

# Post-termination Evidence Of Dishonesty Substantiates Just Cause



A recent decision in British Columbia has found post-termination evidence of just cause for dishonesty discovered in an investigation of an employee that occurred following his termination.

The plaintiff in this case was responsible for managing the company's day-to-day finances and its administrative staff. The Plaintiff had 40 years of experience as an accountant and had worked at the Defendant company for 14 years. By the end of his tenure he was earning \$60 000 a year. The Plaintiff had been issued a 'gas card' to use for company business during his employment. The Plaintiff's boss learned that he had also been using the gas card for his recently separated wife's car. When asked about this improper use he replied honestly and admitted the fact and added "...but I haven't had a raise in four years."

After conducting a quick investigation, the employer found that the Plaintiff had also been submitting medical expenses for his separated wife contrary to the insurer's policy. Without revealing this, the employer asked the Plaintiff whether there were any outstanding accounting issues he wanted to disclose – the Plaintiff said "no." He was then terminated without notice because of the inappropriate use of the gas card and medical insurance.

Post-termination, the employer conducted a review of files and records associated with the Plaintiff. This investigation revealed evidence of the Plaintiff making two unauthorized salary advances of \$500 each and numerous account errors resulting in substantial financial losses and a significant downward adjustment to the company's inventory valuation.

At trial, the judge found that although it could be proven that the plaintiff had misused the gas card and violated the company's medical insurance policy, the level of dishonesty in these two incidents did not warrant dismissal. It was a misunderstanding about the extent of 'personal use' for the gas card and a misinterpretation of the insurance policy for spouses rather than purely intentional dishonesty.

However, the evidence found post-termination was found to amount to just cause warranting dismissal without notice. The Court concluded that not only were these acts conducted with intentional dishonesty, the Plaintiff was dishonest when he failed to mention them when he was given one last chance to admit any accounting

errors before his termination. This dishonest act was discovered post termination and gave just cause to terminate the Plaintiff's employment.

The take away for employers is that one dishonest act may be a sign of other more surreptitious ones lurking in the closet. After an employee has been terminated it is always useful to review their conduct prior to termination to identify any additional acts of misconduct that may not have been known when the decision to terminate was made. This may include reviews of business records, employee e-mails on company computers or other areas of the business the employee was involved with. Additional post-termination evidence could provide a stronger basis for substantiating a termination than the ones that the original decision was based on, as was the case here.

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