
**• REQUESTING A SEVERANCE PACKAGE DOES NOT
A RESIGNATION MAKE •**

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In an Alberta Court of Queen's Bench decision, *Carroll v. Purcee Industrial Controls Ltd.*, [2017] A.J. No. 302, 2017 ABQB 211, an employer that accepted an employee's notice of resignation was found to have wrongfully terminated the employment relationship because the resignation was conditioned upon negotiating a fair severance package.

The employee worked for the employer in Calgary, Alberta and later in Madagascar for four years and eight months. The employee was the company's sole employee and representative in Madagascar and the larger African and Indian Ocean Region and enjoyed a certain level of autonomy in carrying out his duties. Over time, the relationship between the parties became strained as the employer began to increase its oversight of the employee's day-to-day operations.

Matters reached a climax when the employer advised the employee that as business was slowing in the region it would be winding-up its operations there. The employee was insistent that he had a plan that would help to redirect business in the region and offer continued growth for the company. Feeling overlooked by the employer and frustrated with the situation, the employee tendered his resignation and invited the employer to discuss a fair severance package. The employer did not accept the employee's resignation but instead invited him to put together a proposal for how he could remain in Madagascar.

After receiving and reviewing the employee's proposal the employer advised him that it saw no

business efficacy in his proposal and it would not be implementing any of his suggestions. In response, the employee reiterated that he would be resigning and proposed terms for a severance package. A few days later, the employer purported to accept the employee's resignation without any reference to his proposed severance package.

The court found that the employee had not resigned but was instead terminated and owed pay in lieu of notice. The court noted that in order for a resignation to be effective and binding it must be clear and unequivocal. To determine if an employee has resigned the court applies both a subjective and objective test. The subjective test assesses whether the employee intended to resign and the objective test asks the question, "given all the circumstances, would a reasonable employer have understood that the employee had resigned?".

In view of all the circumstances, the court found that the employee did not intend to resign from his position with the employer without further recourse. Each time the employee offered to resign his employment, the offer was conditioned upon the parties negotiating a severance package. The court noted that this was important for two reasons: first, "it is difficult in such a circumstance to argue that the resignation is clear and unequivocal when it is tied to a proposal for terms of severance"; and second, "it calls into question an employer's ability to accept that resignation ... if the employer does not also accept the terms proposed by the employee".

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The court found that the employee's resignation was not clear and unequivocal, but rather an invitation to negotiate a severance package and in any event the employer purported to accept the resignation on different terms.

The takeaway, although well established, was reiterated by the court; an intent to resign unconditionally must be clear, unequivocal and unconditional. Upon receipt of an employee's offer

to negotiate a severance package the employer can either refuse the employee's offer outright or otherwise negotiate the terms of departure.

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