

Reassigning An Employee To Lesser Role Can Be Recipe For Lawsuit



The charade of bumping an employee into a position with little more than a title is a recipe for a lawsuit.

Harry Jodoin, Nissan Canada's senior manager, retail sales and sponsorship, managed the company's advertising and dealer recognition programs, as well as sponsorship programs for the CFL and for Cirque de Soleil, and had a multi-million-dollar budget and two full-time staff. During his 10 years with the company, Jodoin had been rewarded with a string of promotions which, coupled with approbation as to his performance, lead him to believe his career would continue to ascend.

Three days before Christmas, Jodoin was summoned to a meeting and told he was being moved into the newly minted role of senior manager of its vehicle participation program reporting to Jean Luc Lemire. His job would be to promote vehicle sales to staff.

Jodoin suspected something was amiss because he had a testy history with Lemire from years earlier when both worked in Quebec. His fears were quickly realized. In his new job he had no budget, no staff and no direct contact with dealers as much of the work was done online. He was unable to obtain a job description or a list of his long-term goals. He was also moved out of his office into a cubicle with considerable employee traffic and little privacy.

Jodoin's repeated requests for a concrete job plan and appropriate office space were ignored. What he did learn was that his successor in his previous role was Lemire's favoured candidate. Convinced Lemire had manufactured a position to get him out of that role, Jodoin quit and sued for constructive dismissal.

Nissan took the case all the way to trial. It put Lemire on the stand to support its defence that Jodoin had been laterally transferred to a legitimate, important job and that he lacked any grounds to be awarded damages.

Madame Justice Susan Greer of the Ontario Superior Court of Justice disbelieved Lemire's testimony. The clincher, she said, that the reassignment was contrived was the revelation Jodoin's successor spent only half his working time on this supposedly important role. She found that Jodoin had been unfairly demoted from a successful senior manager job into a marginal one stripped of office management functions, budget and position description, and he was awarded hefty damages for constructive

dismissal.

What Nissan Canada hoped to achieve either through its behaviour toward Jodoin or (its quite separate decision of) allowing this case to go to trial with the consequent notoriety remains unclear. But other employers can derive meaningful lessons in managing staff re-assignments and reducing litigation risks:

Strengthen the employment agreement. Many employers have no contracts in place; others, have weakly worded templates. The effect is to default to the courts the ability to circumscribe the employer's powers and trigger constructive dismissal lawsuits. Introduce wording that provides the employer the ability to re-assign staff to meet its changing requirements, even if that would otherwise be a constructive dismissal.

Be responsive. The court was critical of the employer ignoring Jodoin's requests for details about his job.

Maintain the employee's dignity. If an employer is required to re-assign staff, ensure that not only are the compensation and title equivalent but that the employee's public status, including office privileges, remain unaffected.

Screen the bona fides of re-assignments. A robust Human Resources would have challenged a decision to orchestrate an employee's removal from a position into the shell of one.

Keep careful records of your decision-making process. The absence of documentation on critical issues undercut Nissan's credibility and helped tilt the court in Jodoin's favour.

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