



Feb. 13
2014

Court of Appeal Drastically Reduces Punitive Damages Award

James Heeneey spoke at the 3rd Discipline and Employment Termination course

3rd Discipline and Employment Termination

The Ontario Court of Appeal recently released its decision in the case of *Boucher v. Wal-Mart Canada Corp. and Jason Pinnock* where an extremely high award of punitive damages against both Wal-Mart and the individual defendant were drastically reduced.

By way of background, the plaintiff, Meredith Boucher, began working for Wal-Mart in 1999. She was promoted to the position of assistant manager in 2008 and reported to the store manager, Jason Pinnock. At first, Ms. Boucher and Mr. Pinnock worked well together without issue. However, after an incident in which Ms. Boucher refused to falsify a temperature log, Mr. Pinnock disciplined her and began to use disrespectful language when speaking to her and other female co-workers. Ms. Boucher met with Wal-Mart to express her concerns. Mr. Pinnock was made aware of the meeting.

May,
2014

James Heeneey spoke at the Federated Press on a topic in employment law

Federated Press

After Mr. Pinnock found out about the meeting, he engaged in a course of shocking treatment towards Ms. Boucher including using profane language when he spoke to her, belittling her, demeaning her in front of other employees and calling in other employees so that he had an audience when he berated her and treated her badly. Ms. Boucher again reported her concerns to Wal-Mart. Wal-Mart said that they would investigate but warned Ms. Boucher that if her complaints were found to be unwarranted, she would be held accountable for raising them. Following the investigation, Wal-Mart told Ms. Boucher that her complaints had been found to be unsubstantiated and they concluded that she was trying to undermine Mr. Pinnock's authority.

A few days after the investigation, Mr. Pinnock berated Ms. Boucher because 10 skids of product had been delivered to the store the night before and not unloaded. Mr. Pinnock grabbed Ms. Boucher by the elbow among a group of her co-workers and told her to prove that she could count to 10. He told her to count out loud with him. Ms. Boucher was humiliated and left the workplace. She advised Wal-Mart that she would not return until her complaints were resolved to her satisfaction. Wal-Mart did not address the complaints. Ms. Boucher claimed constructive dismissal and damages.

Sept. 24,
2014

Sarah Vokey will be speaking at Humber College's Human Resources Faculty on investigations



At trial, the jury agreed that Ms. Boucher had been constructively dismissed and awarded her the damages outlined in her employment contract. Further, Ms. Boucher was awarded damages of \$1,200,000 against Wal-Mart comprised of \$200,000 in aggravated damages and \$1,000,000 in punitive damages. The jury further awarded Ms. Boucher damages of \$250,000 against Mr. Pinnock comprised of \$100,000 for intentional infliction of mental suffering and \$150,000 in punitive damages. On appeal, the punitive damage award against Wal-Mart was reduced to \$100,000 and the punitive damage award against Mr. Pinnock was reduced to \$10,000. The decision of the Court in this regard was largely based on the Court's view that the other damage awards against Wal-Mart and Mr. Pinnock were sufficient to punish the wrongdoing.

While the amount of the decrease in the award of punitive damages in this case is significant, the message from the Court remains clear that both companies and individuals can be held accountable in a serious way for mistreatment of employees in the workplace.

