

CITATION: Wilsher v. Olympic Wholesale, 2026 ONSC 3620
OSHAWA COURT FILE NO.: CV-23-2380
DATE: 20260626

ONTARIO

BETWEEN:

Plaintiff

William F. Kelly, for the Plaintiff

– and –

Kyle Armagon, for the Defendant

Defendant

HEARD: January 19–22, 2026

REASONS FOR DECISION

OVERVIEW

¹ Note: Mr. Willsher's surname in the body of this judgment accords with the spelling of his name recorded on his ROE and Income Tax Returns.

- [2] Willsher seeks general damages of \$200,000 for wrongful dismissal, damages of \$100,000 for Olympic's alleged bad faith conduct, pre-judgment and post-judgment interest, and costs.
- [3] Olympic claims that "just cause" existed to terminate Willsher's employment because of his "fraudulent activity and time theft". Olympic denies that damages are payable to Willsher and seeks a dismissal of the action with costs.

ISSUES

- [4] The issues to be determined are as follows:
 1. Did Olympic have "just cause" to terminate Willsher's employment?
 2. If "just cause" was not present, what period of notice was Willsher entitled to?
 3. What additional damages, if any, are owed to Willsher?

FACTS

Background

- [5] Olympic is a food distribution company located in Ajax, Ontario. Olympic distributes products to bakeries and companies who make food products, including the grocery store chain, Whole Foods.
- [6] Olympic was established in 1972 and has been managed by the founder's son, Dan Peroff ("Peroff"), since 1979.
- [7] Olympic operates seven (7) days a week, with three shifts running from 4:30 a.m. to 2:30 a.m., with restricted hours on Saturdays. Olympic employs 55 to 65 employees, including administration staff, logistics, sales, accounting, and warehouse employees.
- [8] Olympic's employees were salaried until they unionized in 1994. Once unionized, Olympic used a "card punch clock" system to track its employees' hours.

Willsher's Employment at Olympic as a Warehouse Labourer

- [9] Willsher was hired by Olympic on July 24, 2006 as a warehouse labourer. Willsher primarily worked on the night shift, which ran from 6:30 p.m. to 2:30 a.m.
- [10] When Willsher was first hired, Olympic used the "card punch clock" system for tracking its employee's hours. This system was changed to a finger scan system sometime prior to 2015 and has since been changed to a facial recognition system.
- [11] Willsher testified that, when he worked as a warehouse labourer, the supervisors regularly "topped up" employees' hours if an employee worked through their lunch or break, forgot

to clock in or clock out, and/or if a driver/labourer finished their shift outside the warehouse.

- [12] Willsher also testified that when he worked as a warehouse labourer, the supervisors regularly allowed employees to “clock out” and leave early if all work had been completed prior to the shift’s end. This often occurred on Thursdays and Fridays and on Christmas and New Year’s. On these occasions, when the employees “clocked out early”, supervisors would “top up” the employees’ hours to the end of the shift, provided that the cleanup and preparation for the next shift had also been completed.
- [13] Willsher testified that when a supervisor is appointed, management provides a computer, passcodes, and access to the time management system. To input the “top-ups”, supervisors would enter their passcodes, access the employees’ timesheets, and make the necessary edits to the employees’ hours/timesheets.
- [14] Willsher explained that, during his employment as a warehouse labourer, all supervisors would engage in the “clock out/top up” practice, including former supervisors: Dan Ellis (“Ellis”), Mike McDowell, Mike Hugh, and Kay Lincolnshire.
- [15] Willsher told the court that the “clock out/top up” practice was an unwritten one; it was instituted to guarantee Olympic employees 40 hours of work per week in accordance with their union contract.
- [16] Willsher’s testimony regarding the usual and ordinary practice of supervisors allowing employees to clock out early and have their hours topped up was fully corroborated by three long-time, and current, warehouse labourers, namely: David Hodgson (“Hodgson”), Stefan Rowny (“Rowny”), and O’Neil Nelson (“Nelson”).
- [17] Willsher testified that all supervisors made time adjustments or edits to employees’ hours/timesheets on a weekly basis. He explained that the adjustments/edits affected 70% of all warehouse employees. Willsher’s testimony was corroborated by the timesheets of various employees that were produced at trial by Olympic.

Mr. Willsher’s Promotion to Night Shift Supervisor

- [18] In 2015, after working for nine (9) years as a warehouse labourer, Willsher was promoted to the position of Night Shift Supervisor by the Operations Manager, Gary Hale (“Hale”). At the time of Willsher’s promotion, Olympic had changed their time management system from one that utilized a “card punch clock” to one that relied on fingerprint scanning technology.
- [19] Once promoted, Hale instructed Willsher to “shadow” Ellis for a few nights, which he did.
- [20] Willsher was not provided with a job description as a Night Shift Supervisor, nor was he provided with a training manual or any written policies or procedures of any kind beyond shadowing Ellis.

- [21] Willsher was provided with a company laptop, a passcode, and access to the time management system which enabled him to make adjustments/edits to employees' timesheets.
- [22] During his time shadowing Ellis, Willsher was shown how to sign into his computer and how "to change hours".
- [23] Willsher received no other training, information, policies or procedures with respect to adjusting/editing employees' timesheets beyond the training provided by Ellis during his shadowing period.
- [24] Willsher testified that he would have altered employees' timesheets within his first week as a supervisor.
- [25] Willsher testified that to alter/edit an employee's timesheet, he would log into the company's time management system using his own personal login code and would make the necessary edits. Willsher explained that he never personally benefitted from making any adjustments/edits and that all of the edits he made within the time management system would be readily apparent to anyone who viewed the employees' timesheets as he would be identified as the person who made the edits.
- [26] Willsher never attempted to conceal the adjustments or edits he made to employees' timesheets. He understood that making adjustment/edits to employees' timesheets was an ordinary and usual responsibility of a Night Shift Supervisor at Olympic's warehouse.
- [27] Throughout Willsher's nine-year tenure as a Night Shift Supervisor, he consistently input his individual supervisor code with respect to any timesheet edits that he made. He explained that these edits were readily available for review by all persons with authorized access to the time management system, including Peroff, Operations Manager, Eric Sousa ("Sousa"), and Controller Jamie Pyefinch ("Pyefinch").
- [28] During the period that Willsher was employed at Olympic, he never received a complaint, notice, write up, or negative review, regarding his work, at any time.

Evidence of Warehouse Labourers: David Hodgson, Stefan Rowny, and O'Neil Nelson

- [29] Hodgson testified that he has worked in the Olympic warehouse, on the night shift from 6:00 p.m. to 2:30 a.m., since June 2018. Throughout his employment, Hodgson has had five different Night Shift Supervisors. Nevertheless, regardless of which time management "clock" was being utilized at any given time, the practice of his supervisors occasionally "clocking" him out after he left and/or editing his timesheets has remained consistent.
- [30] Hodgson testified that Willsher did not act any differently than any of his other supervisors and occasionally "topped up" his hours just like every other supervisor had done before.

Hodgson testified that his supervisors' practice of "topping up" employees' hours has continued, even after Willsher's termination.

- [31] Hodgson testified that Willsher had been his best supervisor because he was versatile, knew how to run the day and night shifts, and held employees accountable.
- [32] Rowny testified that he has worked in the Olympic warehouse since March 2011. He has had "quite a few supervisors" and named five of them. Rowny testified that all his supervisors have engaged in the same practice of allowing employees to clock out early when all work was completed and have their hours topped up to their shift's end. Rowny testified that supervisors continue to use this practice and nothing at the Olympic warehouse has changed despite Willsher's termination. Rowny testified that, other than Willsher, no other supervisor has been cautioned until very recently when Willsher's replacement, Jacob, was terminated for engaging in the same timesheet editing practice.
- [33] Nelson testified that he worked in the Olympic warehouse for 15 years as a warehouseman, fork truck operator, and as the "main freezer guy" for the night shift. Nelson confirmed that there have been three different systems used to track employees' hours: clock punch cards, finger scans, and a facial recognition system. Nelson always reports to the on-duty Night Shift Supervisor and estimates that he has had somewhere between five and eight supervisors over the course of his employment with Olympic. Nelson testified that it was "common practice" for employees to leave early when all work was completed, be clocked out, and have their hours topped up by their supervisors. Nelson testified that all supervisors engaged in this practice and he explained that he is not aware of anyone else being disciplined for it, other than Willsher.

Evidence of the Operation Manager, Eric Sousa

- [34] Sousa was the Operations Manager at Olympic from April 2023 to January 2026. He managed all three shifts, took care of expenses, inventory control, and the hiring and firing of employees. Willsher and two Day Shift Supervisors reported directly to Sousa.
- [35] Sousa testified that he acted as Willsher's supervisor from April 2023 to October 5, 2023 (i.e., Willsher's termination date) and interacted with him on a daily basis. He would meet with Willsher at 5:30 p.m. (i.e., 1 hour prior to the start of the night shift) at the employees' entrance of the supervisor's office to "stop and chat". Sousa testified that they discussed daily issues and inventory, fleet issues, and attendance issues. Sousa agreed that his hours of work were weekdays from 8:00 a.m. to 7:00 p.m., and that he had no knowledge of the usual practices of the night shift between the hours of 10:00 p.m. and 2:30 a.m.
- [36] Sousa testified that he had a "negative" relationship with Willsher and claimed that Willsher was "very temperamental", had "freaked out on him", and had "lost his temper on more than one occasion in front of employees".
- [37] As for the allegations of time theft, Sousa testified that a Day Shift Supervisor, Jacob Bailey ("Bailey"), advised him that Willsher was adding time to the night shift or letting the night

shift employees go home early and topping up their hours. Sousa said that he was not aware of this practice.

- [38] Once the allegation of time theft was made, Sousa obtained printouts from the time management system and showed it to Pyefinch, the controller, and “started digging” into the time theft allegations against Willsher. He reviewed Willsher’s timesheet edits back to 2017 before bringing what he had discovered to Peroff.
- [39] Sousa agreed that he did not ask any other supervisor about the practice of “topping up” employees’ time, nor did he review the timesheet edits of any other supervisor. Sousa agreed that the employee who reported Willsher, Jacob Bailey, was terminated for the same timesheet editing practice in December 2025, following Willsher’s termination in October 2023.
- [40] Sousa testified that he was not aware that supervisors had the ability to edit timesheets. However, there are several emails exchanged between Willsher and Sousa that make it clear that Willsher could edit employees’ timesheets for reasons unrelated to the time theft allegations (see: the parties’ Joint Book of Documents, at Tabs 16, 48, 50, 51, and 52).
- [41] Sousa testified that he had not seen a job description for the Night Shift Supervisor position. He was not aware of any policies regarding how employees punch in or punch out and he had no knowledge of the practices of the night shift prior to April 2023.

Evidence of the Controller, Jamie Pyefinch

- [42] Pyefinch testified at trial and told the court that he had been employed for 16.5 years at Olympic. He has been the Controller at Olympic for the past 11 years.
- [43] Between September 2021 and October 2023, Pyefinch was responsible for Olympic’s payroll. Pyefinch testified that the payroll report received by him showed the hours worked by Olympic’s employees. He would call the supervisor if an employee punched in at 6:00 p.m. but had failed to punch out. The report did not indicate if the employees’ hours worked had been adjusted or edited. Pyefinch testified that it was Willsher’s job to ensure that Olympic’s warehouse employees punched in and out and that they were disciplined accordingly if they did not do so.
- [44] Pyefinch was aware that supervisors had the ability to edit employees’ timecards. Pyefinch was not part of the investigation into the allegations of time fraud against Willsher and had never heard of supervisors “topping up” employees’ hours. Pyefinch agreed that he was not on site when the night shift was working and he had no evidence about the practices of the night shift. Pyefinch said he was surprised to learn of the practice of supervisors topping up employee’s hours and claimed that it was against company policy. When asked to explain further, he told the court that there was a “general understanding that everyone is obligated to punch in and out – when they don’t – it is not correct for someone to punch them out when they work”. He agreed that this explanation was a “general understanding” at Olympic, not a policy, and that it was his understanding of how employees’ hours should

be tracked. He hoped that it was everyone's understanding that supervisors should not be topping up employees' hours for time that they did not work.

Evidence of Olympic's President, Dan Peroff

- [45] Peroff testified that a Night Shift Supervisor was to manage the entire facility on behalf of the company after management had left for the day. Night Shift Supervisors manage the warehouse overnight and report to the Operations Manager. Peroff agreed that he was not involved in any discussions with Willsher regarding his duties, nor was he aware of whether Willsher was provided with a job description. He could not dispute Willsher's evidence that he was never provided with a job description. Peroff further agreed that the job description introduced at trial (see: the parties' Joint Book of Documents, at Tab 58) was not in place when Willsher was hired as a Night Shift Supervisor in 2015.
- [46] Peroff testified that the Night Shift Supervisor had the ability to amend timesheets and, therefore, they had the ability to change the payroll. Their responsibility was to ensure that everyone punched in and punched out. Peroff testified that there was no authorization for any supervisor to edit time – the only time they needed to enter – was if the worker was outside the premises (such as drivers) and this type of edit was authorized. Peroff agreed that there was no notice regarding the implementation of the time management system and no evidence that Willsher was trained on the system. Peroff agreed that he has no direct evidence about what happens on the night shift as he would leave the office before the night shift began. Peroff further agreed that he had no information about whether the Operations Manager would be present when the night shift arrived or was working.

Olympic's Investigation into Willsher's Practices

- [47] As noted, Willsher's supervisor, Sousa, received a complaint from Bailey that Willsher was "manipulating the payroll". It was alleged that Willsher engaged in time theft for the benefit of certain employees in exchange for favours.
- [48] Sousa began investigating and took his findings to Peroff.
- [49] On October 5, 2023, upon arriving at Olympic, Willsher was summoned into a room by Sousa. Once inside the room, Peroff and Sousa questioned Willsher as follows:

Peroff to Willsher: Terry we noticed the facial recognition clock you made adjustments several times a week to certain staff, you were adding hours to them, can you explain why you are continually making changes to their hours by adding 1 to 3 hours to these same staff?

Willsher: I make these changes because we have some guys who will skip their lunches and breaks to get the work completed. Some of the staff work extra hard for the company.

Peroff: ... so because they were working hard you decided to top them up as additional hours.

Willsher: no topping up was for missed breaks and lunches.

- [50] After questioning Willsher, Peroff, Sousa, and a Union Representative, Mike Wilson, interviewed five night shift labourers, one by one, and asked them if they worked through their lunch and/or breaks. The following employees advised that they never missed a break or lunch: Brian MacLean, Dave Hodgson, James Decker, and Nathan Richards. One employee, O'Neil Nelson, advised that Willsher approved him skipping his breaks and taking an extended lunch of one hour as he goes home for lunch each night.
- [51] All five of the questioned employees advised that they did not track their weekly hours or overtime and trusted payroll to pay them for the hours they worked.
- [52] Willsher was again called into a room and interviewed by Peroff and Sousa and confronted with the employees' responses.
- [53] Willsher proposed that he be removed from inputting hours for staff. Willsher advised that he "topped them up" and that this was "aloud" [sic] (see: handwritten notes of meeting, Case Center at F270–F271; typewritten notes, Case Center at F266–F268). No questions appear to have been asked of Willsher in response to his comment that "topping up" was "aloud" [sic].
- [54] Peroff advised Willsher that he had admitted to committing fraud on the company and was being fired.
- [55] Willsher was provided with a letter of dismissal, dated October 5, 2023, from Sousa that read:

This letter is served as your official notice that effective immediately your employment with Olympic Wholesale Co Ltd has been terminated.

You have been terminated for fraudulent activity.

- [56] Willsher was asked for his key fob and company phone and was escorted out of the building.

Events Following Willsher's Termination

- [57] Peroff testified that after Willsher was terminated, Olympic conducted an audit of the timesheets that he managed from 2021–2023 to track instances of increased or edited time.
- [58] Peroff agreed that every single member of the night shift was implicated in the increased/edited time practice and that Willsher always entered his passcode to make the

edits. Olympic could easily and readily identify Willsher as the individual who made the adjustments/edits and there was no attempt to disguise them.

- [59] Peroff confirmed that no action was taken against any of the employees who had been “topped up” by Willsher as they had “no proof” that the employees were receiving a “top up” and had not actually worked the hours that they had been paid for.
- [60] When Peroff was questioned why he did not review the edits of Olympic’s other supervisors, he responded that he was “not required to prove” Willsher’s case.
- [61] Peroff did not deny Willsher’s testimony that the Olympic employees’ union contract guaranteed them 40 hours of work per week.
- [62] Peroff testified that the “unwritten rule” between the union and the company is that, if all work is completed, the shift can go home early and, in that event, employees’ hours could range between 32 to 40 hours per week.
- [63] Peroff disclosed that Bailey, the employee who went on to assume Willsher’s position as Night Shift Supervisor, was terminated in mid-December 2025 for engaging in the same “topping up” practice as used by Willsher. Sousa also left Olympic in mid-December 2025.
- [64] None of the night shift labourers who received a financial benefit as the result of the “topping up” practice were cautioned, disciplined, or reprimanded.

Mitigation and Damages

- [65] On October 5, 2023, Willsher’s termination date, he was earning \$62,182.72 per year (i.e., \$1,195.82 weekly) plus benefits valued at approximately \$500 per month.
- [66] Following Willsher’s termination on October 5, 2023, Olympic issued him a Record of Employment (“ROE”), dated November 21, 2023, that listed the reason for issuing his ROE as being category “M” which denoted “dismissal or suspension”.
- [67] Following his termination, Willsher updated his resume, and on October 16, 2023, he sent his resume to the Indeed and Monster Jobs databases and the “Government Job Bank”. Willsher testified that he spent the next few weeks monitoring job listings. When it became apparent that there were no supervisor positions in the food distribution industry, Willsher began searching for other supervisor positions. His search continued to the date of the trial without success.
- [68] Willsher testified that his lack of references from his 17-year career at Olympic and being labelled a “thief”, greatly impacted his ability to obtain employment and/or mitigate his losses.

- [69] Prior to his termination, and throughout the entirety of his time working for Olympic, Willsher had never received a reprimand or a complaint about the execution of his duties as a labourer or as a Night Shift Supervisor.
- [70] At the date of his termination, Willsher was 55 years old and had worked at Olympic for over 17 years.

POSITIONS OF THE PARTIES

- [71] Willsher acknowledged and agreed that, during his tenure as the Night Shift Supervisor, he “topped up” employees’ hours for various reasons, including on occasions when workers were allowed to leave prior to the end of their shift when all work had been completed.
- [72] Willsher submitted that the “clock out/top up” practice was used by all Night Shift Supervisors at Olympic for at least 19 years, from (at least) July 2006 and continued even after his termination to (at least) December 2025.
- [73] Willsher submitted that his use of the “clock out/top up” practice kept with what all other Night Shift Supervisors had done. The practice was the unwritten practice that aligned employee’s hours with the terms of their union contract which “guaranteed” 40 hours of work per week.
- [74] Olympic submitted that the “clock out/top up” practice was something that management did not know about, was unauthorized by Olympic, was against company policy and procedure, and constituted “time theft” and “fraud”.
- [75] Olympic submitted that Willsher engaged in fraudulent conduct by manipulating the payroll and then lied about it after he was confronted. Olympic argued that Willsher’s actions and his attempt to cover up his actions, constituted just cause to terminate his employment on October 5, 2023.

CREDIBILITY AND RELIABILITY FINDINGS

Mr. Willsher

- [76] Willsher provided his testimony in a straightforward manner. He spoke simply and directly. Willsher’s testimony regarding the material issues was fully corroborated by the independent, unbiased testimony of three long-term warehouse labourers: Hodgson, Rowny, and Nelson.
- [77] Willsher’s testimony was not diminished, negated, or weakened when considered in the context of the testimony of Peroff, Sousa, and Pyefinch, all of whom claimed to have “no knowledge” of the impugned “clock out/top up” practice. Their lack of knowledge of the practice does not negate a finding that it existed and was instituted over an extended period of time.

- [78] I specifically reject the allegation that, during the October 5, 2023 meeting, Willsher “lied” or “attempted to cover up fraudulent conduct” or admitted to engaging in “fraudulent” conduct.
- [79] The meeting between Willsher, Peroff, and Sousa on October 5, 2023, was conducted in a high-handed, unfair, and unbalanced manner. Willsher was ambushed by management and interrogated without notice, without context, without representation, and without regard for his unblemished 17-year employment record with Olympic.
- [80] It is notable that, when Willsher attempted to advise Peroff and Sousa that “topping up” was “aloud”² [sic], this information was ignored and Willsher was summarily terminated without further investigation.
- [81] In the circumstances, I draw no negative inference relating to any statement alleged to have been made by Willsher on October 5, 2023, nor do I find that any alleged statement equated to an admission of guilt or blameworthiness on Willsher’s part.
- [82] Willsher’s testimony with respect to the material issues in dispute was not impugned on cross-examination, was corroborated by Hodgson, Rowny, and Nelson, and remained unaffected by the testimony of Peroff, Sousa, and Pyefinch.
- [83] For the foregoing reasons, I find Willsher to be a credible witness who provided reliable testimony.

Hodgson, Rowny, and Nelson

- [84] With respect to the credibility of Hodgson, Rowny, and Nelson, these witnesses provided evidence that went against their own self interest.
- [85] All three witnesses were current long-term labourers at Olympic and all provided compelling, honest, and forthright testimony. I accept the testimony provided by each of Hodgson, Rowny, and Nelson relating to the material issues in dispute as being truthful and reliable.

Peroff

- [86] Peroff presented as a concerned employer with little knowledge about the actual work completed during the night shift at his warehouse. Peroff agreed that there were no written policies or procedures relating to Olympic’s supervisors’ training or their ability to edit timesheets. Nevertheless, he adamantly insisted that Willsher’s “clock out/top up” practice was “unauthorized and fraudulent”.

² See: the parties’ Joint Book of Documents, at Tab 56, Case Center F271.

- [87] Despite appearing ill-informed on the practices and routines of the night shift labourers, Peroff expressed knowledge of an “unwritten rule” that allowed union employees to leave work early if their work was completed *without* a top up of their hours, despite the employees’ union contract that guaranteed them 40 hours per week. I have great difficulty accepting Peroff’s evidence in this regard given his otherwise complete lack of knowledge of any of the practices or procedures followed or engaged in by the night shift.
- [88] Based on the foregoing, I have treated the evidence of Peroff with care.

Sousa

- [89] Sousa had been the Operations Manager for only four months when he began his investigation into Willsher. Like Peroff, Sousa appeared ill-informed of the workings of the night shift (despite being the supervisors’ supervisor) and by his own admission had a fractious/negative relationship with Willsher.
- [90] My concerns relating to Sousa are shaped by the manner in which Sousa, and to some extent, Peroff, conducted the “investigation” into Willsher. The investigation seemed personal and targeted, given that no other supervisors or labourers were questioned about the practice, nor were the timesheet edits of any other supervisor audited. My concerns are heightened by the knowledge that Bailey, who Sousa alleges reported Willsher, and who later acquired Willsher’s job, was terminated immediately preceding this trial for the same “clock out/top up” practice that resulted in Willsher’s termination.
- [91] Based on the foregoing, I have treated the evidence of Sousa with care.

Pyefinch

- [92] Pyefinch had no relevant information relating to the material issues in dispute. He appeared to provide straightforward and balanced evidence without any indication of malice or bias.

ANALYSIS AND THE LAW

Issue #1: Did Olympic have “just cause” to terminate Willsher’s employment?

- [93] The onus of proof to demonstrate just cause on a balance of probabilities rests on Olympic.
- [94] Termination for “just cause” under the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (the “ESA”), requires “wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer” (see *ESA*, s. 71.10.1(4)(a)).
- [95] In *McKinley v. BC Tel*, 2001 SCC 38, [2001] 2 S.C.R. 161, the Supreme Court of Canada considered the circumstances in which an employer may dismiss an employee on the grounds of dishonesty. Iacobucci J., for the court, held at para. 48, that the question “requires an assessment of the context of the alleged misconduct.” To this point, at para. 48, Iacobucci J. held that

the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligation to his or her employer.

- [96] Therefore, when determining whether "just cause" was present, the trial judge must determine "(1) whether the evidence established the employee's deceitful conduct on a balance of probabilities and (2) if so, whether the nature and degree of the dishonestly warranted dismissal. It is a factual inquiry" (see: *McKinley*, at para. 49).
- [97] At paras. 51–57 of *McKinley*, Iacobucci J. held:

[A] contextual approach to assessing whether an employee's dishonesty provides just cause for dismissal emerges from the case law on point

...

Underlying the approach I is the principle of proportionality. An effective balance must be struck between the severity of an employee's misconduct and the sanction imposed. The importance of this balance is better understood by considering the sense of identity and self-worth individuals frequently derive from their employment

...

Given this recognition of the integral nature of work to the lives and identities of individuals in our society, care must be taken in fashioning rules and principles of law that would enable the employment relationship to be terminated without notice. The importance of this is underscored by the power imbalance that this Court has recognized as ingrained in most facets of the employment relationship.

...

I favor an analytical framework that examines each case on its own particular facts and circumstances, and considers the nature and seriousness of the dishonesty in order to assess whether it is reconcilable with sustaining the employment relationship.

- [98] The question to be answered is whether Olympic has met its onus of proving just cause on a balance of probabilities in relation to its allegation of misconduct on the part of Willsher for time theft.
- [99] The answer to this question requires an objective examination of this case's factual matrix to understand the context surrounding the termination of Willsher's employment with Olympic.
- [100] Misconduct in and of itself is not considered grounds for dismissal without notice, unless the misconduct is "so grievous that it gives rise to the inference that the employee intends to no longer to be bound by the contract of service. There is no definition which sets out, precisely, what conduct, or misconduct, justifies dismissal without notice, and rightly so. Each case must be decided on its own facts (see: *McKinley*, at paras. 32–33, citing *Blackburn v. Victory Credit Union Ltd* (1998), 36 C.C.E.L. (2d) 94 (C.A.), at p. 110).
- [101] Misconduct sufficient to justify an employee's termination cannot be looked at in isolation. Whether the employee's misconduct constitutes just cause must be analyzed with due regard to the circumstances of each case. Both the circumstances surrounding the misconduct and the nature or degree of the misconduct must be carefully considered and weighed by the trial judge. Courts have held that various factors, like the nature and degree of the misconduct, and whether the misconduct violates the "essential conditions" of the employment contract or breaches an employer's faith in an employee must be considered when drawing factual conclusions as to the existence of just cause (see: *McKinley*, at paras. 33–39).
- [102] In the present case, Willsher admitted to "topping up" employees' timesheets on occasion. He claimed that this practice accorded with the usual and ordinary responsibilities of a Night Shift Supervisor and was implemented to align employees' actual hours worked with the number of hours that they were guaranteed by their union contract.
- [103] Willsher, Hodgson, Rowny, and Nelson, testified that the practice of "topping up" employees' hours was a long-standing and established practice used by all Night Shift Supervisors at Olympic. The practice was implemented prior to Willsher's employment as a warehouse labourer in 2006 and continued after his termination until at least December 2025, for a period exceeding 19 years.
- [104] Peroff, Sousa, and Pyefinch denied knowledge of the "topping up" practice, but each of them claimed that the practice was "unauthorized" and constituted a dishonest and fraudulent act. Peroff testified that the "topping up" practice resulted in employees receiving payment that they were not entitled to receive and, therefore, the practice could be described as "time theft".
- [105] The first question to be determined is whether the facts and circumstances of the present case justify a finding that Willsher's practice of "topping up" employees' timesheets constitutes a "dishonest act" or "misconduct".

[106] The question must be answered with an understanding of the surrounding facts and circumstances. Context matters.

[107] The evidence before this court established the following:

- a. Willsher began working at Olympic as a warehouse labourer on July 24, 2006.
- b. From the start of Willsher's employment at Olympic, supervisors allowed warehouse night shift employees to go home early if all their work was completed before the shift's end. Supervisors then "topped up" the employees' hours to shift end.
- c. Willsher was promoted to the position of Night Shift Supervisor in 2015.
- d. Upon promotion, Willsher was provided with a company laptop, a passcode, and access to the time management system.
- e. Willsher's training as a supervisor was conducted by Ellis, another supervisor at Olympic.
- f. Willsher "shadowed" Ellis during several night shifts and Ellis showed Willsher how to log into the time management system to "add hours" to employees' timesheets.
- g. No training of any kind was provided to Willsher beyond that provided by Ellis.
- h. No job description or training manual was provided to Willsher at any time with respect to his role as a Night Shift Supervisor.
- i. No memorandums, policies, procedures, or training manuals were prepared or provided to Willsher regarding his duties and responsibilities as a supervisor or for accessing the time management system.
- j. Willsher followed all the usual practices and procedures that were in place when he was appointed as a supervisor, including the practice of allowing the night shift employees to leave early if all their work was completed. He would then "top up" the employees' hours to shift end.
- k. Willsher followed the exact same practices that were in place when he was appointed as a supervisor and in accordance with his training and experience.
- l. All "top up" edits made by Willsher to the employees' timesheets were made by him on his company laptop using his passcode and individual employee identifier such that all edits were readily identified and attributed to Willsher. The edits were always transparent and Willsher never attempted to disguise the edits he made to employees' hours.

- m. Willsher understood and believed that the supervisors' practice of allowing employees to leave when all work was complete and "topping up" hours to shift end was in alignment with the employees' union contract that guaranteed them 40 hours of work per week.
- n. Willsher, as a supervisor, never personally benefitted from the "topping up" practice.
- o. The "topping up" practice continued even after Willsher's termination to December 2025 and had been instituted by all Night Shift Supervisors for a period of (at least) 19 years.

[108] The surrounding facts and circumstances provide overwhelming support for a finding that the impugned practice of "topping up" employees' hours did not constitute a "dishonest act" or "misconduct". Instead, the evidence establishes that "topping up" employees' hours was an ingrained institutional practice that existed at Olympic for a lengthy period and was applied consistently and uniformly by all Night Shift Supervisors.³

[109] In the event that I am mistaken in my assessment of this factor, I will, as per the Supreme Court of Canada's decision in *McKinley*, consider the "sufficiency of the justification" of the alleged misconduct to determine whether the conduct complained of shows that the employee disregarded the essential conditions of the contract of service: see *McKinley*, at paras. 30–31. In other words, whether the nature and degree of the dishonesty warranted Willsher's dismissal.

[110] In this regard, Peroff testified that the "topping up" practice resulted in employees receiving payment that they were not entitled to receive and, as such, the "topping up" practice constituted "time theft".

[111] Willsher testified that the practice was instituted before he began working at Olympic to align with the employees' union contract which specified that Olympic would provide 40 hours of work per week to the unionized employees.

[112] Peroff did not dispute Willsher's evidence with respect to the guaranteed 40 hours. Instead, he stated that there was an "unwritten rule" that, if the shift decided to go home early when the work was completed for the night, they could leave. Critically, if the employees left work early, they could "have somewhere between 32 and 40 hours in [that] week".

³ The facts of this case are entirely distinguishable from *Abbasbayli v. Fiera Foods Company*, 2025 ONSC 3240 and *Retail, Wholesale Department Store Union v. Yorkton Cooperative Association*, 2017 SKCA 107, relied upon by Olympic. In *Abbasbayli* and *Retail*, the employees knowingly misused timecards for their own personal benefit. In the present case, Mr. Wilsher understood that the "topping up" practice was allowed and the facts established that the practice was uniformly applied and that Mr. Wilsher did not personally benefit from it.

- [113] For the reasons earlier noted, I do not accept Peroff's evidence on this "unwritten rule". Peroff did not dispute Willsher's evidence that union employees are guaranteed 40 hours of work per week and he provided no reason why the union would unilaterally allow non-compliance with an essential term of its contract with Olympic.
- [114] In the circumstances, I accept and prefer Willsher's evidence and find that the facts in the case at bar established a legitimate basis for Willsher to "top up" employees' hours based on his uncontroverted testimony. Willsher's decision to engage in the "clock out/top up" practice was not wilful misconduct, disobedience or a wilful neglect of his duties.
- [115] As such, in the specific circumstances of this case, in the event that the practice of "topping up" employees' hours is viewed as "dishonest" or to be "misconduct", I find that there was sufficient justification for the practice such that Willsher did not disregard the essential conditions of his employment contract.
- [116] With respect to the defendant's argument that Willsher breached his fiduciary duty to Olympic by failing to disclose the impugned "topping up" practice as per *Dunsmuir v. Royal Group, Inc.*, 2018 ONCA 773, 50 C.C.E.L. (4th) 310, I find the facts of this case are entirely distinguishable. Unlike the facts in *Dunsmuir*, in the present case there was no credible evidence that Willsher knew that the "topping up" practice was a "wrongdoing committed" against the company. Willsher inputted all timesheet edits into the time management system using his own credentials. The edits were submitted weekly to various members of Olympic's accounting staff and were always available for review by Peroff and Sousa. Willsher never attempted to disguise his actions and understood that "topping up" was the usual and ordinary practice of all Night Shift Supervisors that and was in done to align with the employees' union contract. Any alleged "apology" provided to Peroff and Sousa by Willsher on October 5, 2023 cannot be interpreted to be an expression of guilt or moral blameworthiness for the reasons I set out earlier.
- [117] For the foregoing reasons, I find that Olympic did not establish "just cause" for the termination of Willsher's employment on October 5, 2023.

Issue 2: If "just cause" was not present, what period of notice was Willsher entitled to?

- [118] An employee, on dismissal without cause, is entitled to reasonable notice of termination or pay in the absence of reasonable notice.
- [119] The factors that are relevant in determining a reasonable notice period are: character of the employment; the length of service; the age of the employee; availability of similar employment; and the experience, training and qualifications of the employee (see: *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140, at p. 145).
- [120] Furthermore, there is jurisprudence to suggest that employees in managerial and supervisory roles are generally entitled to more notice than employees in non-managerial/non-supervisory roles (see: *Stone v. Sybron Canada Ltd.*, 2006 CanLII 21073 (Ont. S.C.J.), at para. 160, aff'd *Stone v. SDS Kerr Beavers Dental*, 2007 ONCA 543).

- [121] In *Cardenas v. Kohler Canada Co.*, 2009 CanLII 17976, at paras. 15–27, this court surveyed the law and found that reasonable notice has been held to be: 16 months’ notice for an employee aged 46 years employed 20 years; 22 months’ notice for an employee aged 60 years employed for 23 years with 8 years as a team leader; 19 months’ notice for an employee aged 51 years employed 21 years; 12 months’ for an employee aged 54 years employed 14 years; 21 months’ for an employee aged 52 years employed 21 years who was promoted to shift supervisor and held that position until their dismissal.
- [122] The cases surveyed in paras. 15–27 of *Cardenas* provide a general range of appropriate notice periods which vary in accordance with the facts of each case.
- [123] In the present case, Willsher was 55 years of age and had been employed for 17 years by Olympic. He was a Night Shift Supervisor for 8 of those 17 years. Due to allegations of “theft” and “fraudulent activity” Willsher was unable to secure alternate employment after he was terminated by Olympic, despite his appropriate attempts to mitigate his losses.
- [124] At the date of his termination on October 5, 2023, Willsher was earning \$62,182.72 per year (i.e., \$1,195.82 weekly) plus benefits valued at approximately \$500 per month.
- [125] In the circumstances of this case, I find that the appropriate notice period for Willsher, a 55-year-old supervisor employed for 17 years with 8 years served as a supervisor, is 19 months’ payment in lieu of notice.

Issue 3: What additional damages, if any, are owed to Willsher?

Extension to the Notice Period

- [126] Where a dismissal is accompanied by bad faith or unfair dealing on the part of the employer, the court has established that such conduct merits compensation by way of an extended notice period (see: *McKinley*, at para 74).
- [127] The remedy of extension to the notice period is not triggered by the dismissal itself but by the exacerbating factors that inflict injury upon the employee (see: *McKinley*, at para. 74). The nature of this remedy was described in *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, at para. 103, as follows:

where an employee can establish that an employer engaged in bad faith conduct or unfair dealing in the course of the dismissal, injuries such as humiliation, embarrassment and damage to one’s sense of self-worth and self-esteem might all be worthy of compensation depending upon the circumstances of the case. In these situations, compensation does not flow from the fact of dismissal itself, but rather from the manner in which the dismissal was effected by the employer.

- [128] At para. 74 of *McKinley*, Iacobucci J. held that:

Wallace also made clear that the extent by which a notice period should be extended for bad faith or unfair dealing in the conduct of a dismissal will depend, in each case, on the degree of injury that an employee sustains. While recognizing that tactics that affect the employee's ability to find new employment is particularly deserving of such a remedy and may merit more compensation, the majority also ruled that "intangible injuries", which give rise to emotional damage, also may suffice to attract an award in the form of an extended notice period.

[129] In the present case, there is sufficient evidence that Olympic engaged in bad faith and unfair dealings when dismissing Willsher that would justify awarding an extended notice period to Willsher. This evidence, includes *inter alia*, the following:

- a. The "investigation" specifically targeted Willsher without any attempt to determine the nature and extent of the "topping up" practice.
- b. No other supervisors were interviewed about the "topping up" practice, nor were other supervisors' edits of employees' timesheets audited in the course of the "investigation" as, according to Peroff,⁴ Olympic "was not required to prove the plaintiff's case".
- c. Willsher's October 5, 2023 "interview", conducted by Peroff and Sousa, closely resembled an interrogation and not an investigation or interview. The meeting was implemented without notice, without explanation, without due process, without representation and was conducted in a high-handed, one-sided and biased manner, intended to intimidate Willsher.
- d. Willsher's replacement, Jacob Bailey, who assumed Willsher's position as Night Shift Supervisor in October 2023, was terminated in December 2025 (immediately prior to trial) "for the same practice"⁵ which supports a finding that Willsher's termination was personal, directed, and intended to remove Willsher from the company, not to correct or prevent the "topping up" practice from continuing.
- e. The termination letter provided to Willsher on October 5, 2023, accused him of "fraudulent behaviour" and "theft of time". Willsher's ROE recorded "dismissal/suspension" and prevented him from obtain unemployment benefits. Further, Willsher was not provided with any references after 17 years of employment with Olympic and, as such, he was inhibited in his search for new employment and mitigating his losses.

⁴ Evidence from the cross-examination of Dan Peroff.

⁵ Evidence from the cross-examination of Dan Peroff.

- [130] Despite attempts to secure new employment, Willsher has been unable to find a new job and has suffered embarrassment and humiliation at the hands of Olympic. In these circumstances, Willsher is entitled to damages in the form of an extended notice period extended to the date of release of this decision which equates to a further 14 months' notice, for a total notice period of 33 months.

Aggravated Damages

- [131] The key principles for establishing whether aggravated damages should be awarded in wrongful dismissal actions were set out by the Supreme Court of Canada in *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 S.C.R. 1085. In that case, McIntyre J. highlighted that, unlike punitive damages, aggravated damages serve the purpose of compensation for intangible injuries. Such damages could be awarded where: an employer's conduct was "independently actionable"; the dismissal amounted to a wrong that was separate from the breach of contract for failure to give reasonable notice of termination; and could arise from the dismissal itself, rather than the employer's conduct before or after the dismissal (see: *Vorvis*, at pp. 1102–04).
- [132] Having considered the issue of aggravated damages, I am of the view that the actions of Olympic in terminating the employment of Willsher do not rise to the level of aggravated damages. Damages in the present case more properly warrant an extension of the notice period, which has been granted.

Punitive Damages

- [133] Punitive damages are not compensatory. Their purpose is to punish and deter unacceptable conduct. In Canada, they have rarely been awarded in breach of contract cases, largely because the requirements to obtain them are appropriately onerous.
- [134] To be entitled to punitive damages a plaintiff must meet a threefold burden.
- [135] First, the plaintiff must show that the defendant's conduct is so "harsh, vindictive, reprehensible and malicious" or "so malicious, oppressive and high-handed that it offends the court's sense of decency" (see: *Vorvis*, at paras. 1107–08; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 ("*Hill (SCC)*"), at para. 196).
- [136] Second, the plaintiff must establish that the defendant committed a separate or independent actionable wrong causing damage to the plaintiff. Although the requirement of an independent actionable wrong does not easily explain some of the breach of contract cases where punitive damages have been awarded, and though it has been criticized by several academics, it remains the current law in Canada (see: *Vorvis*, at pp. 1105–06; *Wallace*, at para. 79; *McKinley*, at para. 89; and *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595, at para. 78).
- [137] Third, even if the requirements of reprehensible conduct and an independent actionable wrong are met, punitive damages should not be awarded unless "compensatory damages

are considered ... to be insufficient to express its repugnance at the conduct of the defendant and to punish and deter” (see: *Hill v. Church of Scientology of Toronto* (1994), 18 O.R. (3d) 385 (C.A.) (“*Hill (ONCA)*”), at p. 458, aff’d *Hill (SCC)*). In other words, punitive damages must serve a rational purpose.

- [138] Having considered the issue of punitive damages, I am of the view that the actions of Olympic in terminating the employment of Willsher do not rise to a level that would warrant punitive damages. Again, damages in this case warranted in an extension of the notice period, which has been granted.

CONCLUSIONS AND DISPOSITION

- [139] For the foregoing reasons, I find as follows:

- a. Olympic did not have just cause to terminate Willsher’s employment. Willsher is entitled to 19 months of pay in lieu of notice.
- b. Willsher’s termination was accompanied by bad faith conduct and unfair dealings on the part of Olympic. In turn, Willsher is entitled to an extended notice period of a further 14 months, resulting in a total notice period of 33 months.
- c. In consideration of the entirety of the circumstances, aggravated and punitive damages will not be awarded in this case.

- [140] In the circumstances, Willsher is also entitled to have his ROE amended/corrected to delete any reference to his employment being terminated as a result of “dismissal/suspension”.

- [141] As counsel is in a better position to determine the actual monetary amount of the award based on Willsher’s 2023 earnings, including benefits, they are directed to determine the monetary judgment. In the event counsel are unable to agree, they may contact my assistant, Monica Mayer (Monica.Mayer@ontario.ca), and obtain a case conference before me to settle the issue.

- [142] As Willsher is the successful party, he shall be entitled to his costs, subject to any offers to settle that may have been exchanged.

- [143] If the parties are unable to resolve the issues of costs, the following schedule shall be followed:

- a. Willsher’s costs submissions shall be limited to three pages together with a Bill of Costs, Cost Outline, and any Offers to Settle attached thereto to be served and filed with my assistant within 45 days of today’s date.
- b. Olympic’s responding costs submissions shall be limited to three pages together with a Bill of Costs, Cost Outline, and any Offers to Settle attached thereto to be served and filed with my assistant within 60 days of today’s date.

- c. Reply, if any, shall be limited to one page, to be served and filed within 65 days of today's date.

[144] The timeline applicable to the filing of costs may be amended by the parties upon consent.

Released: June 26, 2026

The Honourable Justice S. Woodley