

Let's Revisit: Resignation And Abandonment Of Employment



A recent decision from the Alberta Court of King's Bench¹ examined a situation where an employer deemed an injured employee to have resigned or abandoned their employment pursuant to a workplace policy when they did not return to work on the expected date.

What Happened?

The employee in this case was a commercial truck driver who was injured at work. While the employee was initially able to perform modified duties, he eventually went on a medical leave on the advice of a psychologist.

The employee was expected to return to his full-time position by September 15, 2020 based on his medical documentation. However, there was no communication between the parties between August 14, 2020 and September 18, 2020. The employee did not attend work between September 15-17th and requested reinstatement by letter on the fourth day. The employer took the position that the employee had resigned, relying upon a provision in its handbook policy which stated that employees are considered to have resigned if they are absent for more than three consecutive working days without contacting the employer (the "Resignation Clause").

The employee brought a claim against the employer for wrongful dismissal. The employer took the position that the employee had not been terminated, but either resigned or abandoned his employment.

What Did the Court Decide?

There Was No Resignation

The employee in this case did not have an employment agreement and they were not presented with a copy of the handbook at the start of their employment. The resignation clause was incorporated as an amendment to the company's handbook later on, without the employee's express consent, at which point the employee received and signed it.

The court concluded that the employee was aware of and accepted the Resignation Clause in the handbook. However, the court found that it was not binding on the employee in the situation because:

- it was ambiguous;
- it fundamentally altered the employee's common law rights and therefore required fresh consideration when it was introduced to the handbook; and
- even if it were enforceable, the employer failed to prove that it applied in the circumstances because it was not clear that the days missed were "working days".

The court also found that the employee did not subjectively intend to resign. He wanted to return to work as a driver as soon as he was able and had expressed this in his communications with the employer. The court determined that no employer would have reasonably understood the employee to have resigned based on his actions and communications.

There Was No Abandonment

The court restated caselaw that holds where an employee expresses an intention to return to work when they are better and there is an expected return date, the objective test for abandonment will not be met where the employer has not taken any steps to clarify, or seek an update on, the employee's expected return date. The court found that the employee had not exhibited any intention to abandon his job and had in fact made it clear in his reinstatement request that he wanted to return to work.

Ultimately, the court found that the employee had been wrongfully dismissed without reasonable notice. The employer had failed to provide any notice of termination, and the court found that the response to the employee's absence was not proportionate.

Takeaways

This decision serves as a reminder for employers about their obligations before declaring employees have resigned or abandoned their employment when those employees are absent for medical reasons. Employers should avoid making independent decisions and take steps to ensure clear communications with their employees regarding expectations for return to work.

This decision also reminds employers that policies will be subject to the same scrutiny as employment agreements where they deal with fundamental terms of employment such as termination entitlements.

Footnote

1. *Stonham v Recycling Worx Inc.*, 2023 ABKB 629

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.

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