

No cause where employee's spouse deposited employer's funds in joint account

Employee mistakenly thought cheque was for expenses and took it home, but employer didn't believe him

BY RONALD MINKEN

THE ALBERTA COURT of Queen's Bench has determined that an employee should not have been terminated for cause after 24 years of service when it was discovered a missing cheque had been deposited by the employee's common law partner into the couple's joint account.

James Winfield, 55, was a commissioned sales representative who had been employed with Pattison Sign Group in Edmonton for 24 years without incident.

Shortly before termination, Winfield had been recognized with a bonus for his overall performance and achieving sales exceeding \$34 million during his years of service. The employee received the bulk of his earnings by direct deposit, although he was always reimbursed for business expenses incurred in the performance of his duties by cheque. These cheques would be left by the employer on the employee's desk in an envelope.

Cheque mistakenly left on worker's desk

One day, a cheque payable to the company's Edmonton office where Winfield worked was mistakenly left on his desk. The employee assumed the cheque was to reimburse him for his business expenses and did not notice it was not issued to him.

He took the cheque home and left it for his partner to deposit into their joint account, as she was responsible for their finances. When the employer realized the cheque was missing and investigated the matter, it discovered the cheque had been deposited by the employee's partner.

When the employer confronted Winfield, Winfield confirmed there was additional money in his account that was unaccounted for and tried to explain how the cheque was deposited into his personal account. Winfield also mentioned he was entitled to outstanding business expenses and suggested these be offset against the money to be returned to the employer.

Winfield then promptly repaid the employer. The employer investigated Winfield's prior expense reports and found no errors. It also considered Winfield's comment that he was owed expenses

and, unable to verify this, believed the employee to be lying.

The employer felt Winfield could no longer be trusted and, despite Winfield promptly repaying the employer, he was terminated for cause due to the employer's belief he had either stolen money when the cheque was deposited or was dishonest when confronted with the fact that the cheque had been deposited into his personal account.

After termination, the employer discovered it actually did owe expenses to (the worker) and another cheque had been correctly issued to him on the same day as the erroneous cheque.

After termination, the employer discovered it actually did owe expenses to Winfield and another cheque had been correctly issued to him on the same day as the other cheque. This was likely forwarded to Winfield in the same envelope as the other cheque by mistake.

A series of errors

Justice K.G. Nielsen determined that a series of errors, which included errors made by the employer, had led to the employer's cheque being deposited into Winfield's account.

The judge evaluated all of the circumstances, including the length of Winfield's service and his good work record, and concluded there was "no clear, cogent and convincing evidence establishing deceitful conduct on the part of Mr. Winfield on a balance of probabilities."

Accordingly, the employer should not have terminated Winfield for cause and the judge determined that the employee was properly entitled to 18 months' notice.

Impact of decision on employers

Employers should make sure they carefully review all of the facts and the broader context, including an employee's work record and length of service, prior

to making the decision to terminate an employee for cause.

While improper conduct and dishonesty can, in some instances, justify the termination of an employee for cause and without notice, this will not always be the case.

The alleged misconduct must be proportionate to the disciplinary measure that is imposed. It will likely be more difficult to terminate a long-term employee who had a good work record for cause as these factors will add a broader context to the misconduct in question.

Impact of decision on employees

Employees should be aware that a single incident of misconduct may not be enough for an employer to establish the existence of grounds to terminate for cause. Further, if an employee has engaged in misconduct and is confronted by her employer, it is likely best for the employee to honestly admit to the misconduct.

Failure to do so may demonstrate a level of dishonesty that may, in itself, justify the employee's termination for cause due to a breakdown of the employment relationship and level of trust.

FOR MORE INFORMATION SEE:

- *Winfield v. Pattison Sign Group*, 2013 CarswellAlta 1948 (Alta. Q.B.).

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