A First In Alberta: Employee Awarded 26 Months Of Reasonable Notice



In *Lischuk v. K-Jay Electric Ltd, 2025 ABKB 460*, the Alberta Court of King's Bench, for the first time, awarded damages to a wrongfully terminated employee equal to 26 months' compensation, which was more than the generally accepted rough upper limit of 24 months, due to the exceptional circumstances of Mr. Lischuk's case.

Key Background Facts

Mr. Lischuk worked for K-Jay Electric Ltd. (K-Jay) for 34 years. He started as a Labourer and worked his way up to General Manager. Mr. Lischuk's employment was terminated without cause when he was 58 years old. Mr. Lischuk had devoted his entire career to K-Jay's business and ultimately occupied a senior and trusted position by the time his employment was terminated. Mr. Lischuk did not look for work after his employment was terminated and did not secure employment during the reasonable notice period.

Assessment of Common Law Damages

Since Mr. Lischuk did not have a written employment contract limiting his termination notice entitlement to the minimum amount in the Alberta *Employment Standards Code* (the "Code") or some other agreed upon entitlement, Mr. Lischuk was entitled to reasonable notice of termination under the common law. The Court reviewed the usual *Bardal* factors in its assessment of Mr. Lischuk's common law entitlement; namely his age, length of employment, character of employment, and the availability of comparable employment, having regard to Mr. Lischuk's experience, training and qualifications.

Consistent with other Canadian cases in which Courts have awarded more than 24 months, the Court held that Mr. Lischuk's termination effectively amounted to a forced retirement because the entirety of his working career was spent working at K-Jay, where his experience and skills were limited only to K-Jay's business. In other words, Mr. Lischuk's specialized skills and experience were not easily transferrable, which would make finding comparable employment difficult, especially considering his age. The Court also considered the fact that Mr. Lischuk occupied a senior role with significant responsibility at the time of termination.

Based on these exceptional circumstances, the Court awarded Mr. Lischuk an amount of $1,522,841.33 in damages, which was equal to 26 months of the full compensation he

would have earned over the reasonable notice period, including his base salary, bonuses, and benefits.

Damages not Reduced by Failure to Mitigate

At common law, an employee has a duty to mitigate their damages arising from a termination by taking reasonable steps to find comparable employment. A Court can reduce the damages amount if an employee fails to seek out comparable employment that would have reduced their damages over the reasonable notice period.

The onus is on the employer to present evidence at trial to prove that (a) the employee did not make reasonable efforts to find comparable work, and (b) had they looked for comparable work, they likely would have secured it (the Mitigation Test).

In this case, Mr. Lischuk admitted that he made no efforts to find new employment so there was no dispute on the first part of the Mitigation Test. However, K-Jay failed to present any evidence of comparable jobs that were available at the relevant time that Mr. Lischuk could have applied for and likely would have secured if he tried. Since K-Jay failed to satisfy the second part of the Mitigation Test, the Court declined to reduce the damages amount.

Insights for Employers

As is demonstrated by this case, having a properly drafted employment contract and termination provision is the single most effective strategy to mitigate employment termination costs and future litigation. This case emphasizes the following well established principles:

1. Ensure that employees are employed pursuant to written employment contracts that clearly and unequivocally limit termination notice entitlements to either the minimum amounts in the Code or some other agreed upon entitlement that complies with the Code;
2. It is critical to draft the termination provision clearly and strictly in compliance with the Code. If the termination provision breaches the minimum requirements of the Code or it does not unambiguously remove an employee's common law entitlements, an employee will be entitled to common law reasonable notice of termination which significantly increases an employer's severance liabilities;
3. If a termination provision provides an employee with termination entitlements that exceed the Code minimums, then the employment contract should require the employee to execute a full and final release of claims to receive the additional contractual termination entitlements ("Additional Contractual Entitlements"). The minimum Code entitlements cannot be made subject to the signing of a release and should be provided regardless of whether the employee signs a release (and within the timelines required by the Code). Obtaining a full and final release at the time of termination in exchange for Additional Contractual Entitlements is an effective strategy to avoid employment litigation (such as wrongful termination claims, discrimination complaints and prohibited action complaints);
4. Employment contracts should include clear and very specific language to remove an employee's right to continue to earn certain types of incentive compensation during any period of notice (except for the statutory minimum notice period). Without the right language, an employee will continue to earn and will be entitled to receive all forms of compensation during the reasonable notice period, as demonstrated in this case. For example, Mr. Lischuk's damages included bonuses that he would have received over the 26-month notice period. This could have been avoided with the right contractual language; and
5. When defending a wrongful termination claim, it is important to present evidence

to satisfy both aspects of the Mitigation Test. Courts can only make decisions based on the evidence before them. Proving that an employee failed to mitigate their damages is an effective strategy to limit common law damages.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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