

Current Workplace Issues

Special Care When Offering Resignations with Compensation

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Schmidt v. Sears Canada Inc., a recent decision of the Alberta Court of Queen's Bench, demonstrates that employers must take special care, when offering an unsatisfied employee the opportunity to resign with compensation, to see that the decision to accept the offer is made freely; otherwise, the settlement may be overturned in court and subject the employer to payment of additional sums in accordance with established principles of reasonable notice.

In this case, a 44-year old plaintiff had worked for the defendant in various capacities for 24 years, latterly as a store manager in Medicine Hat. As a matter of policy, the defendant's employees were encouraged to make purchases from the store. However, the plaintiff's subordinates began complaining that he was using his position to cross over the line of permissible

activity under company policy in making purchases on his own behalf for the greatest price reduction and on the best payment terms. For example, he arranged to purchase carpet at a particular price but did not take delivery at the time of purchase and deferred payment. When the price of the carpet was later reduced, he sought to obtain the benefit of the reduced price by allegedly pressuring one of his subordinates to change the order.

When these incidents came to the defendant's attention, the plaintiff was confronted with the complaints against him and, without warning or notice, he was suspended and informed that he could resign with compensation in an amount equivalent to six months' salary or be fired. His request for time to consider these alternatives was refused. After a few minutes, the plaintiff wrote out his resignation and accepted the offer, completing the paper work a few days later.

At trial, the primary issue was whether the plaintiff's resignation and acceptance of the six months' salary released the defendant from any further obligation under the contract of employment. The defendant admitted that the resignation could not be characterized as voluntary, but took the position that the plaintiff's failure to revoke it and his acceptance of the payment made to him prevented him from saying that it was not a final settlement.

The court rejected the defendant's view of the matter. Only if the plaintiff had had independent advice and had clearly indicated that, knowing his rights, he was satisfied with the amount provided to him would the defendant be released from its obligation, in the absence of cause, to pay compensation in lieu of reasonable notice which in this case was held to be twelve months. Since the plaintiff had already received six months' salary, the defendant was ordered to pay him an amount equivalent to an additional six months' salary.

An interesting dimension of the case is that the court characterized the incidents which the defendant said amounted to just cause for dismissal as unfortunate examples of the plaintiff acting as a customer while at the same time holding the position of store manager. Since the defendant did not issue a warning or clear directions when the plaintiff's duties as store manager conflicted with his personal interests as a customer,



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these incidents could not constitute cause for dismissal. The lesson is that even where personal and employment interests clash to the point of constituting real conflict, an employer should be offering substantive guidance in the form of clear policies and specific warnings that they have been breached before taking action which puts an end to the employment relationship.

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