

The Cost of Stolen Time: B.C. Tribunal Provides Clarity on Employee Time Theft and Cause for Termination

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“Time theft” occurs when an employee is paid for time that the employee knowingly did not work. Examples include the alteration of records by an employee to reflect paid time that was not earned, purposefully taking unauthorized breaks, or engaging in personal matters on company time. Given the increased prevalence of remote and hybrid work opportunities over the past couple of years, the issue is likely to remain a relevant concern for employers.

In a highly publicized decision from British Columbia, the Civil Resolution Tribunal addressed allegations of time theft in relation to unsupervised remote work. In *Besse v Reach CPA Inc*^[1], the applicant employee had been employed as an accountant by the respondent employer for five months before her employment was terminated for cause. The employee brought a claim for unpaid wages and wrongful dismissal damages while the employer alleged that it had cause to terminate the employee's employment as a result of the employee's time theft. The employer also filed a counterclaim for the paid wages that it said amounted to time theft.

Background

In September 2021 the employee entered into an employment agreement under which she would work exclusively from home. In February 2022 the employer installed a time-tracking program on the employee's work laptop. The employer subsequently discovered that during the subsequent period of approximately 1 month, the employee had recorded 50.76 hours on her timesheets that did not appear to have been spent on work-related tasks. The employee could not provide an adequate explanation, and her employment was therefore terminated for cause.

The Civil Resolution Tribunal found that the time-tracking program accurately recorded the employee's work activity, and that there were 50.76 hours of unaccounted time on the employee's timesheets.

In finding that the employee had engaged in time theft, the Civil Resolution Tribunal stated the following:

“Time theft in the employment context is viewed as a very serious form of misconduct...Given that trust and honesty are essential to an employment relationship, particularly in a remote-work environment where direct supervision is absent, I find Miss Besse's misconduct led to an irreparable breakdown in her employment relationship with Reach and that dismissal was proportionate in the circumstances. So, I find Reach had just cause to terminate Ms. Besse's employment.”^[2]

As a result of this finding, the Civil Resolution Tribunal dismissed the employee's claim for wrongful dismissal damages and also allowed the employer's counterclaim for the paid wages that it said amounted to time theft. The Civil Resolution Tribunal also dismissed the employee's claim for unpaid wages, as the employee had signed an agreement authorizing the employer to withhold certain amounts from her final paycheck.

Takeaways for Employers

While this decision provides some clarity for employers concerned about potential time theft, employers should remain cautious when making such an allegation, particularly if they intend to rely on it to assert just cause for termination. Courts and tribunals would likely consider a variety of factors in determining whether an employee's alleged time theft amounts to cause for termination, including the quality of evidence available in support of such an allegation, whether the employer previously condoned similar behaviour, the role and responsibilities of the employee, the existing policies and practices of the employer, and the frequency and duration of the alleged misconduct.

Regardless of whether an employer intends to bring a claim or counterclaim for wages that allegedly amount to time theft, the employer should ensure that the employee is provided with their minimum termination entitlements under the applicable employment standards legislation. The employer should also ensure that it is in compliance with the applicable rules regarding deductions from an employee's wages.

Finally, with respect to the monitoring of time theft and employee productivity, employers should also be aware that they may be subject to certain obligations regarding electronic monitoring of employees in the workplace, depending on the applicable employment standards legislation. Our previous article regarding these obligations in Ontario can be found [here](#).

For assistance developing a policy to reduce the risk of time theft or advice addressing an issue of time theft in your organization or on any other employment law matter for your organization, please feel free to contact [Daniel Wong](#) or [Megan Mah](#) of WeirFoulds' Employment Law Group.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[\[1\] Besse v. Reach CPA Inc.](#), 2023 BCCRT 27.

[\[2\] Ibid](#) at para 26.

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