

Dishonesty of fiduciary employees can amount to cause for termination, even if individual acts of dishonesty are “not major”

In [*Goruk v. Greater Barrie Chamber of Commerce, 2021 ONSC 5005*](#), the Ontario Superior Court upheld the for cause termination of an Executive Director with 17 years of service and no prior disciplinary record. As Executive Director, the Plaintiff was a fiduciary employee. It was crucial that she acted with honesty and integrity in discharging her duties.

The Plaintiff was terminated for cause after engaging in a series of misconduct. While the Court found that the various individual acts of misconduct were “not major” and would not amount to just cause for termination on their own, the Court nevertheless found that taken together, the Plaintiff’s misconduct demonstrated a lack of honesty and integrity which was incompatible with the fundamental terms of the employment relationship.

Background

The Plaintiff, Sybil Goruk, was employed by the Barrie Chamber of Commerce (the “Chamber”), a not for-profit organization, in the role of Executive Director. The volunteer board of directors (the “Board”) of the Chamber was limited in its ability to oversee Ms. Goruk’s activities. The Board relied on her integrity and trustworthiness in fulfilling the duties of her role.

In February of 2014, Ms. Goruk was placed on paid administrative leave, pending an investigation of some “irregularities” after she allowed a member of the Chamber to circulate a controversial e-broadcast complaining about the Board.

The investigation uncovered a number of other incidents of misconduct. Following the investigation, on April 28, 2014, Ms. Goruk was terminated for cause for breach of trust based on the following findings from the investigation:

A) Altering a Bank Document

Ms. Goruk had knowingly altered a transfer direction the Chamber had prepared to send to TD Bank. The Chamber had mistakenly transferred \$3,000 more than it intended in an initial direction. Instead of preparing another direction, a piece of paper was taped over the part of the direction that set out the transfer quantity.

B) Authorizing Vacation Pay in lieu of Time Off

The Chamber found that Ms. Goruk took vacation pay amounting to more than \$8,000 in lieu of time off. At trial, it was found that this was a misunderstanding, but that Ms. Goruk had exercised poor judgment because she had never been paid for unauthorized vacation pay before. The inference was that she ought to have known that this was an error which needed to be corrected.

C) Unauthorized Salary Raise

The Chamber found that Ms. Goruk provided herself with an unauthorized salary raise of 3%. This error was never corrected. At trial, this was held to be an unintentional error, but failing to correct the error amounted to dishonest conduct on the part of Ms. Goruk.

In addition, the Chamber found Ms. Goruk to have engaged in the following:

- Improperly awarding service contracts to family members;
- Failing to bring an Auditor’s Letter of “identified weaknesses” to the Board’s attention;
- Improperly using an American Express Credit Card for personal expenditures; and
- Impeding the Treasurer’s access to financial records.

Decision and Analysis

Ms. Goruk commenced an action for wrongful dismissal and additionally sought aggravated damages for mental suffering as well as punitive damages. Ms. Grouk’s entire claim was dismissed.

Justice Boswell held that the Chamber had cause to terminate Ms. Goruk’s employment even though Ms. Goruk by all accounts “*ran the Chamber for the better part of 17 years*” and “*did a terrific job of it*”.

Justice Boswell found that none of the individual acts of misconduct summarized above would be sufficient to support a termination for cause; however, the culmination of the misconduct did amount to cause for termination. Focusing on the alteration of the banking direction and the unauthorized salary raise, Justice Boswell stated that “*these two acts of misfeasance are, arguably not major*” but that “*the significance of the misfeasance, however, in both instances, is the aspect of dishonesty.*” As a result of Ms. Goruk’s dishonesty, Justice Boswell found that the Chamber was justified in terminating her employment for cause. Her failure to act with complete honesty rendered her unfit for the role of Executive Director and irreparably damaged the employment relationship.

The key to Justice Boswell’s ultimate decision was the fact that he found Ms. Goruk was a fiduciary employee. As such, honesty, faith and trust were integral components of her employment. Justice Boswell also noted that integrity and honesty were particularly important given Chamber’s status as a not-for-profit community-based organization and the fact that the volunteer Board had a limited ability to oversee Ms. Goruk’s activities. It was imperative that the Board be able to trust her implicitly.

Practical Implications

This decision raises several important considerations for employers when assessing whether an employee’s conduct may amount to cause for termination:

- 1) Even if no particular instance of misconduct amounts to just cause for termination, it is possible for multiple instances of misconduct, taken together, to undermine a relationship between employer and employee.
- 2) Fiduciary employees must act with honesty, good faith, and trust at all times. A failure to do so may amount to just cause for termination, regardless of the actual severity of the misconduct.
- 3) A long-term employee with an otherwise flawless disciplinary record may be terminated for misconduct that is incompatible with the fundamental terms of the employment relationship, without the need for progressive discipline.

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