dismissal damages is an art, an impressionistic blend of previous decisions and potential factors, the most important being age, position, service, remuneration and re-employability.

Employees with a few months service could obtain as much as a year’s severance, while

someone with 25 years service may get no more than that. Beyond your legal entitlement, another factor in determining what you are likely to obtain is the attitudinal makeup of your employer. Some employers negotiate easily; others less so. Some employers are generous; others, parsimonious. A sense of what co-workers have achieved, what approach they used and how quickly they did so are salient points in planning your approach.

If you are a month or so of severance from a satisfactory solution, you should likely attempt to negotiate it yourself. Otherwise, use a lawyer. Generally, those negotiating on their own are taken less seriously because of the employer's presumption they will not do what is necessary to sue.

What lies ahead if you sue? I heard one employment lawyer on the radio (not CFRB) recently assuring a caller he would get her case settled in a couple of weeks for a dramatically larger amount than what she had been offered, without even knowing who the employer was.

Although less than 1% of employees who challenge their employer end up going to trial, the other 99% settle at some stage along the way. A case I inherited from another lawyer four weeks ago, settled this Monday after eight years. While extraordinary, that length of time is indicative of the vagaries of litigation.

As a general rule, the closer you get to trial, the more your employer will pay. That is why it is in employees' interest to move their case briskly along and not get caught up in the delays and expense of preliminary motions and skirmishes.

Your former employer's belief that you and your lawyer will go all the way to trial and that there is no advantage in delay is critical in settling quickly and well. Ironically, lawyers who specialize in settling" rather than trying cases get the worst settlements of all. Employers pay more if they face a real risk of being taken to trial by an experienced employment litigant than when they are faced with a lawyer who they believe will collapse if they only hold tough.

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