

Travel Allowance Downfall of a Municipal Administrator

A recent decision of the British Columbia Supreme Court affirms the principle that municipalities are entitled to expect a high standard of conduct from senior management employees.

Facts

Following a lengthy career in municipal management, Richard Zerr was hired by the District of North Vancouver as the Director of Community Planning, Building, Land and Bylaw Services in 1998. At the time of his hire, there were approximately 80 employees reporting to him and he was also responsible for managing the application of the District's policies, including the car allowance policy, for employees reporting to him. Mr. Zerr proved to be a very dedicated and hard-working employee.

In 2001, the District underwent a corporate restructuring which resulted in the consolidation of two divisions into a new division which was led by Mr. Zerr. This represented a very substantial increase in Mr. Zerr's responsibility including management of 325 employees and about \$50 million of the District's budget. One of the reasons for the corporate reorganization was that an audit of the Parks and Engineering Department had revealed theft of time and merchandise.

About this time, the District also tightened up its policy with respect to vehicle allowances. Mr. Zerr was a member of the task force formed to review the District's policy in this area. On the recommendation of this task force, the District amended its vehicle allowance policy by requiring employees to submit written confirmation of business mileage.

Also about this time, the District discovered a further problem with fidelity after it investigated its golf course and found it had been defrauded of approximately \$300,000 or more. Mr. Zerr took part in meetings to deal with this problem.

Mr. Zerr became the acting Chief Administrative Officer in February 2003.

In response to a request for a detailed mileage log for 2003, Mr. Zerr estimated that he had travelled 13,250 kilometers. In response to a request for a detailed breakdown of the mileage claim, a form was submitted claiming exactly 13,250 kilometers. Still concerned over Mr. Zerr's mileage claim, the District retained outside auditors to conduct an investigation. On the strength of the resulting report, District Council terminated Mr. Zerr's employment. Mr. Zerr sued for wrongful dismissal.

The Decision

Unfortunately for Mr. Zerr, at trial, his testimony differed from that of his assistant. The suggestion that the assistant lied was rejected in the following words of the Court:

The inference I draw from the foregoing is that Richard Zerr knowingly submitted a false travel log to support his claim for travel expenses, and later falsely accused his assistant...of submitting the log without his approval.

In ultimately rejecting Mr. Zerr's claim for damages, the Court stated the following:

Zero tolerance for employee dishonesty is not the law. In some circumstances, a warning or other discipline would be the appropriate course, however, without attempting to define with precision where conduct crosses from that which requires other forms of discipline to that which warrants termination, Mr. Zerr's conduct clearly warrants his dismissal.

Mr. Zerr advised the KPMG investigators that he drove 32,000 kilometers per year of which 24,000 represented travel from his home to his place of work. He testified at trial that the 32,000 was an estimate. I do not know whether service records for his vehicle were available to support this estimate, but nothing was offered to confirm it. It is possible that the 24,000 kilometers between home and work could have been claimed under the District policy. In his 2003 tax return, Mr. Zerr reported that he drove 9,600 for business purposes under the tax definition of that term. No calculation particularized that claim, nor was documentation supporting it submitted.

Exactly how many kilometers Mr. Zerr did drive for business purposes as defined by the District policy is not clear, but it is clear that he attempted to support his car allowance claim by deliberately submitting information that he knew was false or contrary to the District's policy.

I find Richard Zerr's employment with the District of North Vancouver was properly terminated for cause. He had fundamentally violated the trust that his senior management position required, and in doing so fundamentally breached his contract of employment. A senior municipal manager who knowingly submits a false car allowance claim and then blames his secretary for conduct for which he is responsible cannot reasonably expect to retain his position.

Zerr v. North Vancouver (District)
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