COMPENSATION ON THREATENING EMPLOYEE UNDER CIVIL LAW AND COMMON LAW

MUSTAFA RASHID ISSA

Ishik University
E-mail: law.malaysia1@gmail.com

Abstract- Employers with twenty or more employees are prohibited from preventing an employee from engaging in politics or from becoming a candidate for public office. Further, an employer may not control or direct the political activities or political affiliations of its employees with the adoption or enforcement of any rule, regulation or policy or threats . Coercion or influence by an employer by threats of discharge or employment loss for an employee's support or affiliation with a particular political faction or organization is also prohibited. It is unlawful for anyone except common carriers to transport or cause to be transported into Louisiana persons who are employed to obstruct or interfere by force or threats with peaceful picketing or union organizational activities.

Keywords- Employers, Threatening, laws, threat cases, compensation.

I. INTRODUCTION

Further, any person not directly involved in a strike or lockout is prohibited from recruiting, hiring, securing or furnishing striker replacements. This law does not apply to employers directly involved in a strike or to employment agencies as long as they are not primarily engaged in the business of providing striker replacements.

II. CIVIL AND COMMON LAW

The statute provides an exemption for certain industries. Take the example of employment with Allstate, Mr. Colden was observed behaving strangely, including making death threats to co-workers. Allstate terminated Mr. Calden after he was found carrying a gun to the workplace in his briefcase. Allstate provided Mr. Calden with a neutral letter of reference stating that he had voluntarily resigned because his position was eliminated in a restructuring. Firemen's Fund hired Mr. Calden based in part on Allstate's neutral letter of reference. After Firemen's Fund terminated him, Mr. Calden shot five supervisors who were involved in his firing, killing three of them. Family members of the victims sued Allstate for failing to disclose his true work history. The Florida appellate court held that there could be a cause of action against Allstate for misrepresentation. Allstate ultimately settled the case for an undisclosed sum of money. Employers can take certain steps to minimize the risk of defamation or negligent referral claims, including: Be Cautious about Threatening Criminal Charges When dealing with workplace investigations involving incidents of theft and fraud, employers are often pre-occupied with ensuring the prompt return of their stolen property or assets. While this is a legitimate concern, employers need to be cautious with respect to how they approach these scenarios, because the interplay between an aggressive pursuit of civil remedies or reparation and the criminal justice system can potentially have unintended consequences. In particular, several courts have commented unfavorably on situations where employers have threatened or initiated criminal charges for the primary purposes of advancing a civil remedy against a current or former employee.

Generally speaking, courts and laws have considered threats of this nature to be an inappropriate use of the state's prosecutorial power. Where criminal charges have actually been laid, several decisions have resulted in a stay of proceedings against the accused, where the threat of prosecution was being used as a tool to leverage reparation, and thereby considered to be an abuse of process.

For example, in Regina v. Janvier, [1985] 5 W.W.R. 59 (Sask Q.B.), a complainant town council used the threat of criminal proceedings to intimidate an employee into repaying monies apparently stolen by her. The accused started to make payments, but charges were laid when she defaulted. The Court held that while no person specifically threatened the accused with criminal prosecution if she did not repay the money, there was an implied threat of such a consequence. Had she not agreed to pay, the matter would most certainly have been turned over to the police with a view to having her investigated and prosecuted. The proceedings were therefore stayed. Similarly, in Regina v. Van Holland (1984), 13 C.C.C. (3d) 225, (Ont. County Ct.) an employee of a trust company was confronted about misappropriated funds and told no charges would be laid if restitution were made. However, charges were laid in the midst of his taking steps to liquidate assets in order to effect restitution. The accused was arrested on charges of theft and the complainant, while aware

of the arrest, said that his head office had wanted the charges laid and that he had nothing to do with it.

An order was made staying the prosecution. Apart from jeopardizing the chances of a successful prosecution against a malfeasant employee, employers also need to be concerned about avoiding potential criminal charges against themselves. Some courts have comment
ed that attempting to threaten or bargain away criminal charges in exchange for exacting a monetary benefit could itself constitute the crime of extortion pursuant to the Criminal Code of Canada. In R. v. Bristow,[1990] B.C.J. No. 2218 the British Columbia Supreme Court suggested
(in obiter): The mere laying of a charge can cause great harm to a person's reputation, occupation and family even if it later turns out that the accused was innocent. The fear of being charged may induce a person to do things he would not otherwise do. No person should be permitted to use such a threat for any personal purpose or gain. The policy of the criminal law is to protect the public interest in seeing that justice is done and any attempts to 'use it for personal purposes must be stopped without hesitation. The Criminal Code contains a provision regarding extortion. Section 346 (now Section 340) of the Criminal Code provides as follows: Section 346.
(1) Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.
(1.1) Every one who commits extortionis guilty of an indictable offence and liable to a maximum term of imprisonment for life.
(2) A threat to institute civil proceedings is not a threat for the purposes of this section.
R.S., c. C-34, s. 305; R.S.C. 1985, c. 27 (1st Supp.), s. 46. "
The Section makes it clear that a threat to institute civil proceedings is not a threat for the purposes of this section. I think it can be inferred that a wrongful threat to institute criminal proceedings for the purpose of obtaining something could be extortion. My purpose in referring to this section is to demonstrate that threats of criminal proceedings in certain circumstances can themselves be a crime. Legal counsel involved in conducting investigations on behalf of their clients should also exercise caution in these situations. Several provincial Law Society Rules of Professional Conduct expressly provide that it is improper to threaten or
advise a client to threaten criminal or quasi-criminal charges for the purpose of securing advantage in a civil claim (see Ontario's Law Society of Upper Canada's Rules of Professional Conduct Section 2(4)According to threat theories, contextual threats impact on psychological mechanisms for instance by attenuating the impact of personality traits on attitudes Sibley, Osborne & Duckitt (2012)or the expression of conservative values in attitudes (Boer &Fischer, 2013). The underlying mechanisms include threats being strong sources of uncertainty, which impact on human motivation striving for a management of and coping with these uncertainties (Hogg, 2007). We argue that an economic crisis is a contextual threat that influences individuals' work-related attitudes. Further-more, we claim that changes in regulatory foci function as threat adjustments underpinning these attitudinal changes. Next, we explicate which work-related attitudes are investigated in detail and how regulatory foci relate to these work-related attitudes.

We contribute a novel take on work-related crisis effects and their underlying psychological mechanisms by developing three sets of hypotheses concerning (a) the impact of economic crisis on work-related attitudes, (b) the impact of economic crisis on promotion and prevention focus, and (c) the mediating role of regula- Refusals and disagreements are usually considered 'dispreferred responses' and 'face-threatening' speech acts that therefore tend to be linguistically softened (e.g. Hayashi 1996, Felix-Brasdefer 2006). Until now, they have mainly been studied in oral and everyday communication, and much less so in written electronic communication and business contexts. In this paper we offer a discursive and contextual analysis of customer e-mails expressing disagreement with a complaint refusal. Our study builds on an authentic corpus of German-, French- and English-language business e-mail correspondence on complaint refusals (a total of 100 e-mail sequences), which was gathered at the sales department of a Belgian multinational. Apart from this ethnographic approach, we rely on research in pragmatics and genre-analysis (e.g. Blum-Kulka et al. 1989; Bhatia 1993) to determine the generic structure of customer disagreement e-mails. In particular, we distinguish several moves and examine their linguistic realization: Which disagreement strategies are used, what is their level of directness, and to what extent are they internally and externally modified? We are also interested in how these different realizations of disagreement are influenced by contextual (situational and cultural) factors. Our results reveal a preference for direct strategies. In addition, we found that the customers' disagreement statements, as opposed to the employees' refusal notifications, tend to be accompanied by upgrading internal and external modification. These results indicate that when conveying non-acceptance, transactional and interactional communicative goals are negotiated differently depending on context (everyday vs. business context; employee vs.

customer perspective). Furthermore, the comparative analysis of the German-, French- and English-language corpus showed differences in the number of direct strategies and aggravating devices, pointing, among other things, to a more direct and confrontational communication style in French. These results will be compared with previous cross-cultural studies involving (one of) these three languages. Finally, when looking for contextual factors explaining the customer's reaction, we were able to link disagreement statements to a series of variables ranging from complaint type and reason for refusal to the gravity of the complaint and the employee-customer relationshiptory foci for explaining the crisis effects on work-related attitudes.

Thus, documented reprimands, threats of termination, and negative performance reviews did not support a retaliation claim in the Fifth Circuit, because while they "may have increased the chance that [plaintiff] would suffer an adverse employment action, ... neither were they ultimate employment decisions nor did they rise above having a mere tangential effect on a possible future ultimate.

III. EMPLOYEE THREATENING AND LAWS

A. The Goals of the Public Policy Exception

Created in 1959,3" the public policy exception gives a tort cause Of action to employees whose dismissals contravene a clear mandate of public policy. The discharged employee usually must locate this public pol-icy in a legislatively enacted source, but courts have occasionally found actionable discharges that contravene norms found in judicial opinions, codes of professional ethics, or even accepted standards of morality.

The public policy exception is controversial because these enactments, while proscribing certain kinds of conduct, do not expressly give discharged employees a private right of action. Nonetheless, the right of action implied from these sources can serve as a useful and justifiable private mechanism for promoting certain public policies.

B. The Inadequacy of the Prevailing Remedial Scheme

Under current law, successful plaintiffs in public policy exception cases automatically receive an award of compensatory damages. Fur-thermore, the jury has discretion to award punitive damages if the dis-charge was "willful, malicious, wanton, fraudulent, or oppressive." [4 7] The only legal limitation on the amount of the punitive damage award is that it may not be "excessive." [4 8] Although the compensatory damage award does provide employees with the proper incentives to promote public policy goals, current damage awards in public policy exception cases do not provide the proper level of deterrence for employers.

C. Toward a Revised Doctrine of Damages in Public Policy Exception Cases

To summarize, I have criticized the prevailing damage doctrines in public policy cases on three grounds. First, the "wanton, willful, or op-pressive" standard, though it does identify those cases where employers receive an illicit benefit, may not provide extra deterrence when the em-ployer, through a rational calculation of economic costs and benefits, without a hint of malice towards the employee, determines that discharging the employee is in its best economic interests. Second, once a jury decides that a plaintiff was dismissed wrongfully, its common sense equi-ties and pro-employee prejudices too often lead it to award punitive dam-ages in cases where they are not appropriate. If these problems are not corrected by meaningful judicial review of the jury's discretionary deter-mination of the quantity of punitive damages, then the awards may bear no relation to the extra deterrence necessary in a given case.

To solve these problems, I suggest that the judge, not the jury, should have the discretion to award punitive damages,[6 5] or, where that is not possible, the judge should carefully scrutinize any large punitive damage award for prejudice. In exercising this discretion, the judge should emphasize two factors in deciding both the appropriateness and quantity of a punitive damages award: (1) the personal vindictiveness or spitefulness of the discharge, and (2) the deterrent effect of the compensa-tory award in light of what the employer had to gain from the wrongful discharge. In addition, judges should explain how those factors applied

A superficially appealing explanation suggests that the common law should mandate some degree of job security because it is the only major employment condition not already regulated by the state. Since the New Deal, state and federal minimum wage laws have imposed paternalistic limitations on the employer's and employee's freedom to bargain for wages. Similarly, state workers' compensation schemes and the federal Occupational Safety and Health Administration have regulated allowable conditions in the workplace. Most recently, the Employee Retirement Income Security Act' has invaded the employer's traditional freedom over the terms of employee pension plans. Through these pro-grams, society has declared that employment contracts implicate concerns beyond the individual preferences of negotiating employers and employees. According to this argument, state courts of general jurisdiction should not hesitate to infuse analogous public values and policy concerns into cases involving employee job security.

But this argument provides only a partial justification, for it does not explain why the state should interfere with private choice as to all the other terms of

employment. It merely bootstraps a new paternalistic law onto an existing body of paternalistic laws. The implied-in-law covenant of good faith and fair dealing in employment contracts demands a deeper rationale, one that explains why public choices concerning job security should predominate over private ones.

CONCLUSIONS

Such a rationale can be derived from two assumptions underlying traditional contract law's fundamental presumption that private choice best furthers the collective good.'[0 9] One assumption is that contracting parties act out of their own free will and are capable of ascertaining their own best interests. The other is that the contract's terms impose no costs ("externalities") on people who are not parties to the contract. When either of these assumptions is incorrect, the law may justifiably intervene into the parties' presumed freedom of contract. Of course, the law need not intervene in every instance where these assumptions falter; the falter-ing only legitimates a possible intrusion into individuals' freedom of contract.

★★★