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ALLEGING JUST CAUSE - NO BAD DEED GOES UNPUNISHED: COURT AWARDS TERMINATED EMPLOYEE \$50,000 IN PUNITIVE DAMAGES

By: Michelle Quinn

In the recent decision of *Morison v Ergo-Industrial Seating Systems Inc.*, 2016 ONSC 6725, the Ontario Superior Court of Justice made an award of \$50,000 in punitive damages against the defendant employer. This decision is a reminder to employers of the type of behavior which may attract punitive damages.

Tom Morison ("Morison") brought a wrongful dismissal action against his former employer, Ergo-Industrial Seating Systems Inc., ("Ergo-Industrial") seeking damages for reasonable notice equivalent to 14 months' remuneration, less mitigation earned during the notice period; aggravated damages for breaches of the duty of good faith and punitive damages for high-handed treatment.

The Facts

Morison was 58 years old at the time of his dismissal. His relationship with Ergo-Industrial began on August 9, 2004. The nature of their relationship between August 9, 2004 and January 1, 2006 was in issue (whether he was an employee or an independent contractor). It was not disputed that Morison was an employee by January 1, 2006, until his termination on October 22, 2012. At the time of his dismissal, Morison held the position of Regional Manager responsible for Eastern Ontario and Western Quebec, as well as manager for federal government sales.

On October 22, 2012, the owner and president of the employer contacted Morison (by telephone) and told him that his employment was terminated. The allegation of just cause was alluded to in Morison's termination letter. At all times, Morison was a top salesperson, with a history of good performance and no prior discipline. He was offered five months' notice including one month of working notice.

The Positions of the Parties

Morison claimed that Ergo-Industrial did not act fairly and there was no basis to allege just cause. Ergo-Industrial argued that it had a *bona fide* belief of cause relating to a mismanaged demo chair account, failing to properly market the health care line of products, and difficulties with Morison cooperating with his immediate supervisor. Additionally, it argued that Morison was an independent contractor from August 9,



2004 until December 31, 2005 such that the period of employment slightly exceeded six and a half years, rather than eight years. Lastly, it argued that Morison's situation was not a situation that warranted either aggravated or punitive damages.

The Decision

In addressing the length of service issue, Justice Roger considered whether Morison was an independent contractor or a dependent contractor. In determining the status of a work relationship, Justice Roger engaged in the following analysis:

[8] *...one looks at the total relationship of the parties, assessing whether the worker was engaged to perform the services as a person in business on his own account. The employer's level of control over the worker is a factor, as are the degree of financial risk taken by the worker and the worker's opportunity for profit.*

Morison had no expectation of profit other than commission. Ergo-Industrial was required to provide company sales policies, product/sales training, sales literature and business cards to perform the sales duties and pass along all leads for business in his territory. The Court, after "*considering all the evidence*" found that the total relationship between the parties was, from the outset, one of employment. Accordingly, the Court awarded 12 months of reasonable notice of termination less one month paid of working notice, statutory amounts and mitigation earnings.

On the issue of aggravated damages, while Justice Roger found that Ergo-Industrial did not act fairly or in good faith in the manner of dismissal, he declined to award aggravated damages because Morison provided insufficient evidence of actual damages resulting from the manner of dismissal. The Court found that his evidence on this point was limited and really had more to do with the ordinary pain, distress, and financial stress associated with losing a job, rather than that which might result from the manner of dismissal.

The evidence at trial revealed that Morison was "*simply not a good fit*" with his immediate supervisor. It was clear that his supervisor knew someone she respected who expressed interest in Morison's position. Justice Roger (at para. 42) stated:

"...I conclude that alleging cause was an integral part of the defendant's negotiation strategy. The defendant was counselled in September 2012 that it would not be able to establish cause. The defendant alluded to a possibility of alleging cause in its dismissal letter. The defendant then alleged cause in its defence and adopted a rather aggressive position while providing no evidence at trial that could support its alleged reasonable belief in cause or that it was reasonably justified in initially adopting a position of just



cause”.

Regarding punitive damages, Justice Roger accepted Morison’s claim for punitive damages and articulated as follows (paras. 53 to 54):

[53] I find the facts of this case particularly troubling. Not only did the defendant assert cause when there was no reasonable basis for such an assertion, the defendant delayed in providing the plaintiff his record of employment, and significantly delayed in paying amounts owing under the Employment Standards Act, 2000, until June 15, 2015. This had a significant financial impact on the plaintiff and the employer had knowledge of the plaintiff’s financial circumstances. Moreover, the allegations of cause, made with no reasonable basis, were made for tactical and financial gain considerations.

[54] I had the advantage of listening to the evidence and observing the witnesses and I find such conduct to be reprehensible. It exceeds what might be considered as ill-advised. The allegations of cause, made with no reasonable basis, and the significantly delayed payment of statutory amounts were intentional and financially impacted the plaintiff. These actions of the defendant were designed to financially benefit the defendant and the defendant had knowledge of the plaintiff’s precarious financial position. Such a [sic] conduct is “malicious, oppressive and high handed” and “marked departure from ordinary standards of decent behavior”. A similar finding was made in Kelly v. Norsemont Mining Inc., 2013 BCSC 147, at para.115.

The Court held (at para. 56) that an award of punitive damages was rationally required to punish the defendant and to meet the objectives of retribution, deterrence, and denunciation. Justice Roger concluded that “employers cannot be allowed to behave in such a fashion without a clear message being sent by this Court that this is not acceptable”.

Takeaways for Employers

This case from the Ontario Superior Court of Justice highlights that terminating employees requires careful consideration particularly where just cause is alleged. Generally speaking, just cause involves conduct so serious that there is a complete breakdown in the employment relationship. Alleging cause where there is no reasonable basis for doing so will expose employers to the risk of, in the words of Justice Roger: “*getting its just desert from the courts*”^[1]. Click here to learn more about this decision.

^[1] Speaking of just desert, in February 2017, the BC Supreme Court awarded \$25,000 in aggravated



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