

Member's Quarterly

Fall 2025 Edition

Feature

Doubling the Discipline: Jeopardized Termination

Employees cannot be disciplined twice

The decision of the Alberta Labour Relations Board (the "**Board**") in 2024531 ALBERTA LTD. o/a as Blakkloud Hair Studio v. HASSAN, 2024 ABESAB 12 ("**Blakkloud v Hassan**") serves as an important reminder to employers that the choice of disciplinary action should be considered carefully and cannot be changed once a course of action has been undertaken. In this decision, the employer was unable to terminate for just cause, because it had already given a written warning for the same misconduct.

In *Blakkloud v Hassan*, the employer appealed an Order directing the employer to pay the employee termination pay in lieu of notice. The employer took the position that the employee's employment was terminated for just cause, and therefore no termination pay was owed.

On February 26, 2023, the general manager approached the employee to discuss his failure to perform his opening duties that morning, the general manager testified that the employee's response was, "F*** you. That's not my job".

The general manager subsequently wrote an "Employee Discussion Log" which stated in part:

"This is a final warning after multiple discussions. Brendan has

- issues with a negative attitude towards staff
- has been disrespectful towards management
- completing duties at opening and closing
- unable to control emotions."

The general manager also wrote, "If Brendan's attitude and work [does] not change, he will be terminated". The general manager stated that the employee was provided with the Employee Discussion Log but refused to sign it. At the time of this incident, the owner of the employer was on vacation and she did not return until mid March 2023. The general manager met with the owner upon her return and explained what had occurred. The owner subsequently decided to terminate the employee's employment for just cause, as a result of his behaviour on February 26, 2023.

Two Categories of Just Cause

The Board considered the two categories of just cause articulated in 409204 *Alberta Ltd. v Hertel*, 2001 CanLII 25652 (AB ESA) ("**Hertel**"):

I am satisfied that conduct of an employee sufficient to justify dismissal falls into two distinct categories. In the first category, the conduct is sufficiently egregious so as to justify immediate dismissal. Obvious examples are dishonesty, deliberate disobedience of lawful and reasonable instructions, or some conduct that indicates a repudiation of the contract of employment. These are illustrations only and not intended to be an exhaustive list of matters which might justify immediate dismissal.

There is, however, a second category consisting of conduct which is inconsistent with the duties of the



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employee but falls short of either being a repudiation of the contract of employment or being sufficiently serious to justify immediate dismissal. The law seems to be clear that in such cases an employer must warn, must specify the misconduct, which is considered unacceptable, and must indicate to the employee in some clear way that the employee's job is in jeopardy if the conduct is repeated.

The Board acknowledged that the employee's behaviour on February 26, 2023, which it considered to be insubordination and insolent, was sufficient to be considered termination for just cause under the first category discussed in *Hertel*. The Board stated that an employer is not required to tolerate an outburst from employees, especially when the employee does not apologize, demonstrate remorse or demonstrate an intention to improve. Therefore, the employer would have been justified in terminating the employee's employment for just cause on February 26, 2023 or shortly thereafter. However, the Board determined that having chosen to issue a final warning instead of termination, the employer brought the case into the second category articulated in *Hertel*.

Employees Cannot be Disciplined Twice for the Same Misconduct

Court and tribunal decisions across Canada have clearly articulated that the concept of "double jeopardy" applies in the employment context. That is, an employee cannot be disciplined twice for the same misconduct.

The Board considered that the general manager provided the employee with a clear written warning that he was at risk of termination if his behaviour did not improve, but the employer was not able to present evidence of improper conduct following the February 26 incident, other than to state the employee's behaviour had not changed. The Board concluded that having provided the employee with a written warning, and no further incident had occurred, the employer could not then terminate the employee's employment for the same conduct for which he had already been disciplined.

The Board therefore concluded the employee's employment was not properly terminated for just cause, and therefore was owed termination pay.

Takeaway for Employers

Employers should take time to decide on disciplinary action. Employees cannot be disciplined twice for the same offence. If a disciplinary or corrective action has been taken, employers cannot change the type of discipline and subsequently terminate the employee for the same offence. If in doubt about how to deal with employee discipline, take time to consider the options available and seek legal guidance if necessary. Once a course of discipline is selected and put into action, the employer will be stuck with it.

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