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Federal Employee Disabled by Work Related Injury Protected Indefinitely

An employee of a federally regulated business was off work for over 20 years due to a work related injury (amputation of his arm). Over the years the employee maintained his employment status and the employer made health and welfare and pension plan contributions on behalf of the employee. Approximately 20 years later the company was sold and the purchaser inquired into whether the employee was able to return to work. When the employee reported that he was unable to return to work due to the injury, the employer terminated his employment.

The employee grieved his termination on the basis that section 239.1(1) of the *Canada Labour Code* (the "Code") which provides that "no employer shall dismiss, suspend, lay off, demote or discipline an employee because of absence from work due to work-related illness or injury" prohibited the employer from terminating his employment, even after over 20 years.

Arbitrator Slotnick concluded that section 239.1 of the Code indicated a "clear intention to protect the employment status and benefits of workers who are injured on the job" and precludes an employer from dismissing a worker because of "absence from work due to work-related illness or injury." As a result, the Arbitrator ordered the employee reinstated to non-active status and for his benefits and pension payments to be reinstated.

The implication for federal employers is that it will be extremely difficult, if not impossible, to terminate the employment of an employee who is off work due to a work related injury or illness.

Teamsters, Local Union 91 v. Kingsway Transport.

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