

Constructive Discharge/Involuntary Resignation

The VLRB and the Vermont Supreme Court have addressed the issue of whether resignations can be converted into discharges due to their involuntary nature. Only by converting a resignation into a discharge can a grievance come before the Board.¹ Further, only by proving, in addition, that this conceptual discharge is without just cause can the Board require remedial action.²

Constructive discharge refers to a resignation that was improperly procured or induced to the point that, conceptually, the resigned employee should be taken to have been discharged.³ In constructive discharge cases, the general rule is that, if the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation, then the employer has encompassed a constructive discharge and is as liable for any illegal conduct involved therein as if it had formally discharged the aggrieved employee.⁴ The establishment of intolerable working conditions must be intended by the employer to get the employee to resign.⁵

A resignation also is involuntary, and thus invalid, if it is the result of undue influence by the employer.⁶ Undue influence occurs when a person in a dominant position exerts excessive pressure on or unfairly persuades another in a vulnerable situation, to the extent that the will of the servient person is overcome by the will of

¹ In re Grievance of Bushey, 142 Vt. 290, 291 (1982).

² Id.

³ Id.

⁴ Grievance of Bushey, 4 VLRB 285, 298 (1981); *Reversed on other grounds*, 142 Vt. 290 (1982).

⁵ 4 VLRB at 298-99.

⁶ In re Taylor, (Unpublished Decision, Supreme Court Docket No. 91-108, January 6, 1992).

the dominant person.⁷ Undue influence may be present where an employee has been pressured to resign.⁸

In determining whether a decision resulted from undue influence, a number of factors are considered, including: 1) whether the servient party was in a susceptible or vulnerable state of mind; 2) whether the persuading party was in a dominant position over the person persuaded, and whether there was more than one person doing the persuading; 3) whether independent advice was made available to the servient party; 4) whether the discussion took place in an unusual place or at an unusual time; and 5) whether there was an emphasis on the negative consequences of delay or an insistence on an immediate answer.⁹

⁷ Id.

⁸ Id.

⁹ Id.