

Fulcrum Search Science Inc.

Just Cause Terminations



So you want to fire an employee for dishonesty. Be very careful.

A recent court case demonstrates yet again that it is generally difficult to prove just cause for termination - especially for long-term employees.

In June 2001, the Supreme Court of Canada (SCC) concluded that just cause for termination exists where dishonesty violates the essential condition of the employment contract, breaches the faith inherent in the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.

In particular, the SCC directed judges or juries, as the case may be, to decide (1) whether the evidence establishes deceitful conduct on the balance of probability, and (2) if so, whether the nature and degree of the dishonesty warrants dismissal.

In other words, the SCC decided that not all cases of dishonesty amount to just cause.

Whether or not an act of dishonesty amounts to just cause will involve an analysis of the surrounding circumstances, its level of seriousness, and the extent to which it impacted upon the employment relationship.

In 1994, BC Tel fired Martin McKinley, 48 years old, after almost 17 years of service while he was sick leave for high blood pressure. Mr. McKinley worked as Controller, Treasurer & Assistant Secretary to certain BC Tel companies. At trial, BC Tel alleged Mr. McKinley was fired for just cause because he was dishonest about his medical condition and the treatments that were available for it; that is, Mr. McKinley did not disclose to BC Tel that he was medically able to resume work and if necessary, he could have used beta blockers to control his blood pressure.

In the McKinley case, the SCC concluded that although Mr. McKinley may not have provided full disclosure of all material facts concerning his medical condition to BC Tel, there was no basis for interfering with the jury's verdict that BC Tel did not have just cause to terminate Mr. McKinley's employment. The British Columbia jury awarded Mr. McKinley 22 months' notice of termination, plus 4 additional months' notice for bad faith termination.

Employers can avoid the result in the McKinley case by using a specific penalty clause in a written employment contract. For example, if you consider dishonesty in connection with your sick leave plan to be serious misconduct warranting dismissal, you can include a clause in your standard employment contract which states that the employee agrees that if s/he claims sick leave when s/he is not sick, then the employer has just cause to terminate his or her employment without notice.

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