

## Case In Point

# No Jurisdiction to Determine Unjust Dismissal Complaint Where Employee Terminated Without Cause Pursuant to Employment Contract

**Date:** March 28, 2014

In a recent adjudication under the *Canada Labour Code* (the “Code”), Adjudicator Rose relied on the Federal Court decision in *Atomic Energy of Canada v. Wilson* to grant an employer’s preliminary objection and dismiss an unjust dismissal complaint. In doing so, he found that in the case of without cause terminations an adjudicator lacks jurisdiction under the Code where the employee had agreed to a valid and enforceable contract of employment that complied with the Code and no discrimination, bad faith, reprisal or any other impropriety was alleged in relation to the termination.

The applicant was initially hired by the employer into a bargaining unit position, but was promoted to a non-union position and signed an employment contract upon his promotion. The employment contract provided that the employer could terminate his employment at any time by giving him two weeks’ notice in writing or his minimum entitlements under the Code, whichever was greater. About five months after his promotion the applicant was terminated without cause and was provided pay in lieu of notice and severance pay in accordance with the Code. The applicant subsequently filed a complaint under the Code alleging he had been unjustly dismissed.

The employer raised a preliminary objection to the complaint on the basis that the adjudicator was without jurisdiction to order a remedy under the Code unless the dismissal in question was “unjust.” As the Code permits an employer to terminate an employee without cause, a termination cannot be considered “unjust” merely because it was done on a without cause basis. Thus, as long as the termination was in accordance with the valid terms of an employment agreement that complied with the Code and there were no allegations that the termination was in any way “improper,” a without cause termination could not be considered unjust. In this case there were no allegations of impropriety and the employer therefore asserted that the adjudicator was without jurisdiction to consider the complaint.

Adjudicator Rose agreed with the employer’s argument and dismissed the complaint.

He found that the Federal Court’s decision in *Atomic Energy of Canada v. Wilson* clearly held that without cause dismissals are permitted under the Code. An adjudicator is without jurisdiction to grant a remedy under the Code merely because the dismissal was without cause, provided that an employee had entered into a valid and enforceable employment contract which complies with the Code and there are no allegations of discrimination, bad faith, or reprisal.

Adjudicator Rose noted that adjudicators must carefully scrutinize each contract of employment. Here, he found that there was no indication of impropriety nor any allegation that the dismissal arose out of discrimination, reprisal or bad faith. As such, he was without jurisdiction and dismissed the complaint.

This decision highlights for employers in the federal sector the importance of having a written contract with an enforceable termination provision that complies with the Code. In these cases, employers should be able to bring a successful preliminary objection to most unjust dismissal complaints arising from without cause terminations. However, employers should also expect to see more unjust dismissal complaints alleging bad faith or discrimination, even when none existed, in order to circumvent this type of preliminary objection.

*Filo Sigloy v. DHL Express (Canada) Ltd* (20 March 2014, Rose)