
# UP AND ATOM: VICTORY FOR FEDERALLY REGULATED EMPLOYERS AS COURT OKAYS WITHOUT CAUSE DISMISSALS

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For decades, adjudicators appointed under the Canada Labour Code to consider unjust dismissal complaints under section 240 have differed on whether the statute permits federally regulated employers to dismiss employees without cause, absent a lay off due to a "lack of work" or the "discontinuance of a function". In *Wilson v. Atomic Energy of Canada Limited*, 2015 FCA 17, the Federal Court of Appeal has settled the dispute "once and for all", subject to a successful appeal to the Supreme Court of Canada. Its decision arrives as welcome news to employers.

**Background**

Atomic Energy of Canada Limited (AECL) is a Crown corporation, and one of Canada's largest nuclear science and technology laboratories. Wilson was a former procurement supervisor at AECL who was dismissed without cause following four and a half years of service. Despite AECL's offer to pay six months of pay representing both statutory and common law severance , Wilson opted to make an unjust dismissal complaint under Division XIV of the Code.

Specifically, Division XIV establishes a procedure for making complaints against dismissals that employees consider unjust. Where an adjudicator appointed under the Code agrees that an employee has been unjustly dismissed, the adjudicator has broad powers to require the employer to compensate the employee, reinstate the employee or grant any other suitable remedy in order to "counteract" the consequences of the dismissal.

While the correct interpretation of these provisions has been hotly debated since the late-1970s, popular belief held that employees could only be dismissed due to just cause, a lack of work or the elimination of the employee's position (or in a handful of other prescribed circumstances). This was the line of reasoning adopted by the adjudicator in the present case, who held that Wilson's complaint was made out because he had been dismissed by AECL without cause.

**Without Cause Dismissals Not (Automatically) Unjust**

In the Wilson decision, the Court of Appeal agreed with the Federal Court and held that without cause

dismissals are not necessarily unjust under the Code. Rather, Division XIV requires adjudicators to examine the specific facts of each case and then determine whether the dismissal was unjust in the circumstances. In the words of the Court, employees do not have a "*right to a job in the sense that any dismissal without cause is automatically unjust*."

The Court concluded that Division XIV of the Code supplements (as opposed to ousts) the common law doctrine of reasonable notice. As provincially regulated employers already know, this doctrine holds that an employee who is dismissed without cause but provided with reasonable notice of termination or pay in lieu thereof is, in general, not wrongfully dismissed.

However, the Court was cautious to point out that just because an employer has provided an employee with reasonable notice of termination or pay in lieu thereof does not necessarily mean that the employee is without further relief under Division XIV. The Court said:

> *"..., it bears noting that an adjudicator under the Code does not have free rein to find a dismissal 'unjust' on 'any basis'. As I have suggested above, 'unjust' is a term that sits alongside and gathers much, if not all, of its meaning from well-established common law and arbitral cases concerning dismissal. It is also a term whose meaning must be discerned using accepted principles of statutory interpretation ... . It is for Parliament's chosen decision-makers in this specialized field – the adjudicators – to develop the jurisprudence concerning the meaning of 'unjust' on an acceptable and defensible basis, not 'any basis'. It is for us to review the adjudicators' interpretations for acceptability and defensibility when they are brought before us."*

Whether an employee is entitled to such relief will of course depend on the specific facts of each case.

**Lessons for Employers**

Federally regulated employers can finally relax, as the *Wilson* decision has breathed considerable latitude into the running of day-to-day operations of an employer's business. That said, employers must take care to treat employees fairly and reasonably whenever severing employment. Failing to provide adequate severance pay or otherwise treat an employee justly could invite complaints under Division XIV of the Code, which may in turn result in more extreme forms of relief.

by Paul Boshyk

**A Cautionary Note**