

Member's Quarterly

Spring 2021 Edition

Feature

Quitting Ain't Easy: The Fine Line Between Resignation and Termination

Get it in writing and leave nothing to chance

There is of course a world of difference between a termination of employment by the employee (resignation) and a termination of employment by the employer without cause in terms of employee payments. However, differentiating between a resignation and a termination of employment by the employer can sometimes be tricky. Employers should be careful in considering their exposure even if an employee has expressed an intention to resign.

The Test

In Alberta, for a resignation to be binding, it must be clear and unequivocal. The test involves 2 parts:

1. Did the employee intend to resign based on that employee's own state of mind? and
2. Would a reasonable employer in the same circumstances have understood that the employee resigned?

The onus of proof is on the employer rather than on the employee. It is the employer who is expected to make further inquiries with the employee where there is a potential for misunderstanding.

Josta Plywood Sales Ltd. v Tracy Lind

One recent Alberta Labour Relations Board decision on this matter is *Josta Plywood Sales Ltd. v Tracy Lind*. The facts are as follows. One Saturday, Ms. Lind was off sick but she was back to work the following Monday. While at work, she was still not feeling fully recovered and was standing by the door to get fresh air when the assistant manager directed her to clean the bathroom, which was part of her duties. A disagreement ensued as to when she would complete this task during her shift. Finding that she was acting confrontationally, the assistant manager asked her, "Would you like to go home?" and she did, in fact, then go home.

The Board found that the employee genuinely thought her employment was terminated by her employer. This was the case even though some of the circumstances suggested that she should have known her employment was not terminated. For instance, in her years of employment with the employer, she had never seen anyone's employment terminated on the spot, without any paperwork, by simply being asked to go home. Even so, it was her *subjective* state of mind that mattered for the first part of the test.

When the employee did not report to work, the employer did connect with the employee to clarify the situation via text message. The employer told the employee that it was unfortunate that she had decided to walk out, while the employee responded by indicating "I didn't walk out — I was told to go home." The employer did not respond to this message.

The employer also sent a follow-up letter to the employee. However, the Board found that the follow-up letter was not so much an attempt to clarify the employee's intention, but more of a statement to the employee telling her it was her choice to leave her employment. The Board stated that the letter would have been a good opportunity to seek clarification, and held that it was incumbent on the employer to clarify whether the employee was, in fact, quitting.



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Since the employer did not seek clarification, the Board held that the employee's employment was in fact terminated by the employer, resulting in termination pay.

Retractions

Even in situations where employees actually intended to resign, that may not be the end of the story. In *Robinson v. Team Cooperheat-MQS Canada Inc.*, 2008 ABQB 409, the court found that even though the employee had resigned, the resignation was retracted the next day. The court found that employees are free to retract their resignation unless the employer has acted to its detriment in relying on it, such as the employer incurring costs to replace the employee due to the resignation.

Key Takeaways

If an employee wishes to resign, it will be crucial for the employer to have this intention evidenced in writing and, if there are any doubts, the employer should seek clarification. Of course, this will not fully mitigate the risk of the employee retracting their resignation. If the employee retracts their resignation, the employer will need to consider whether the resignation has already been accepted and the costs that the resignation has caused, if any, in deciding whether to enforce the resignation or agree to the retraction.

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