

# **WALL POST, JOB TOAST: CANADA'S FIRST FACEBOOK FIRING**

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## INTRODUCTION

The British Columbia Labour Relations Board (the “Board”) recently upheld the dismissal of two employees for posting offensive, insulting and disparaging comments about their employer on their Facebook pages. The decision in *Lougheed Imports Ltd. operating West Coast Mazda doing business as West Coast Detail & Accessory Centre and United Food and Commercial Workers International Union, Loc. 1518*, BCLRB No. B190/20100, is Canada’s first labour arbitration decision where the dismissal of an employee solely on the basis of off-duty Facebook postings has been upheld.

## FACTS

The employer operated “West Coast Mazda”, an automotive detailing and accessories shop in Pitt Meadows, British Columbia, which had been certified by the United Food and Commercial Workers International Union (the “Union”). An employee identified as J.T. worked as a detailer in the shop for four years, and was a key inside organizer during the Union’s organizing campaign. An employee identified as A.P. worked as an installer for the employer for approximately two years. The employer was aware that both J.T. and A.P. were vocal and visible union supporters.

J.T. and A.P. were Facebook “friends” and were also “friends” with F.Y., a manager at the shop. The two employees had hundreds of other Facebook “friends” who could access any comments made on their respective Facebook profiles.

Shortly after the Union was certified, J.T. posted a status update on his Facebook page as follows:

Sometimes ya have good smooth days, when nobodys fucking with your ability to earn a living...and sometimes accidents DO happen, its unfortunate, but that’s why there called accidents right?<sup>1</sup>

J.T.’s manager, F.Y., noticed J.T.’s status update, advised another manager, and began monitoring J.T.’s Facebook page, since he was

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<sup>1</sup> All quotes relating to the employees’ Facebook pages were taken verbatim from the decision and as such include the typos and grammatical errors that appeared on the employees’ Facebook pages.

alarmed by the threatening tone of the post. Over the next five weeks, F.Y. noticed that J.T. and A.P. were posting a substantial number of increasingly angry and disparaging comments, including homophobic insults, damaging comments about the shop and its owners, and frequent use of profanity. Some of these comments were posted as status updates, and others as a conversation between J.T. and A.P. on their Facebook walls. Below are some of the more serious comments:

Hhhmmmm??? According to this reprimand at work, Im confrontational & disruptive to the WHOLE shop ... AND .... My outburst yesterday was threatening and didn't allow The WestCoastAutoGroup to conduct regular business.... well????All I Gotta say is they pissed off the WRONG GUY ....big time.

...

Seems my Boss, who's owned the business 25 yrs & is fixed operations director of 2 dealerships as well...couldn't comprehend my reply?? So its confirmed...HE'S A COMPLETE JACK-ASS...not just Half-a Tard.

...

west coast detail and accessory is a fuckin joke....dont spend your money there as they are fuckin crooks and are out to hose you... there a bunch of greedy cocksucin low life scumbags.

The posts also included several homophobic remarks, suggesting that F.Y. and another male supervisor were engaging in a homosexual relationship, as follows:

[J.T]...is wondering if his 2 supervisors at work, go to the bathroom together?? And who holds who's penis while pissing?

...

I heard that Marco and [F.Y.] were seen fondling each others nut sack in the shop bathroom?? Any truth to that? That shop ripped off a bunch ppl I know...

The employer eventually conducted separate investigatory meetings with J.T. and A.P., who were both provided with printed copies of the Facebook postings in question. Both employees denied that they were responsible for posting some of the comments. Neither employee had any previous discipline on record.

The employer terminated the employment of J.T. and A.P. for making disrespectful, damaging and derogatory comments on Facebook, which was damaging to the reputation of the shop and created a hostile work environment. The employer also asserted that the employees compounded their wrongdoing by being dishonest during the investigation.

### **LEGAL FINDINGS**

The Board dismissed the Union's argument that the employer's actions were related to the employees' union support. Instead, the Board found that the employer had monitored the Facebook pages due to the troubling content of the posts.

The Board found that the employees could not have had a serious expectation of privacy when publishing comments on their Facebook pages. The Board noted that some of these public comments were damaging to the employer's business, and that the comments made towards the supervisors "were offensive and egregious". The Board further found that the disparaging comments about the supervisors amounted to insubordination since, the comments were "used as a verbal weapon to degrade a Supervisor in front of others" and were "akin to comments made on the shop floor".

In dismissing the Union's grievance, the Board found there was just cause for the dismissal of both employees. The Board accepted the employer's argument that the employees' dishonesty during the investigation compounded the misconduct.

### **IMPACT OF DECISION FOR EMPLOYERS**

This case appears to be the first to decide that employees can be held responsible for off-duty conduct on social networking sites, such as Facebook, as it relates to their employment.

There is a misconception that Facebook and other social networking sites are a private or personal space, free from employer scrutiny; however, when an individual's privacy settings allow their colleagues or other members of the public to view that individual's page, the content of the page is broadcast to hundreds or even thousands of people.

The recent growth of social networking sites, such as Facebook and Twitter, poses interesting challenges for employers. Employers want to ensure that employees are not spending hours of designated work time surfing social networking sites. Employers also want to ensure that employees are not tarnishing the reputation of the business, undermining supervisors or harassing co-workers on social networking sites while off-duty.

Employers should be proactive and have a social media policy in place which clearly outlines the expected conduct of employees while on such sites, both on and off-duty. The policy should prohibit any violation of the law or violation of other employer policies related to social networking sites. This would include, for instance, a prohibition of harassment, discrimination or bullying of co-workers on social networking sites at any time. The policy should also identify the types of references to the employer or the workplace that may be made on social networking sites and specify the discipline that may result from any breach of the policy.

In Canada to date, the courts and arbitrators have considered only a handful of cases involving discharge based on the use of social networking sites; however, the Loughheed decision indicates that conduct on social networking sites does not hold any special immunity and can be subject to discipline, up to and including discharge.