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## Ontario Arbitrator awards over \$500,000 in damages to terminated employee

Unionized employers should be aware that the playing field may have shifted for terminated employees claiming damages at arbitration. In his recent award in *Greater Toronto Airports Authority and P.S.A.C. Loc. 0004* (2010), Arbitrator Owen Shime awarded a total of more than \$500,000 in damages to an employee terminated for sick leave fraud. In what can only be described as a ground-breaking decision, Arbitrator Shime found that the employer acted precipitously and in bad faith when it terminated an employee on the basis of its opinion that video surveillance evidence was inconsistent with her claim for sick leave.

In a series of novel legal findings, Arbitrator Shime held:

- that the employer had an implied duty to administer the collective agreement in good faith, and an implied duty to avoid acting in a manner calculated to destroy the confidence and trust between employer and employee;
- that the employer's breach of these duties, its bad faith in the termination, and its failure to conduct a proper and thorough investigation had destroyed the trust underlying the employment relationship and made reinstatement inappropriate;
- that the employee was entitled to an award of damages in respect of all future financial benefits she would have received had the employment relationship continued - in this case salary and benefits, including pension benefits for eight years through the grievor's early retirement date;
- that a main purpose of a collective agreement is to provide a psychological benefit or "mental security" to employees, and that the grievor could therefore recover and additional award of damages for mental distress, which Arbitrator Shime set at \$50,000;
- that the employer's conduct stripped the collective agreement of any meaning, and that an award of \$50,000 in punitive damages was therefore warranted.

This is the largest award of damages following the termination of a unionized employee that has ever come to our attention. In our opinion, it represents a marked departure from established principles of arbitral case law. The employer has applied for judicial review of the decision and we will keep readers informed of this case as it progresses.

Until such time as the award has been considered by the courts, employers should remember to exercise caution in terminating employees for cause, particularly where the employee is on disability leave. Employers should act only where the allegations of cause are supported by a clear evidentiary foundation, established after a proper and thorough investigation of the facts. Employers should also seek independent medical evaluation of an employee's restrictions where necessary.

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