

# One Strike And You're Out: Employer's Just Cause Dismissal Upheld



The employee, Ms. Steel ("**Steel**"), made a summary judgment application to the Supreme Court of British Columbia ("**BCSC**") for damages for wrongful dismissal from her employment with Coast Capital Savings Credit Union (the "**Employer**").

Steel was a Helpdesk Analyst at the Employer's IT Department and had a 21 year unblemished record of employment. She was dismissed with cause after accessing a confidential document in another employee's "personal folder" without permission, contrary to the Employer's policies and protocol.

## Facts

All employees were assigned a personal folder on the Employer's internal network which was intended to be used by employees to store confidential information pertaining to the company; it could only be read or edited by the individual employee assigned to the file. The only exception to this rule was that Steel, as part of her duties, had access to the employee's personal folders in order to assist them with any technical problems but only after permission was granted by the owner of the file or by authorization of the VP of corporate security. The Employer also maintained strict policies with respect to access to information, and privacy and confidentiality were taken very seriously at the workplace. Each year, Steel acknowledged that she had reviewed, understood and signed off on several policies of the Employer including Acceptable Use Policy, Code of Conduct Policy, and the Information Confidentiality Policy.

On July 22, 2008, Steel accessed another employee's confidential personal file. Her evidence was that she accessed the file in order to retrieve a document related to parking spot eligibility for her manager, Mr. Valdal ("**Valdal**"). Steel said that Valdal was trying to obtain the document from another manager, Ms. Kerr ("**Kerr**"), but was having difficulty reaching her. Steel said that she knew of the document's existence and location because she had assisted Kerr a

few weeks earlier with the file in her personal folder. The confidential document set out a waiting list of employees that were eligible for the limited parking spots at the Employer and also contained information about employees' seniority and pay grades.

While Steel was reviewing Kerr's personal file, coincidentally Kerr also tried to access the same document but received an on-screen notification that the document was already in use by Steel. Kerr immediately reported this to Steel's manager, Valdal, who confirmed that Steel had Kerr's personal file presently open on her computer. Contrary to Steel's evidence, Valdal said that he was not trying to obtain a document from Kerr but rather that Steel had asked him earlier about her eligibility for a parking spot. He told Steel that he would reach out to Kerr to discuss but for Valdal, the issue was not a priority and he did not ask Steel to obtain any such document.

As a result of the incident, Steel was dismissed on a "with cause" basis. The Employer stated in the termination letter that Steel's conduct was a severe breach of trust which resulted in a loss of confidence.

## **Decision**

Madam Justice Ross of the BCSC found that the Employer had established clear policies known to Steel at the relevant time that were to govern access to confidential documents. She found that Steel did not have permission to access the confidential document, accessed it for her own purposes, and found that her actions were in violation of the Employer's policies. Madam Justice Ross held that Steel occupied a position of great trust in an industry of which trust is paramount. In her discussion, she found that Steel violated the Employer's trust in two ways: first by opening a confidential document in another employee's file for her own purpose and second, by violating the Employer's protocols that were to govern situations in which remote access of such documents was undertaken.

Steel's action for wrongful dismissal was therefore dismissed; her conduct in the circumstances was found to amount to just cause for termination by her Employer. A majority of the British Columbia Court of Appeal affirmed this decision and the Supreme Court of Canada dismissed Steel's application for leave to appeal and did not hear the case.

## **Lessons for Employers**

While generally, a single act of misconduct by an employee, especially one with an unblemished, lengthy employment history, is not enough to support a just cause dismissal, this case illustrates that an employee's violation of trust on one occasion, depending on the severity and circumstances of the breach, may be sufficient to support a termination with cause. This case also stresses the value of creating workplace policies and properly disseminating them to employees as this was a key consideration of the Court in this decision.

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