

Stolze temporary layoff ruling reversed

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The Ontario Court of Appeal has overturned the decision, reported in the September 1996 issue of *FOCUS* (see ["Courts split on temporary layoffs of non-union employees"](#) on our Publications page), that a non-union employee who had quit his position after being placed on temporary layoff, was not eligible to receive termination and severance pay under the *Employment Standards Act*. The Divisional Court had held that the Employment Standards Adjudicator was correct in finding that Stolze, the employee, had quit his position, thereby forfeiting his entitlement to termination and severance pay under the *ESA*. The court had noted that Stolze's contract of employment did not prohibit temporary layoffs.

In a decision released on November 26, 1997, the Court of Appeal disagreed that Stolze's contract permitted such layoffs. Noting that s. 58(1) of the *ESA* defined 'termination' to include constructive dismissal, the Court of Appeal ruled that the Adjudicator's decision had been unreasonable in not considering the possibility that Stolze had been constructively dismissed. It was an implied term of Stolze's contract that he would be employed at an annual salary for an indefinite period of time. In the absence of any policy or practice of the employer of temporarily laying off key salaried employees, such a layoff amounted to a repudiation of that implied term and, therefore, constructive dismissal. Accordingly, Stolze was entitled to receive statutory termination and severance pay.