

Status update: 'You're fired'

Labour board upholds firing of 2 workers at B.C. car dealership on basis of 'inappropriate and insubordinate' Facebook comments

BY CAITLIN CRAWSHAW

THE PERILS OF social media go far beyond productivity loss, as seen in the recent firing of two employees in British Columbia who attacked their employer through Facebook.

In August, just a few weeks before a Mazda dealership in Pitt Meadows, B.C., became officially unionized, management discovered two employees were using their status updates to take aim at both the company's products and managers. One of the managers was a Facebook "friend" with one of the employees so he could easily see the employee's status updates.

Over the next two months, the comments made by one of the employees (identified in the labour board ruling as "J.T.") became increasingly hostile. On Sept. 17, J.T. posted: "If somebody mentally attacks you, and you stab him in the face 14 or 16 times... that constitutes self-defence doesn't it ????"

Other status updates included a posting of the "top five kills" from TV's vigilante killer on *Dexter* and open-name calling ("HE'S A COMPLETE JACK-ASS...not just Half-a-Tard").

On Sept. 30, the other employee, identified as A.P., advised his friends to steer clear of the company, calling them "crooks" and a variety of profanities. When his girlfriend replied to the thread, warning him "some things just shouldn't be broadcasted on Facebook, especially when you still work there," A.P. replied, "That's the whole point, honey."

On Oct. 7, both employees were fired for making disrespectful, damaging and derogatory comments on Facebook. The comments were also "inappropriate

and insubordinate and created a hostile work environment for co-workers and supervisors," said the board, and were likely meant to damage the dealer's reputation and business interests.

Several weeks later, the case was brought to the B.C. Labour Relations Board as the union claimed the terminations were without cause and anti-union.

The employees claimed they didn't actually make the postings (arguing their accounts had been hacked) and the United Food and Commercial Workers International argued the workers had been fired because of hostility towards the union. But the board ruled in favour of the company on Oct. 22.

"The comments made by the complainants on Facebook were damaging comments about the employer's business such as 'Don't spend your money at West Coast Mazda as they are crooks out to hose you' and 'The shop ripped off a bunch of people I know,'" said the arbitrator. "The complainants could not have a serious expectation of privacy when publishing comments on their Facebook websites and, therefore, the comments are damaging to the employer's business."

While the dealer did monitor one of the employee's Facebook comments for several weeks, this was not out of line, said the arbitrator. And the dismissals were appropriate for the behaviour.

"The nature of the comments made towards the supervisors were offensive and egregious. J.T. expressed contempt for and ridiculed the manager and supervisors in such a manner that there was proper cause. The fact that the employer allowed this insubordinate conduct to continue for a matter of weeks does not mitigate

against a finding of proper cause."

If A.P. had admitted the postings and been honest during the investigation meeting and these proceedings, the conclusion may have been different, said the arbitrator.

"However, the employer found that the dishonesty in the investigation meeting compounded the misconduct and determined that it justified termination. I agree and find that there is proper cause for the termination of A.P."

While some media reports hailed it as the first clear Facebook-related firing, there have been previous cases of legal terminations on the basis of Facebook misconduct, said Hena Singh, an employment lawyer at the Toronto law firm Rubin Thomlinson. However, in this case, the behaviour of the employees was exceptionally brazen.

"In employment law, the facts are outrageous — and they still tried to say it was anti-union animus," she said.

Employers can legally terminate an employee on the basis of Facebook comments — even if they're made off-site — if they harm "the legitimate interests of the employer," said Singh.

As the employees in the Pitt Meadows case had several hundred Facebook friends between them (one had 377 and the other 100), their online comments were broadcast to a large group of people. The ruling might have been different if they'd vented to a handful of friends, such as on a password-protected blog, she said.

"Because this was so public, and the employer had open access to this information, and because there were so many employees who had access, and because of the derogatory nature of this in-

formation, it affected the legitimate business interests of this employer," said Singh.

In previous decades, people would vent to friends at a bar or air their grievances to a boss one-on-one, she said.

"Some people feel an urgency to share frustration and, back in the day, we didn't have this outlet," said Singh.

While Facebook has been around for about six years, it's still brand new to many people, said social media expert Randall Craig, author of *Social Media for Business*.

"There's a huge portion of the Canadian population who aren't living on Facebook because it's not their primary method of communicating with their network — it's real life," he said.

Some don't understand bad behaviour online can be broadcast to the world at large, depending on whether they've tweaked their privacy settings.

"It's like the thief who leaves his ID on the table in the house he's robbing," said Craig. "(It's) not very smart."

The Pitt Meadows employees are "as guilty as they come," he said, but a social media policy might have spared the company a lot of hassle.

"Perhaps if they'd had some understanding of what's right and wrong using these new tools, they'd have thought twice about what they did," he said.

Most employers institute a social media policy after a conflict, but some are very proactive, said Edmonton HR consultant Julianna Cantwell.

"Smart employers are monitoring the activities of some of their employees online because if they're in the press, and there's a public relations focus, that could be very damaging to the reputation of the company if their employees are misbehaving," she said.

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