



Restructuring: The Pitfall of Constructive Dismissal

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In our recent seminar series, we have spoken about restructuring as a possible way of managing workloads on reduced budgets without losing staff. In our seminars, however, we have warned about the risks of unwittingly engaging in a constructive dismissal.

In a new case, the employer did exactly that. In *Sifton v. Wheaton Pontiac Buick GMC (Nanaimo) Ltd.*, the employee had been promoted from being a service technician in a dealership to shop manager. The promotion was confirmed in a memorandum which provided that the employee could be demoted to his previous position if the employer felt that the position was "not being properly served".

Eleven years later, the dealership was sold and the new owner immediately began restructuring. The owner introduced the changes in a series of group meetings with employees. Those group meetings were described in court as "tense" and at one point, the owner's representative stated "I won't tolerate negativity". As part of the restructuring, the owner returned the employee to a technician position; changed his compensation structure which led to a 23% reduction in income; and assigned simple work of a level the employee had been doing fifteen years earlier.

The employee quit and claimed a constructive dismissal. The owner immediately re-offered the demoted position. The employee declined and sued for damages. In court, the owner argued that the memorandum entitled the owner to return the employee to his old position. The owner also argued that the employee should have remained in the position offered and, by quitting, had failed to mitigate his damages.

The court found that the employee had been dismissed and awarded damages of fourteen months of salary. In doing so, the court made the following rulings:

- The memorandum did not entitle the owner to demote the employee. In particular, it did not permit demotion for economic reasons, only for performance issues, which was not the case.
- The decision to demote the employee was a rational business decision but was also a breach of the employee's contract of employment.
- The owner was assertive and, at times, insensitive.
- The employee was not obliged to remain employed. The salary offered was significantly lower and the relationship between the parties was tense.

In this case, with the demotion and the significant pay reduction, it is difficult to see how the employer could have avoided a constructive dismissal. The breakdown in the relationship afterwards did not help. The employer may have succeeded if it had offered a time-limited salary guarantee and had handled the transition in a more positive manner. Overall, the case illustrates that restructuring requires careful planning and sensitive execution.