



e2r Alert

Apologies and Just Cause

A recent Ontario Superior Court case confirms that refusing to apologize for alleged misconduct does not automatically equate to just cause for termination.

In *Hucsko v. A.O. Smith Enterprises*, a female employee alleged that a senior male co-worker harassed her by making a series of inappropriate comments on four different occasions. During the employer's investigation, the alleged harasser said he did not recall making the alleged comments or that they had a different, non-sexual meaning than what was alleged. Despite the employee's denials, the employer concluded that his comments were inappropriate and constituted harassment.

The employee was given corrective action, which included the requirement to attend harassment training and provide his co-worker with an apology. The employee disagreed with the investigation's conclusions. He obtained legal counsel who sent a letter to the employer stating that the employee would agree to attend training but that he would not make an apology admitting to any wrongdoing.

After receiving the letter, the employer suspended the employee and eventually terminated him for just cause based on his inappropriate comments, his failure to show remorse, and his wilful insubordination based on a refusal to accept and comply with the corrective action given. By way of refresher, courts view terminations for cause as the "capital punishment" of employment law and employers must prove that there was an irreparable breakdown in the employment relationship to justify a termination for just cause.

The employee successfully challenged the termination in the Ontario Superior Court of Justice. Given the employer's belief that an apology would have been a sufficient form of corrective action, the Court decided that the employer could not establish there was an irreparable breakdown in the employment relationship. The Court also noted that the employer failed to respond to the employee's lawyer, which made it appear that the termination was based in part on the employee obtaining legal counsel. The Court ordered the employer to pay the employee twenty (20) months of pay in lieu of reasonable notice (\$187,000.00).

The case highlights the importance of clarifying the reasons for a just cause termination. In determining whether an employee's conduct caused an irreparable breakdown in the employment relationship, a court will consider the surrounding circumstances, including any

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previous communication provided to an employee whether written or oral. Had the employer in this case decided to terminate the employee for just cause immediately after its investigation, perhaps the Court would have upheld the termination. However, the employer had already committed itself to accepting an apology. Therefore, the termination appeared more driven by the employee's refusal to apologize and his hiring of a lawyer than the actual comments he was alleged to have made. The case also serves as a reminder why employers should always seek advice from an e2r® Advisor before terminating an employee for just cause.