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Employers' Duty of Care to Employees Extended to After Termination

The duty of care owed by an employer to an employee does not necessarily end once the employment relationship has been terminated, and may survive through the post-termination period.

By Ronald S. Minken

The recent Nova Scotia Small Claims Court decision in *Hyde v. Reliance Offshore Canada Inc.* [2010] N.S.J. No. 12 ("Hyde") held that the employer was liable for loss or damage done to the terminated employee's property left at the workplace that the employee had not been able to recover, thereby illustrating that an employer's duty to an employee does not necessarily cease to exist at the time of termination.

In *Hyde*, the employee had worked for the employer on an offshore rig since April 2009. The employee was taken from shore to the rig by helicopter, and would stay on the rig for a three week period, when she would then return to shore for three weeks and the cycle would repeat. The rig was not equipped with any form of entertainment for the employees to use during their off hours. To compensate for this lack of entertainment, the employee, as well as many of her co-workers, brought a personal DVD player and some DVDs to the offshore workplace. The DVDs were shared with all employees by way of a sign-out system. During her time of employment with the employer, the employee did not experience any loss or theft of these DVDs, even when she left such items at the offshore workplace during her three week rotation ashore.

On August 20, 2009, problems on the rig led to the employee having to be evacuated from the workplace via helicopter four days ahead of her scheduled return to shore. Though the employee had time to remove her personal items, she did not do so since she expected to be returning to the rig in three weeks time, as usual.

However, on August 28, 2009, being before the employee's scheduled return to the rig, the employer terminated her employment. The employee requested the return of her personal belongings from the rig, including her DVDs. The employer returned her personal belongings except for the DVDs which could not be located. As a result, the employee commenced an action seeking damages for the replacement of her missing items.

The Court found that the employer had assumed a duty of care in relation to protecting their employees' personal property. The Court stated the following, "In my opinion an employer who: a. hires workers to work on a secluded site, where b. the employees are expected to live during their off-hours, as well as work during their on-hours, but c. provides no means of personal entertainment, and d. knows that employees have taken matters 'into their own hands,' so to speak, by bringing their own entertainment devices, and e. has provided secure facilities for the storage of personal items (i.e. rooms and lockers) that no longer work, can be taken as having assumed a duty of care to take some meaningful steps to provide employees with a means for the 'better protection' of their personal property..."

Additionally, the Court determined that the employer had already decided on August 20, 2009 that the employee was going to be terminated prior to her return to the rig. Given this known intention, the Court stated the following, "...[T]he [employer] cannot have been surprised to learn that its employees left their personal property on board the rig when they rotated off.

People do not clean out [sic] their offices when they leave work or go on vacation, nor do they clean out their lockers. They expect to return and that being the case leave their personal property at their place of employment. So the [employer] must be taken to have known -- or ought to have known -- that the [employee] might leave personal property on board the rig when she left on August 20th."

Therefore, the Court concluded that due to the employer's assumed duty of care and the advanced knowledge of the employee's termination, the employer was liable for the employee's lost personal items.

Both employees and employers should be aware of the decision in *Hyde* as a reminder that the duties which may exist during the employment relationship, such as a duty of care, do not necessarily end on the day of termination. An employee may still be owed the benefit of such pre-existing duties during the post-termination period, whether explicitly stated to exist by the employer or implicitly incorporated into the employment relationship due to the actions of the employer. **MB**

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