Not Letting Sales Rep Return to Pre-Leave Job Is Constructive Dismissal



A sales representative who sold to the mining industry wanted his old job back after returning from work after 35 weeks of temporary layoff. But the industry had shifted while he was gone and now nobody was buying the services he had been selling before. So the company offered him a different position. The rep refused to return and sued for constructive dismissal. And he won. The position offered was so fundamentally different that it amounted to constructive dismissal, said the court. Because the mining industry is cyclical, the rep felt there was a good chance that his old service would come back in demand and was willing to accept the risk, the court explained. The employer's refusal to let him do so was constructive dismissal [*Motion Industries (Canada) Inc. v. McCarthy*, 2015 ONCA 224, April 7, 2014].