

Probationary employees and dismissal – “suitability” standard applies

Date : October 2, 2015

For organizations operating in the aviation industry probationary periods for new employees are common. The probationary period enables an employer to not only assess the employee's skills, but also their character. This in turn permits the employer to determine whether the employee will work in harmony within the organization if hired permanently. During the probationary period an employer is permitted to dismiss a probationary employee without notice and without giving reasons, provided that the employer acts in good faith in its assessment of the employee. This is a much lower bar than the just cause threshold required for the dismissal of a permanent employee. The recent decision of the Supreme Court of British Columbia in [Langford v. Carson Air Ltd.](#) (August, 2015) discusses the different standard for dismissal for probationary employees.

In *Langford*, the employee was hired in August of 2012 as a first officer with Carson Air Ltd. The employment contract between the parties included a six month probationary period. During that period, it came to the attention of the employer that the employee did not have proper licencing and medical examinations that would permit her to fly commercially. When this issue was raised with the employee, it appeared to management that she refused to take responsibility and claimed that the lack of certification was an administrative error. Management felt that the employee displayed poor judgement on another occasion when she brought her dog to work and left it unsupervised. The employer concluded that the employee would not fit into its operations and terminated the employment during the probationary period.

The employee brought an action against the employer claiming amongst other things wrongful dismissal. She sought damages that included pay in lieu of reasonable notice. In support of her claim of wrongful dismissal, the plaintiff adduced evidence demonstrating that she was a proficient pilot and in fact better than some at Carson Air.

The court noted that the termination was based not on the employee's proficiency as a pilot, but instead her failure to fit in with other employees and the company operations generally. Borrowing from the decision in *Jadot v. Concert Industries Ltd.* (1997) (1998) the Court set out the standard for dismissing probationary employees as follows:

...the termination of a probationary employee during his or her probationary period can be based on a decision that the employee is unsuitable for the job. Such a conclusion must be a reasonable one and properly motivated, reached only after the employee has been given a fair opportunity to demonstrate his or her suitability.

Based on the evidence, the Court found that the employer made a reasonable business decision when it terminated the employment. The wrongful dismissal action was dismissed.

This decision is positive for employers as it validates the “trial period” that a probationary period is meant to provide. Employers may assess a probationary employee’s suitability, and provided that they are reasonable in that assessment, they can dismiss an unsuitable probationary employee with limited legal exposure.

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