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ONTARIO DIVISIONAL COURT AWARDS PUNITIVE DAMAGES FOR BREACH OF LABOUR RELATIONS ACT

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In *Beck Taxi Limited v. Chaudhry*, the Ontario Divisional Court held that a breach of the *Labour Relations Act* (the "Act") can justify an award of punitive damages.

Chaudhry, a non-unionized taxi driver, drove a Beck taxi as an "independent owner", as opposed to an "employee". He owned his own vehicle, and paid Beck \$420.00 per month for the use of the company's dispatch service. Chaudhry was required to equip his car with a two-way radio, credit card machine, and pager, and to paint his vehicle in Beck's distinctive colours. There was no written agreement.

Chaudhry became frustrated with the improper activities of one of the other drivers, and Beck's failure to take action with respect to them. As a result, Chaudhry sent a letter of complaint signed by 116 drivers to Beck's president. The driver who was the subject of the letter told the company that the complaint letter was a unionization attempt. Chaudhry was subsequently informed that his association with Beck was terminated.

Chaudhry sued Beck for breach of contract. Although he was not a Beck "employee", Chaudhry argued that the nature of his relationship with Beck was such that he could not be terminated without just cause, or alternately, proper notice. Chaudhry also claimed aggravated and punitive damages arising from the manner in which the termination was executed.

Aggravated damages are awarded when egregious conduct results in pain, anguish, grief or humiliation. This head of damages is compensatory in nature, and is intended to put the plaintiff in the position he would have been in had the defendant not inflicted harm through the egregious conduct. In contrast, punitive damages are designed to punish and deter egregious conduct. This head of damages is not compensatory in nature, but rather reflects the court's displeasure with defendant's behaviour. The defendant's egregious behaviour must be associated with an independent or separate actionable wrong. In other words, punitive damages cannot be awarded simply because a court is offended by the egregious behaviour of a defendant; the behaviour must be related to the defendant's commission of an independent actionable wrong.

At trial, Chaudhry was awarded damages equivalent to eight weeks pay, as well as \$7,500.00 in punitive damages. The trial judge held there was no basis for aggravated damages.

Beck appealed, among other things, the award of punitive damages. Beck argued that there had been no finding of a separate actionable wrong, which is required for an award of punitive damages. The Court found that it had been established that Beck terminated its contract with Chaudhry because it perceived that he was attempting to organize a union. Citing the Act, the Court went on to say that employers are prohibited from interfering with the formation of a union. The Court concluded, "Beck's violation of the provisions of the [Act] can give rise to an independent actionable wrong sufficient to justify the imposition of punitive damages." The punitive damages were therefore upheld.

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This case is noteworthy for a number of reasons. The Court held that Beck's breach of the Act was a separate actionable wrong that supported the award of punitive damages. This is puzzling given that there was no discussion of the Act in the trial decision.

It is also unclear why an unfair labour practice application was not pursued at the Ontario Labour Relations Board, which is charged with administering and adjudicating the Act. If the breach of the Act was truly the basis of the claim, then the Labour Relations Board would presumably have been the proper venue.

While perhaps factually unique, this case should be noted by employers as it now appears that independent contractors can seek punitive damages from the courts when there has been a breach of the Act. Employers should therefore be aware that independent contractors may have a new venue, and a new remedy, at their disposal.

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