



# What's New in HR Law

## Employer forced to pay \$75,000 after unfairly terminating for “just cause”

August 10, 2017

### **BOTTOM LINE**

An employer was ordered to pay a terminated employee **\$75,000** in aggravated damages (plus 6 months of reasonable notice) for relying on improper reasons for an employee’s “just cause” dismissal after an inadequate and unfair investigation.

### **The Facts: 57-year-old millwright was suspended, then terminated**

Mr. Lalonde, a 57-year-old millwright, had been employed by SENA Solid Waste Holdings in Alberta for four years. During that time, he had not received any discipline. In fact, he had been recently thanked for his hard work and efforts.

On what was otherwise a normal day, Mr. Lalonde was unexpectedly “chewed out” by his supervisors, suspended without pay, and escorted out of the building by security. The employer accused Mr. Lalonde of taking salvageable equipment and scrap metal. The employer also accused him of failing to supervise an unassigned contract worker who did not have a permit.

Mr. Lalonde was surprised by the criticism and was not given an opportunity to respond to the allegations. He repeatedly tried to tell his side of the story but letters and calls to his supervisor

were consistently ignored. The employer also ignored a letter written by another employee stating that Mr. Lalonde had done nothing wrong. One month later, SENA Solid Waste Holdings terminated his employment for just cause.

The employer maintained its allegations of theft for nearly five years – from June 2012 until the trial began in May 2017. On the opening day of trial, the employer withdrew its just cause allegations.

Meanwhile, the employer’s actions and allegations had a significant impact on Mr. Lalonde. He became depressed and had his reputation tarnished in his small town. His ability to obtain Employment Insurance (“EI”) benefits was also delayed as a result of the allegations of just cause.

### **The Court’s Decision: Employer acted unfairly and in bad faith**

The Court of Queen’s Bench of Alberta (the “Court”) found that the employer’s internal investigation was “essentially a sham” and that the employer’s conduct while dismissing Mr. Lalonde was unfair and done in bad faith.

“In this case there was abusive conduct leading up to the dismissal, inappropriate and false reasons for dismissal and an inadequate and unfair investigation. The plaintiff did not receive procedural fairness...The wrongful allegations were maintained for almost 5 years causing the Plaintiff considerable mental distress during and after his sudden termination. He was publicly humiliated at the time of dismissal and the humiliation continued as rumors concerning the reasons he was dismissed continued to circulate.”

As a result, the Court ordered SENA Solid Waste Holdings to pay Mr. Lalonde aggravated damages of \$75,000.00. This was in addition to an award of reasonable notice equivalent to 6 months’ salary and an allowance for retention bonuses (minus mitigation income).

### **Check the Box**

This case reminds us of the importance of appropriately conducting an investigation into allegations of wrongdoing that may later form the basis of a decision to terminate an employee’s employment for just cause. It is also important to appropriately assess the impact of unsubstantiated allegations of just cause. Here are some best practices:

1. **Properly investigate allegations of misconduct:** If an employer suspects that an employee has engaged in wrongdoing, it should conduct a thorough, adequate, and fair investigation. Employers should appropriately consider all information that it obtains in the course of an investigation.
2. **Provide the employee with a meaningful opportunity to respond to the allegations:** As part of its investigation, the employer must provide the employee with an opportunity to explain his/her behaviour, to obtain additional information, if necessary, and to apologize. Until the employer has completed its investigation and made a finding, it

should not simply assume the employee committed the wrongdoing, or that the wrongdoing ought to automatically result in dismissal for just cause.

3. **Respond as appropriate:** Deciding to terminate an employee's employment for just cause requires an assessment of all relevant factors, including: (a) the employee's length of service, (b) the employee's disciplinary record, (c) the nature and extent of the wrongdoing, (d) opportunities for progressive discipline, retraining, and/or coaching, (d) the employee's explanation and/or apology, and (e) the policies and procedures in place.
4. **Consider the different options upon termination:** Although it may be appropriate in some instances, employers ought to assess whether to rely on just cause at the time of termination and throughout the course of related litigation. If termination for just cause is not available in a particular situation, some other, lesser form of discipline, such as a suspension, or even termination without just cause, may be appropriate. Consider whether it is desirable to offer an employee an appropriate severance package upon termination in exchange for a release from liability.

**Forum:** Court of Queen's Bench of Alberta

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