

When An E-Mail Does Not “Find You Well”: Just Cause Termination Not A Proportionate Response To Employee’s Heated E-Mail



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Employers can be quick to assert that a single instance of employee misconduct is enough to discharge an employee for just cause.

However, in the recent decision of *Lefebvre v. Gisborne Holdings Ltd.*, 2023 BCSC 2231, we see that moving too quickly to discharge an employee for cause can have negative financial consequences for employers – particularly where the underlying fixed-term employment agreement does not provide for fixed notice on termination without cause.

Background

The defendant hired the plaintiff under a contract for fixed-term employment in order to cover a parental leave. The contract provided, among other things, for an 18-month term of employment from May 2, 2022 to October 27, 2023 and a completion bonus of \$5,000 to be paid to the plaintiff on the earlier of two dates: the date of layoff or October 27, 2023. There would be no payment of the completion bonus to the plaintiff in the event of resignation or termination for cause. The contract did not provide for without cause termination of the plaintiff’s employment.

About six weeks into the plaintiff’s employment, an incident arose between her and a client. This led the plaintiff to send an e-mail to the defendant’s human resources manager regarding her communications with the client and her supervisor. In the e-mail, the plaintiff accused her supervisor of engaging in misleading behaviour, criticized the timeliness of her supervisor’s response to the client incident, and implied that she had not been treated with courtesy, honesty and accountability.

The defendant responded to the e-mail on July 7, 2022. It terminated the plaintiff’s employment and provided two weeks of pay in lieu of notice. The plaintiff sued the defendant for damages for wrongful dismissal.

Issue

The main issue in *Lefebvre* was whether the defendant had just cause, based on the e-

mail sent by the plaintiff, to terminate her employment.

Analysis

Applying the test from *McKinley v. BC Tel*, 2001 SCC 38, as recently summarized in *Stevens v. Port Coquitlam (City)*, 2022 BCSC 2090, the task before the Court was to:

1. determine the nature and extent of the misconduct;
2. consider the surrounding circumstances; and
3. determine whether dismissal for just cause was a proportionate response – i.e. assess whether the misconduct, viewed in its proper context, led to a breakdown of the employment relationship or was otherwise irreconcilable with the continuation of that relationship.

Ultimately, the Court found the defendant did not have cause to terminate the plaintiff's employment based on the e-mail. Considering all the circumstances, the e-mail did not constitute insubordination as the defendant had argued. Although it was strongly worded, the e-mail was not shared beyond the human resource manager and did not undermine the authority of the plaintiff's supervisor with other employees. In fact, the e-mail expressed the plaintiff's willingness to follow the supervisor's direction and improve performance. Also significant was the fact that the defendant had a progressive discipline policy that required a verbal warning, a written warning and suspension prior to termination, but the plaintiff had not been disciplined at all prior to the termination.

Ultimately, the termination of the plaintiff's employment for just cause was found not to be a proportionate response to her misconduct. Further, there were no authorities cited by the defendant where analogous conduct was found to justify a termination for cause.

As the plaintiff's contract of employment was for a fixed term, and did not contain a term providing for termination without cause, the Court found that she was entitled to judgment for \$81,100. That was the amount she would have earned had she completed her term of employment.

The defendant argued that an early termination clause could be read into the employment contract based on all the surrounding circumstances. However, based on the reasoning of *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, the Court held that doing so would overwhelm the words of the written agreement.

Takeaways

- Be careful about asserting just cause for termination. Obtain legal advice to determine whether the misconduct at issue can actually justify a termination for cause.
- Make sure that any discipline issued to an employee is consistent with existing progressive discipline policies.
- For employees on fixed-term contracts of employment, ensure that there is a term in the contract which explicitly authorizes early termination on notice or pay in lieu of notice.

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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