

When an Employee Changes Their Mind

The Ontario Court of Appeal recently overturned a 2018 judgment and allowed an employee to revoke what had been a clear resignation based on a change in circumstances.

In *English v Manulife Financial Corporation*, Ms. English (64 years old) was an employee of Manulife Financial Corporation for 9 years. The company announced its intention to launch a new computer system and, preferring not to learn the new system, Ms. English submitted her resignation for the end of the year. Her supervisor told her she could change her mind if she wanted to. Soon after, Manulife decided not to implement the new system and the employee decided she wanted to keep her position. She let her supervisor know she had a change of heart, withdrew her resignation, and continued working. A month later, Manulife notified her that her resignation could not be rescinded. The employee claimed wrongful dismissal on the basis that her resignation was prompted by a change in working conditions that was no longer taking place.

The original decision confirmed that the employee had unequivocally resigned and was not wrongfully dismissed. The motion judge also concluded that Manulife did not need to demonstrate that it relied on the resignation to its detriment. This judgement was overturned though by the Court of Appeal.

The Court of Appeal's position was that the core of the issue was whether the circumstances of the resignation amounted to a clear and unequivocal resignation. The Court stated that the employee's **"resignation notice was equivocal given the circumstances in which she presented it to Manulife, and she was entitled to withdraw it."** Essentially, the supervisor provided Ms. English with an "out" and acknowledged that her resignation was equivocal. Manulife failed to respond in a timely manner to Ms. English revoking her resignation and did not indicate any problem with her revocation at the time. The court determined Manulife was bound by the supervisor's offer to Ms. English to rescind or reconsider her decision and awarded Ms. English 12 months' notice for wrongful dismissal on this basis.

This case serves as a good reminder that even in cases where a resignation seems clear, it may be revoked where the circumstances change. Manulife's offer to Ms. English to take back her resignation and failure to respond to her revocation in a timely manner was viewed as condonation of the revocation.

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Employers should ensure they account for the surrounding circumstances of a resignation and be careful in their response when an employee resigns. Resignations must always be clear and unequivocal to be relied on. We encourage you to reach out to an e2r® Advisor for discussion where questions arise.

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