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Supreme Court erases punitive damages in dismissal case

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Honda Canada wins reversal of landmark award in unlawful dismissal case for man suffering from chronic fatigue syndrome

The Supreme Court of Canada has erased a landmark punitive damage award of \$100,000 to an employee of Honda Canada - Kevin Keays - who was fired after years of struggling with chronic fatigue syndrome.

Employers breathed a large sigh of relief as the award - originally \$500,000, but reduced to \$100,000 by the Ontario Court of Appeal - evaporated altogether as a result of the Supreme Court's 7-2 ruling.

It had been the largest ever in a Canadian employment context. Despite the reduction by the Ontario Court of Appeal, the punishment remained strikingly large, as was an award of 24 months of salary in lieu of proper notice, and \$610,000 to cover Mr. Keays's legal costs.

Mr. Keays was employed for 14 years as a senior quality engineering associate. His employment was wrongfully terminated in May, 2000, after he refused to attend at a medical assessment that, the trial judge concluded, was a set-up by Honda to evade its duty to accommodate Keays under Ontario human- rights law.

Mr. Keays's struggle with chronic fatigue syndrome had played havoc with his attendance at the Honda plant in Allison, Ont. Co-workers had taken to mocking his constant absenteeism with cruel cartoons and ridicule.

With workplace morale in a tailspin and their patience spent, Honda managers decided the situation was at the point of no return. They fired Mr. Keays, spawning a bitter court battle that resulted in a record-setting damage award for him - granted by a judge who blasted the company for an "outrageous" campaign of intimidation against Mr. Keays.

Corporate managers, insurers and human-rights advocates have been watching the case closely to see how the court interprets the evolving duty of an employer to accommodate an employee suffering from a debilitating condition.

The landmark case also induced the court to reconsider a 30-year-old Supreme Court decision that limited the ability of judges to award damages for violations of human-rights code guarantees.

At the 2005 trial of Keays v. Honda Canada, both sides portrayed a bitter standoff between an ambitious worker and a company that had originally prized his intelligence, potential and diligent approach to his duties.

For several years after he was hired at the Honda plant in 1986, Mr. Keays's career had been on the fast track. He rose from the production line to a management position, where he was viewed as a key figure in the company's future. Unfortunately, his illness steadily worsened. Having a considerable investment in Mr. Keays's training in a special computer system, Honda was chagrined.

He was off work for most of the period from October, 1996, until December, 1998. At that point, he was cut off long-term disability benefits by London Life, which had arranged for an assessment of his medical condition.

He returned to work, but his absences soon began again. Honda insisted that he begin providing a doctor's note to explain any absence. Mr. Keays was also assessed by a company doctor, who allegedly threatened to have him moved back to the production line.

"He had spent his entire adult life at Honda and felt his world was coming down on his head," Mr. Justice John McIsaac of Ontario Superior Court said in his trial ruling. "The deck was stacked against him and he was only a minnow compared to the leviathan that Honda represented."

Mr. Keays hired a lawyer, but Honda has a policy of not dealing with "third parties," so it ignored him. According to Judge McIsaac, the company had its own lawyers try to persuade Mr. Keays to ignore the advice of his lawyer. It also had two more company doctors assess him.

Judge McIsaac found that the company grossly misrepresented the doctors' advice and conclusions that he ought to return to work, and that it went further offside when it tried to force him to see another company doctor who felt the chronic fatigue syndrome was a sham.

"The subterfuge practised by everyone associated with Honda in attempting to intimidate him to seeing their occupational medicine specialist should make the blood boil of any right-thinking individual," Judge McIsaac observed.

The judge concluded that Honda set about abusing a dedicated worker by misusing medical evidence to mount a case for firing, which occurred on March 29, 2000.

"Just because Mr. Keays did not carry a white cane, use a hearing aid or get around in a wheelchair, [that] did not make him any less deserving of workplace recognition of his debilitating condition," Judge McIsaac said.

Affirming the essential findings by the trial judge, the Ontario Court of Appeal said: "The need for this large employer, and indeed all employers, to take seriously their responsibilities in accommodating employees with disabilities is very important."

In a brief to the Supreme Court on behalf of Honda, lawyers **Earl Cherniak** and **Jasmine Akbarali** argued that the Court of Appeal took the ground out from under Judge McIsaac's harsh judgment by finding that Honda did not run amok or engage in "corporate malfeasance.

The import of these findings is that there was no bad faith on the part of Honda and no conduct justifying an award of punitive damages."

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