



## The right to be heard on dismissal

April 1, 2000

“[F]airness demands that an employee faced with dismissal is entitled to be heard both on cause and on consequence”. That is the message coming out of a decision by a Manitoba court in *Middelkoop v. Canada Safeway Ltd.* (March 26, 1999), which involved an assistant store manager fired after 19 years of service.

While on duty, Middelkoop purchased 23 bricks of cheese, at a substantially reduced price. This was a violation of company policy on employee purchases. He had had no part in the decision to mark down the cheese, and had made no attempt to hide what he was doing. He was reported by another employee and summoned to a meeting with managerial personnel the next day. He was given no notice as to the purpose of the interview, which lasted 40 minutes and was to be his only opportunity to respond to the allegations before being terminated.

At the interview, Middelkoop claimed that he did not believe he had gone against the policy, as he himself had not marked the goods down. He indicated that he had not read the entire policy word for word. Based on this interview, the District Manager reported to the head office that Middelkoop had lied about not understanding the policy. Several days later, following a conference call of four senior managers, of whom only one had participated in the initial interview, Middelkoop was terminated.

The Court noted that, although the District Manager had been informed before meeting with Middelkoop that the company had “zero tolerance” for infractions of the policy, Middelkoop had not been given any advance indication of the seriousness of his situation. Middelkoop was, therefore, completely unprepared to defend himself at the interview. Further, the Court found that Middelkoop was vague about the details of the policy, and unaware of the penalty to which his action had exposed him.

The Court characterized the District Manager’s report to head office as containing several factual inaccuracies. It expressed the view that the District Manager had made up his mind at an early stage, both as to Middelkoop’s guilt and the necessity of terminating him. Safeway had the right to penalize its employees for breach of the policy, the Court observed, but it had to use a fair process to do so: “This right to be heard is more than a matter of form or process. A number of factual inaccuracies and conclusions were placed before the employer and there is no evidence that the details of Middelkoop’s long and satisfactory service were considered. Nor is there any evidence that a lesser penalty was even considered. Such disciplinary penalties have been meted out in the past for other – and more flagrant – violations, and these alternatives might well have been put forward by or on behalf of Middelkoop if he had been offered an opportunity. An unexpected interrogation without warning is no substitute for such an opportunity.”



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Finding that Middelkoop had been unlawfully dismissed, the Court awarded him 20 months' notice.

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