

Case Name:

Monkman v. Anishinaabe Mino-Ayaawin Inc.

**IN THE MATTER OF Complaint of Alleged Unjust Dismissal
- Adjudication under Division XIV - Part III of the
Canada Labour Code
Between
Rhonda Monkman, employee, and
Anishinaabe Mino-Ayaawin Inc., employer
HRDC File No. YM2707-6223**

[2004] C.L.A.D. No. 111

Canada
Labour Arbitration

B.P. Schwartz, Adjudicator

Heard: Winnipeg, Manitoba, February 12, 2004.
Decision: March 11, 2004.

(16 paras.)

Appearances:

Neither party was represented by counsel.

AWARD

Introduction

1 Ms. Rhonda Monkman ("Ms. Monkman") was dismissed by Anishinaabe Mino-Ayaawin Inc. (the "Employer") from her position as an Accounting Clerk on February 26, 2003. Ms. Monkman seeks a finding that the Employer did not have just cause.

2 Ms. Monkman does not seek reinstatement as she believes it is time to "move on". Ms. Monkman did not specify what remedy she is seeking. As the Adjudicator in this matter I decided at the hearing that I would split the case as follows: first determine whether the dismissal was just, and then provide the opportunities to explore the remedial issue in depth.

3 Neither party was represented by counsel and I was not presented with any legal argument or case law.

The facts

4 The basis for the dismissal claimed by the Employer can be stated succinctly. Ms. Ardell Cochrane ("Ms. Cochrane"), Regional Health Administrator of the Employer, discovered Ms. Monkman photocopying documents. The documents were taken from confidential employee personnel files that were ordinarily kept under lock and key. The files included highly sensitive information, including personal health data and credit card numbers. The Employer was concerned enough that it made a police report and several witnesses testified to their ongoing concern about whether confidential and sensitive information is still in the possession of Ms. Monkman or other unauthorized persons.

5 When confronted, Ms. Monkman made statements that left the Employer uncertain and anxious as to her motives and as to the scope of the damage she had done to the confidentiality of personal information.

6 Ms. Monkman stated at one point that she was gathering information for herself so that she could speak knowledgeably at staff meetings about unequal treatment of different employees. However, she also stated that she was getting information on the advice of a "family contact" whose identity she would not reveal. This left the Employer with a concern that Ms. Monkman was leaking information to political opponents of the band government in the middle of a band election. Doing so would compromise the firmly-held position of the Employer that it should be strictly neutral on political matters.

7 Ms. Monkman stated she had "other documents", but when Ms. Cochrane led Ms. Monkman back to her desk Ms. Monkman could not find them. The Employer was concerned that other documents had been copied and taken off the premises, as Ms. Monkman had been observed taking documents out of personnel files on earlier occasions even though she had no duties that required her to work in that area. Ms. Monkman was immediately suspended. At a Board meeting early the following week she was permitted to make her case against dismissal directly to the Board members without any executive officials being present in the room. The Board decided unanimously to dismiss her.

8 Ms. Monkman says that she "blurted out" various statements - such as those about the "family contact" - only because she was panicky, that she had taken no documents off the premises, and that her duties did require her to look into the personnel files on earlier occasions. At the hearing she appeared to confirm that she wanted to be in a good position to address inequities at staff meetings and had no other motives. She stated she had not taken or copied any documents apart from one or two that were on her desk.

9 Even if I give Ms. Monkman every benefit of the doubt - including about whether she had improperly taken any other documents on earlier occasions - the evidence remains very clear about what she said and did on the crucial afternoon of February 26, 2003.

10 The Employer's witnesses were highly credible. At the hearing, it was clear that Ms. Cochrane was still upset and disappointed by Ms. Monkman's breach of employees' privacy, but her testimony was precise, consistent and devoid of insult, generalizations or emotionally charged language. It was substantiated by the testimony of Ms. Jodie Zemliduck ("Ms. Zemliduck"), Health

Secretary of the Employer, who took detailed notes of the conversations that took place after Ms. Cochrane confronted Ms. Monkman. Ms. Cochrane realized that the situation was serious and asked Ms. Zemliduck to listen in and keep notes on her follow-up conversations with Ms. Monkman. Ms. Zemliduck did not appear to bear any animus towards Ms. Monkman or have any desire to tailor her testimony to please her Employer. Ms. Zemliduck was dispassionate in recounting events and her notes supported what she recalled directly from memory.

11 Mr. Daryl Cote ("Mr. Cote"), the Chief Executive Officer of the Employer, testified under oath and his testimony supported that of Ms. Zemliduck and Ms. Cochrane. He appeared to be sympathetic to Ms. Monkman at the personal level. He testified, and I accept, that the Employer tried hard to accommodate employees; that it had accommodated a number of Ms. Monkman's career aspirations, including adjusting her working hours so she could try to run a personal business; that the Employer had tailor-made a position for her when she was dissatisfied with an earlier post; that the Employer would likely have tried to find alternate employment for Ms. Monkman, albeit away from confidential files, if she had provided a clear and consistent explanation of what exactly she had done concerning the confidential information. In Mr. Cote's view, the fact that Ms. Monkman did not "come clean" left the band uncertain as to the extent of the damage she had done, her motives, and their ability to trust her in the future.

12 The best interpretation that can reasonably be put on Ms. Monkman's conduct would be as follows. Ms. Monkman was very upset about perceived inequities in the treatment of different employees. She had wanted to complain about these matters directly to Mr. Cote a day or two before February 26, 2003, but Mr. Cote was out of the office. She was anxious to be able to speak knowledgeably to employees at the next staff meeting about what she perceived to be the extent of bad management practices. The filing cabinets were indeed ordinarily locked, but because an audit was taking place they were not locked on February 26, 2003 and Ms. Monkman was therefore less alert to their highly confidential nature. Perhaps she had spoken to a "family contact", but her motive seemed to be how to document management practices for internal staff meetings, not to become involved in band politics at large. Throughout the whole series of events, Ms. Monkman was emotionally and intellectually focused exclusively on the issue of management practices and simply lost sight of the extent to which she was breaching the personal privacy of fellow employees.

13 That the picture presented is at least part of the truth is borne out by the fact that at her meeting with the Board to contest her dismissal, Ms. Monkman never appears to have acknowledged or regretted her breach of privacy of fellow employees, but focused only on explaining her concerns about management practices.

14 It is not uncommon for even good and intelligent people such as Ms. Monkman to lose sight of other considerations when fixated on a desire to rectify a perceived injustice. The law of unjust dismissal recognizes that people can make mistakes, even serious ones, for which lesser penalties than dismissal are appropriate.

15 Even if Ms. Monkman's conduct is viewed in the best light it possibly can, however, I cannot find that the Employer's response was disproportionate. In other words, I cannot uphold her complaint of unjust dismissal. Key considerations are:

- The seriousness of the breach of privacy;

- The Employer's well-founded uncertainty of the motives behind it, the extent of the damage done and the cryptic and worrisome statements, including those concerning "family contacts" and "other documents";
- Ms. Monkman's ongoing inability or unwillingness to make it clear that she acknowledged the gravity of the breach of privacy and was genuinely remorseful about her role in it, rather than focusing almost exclusively on her sense that the Employer was not equitable in some of its human resource practices;
- Ms. Monkman's failure, even days later, to provide a clear and credible explanation of precisely what she had done and why;
- The fact that the employer had not acted out of any malice, but instead had bona fide concerns about maintaining its political neutrality and safeguarding employee privacy.

16 My conclusion must therefore be that Ms. Monkman's complaint is dismissed.

qp/d/qlklc