Drinking and Driving While Off Duty? Not Always Sufficient Cause for Termination

April 05, 2018

Previous decisions in Canada have confirmed that off-duty conduct of an employee may form the basis for termination from employment. However, not all off-duty conduct, even where it is of a serious nature, will be sufficient to constitute cause. This was the finding in a recent decision before the British Columbia Supreme Court involving an assistant fire chief caught drinking and driving in a municipal-owned truck while off-duty.

Background

In *Klonteig v. District of West Kelowna*, 2018 BCSC 124, Mr. Klonteig, an assistant fire chief of the District of West Kelowna (the "District") was issued a 90-day administrative driving prohibition after being pulled over for suspected impaired driving when returning home from a date night with his spouse. At the time, he was driving a truck belonging to the fire chief (with his permission) and owned by the District, which was impounded.

Mr. Klonteig immediately reported the incident to the fire chief and the human resources advisor and was honest about what occurred. On an initial mistaken belief that Mr. Klonteig had received a less serious, 24-hour suspension, they discussed issuing him a written reprimand; however, upon realizing the more serious suspension had been issued, he was sent home and his employment was suspended. The fire chief and human resources advisor were not in support of terminating Mr. Klonteig's employment for cause given his status as an exemplary employee who was well-respected with no prior incidents of discipline. Mr. Klonteig was distraught and very remorseful of his conduct.

The decision, however, rested with the chief administrative officer, who was angered by the risk to public safety and potential liability to taxpayers created by Mr. Klonteig. As a result, he did not following the recommendations of the fire chief and human resources advisor and Mr. Klonteig's employment was terminated for cause. Mr. Klonteig sued for wrongful dismissal.

The Decision

The Court confirmed that off-duty conduct can constitute just cause for termination, but that to do so "it must be or be likely to be prejudicial to the interests or reputation of the employer." The Court held that was not the case here.

In making this determination, the Court noted that the truck in which Mr. Klonteig was driving at the time of the incident had only a fleet number and no decal or other identification to the District. His administrative suspension was not publicly known, and in any event, his duties were mainly administrative such as dealing with employee relations, and not public facing like that of the fire chief. The Court disagreed with the District that Mr. Klonteig's conduct resulted in the loss of confidence by the fire department members, as the evidence indicated most were not aware of the administrative suspension and, once they were, signed a letter in support of him. The Court also pointed to the fact that the police officer had chosen to give him an administrative penalty rather than criminal charge, as evidence of the moral reprehensibility of the conduct as perceived by a member of the public.

Mr. Klonteig was 48 years old and had worked for the City of Kelowna in firefighting for 13 years before joining the District of Westside (now the City of West Kelowna) as an Assistant Fire Chief for just over five years until his termination. After his termination, he was unable to find another position in the firefighting field and eventually forced to start a new career path. However, while the Court found there was insufficient cause for his termination, it held that damages were limited to five months' pay in lieu of notice by the termination clause contained in his employment agreement.

The Court rejected Mr. Klonteig's argument for an extension of his notice period to 18 months to account for the loss of his career he had built over that period and the refusal by the District to provide a written reference letter initially promised to him. In doing so, the Court confirmed such an extension to the notice period was no longer supported in law, and found insufficient evidence of mental distress due to the manner of dismissal. The District had made no attacks on Mr. Klonteig's reputation or misrepresentations about the dismissal, and the Court determined the lack of reference letter was not the reason for his inability to find new employment in the firefighting field.

Takeaways

This case highlights for employers the importance of proceeding with caution in relying on off-duty conduct, even that which may appear serious, to terminate an employee for cause. Employers should consider what prejudice, if any, to the interests and reputation of the company has arisen from the alleged conduct, with specific consideration of the employee's actual duties and role in the company and employment history. It also, however, serves as a reminder to employers of the benefits of having a well-drafted termination clause in place that can assist in limiting potential damages in the event of wrongful dismissal finding.

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