

Members Quarterly

Summer 2015 Edition

Feature

Insubordination: Can You Terminate with Just Cause?

Considerations for more serious disciplinary response

Insubordination by employees is a frustrating experience for employers. The effective operation of an employer's business relies upon dutiful employees who complete the tasks assigned to them, treat other employees and members of management with respect and make a positive contribution to the workplace environment. When an employee is insubordinate and does not behave in the manner just described, the employer's business is at risk. Even worse, if the employer finds itself before a Court as a result of problems caused by an insubordinate employee, the Court may nevertheless be sympathetic to the employee.

Fortunately for employers, there are some circumstances in which an employer may dismiss an insubordinate employee for just cause and have the dismissal held up in Court. One circumstance is set out in *Hoang v. Mann*, 2014 ONSC 3762 ["Hoang"], a recent decision of the Ontario Superior Court of Justice.

In *Hoang*, the self-represented plaintiff Matthew Hoang brought an action against his former employer alleging wrongful dismissal. At issue before the Court was whether the employer had just cause to terminate Mr. Hoang's employment.

Mr. Hoang had been hired to serve as Chief Financial Officer by the employer, a small company engaged in engineering consulting in the renewable energy sector. Mr. Hoang was hired to assist in raising significant capital for a development project on a fixed term employment contract of 13 months' duration.

Almost immediately after Mr. Hoang was hired, it became clear that he had significant performance issues and behaved in an insubordinate manner on a regular basis. The President and owner of the company worked to coach Mr. Hoang to resolve these issues, but the relationship between the employer and Mr. Hoang instead quickly reached an untenable point. As such, Mr. Hoang's employment was terminated for just cause after only 8 months of employment. Specific instances of Mr. Hoang's insubordination included the following:

- Mr. Hoang was directed to pursue an opportunity which would have capitalized on a government program that provided incentives for the installation of solar panels on agricultural barns. Mr. Hoang did not pursue this opportunity as directed and the employer's President had to instead perform the necessary work.
- Mr. Hoang was instructed to close a deal in which an agreement in principle had been reached, but which required certain formal steps to close. Instead of closing the deal, Mr. Hoang changed the terms of the deal at the last minute, resulting in significant losses to the employer.
- Mr. Hoang did not provide training on various technologies to other employees.

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- Mr. Hoang failed to renew an agreement between the employer and a business partner, despite being expressly ordered to do so. Mr. Hoang's failure caused the employer to lose the partner's business.
- Mr. Hoang agreed to a significant sale of the employer's real estate at a price well below that approved by the employer.
- Despite repeated instruction to treat his co-workers and managers with respect, Mr. Hoang continued to be "unprofessional, uncollegial, ... superior, insolent, rude and unprofessional", according to the Court. Specifically, Mr. Hoang told a senior manager that her actions were "idiotic", yelled and swore at a co-worker, repeatedly called the employer "dysfunctional" and drafted insubordinate emails to the President of the employer. This behaviour led numerous co-workers to refuse to deal with Mr. Hoang prior to the termination of his employment.
- Mr. Hoang refused to follow reasonable directions to apologize to co-workers whom he had verbally abused.

As a result of the behaviour outlined above, the Court found that the employer had just cause to terminate Mr. Hoang's employment. In reaching this finding, the Court held that the evidence of the witnesses who testified on behalf of the employer was preferable to the evidence of Mr. Hoang. The Court did not trust Mr. Hoang's account of the events leading up to the termination of his employment because, as stated by the Court, Mr. Hoang's evidence was self-serving and blatantly dishonest.

The Court also affirmed that insubordination will only be found where there is a clear order given by a person in authority to an employee, the employee understood the order and the employee disobeyed the order. While insubordination alone is not usually sufficient to establish just cause for dismissal, certain factors weigh in favour of a more serious disciplinary response to insubordination, including the following:

- repeated instances of insubordination (rather than a single instance);
- verbal abuse and harsh language toward superiors;
- insubordination that is willful and intentional;
- refusal to apologize; and
- insubordination by managers (rather than by lower-level employees).

Employers deciding whether to terminate the employment of an insubordinate employee for just cause should consider whether any of the above factors are present. While the presence of those factors may increase the likelihood that a termination for just cause will be upheld, each case will be examined on an individual basis and will be determined by the totality of the relevant facts. In addition, it is unlikely that insubordination that does not rise to the level demonstrated by Mr. Hoang will be sufficient to dismiss an employee for just cause.

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