Cassels

Costly Tweeting: Employee Pays High Price for Breaching Settlement Agreement

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It is common for many employers to choose to settle workplace disputes rather than litigate. When making this decision, employers are often mindful of two major benefits of settlement: (i) certainty and (ii) confidentiality. A recent arbitration decision in Nova Scotia provides a good example of how employers can respond when an employee's breach of a settlement attacks one of the main purposes of settling in the first place.

In *Acadia University v. Acadia University Faculty Association*, a former university professor learned the hard way that breaching the terms of a settlement agreement is a serious matter that can have serious consequences.

The Facts

In August of 2018, Acadia University dismissed Professor Mehta, a tenured professor, for cause for, among other things, issues arising from his use of social media. In response, the University's faculty association filed grievances contesting the professor's dismissal. In April 2019, the parties attended a voluntary mediation and reached a full and final settlement of the dispute. The parties (the University, the faculty association, and the former professor) all signed a settlement agreement (the "Minutes") confirming the negotiated terms, which included the following:

- The grievances were resolved "without admission of liability or culpability by any of the parties."
- The parties agreed "to keep the terms of these Minutes strictly confidential except as required by law or to receive legal or financial advice."
- "If asked, the parties will indicate that the matters in dispute proceeded to mediation and were resolved, and they will confine their remarks to this statement. Stated somewhat differently, it is an absolute condition of these Minutes that no term of these Minutes will be publicly disclosed."

All parties to the Minutes had their own legal counsel, including Professor Mehta.

Shortly after the Minutes were signed, Professor Mehta took to social media, tweeting “Vindicated former professor! Advocate for free speech and institutional transparency in universities.” One of Professor Mehta’s followers commented that he hoped the former professor got a nice sum of money. Professor Mehta responded: “All I will say is that I left with a big grin on my face” and “I got the vindication I was seeking. In other words, I have the left the university on my terms, as opposed to the administration or union’s terms.”

Upon becoming aware of the tweets, the faculty association asked Professor Mehta to immediately take them down. He refused. The matter then proceeded to a hearing, following which Professor Mehta was ordered to delete the posts and to strictly comply with the Minutes. The professor took down his posts but continued to tweet about the settlement, making unflattering comments regarding the University and about the labour laws that allegedly facilitated his dismissal.

A subsequent hearing took place to determine whether Professor Mehta’s actions breached the confidentiality provisions of the Minutes and, if so, whether the University was still bound by its obligations under the agreement – namely, to pay the settlement funds.

The Findings

The arbitrator concluded that it was quite clear that Professor Mehta’s tweets breached the Minutes by referring to “vindication” and by repeatedly referring to a payment provision. More specifically:

- Professor Mehta breached the provisions requiring the parties to be specifically circumspect in what they said about the resolution by disclosing that the Minutes provided for a payment (although he mischaracterized the payment as “severance,” there was no “severance pay” in the Minutes).
- As there had been no admission of liability or culpability by any party in the Minutes, there was no basis for Professor Mehta to claim “vindication” and his claims of vindication were “wildly inaccurate.”
- It was “actually untrue” for Professor Mehta to claim that he had left the University on his own terms, that he was terminated for exercising his academic freedom, and that he was owed severance pay. None of these issues were ever determined one way or the other and such statements were inappropriate given that he agreed to say nothing about the settlement other than that the matters in

dispute were resolved.

Notably, the arbitrator found that the Minutes were carefully drafted with specific thought given to what the parties to the agreement could and could not say about the settlement. The arbitrator also noted that the Minutes had been extensively reviewed by all parties (including the Professor Mehta's personal lawyer), and there was no ambiguity about the obligations of the parties in the Minutes. Confirming that "settlements in labour law are sacrosanct," the arbitrator found that Professor Mehta repeatedly broke his promises under the Minutes without any reasonable explanation and, as such, the University was no longer required to make the settlement payments to Professor Mehta.

Takeaways for Employers

The bad news for employers is that, once confidential information is made public on social media or otherwise, the "cat is out of the bag" – even if the social media posts are subsequently deleted. This can be particularly upsetting where the employee has chosen to share inaccurate or exaggerated versions of what transpired.

However, the good news is that adjudicators recognize the importance that confidentiality plays in the settlement process. Employers can use carefully drafted confidentiality provisions to protect themselves from former employees who choose to make a deal and then break it.

For further information, please contact Stefanie Di Francesco or any other member of the Employment & Labour Group.

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