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Truck driver fired over fight, but pay deductions unauthorized

Adam Gorley, Editor, HRinfodesk, published by First Reference Inc., November 2014

After he punched a client employee and knocked out the man's tooth, Jordy Warner was terminated by his employer, Moore Brothers Transport Ltd. Warner, a truck driver with a history of belligerence and disobedience, argued that the employer failed to follow progressive discipline and the fight was not sufficient cause for termination. A federal labour inspector agreed and ordered the employer to pay Warner termination and severance pay, an amount of \$6,441.72. The inspector also ordered Moore Bros. to return to Warner more than \$4,000 that it had deducted from his pay for exceeding the employer's limit on toll highway payments. The employer appealed the inspector's order.

After the fight, the employer suspended Warner indefinitely while she figured out how to handle the situation. However, the employer soon went away on a two-week vacation, and the dispatcher called Warner to work after only four days without knowing about the suspension. While the employer was away, Warner was involved in another lesser incident of workplace misconduct, which the employer only discovered when she returned. That was when she decided to terminate Warner without any further notice.

The employer's termination letter to Warner only mentioned the lesser incident that occurred while she was on vacation, but the labour arbitrator nonetheless found Warner's fighting was the real cause of the termination. Moreover, it was a sufficient cause for termination on its own—progressive discipline was not necessary—and the arbitrator reversed the inspector's decision on termination and severance pay.

However, the arbitrator agreed with the inspector that Moore Bros. had not obtained authorization to deduct the excess tolls from Warner's pay. To enforce the toll rule, the employer relied on a letter that it had every employee sign stating:

"I will be monitoring this every month and any driver who has gone in excess of \$100 per month on the toll road will have the toll difference deducted from their pays. I will enclose a copy of your part of the invoice monthly for your information. If this cannot be done, we will take away your transponder and you will have to deal with the traffic on the regular highways."

Warner regularly took more trips on Ontario's 407 toll highway per month than all of the other five drivers combined. For instance, in April 2003, he used the road 66 times, more than twice per day. The other drivers used the toll highway a combined 45 times that month. In 2012, his 407 bill was more than \$5,200, and the employer had deducted \$4,011.89 from his pay. Despite his signature on the letter, Warner denied signing it.

Regardless of whether Warner signed the letter and consented to the deductions—which it appeared he had—the deductions were still improper. The **Canada Labour Code** states that employers may only make deductions from employees' pay in specific circumstances, including express authorization in writing by the employee. But a policy of Human Resources and Skills Development Canada, while not binding, offered greater detail on the topic:

“amounts authorized in writing by the employee,’ requires a written authorization by the employee assenting to the deduction of a specific amount. **For every deduction made, the authorization must be in writing, specify a particular sum, and be given in a way that is truly consensual.** General blanket authorizations in employment contracts, with or without specific amounts, may operate to assign responsibility or liability to the employee, but the corresponding deduction requires a specific authorization. In order to meet these requirements, **the written authorization must be obtained after the fact, i.e. after the incident or transaction to which it is related has occurred.**” (Emphasis added.)

Moore Bros. had only obtained a blanket authorization and not the type of specific, incident-related consent required. The arbitrator ordered the employer to return the deducted toll payments.

Read [Warner v Moore Brothers Transport Ltd, 2014](#) on CanLII.

Any questions or comments, please communicate with Yosie Saint-Cyr, Managing Editor, HRinfodesk.com at editor@hrinfodesk.com

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