

**CASE NO.****VOL. NO.****PAGE**

WAL-MART CANADA INC.

- and -

DARRYL DAY

(Appellant)

(Respondent)

CA161242

Halifax, N.S.

Freeman, J.A.

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**[Cite as:Wal-mart Canada Inc. v. Day, 2000 NSCA 127]**

**APPEAL HEARD:**

September 14, 2000

**JUDGMENT DELIVERED:**

November 9, 2000

**SUBJECT:****Employment Law; Wrongful Dismissal; Dishonesty as Cause; Notice; Augmented Damages.****SUMMARY:**

The respondent was fired for alleged cause without notice as manager of one of the appellant's Halifax stores after 17-years service for editing payroll records to eliminate apparent overtime entitlements after the staff had been informed no unauthorized overtime would be paid because of a new overtime policy by head office. He was accused of dishonesty and conduct prejudicial to the employer's interests. A jury found the appellant had not proved just cause for dismissal and found the respondent entitled to 17 months' notice plus augmented damages equivalent to a further 12 months. Bonuses to which the respondent would have become entitled during the notice period resulted in an award of \$235,119.95 after deduction of mitigation earnings. The employer appealed, asserting misdirection on the issue of dishonesty and error by the trial judge in leaving the issue of augmented damages with the jury in the absence of evidence of bad faith or unfairness.

**ISSUE:**

Did the trial judge err in failing to instruct the jury that dishonesty is always just cause for dismissal regardless of circumstances, and in failing to withdraw the issue of augmented damages from the jury? Were the jury's awards too high?

**RESULT:**

The appeal was dismissed. The trial judge did not err in instructing the jury to consider the allegations of dishonesty in the light of surrounding circumstances. There was evidence for the jury to consider as to whether the employer had been candid, reasonable, honest and forthright in its manner of dismissal of the respondent. Damages awarded by a jury must be "out of all proportion" to justify interference on appeal.

<p><b>This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 15 pages.</b></p>
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