ROBINSON HEENEY LLP

RH on HR

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Federally Regulated Employees Now Afforded Union-Like Protection from Termination

The threshold an employer must meet in order to justify an employee's termination of employment for just cause is very high in Canada. In most cases however, the employer has the alternative route of terminating an employee without cause and providing reasonable notice or pay in lieu thereof. A recent decision by the Supreme Court of Canada, however, reinforces an employee's rights with respect to termination in federally regulated industries, such as banking, and radio and television broadcasting, and acts as a warning to federally regulated employers that money does not replace following the law.

In the Supreme Court's recent case, *Wilson v Atomic Energy of Canada Ltd.,* the former employee, Mr. Wilson, was terminated from his employment with Atomic Energy Canada Ltd. ("AECL"), a federally regulated employer. Upon termination, he was provided a generous severance package, though the reasons AECL gave for his termination provided no detail, and merely stated that he was dismissed without cause and given a generous package. In the belief that he was being terminated as reprisal for revealing corrupt procurement practices, Mr. Wilson made an unjust dismissal complaint under section 240 of the Canada Labour Code (the "Code").

Section 240 states:

> *Subject to subsections (2) and 242(3.1), any person*
>
> *(a) who has completed twelve consecutive months of continuous employment by an employer, and*
>
> *(b) who is not a member of a group of employees subject to a collective agreement,*
>
> *may make a complaint in writing to an inspector if the employee has been dismissed and considers the dismissal to be unjust.*

In its defence, AECL reiterated that they had exceeded their obligations under the Code by providing such a generous package. While the Adjudicator initially held that AECL could not escape the Code by providing a larger, more lucrative package, ultimately the Application Judge found that there was nothing in the Code that precluded an employer from dismissing an employee without cause. The Court of Appeal agreed, however the Supreme Court allowed the appeal and upheld the Adjudicator's initial position, determining that the dismissal was unjust.

This decision reinforces the rights of non-unionized employees in federally regulated industries to enjoy similar employment protections to unionized employees. The Court made it clear that the Code completely overrides an employer's common law entitlement to terminate an employee without cause by providing reasonable notice, or pay in lieu thereof. The decision also clearly limits an employer's ability, in a federally regulated industry, to terminate employees who are not a good fit, or whose performance, while not amounting to cause, is lacklustre. It is worth noting that the Code continues to allow federally regulated employers to dismiss employees without cause if they have been employed for less than 12 months, hold a managerial position, are dismissed due to lack of work, or are dismissed due to restructuring. Going forward, employers need to be aware of the myriad consequences that could result from a successful unjust dismissal complaint regardless of the severance provided, including remedies such as reinstatement and further monetary damages.

Employers take note!

The changes to the *Occupational Health and Safety Act* implemented by Bill 132 must be in place by September 8, 2016.

Please contact us A.S.A.P. if you have not yet updated your policies