



## Employees Terminated for Cause for Facebook Postings

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A recent decision of the [British Columbia Labour Relations Board](#) ("BCLRB") upheld the terminations, for just cause, of two employees for their posting on Facebook of disrespectful, damaging and inappropriate comments about their co-workers and employer. It is believed to be the first clear Facebook firing case in Canada: [Lougheed Imports Ltd. operating as West Coast Mazda doing business as West Coast Detail & Accessory Centre - and- United Food and Commercial Workers International Union, Local 1518.](#)

The events that gave rise to the eventual termination of the employees arose just after the union had obtained certification. In fact, the very same day the employer learned of the successful certification it also learned that one of its employees ("J.T.") had posted a comment on Facebook that the employer considered to be threatening in nature. This prompted the employer to keep tabs on J.T.'s Facebook postings which became increasingly disrespectful, damaging and derogatory. The employer also followed the postings of another employee ("A.P.") which were also extremely derogatory about the employer and his supervisors. J.T. had been a key insider organizer of the union's campaign and A.P. was known to the employer to have been a supporter of the union's organizing efforts. J.T. had close to 100 Facebook friends and A.P. had 377 Facebook friends. Many of these friends were present and former employees of the employer.

The employer conducted an investigation with separate investigatory meetings for J.T. and A.P. In these meetings, the employees were represented by the union and provided with copies of the Facebook postings. At the outset of these meetings, the employer emphasized the importance of them being honest. In response to the employer's questions about the postings, both employees denied making them and stated that either they had left Facebook logged on at work so that anyone could have written the comments or their account had been hacked. The employer concluded its investigation and terminated them for cause on the basis that the comments were inappropriate and insubordinate and created a hostile work environment. The employer also noted that: the comments were of the nature that they were likely to damage the reputation and business interests of the employer; and that the employees had been dishonest in the course of the investigation.

The union filed a complaint with the BCLRB that the employer did not have proper cause to terminate their employment and that even if it did, the terminations were motivated at least in part by anti-union animus and therefore the employer had committed an unfair labour practice. The BCLRB disagreed, finding that:

- the employees' comments on Facebook were "very offensive, insulting and disrespectful" about supervisors or managers and that because the comments were made to other employees and former employees of the employer that were friends of J.T. and A.P. on Facebook, the comments were akin to comments made on the shop floor and therefore amounted to subordination and had been "used as a verbal weapon to degrade a Supervisor in front of others";
- the employees could not have a serious expectation of privacy when publishing comments on Facebook (even if the comments were made off-site during non-work hours);
- it did not matter that the employer did not have a policy or workplace rule prohibiting inappropriate postings on Facebook;
- the terminations were not motivated by anti-union animus. The fact that: the employer had not previously encountered such conduct; had conducted a proper investigation; and the postings amounted to serious insubordination outweighed the fact that the employees had no previous disciplinary record and were known by the employer to have been key supporters of the union; and
- the postings were egregious and compounded by the employee's dishonesty in the course of the investigation such that termination was a proportional response.

This decision serves as a warning to employees that there should be no reasonable expectation of privacy in relation to social media postings that are work-related and that imprudent postings could adversely affect their employment.

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