

Salesman's Conduct Not Willful So Pay in Lieu of Notice Required upon Termination



Salesman in truck dealership was terminated and denied notice or wages in lieu of notice because the employer alleged the salesman committed willful misconduct qualifying for an exception to the law requiring notice. The salesman had a prior written warning for insubordination related to alleged derogatory comments and threatening remarks made to a senior manager. A subsequent confrontation with a co-worker led to termination. The salesman was confronted in his office by the co-worker with regard to a customer relationship and the salesman allegedly used profanity and was verbally abusive to the co-worker. The salesman claimed he told the co-worker management should handle the dispute and repeatedly asked the co-worker to leave the salesman's office but the co-worker refused. The labour board found the salesman's conduct wasn't willful or violent and didn't fall within exceptions to requirement for providing notice under the Labour Code. The Board said the salesman was confronted in his own office and his requests that the co-worker leave his office were ignored. The prior written warning didn't render this current conduct willful. Additionally, swearing was common at the workplace and the co-worker wasn't physically threatened. So, the salesman was owed notice or pay in lieu. The board also said he was entitled to commissions on sales he made prior to termination because there wasn't sufficient evidence of company practice of splitting commissions or that the salesman had been informed of such practice