

TERMINATIONS BASED ON FACEBOOK POSTING UPHELD

Lougheed Imports Ltd. operating West Coast Mazda doing business as West Coast Detail & Accessory Centre and United Food and Commercial Workers International Union, Local 1518, BCLRB No. B190/2010.

On October 22, 2010, the British Columbia Labour Relations Board (the "Board") upheld the termination of two employees for posting offensive, insulting and disparaging comments on their Facebook. This is Canada's first labour arbitration decision where the termination of an employee has been upheld solely on the basis of Facebook postings.

The two employees identified as J.T. and A.P. worked at an automotive detailing and accessories shop in British Columbia. J.T. and A.P. were Facebook "friends" with F.Y., a manager at the shop. The two each had hundreds of other friends who could access any comments made on their respective Facebook profiles. Over the course of a five-week period, the employees' manager, F.Y. noticed that both J.T. and A.P. were posting a significant number of angry and disparaging comments, including homophobic insults as well as damaging comments about the shop and its owners, all described with a significant use of profanities.

The posts became increasingly offensive over the course of five weeks and 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 remained dishonest throughout the investigation, denying that they were responsible for posting some of the comments.

The employer terminated the employees for making disrespectful, damaging and derogatory comments on Facebook, indicating that their insubordinate conduct was damaging to the reputation of the shop and created a hostile work environment. The employer also relied on the fact that the employees compounded their wrongdoing by being dishonest during the investigatory meeting.

In upholding the termination of both employees who had no previous disciplinary record, the Board found that the comments made towards the supervisors "were offensive and egregious". The Board found that the employees could not have a serious expectation of privacy when publishing comments on their Facebook pages, and that these comments were "akin to comments made on the shop floor". Accordingly, the Board found there was proper cause for termination of both of the employees.

This is Canada's first clear termination based solely on Facebook postings, indicating that employees can be responsible for off-duty conduct as it relates to their employment. This decision indicates that if an employee elects to friend his or her work colleagues on Facebook, inappropriate postings relating to the workplace may be subject to discipline and even discharge.

November 10, 2010