



Fired for Cause and Still Entitled to Termination and Severance Pay?

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Most employers are aware of the distinction between notice of termination under the *Employment Standards Act, 2000* (“ESA”) and reasonable notice of termination which is required at common law in the absence of cause for termination or an enforceable termination clause in the employment contract. Many employers assume that employees who are terminated for just cause are not entitled to either notice of termination under the ESA or reasonable notice at common law. A recent court decision suggest this may not always be true.

In [Oosterbosch v. FAG Aerospace](#), a machine operator for a bearing manufacturer was terminated pursuant to the employer’s progressive discipline policy after receiving four warnings between August 2007 and March 2008 for unsatisfactory work performance, taking an extended break, and lateness. The employer did not provide pay in lieu of notice of termination or in lieu of reasonable notice and the employee sued.

The court found that the employer had just cause to terminate the machine operator because of his persistent misconduct in the face of repeated coaching and warnings and therefore, he was not entitled to reasonable notice of termination. However, the court found that the machine operator was still entitled to notice of termination and severance pay under the ESA because his conduct while careless and persistent was not intentional and therefore, did not satisfy the statutory requirements to disentitle him to termination and severance pay. The court awarded the machine operator damages in excess of \$25,000 in lieu of notice of termination and severance pay.

Under the ESA, an employee is not entitled to notice of termination or severance pay if he or she is guilty of “wilful misconduct, disobedience, or wilful neglect of duty.” *Oosterbosch* establishes that in certain circumstances employees who are terminated for cause may still be entitled to notice of termination and severance pay under the ESA unless their conduct also satisfies the statutory test. Employers who terminate an employee for cause should ensure that they have just cause for termination and the employee is guilty of wilful misconduct, disobedience or neglect before deciding he or she is not entitled to either reasonable notice or notice of termination under the ESA.

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