

# Small Claims Court Confirms That Accepting New Employment During A Lay-Off Doesn't Automatically Imply Resignation



A recent ruling from the Ontario Small Claims Court offers valuable insights for employers regarding what constitutes wrongful dismissal for an employee on lay-off. In [Hurlbut v Low & Low Limited](#), the Court considered whether an employee who was laid off during the COVID-19 pandemic had effectively resigned when she secured another job during her lay-off period.

The employee began working for the employer in December 2018 as a full-time Funeral Director. When the COVID-19 pandemic hit around March 2020, one of the defendant's locations temporarily closed, leading to the plaintiff's lay-off, which was mutually agreed upon. Despite subsequent discussions about the plaintiff's desire to return to work, the employer didn't have enough work to recall the plaintiff at the time. Facing financial strain, the plaintiff accepted a full-time job elsewhere while still on lay-off. Upon learning of this, the employer claimed she had resigned, as taking a full-time job elsewhere was incompatible with her working for this employer. The plaintiff rejected this argument and sued for, wrongful dismissal damages.

The findings of the Court significantly turned on an email sent by the plaintiff to her employer in November 2020 which stated:

[...]

*I've had to take a temporary job to get through all of this covid crap. Times are tough right now. I'm hoping that when things blow over and restrictions are dropped that I can return to Low's.*

The Court agreed that this email confirmed the plaintiff's intention to return once circumstances allowed.

The Court underscored the employer's duty to seek clarification through dialogue before making assumptions. Had the employer confirmed the plaintiff's resignation and refusal to return if recalled, the employer's view of resignation would have been justified. However, lacking such communication, the Court ruled that the plaintiff was wrongfully dismissed on November 4, 2020, when the employer mistakenly assumed her resignation.

The Court awarded the plaintiff 11 weeks reasonable notice (with her receiving the difference between her salary with the defendant and her earnings with her new employer). The plaintiff was denied moral or punitive damages, with the Court affirming the high threshold for such damages.

## **Takeaway for Employers**

Employers must navigate the complexities of employment relationships and employee rights during lay-offs carefully. Accepting alternative employment during a layoff doesn't automatically imply resignation. An employee can hold multiple jobs, unless specified otherwise in the employment contract or if it's found that the employee is unable to fulfill obligations to both employers.

Moreover, regular communication with employees during layoffs or leaves is crucial. Employers should take employees' statements at face value and refrain from making assumptions without confirmation. Failure to do so can lead to significant repercussions.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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