



Case Law Update – February 2023

Just Cause for Dismissal is not an Insurmountable Barrier

Employers terminating employees for “just cause” must show that the employee’s misconduct gave rise to a breakdown of the employment relationship. This is generally a high bar to meet, and many employers hesitate to terminate for just cause even where they believe they have met the required threshold.

In previous articles, we examined how disparate adjudicators can be when assessing cause for dismissal. In *Besse v. Reach*, the Court found that the employer had just cause to terminate a [remote employee who engaged in time theft](#). However, in *Stevens v. Port Coquitlam*, the court found that a municipal employer did not have just cause to terminate an employee who [used the employer’s facilities to wash his personal vehicle](#).

Courts must ask three questions when determining whether an employer was justified in summarily dismissing an employee without notice or pay in lieu of notice:

1. What was the nature and extent of the misconduct?
2. What were the surrounding circumstances of the misconduct?
3. Was summary dismissal a proportional response to the misconduct?

Below we will examine a recent case where the employer successfully argued that summary dismissal was a proportional response.

In [Park v. Costco Wholesale Canada Ltd](#), the Plaintiff had 20 years of service at Costco when he was terminated for cause after twice deleting a website he had created for Costco’s use. At the time of the alleged misconduct, the Plaintiff was working as an Assistant Buyer in the toys department – a managerial level position which gave him security access and editing capabilities on various Costco systems. The Plaintiff had also built a website for the department in late 2014. The website was Costco property and allowed users in the department to share files. In January 2015, the Plaintiff had sent management a link to the website asking for feedback but received no reply.



During this same time, the Plaintiff was experiencing interpersonal conflicts with his direct managers which left him frustrated and resulted in two medical leaves. The Plaintiff returned to work in February 2015 and in March 2015, the Plaintiff presented medical documentation to his manager supporting a transfer to another department. Costco agreed to the transfer and on March 30, 2015, Costco announced that the Plaintiff would be transferred from the toy department to the lawn and garden department effective April 13, 2015.

The Plaintiff began working in his new role on April 13. On that same date, his prior managers in the toy department requested access to the website the Plaintiff had created as well as transfer of ownership for the site. The Plaintiff instead deleted the website. The Plaintiff's prior manager expressed disappointment with the Plaintiff's action and advised the Plaintiff that he should have obtained permission before removing the site from Costco's systems. The Plaintiff replied as follows:

Wow!

I was using the site for my use, no one was interested.... exactly how many times should I be asking for an update, can I not trust in my managers to be able to get back to me in a timely manner and not ignore my requests?

They need to take some ownership and responsibility.

Jason replied in Jan, saying he would look at it when he got back from China...maybe you need to review with your managers how to manage their workloads...I shouldn't have to babysit and always have to do the follow-up.

Costco was able to restore the website, but the Plaintiff again deleted it – this time permanently. At trial the Plaintiff testified that he did not know the website had been restored and thought he had failed to delete it properly the first time. He acknowledged however that both deletions were deliberate. Costco conducted an IT investigation which discovered the Plaintiff's misconduct and terminated the Plaintiff for cause.



Costco argued that the Plaintiff had destroyed company property and that his insubordinate and dishonest actions amounted to willful misconduct warranting dismissal for just cause. The Plaintiff argued that his actions demonstrated poor judgement but did not justify termination for cause. In assessing the nature and extent of the misconduct, the trial judge found that the Plaintiff's deliberate deletions of the website coupled with his dishonest and contemptuous remarks to his manager when questioned about the deletions amounted to insubordination contrary to the terms of his Employment Agreement.

In considering the surrounding circumstances. The trial judge noted that the Plaintiff was 43 years old and had almost 20 years of positive service with Costco, however, the Plaintiff was a managerial employee who had violated Costco's ethical standards when he acted without integrity, honesty, or forthrightness. Lastly, the trial judge found that the Plaintiff's actions were sufficiently serious to warrant dismissal:

It was indispensable to the parties' employment relationship that Mr. Park exercise the duties of his position with integrity and honesty. When Mr. Park's acts of misconduct are considered collectively, and in the context of his position, the degree of trust reposed in him by Costco, and the Employee Agreement, I find that termination for cause was a proportionate response (at para 83).

The trial judge concluded that the Plaintiff engaged in wilful misconduct justifying termination for cause; the plaintiff's claim of wrongful dismissal was dismissed.

Key Takeaways for Employers

What constitutes "just cause" for termination will vary depending on context. However, courts have generally held that misconduct amounts to cause where,

- It violates an essential condition of the employment contract.
- It breaches the trust/faith that is inherent in the working relationship.



HUNTER-LIBERATORE-LAW

- It is fundamentally or directly inconsistent with the employee's obligations to the employer.

The article in this update provides general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hunter Liberatore Law LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hunter Liberatore Law LLP.