



e2r Alert!

Damages For Mental Distress Due to Unfair Treatment in the Termination of Employment Do Not Require Medical Evidence

In the recent case of *Krmpotic v. Thunder Bay Electronics, 2024*, the Ontario Court of Appeal dealt with a variety of issues including awarding damages without medical evidence due to the manner of the employee's dismissal.

The duty to treat employees fairly during dismissal encompasses the employer's duty to exercise good faith during the course of dismissal from employment. Breach of the duty of good faith occurs through conduct that is unfair or made in bad faith - for example, by being "untruthful, misleading or unduly insensitive".

In this case, the trial judge found that the employer had breached the duty of good faith in the manner of dismissal in a number of ways. The employer claimed that Mr. Krmpotic had been dismissed for financial reasons and that the employer's financial statements would support that claim. However, they refused to produce the financial statements. Further, while the trial judge found that the employer was not directly untruthful with Mr. Krmpotic during the termination meeting, he had "no hesitation" in finding that the employer was neither candid nor forthright. The judge also found that Mr. Krmpotic's employment was terminated because his physical limitations restricted him from continuing to perform the wide array of job duties and responsibilities that he had performed for the employer over the previous 29 years. He described the employer's conduct during the termination process as the antithesis of what is required by the duty of good faith in dismissal. Mr. Krmpotic was terminated within two hours of returning to work after his back surgery. During the termination meeting, instead of being candid, reasonable, honest, and forthright, the employer engaged in conduct that was untruthful, misleading, and unduly insensitive.

The Court of Appeal found that the mental distress arising from this manner of termination did not require medical evidence to substantiate aggravated damages:

[34] Mental distress is a broad concept. It includes a diagnosable psychological condition arising from the manner of dismissal but is not limited to

that. There is a spectrum along which a person can suffer mental distress as a result of the manner of dismissal. At one end is the person who suffers the normal distress and hurt feelings resulting from dismissal, which are not compensable in damages. At the other end of the spectrum is the person who suffers from a diagnosable psychological condition as a result of the manner of dismissal. In between those two end points, there is a spectrum along which the manner of dismissal has caused mental distress that does not reach the level of a diagnosable psychological injury.

[35] ...The fact that Mr. Krmptic had not established, through medical evidence, that he had suffered a diagnosable psychological injury, was not the end of a consideration of the issue of mental distress damages. As the trial judge correctly understood, he had to go further and determine whether (1) the appellants' conduct, during the course of termination amounted to a breach of their duty of honest performance; and (2), if so, whether Mr. Krmptic suffered harm – beyond the normal distress and hurt feelings arising from dismissal – as a result of that breach...

The court awarded Mr. Krmptic \$50,000 in aggravated damages.

Takeaway

It is critical that employers are diligent during the termination process to avoid conduct that is unfair or in bad faith. Courts are willing to award substantial damages to Plaintiffs' where terminations are not carried out properly. In the event that a termination goes wrong, an employee may be able to claim significant damages for mental distress without providing any medical evidence.

If you would like to discuss proper termination processes in greater detail, we recommend reaching out to speak to an e2r™ Advisor.