



# What's New in HR Law

## Court of Appeal for Ontario upholds termination for just cause, awards costs to employer

June 14, 2017

### **BOTTOM LINE**

The Court of Appeal for Ontario (the “Court”) recently upheld a trial judge’s finding that the employer had just cause to dismiss a production supervisor with lengthy seniority after he was found to be responsible for a significant production incident and to have lied to the employer during its investigation of the incident.

### **Facts: Production supervisor dismissed due to culminating incident and deception**

The appellant in this case was employed as a production supervisor. The supervisor had worked for the employer for 19 ½ years. In 2013, the employer dismissed the supervisor for cause following a series of incidents, which had culminated in the production of 1,500 defective camshafts due to the supervisor’s failure to supervise the production process. The employer also claimed that, following the discovery of the defective product, the supervisor lied to the employer during an investigation into what had caused the production defects.

The supervisor brought an action for wrongful dismissal. The trial judge did not accept the supervisor's evidence that he had carried out regular checks of the production line and that he had instructed team members to do the same. Instead, the trial judge found that the supervisor had lied about the production issues, and accepted the evidence of another worker who testified he had brought the production issues to the supervisor's attention. The trial judge found that the employer had just cause to dismiss the supervisor, and dismissed the action.

### **The Determination: The employer had successfully established just cause**

The burden of proving just cause lies with the employer. The trial judge found that the employer had established just cause to dismiss the production supervisor based on the supervisor's failure to supervise, his failure to address the production problems, his dishonesty, and certain earlier disciplinary incidents.

On appeal, the production supervisor took the position that the trial judge had reversed the burden of proof, improperly relied on certain hearsay evidence, and was biased, as evidenced by certain comments made to the appellant's counsel.

The Court dismissed all grounds of appeal. The Court found that the trial judge had applied the correct analysis for determining whether just cause was established and had not erroneously reversed the onus of proof.

In this case, the employer did not rely solely on dishonesty to justify the supervisor's dismissal. Rather, the employer successfully demonstrated that an unusually large number of defective camshafts had been produced during the supervisor's shift, and that the supervisor had lied about production issues that had occurred during his shift. This proved the two key incidents the employer had relied on in dismissing the supervisor.

The Court also awarded costs to the employer in the agreed-to amount of \$20,000.

### **Check the Box**

To rely on an employee's dishonesty as a basis for terminating for just cause, the employer must be able to satisfy the test originally set out by the Supreme Court of Canada in *McKinley v. BC Tel*, 2001 SCC 38:

- When dismissing an employee for dishonesty, the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship.
- In all cases employers are required to examine the nature and circumstances of the misconduct.
- Even where dishonesty is at issue, the employer is expected to strike a balance between the sanction and the severity of the misconduct.

While the employer in this case succeeded in establishing just cause, it should be noted that the common law "just cause" standard is generally difficult to satisfy. Moreover, findings of just cause by Ontario courts are highly fact-specific. When considering whether to dismiss an employee for just cause, it is beneficial to seek the advice of a labour and employment lawyer.

**Forum:** Court of Appeal for Ontario  
**Date:** May 15, 2017  
**Citation:** *De Jesus v. Linamar Holdings Inc. (Camcor Manufacturing)*, 2017 ONCA 384

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