Clarity Still Counts In Employment And Compensation



Bottom Line

The Court of Appeal for Ontario (the "Court") in *Boyer v Callidus Capital Corporation* upheld a lower court decision awarding a former employee (the "Plaintiff") over $1.5 million for lost vacation pay and perquisites. A full summary of the lower court's decision is available in our previous Insight article here. The Court's findings in this case reiterate the importance of clearly conveying workplace policies, particularly when those policies affect employees' compensation.

Background

The defendant employer (the "Defendant") retained the Plaintiff as an underwriter. After working in that position for several years, the Plaintiff retired and brought an action against the Defendant alleging that he was constructively dismissed. In bringing his action, the Plaintiff sought damages in lieu of accrued but unpaid vacation pay, unpaid bonuses, and unpaid stock options. The Plaintiff moved for summary judgment in respect of his claim.

The added "wrinkle" in this case was the fact that much of the Plaintiff's employment was governed by a verbal agreement (as opposed to a written employment contract), as well as policies of which the Plaintiff was unaware and to which he did not agree. Among other things, the Plaintiff argued that the Defendant never informed him that it had a "use it or lose it" vacation policy, or informed him of modifications to the Defendant's bonus and stock options policies that would have limited his entitlements on retirement.

The lower court allowed the Plaintiff's motion for summary judgment in part. The lower court's decision is available here. While denying the Plaintiff's claim that he was constructively dismissed, the lower court awarded the Plaintiff damages in lieu of unused vacations, unpaid and deferred bonuses, and lost stock options. In total, the lower court awarded the Plaintiff $93,076 in lieu of unused vacation, $525,000 in lieu of unpaid and deferred bonuses, and more than $1.2 million in lieu of lost stock options.

The Court of Appeal Upholds Damages for Lost Vacation and Perquisites

The Defendant appealed the lower court's summary judgment decision. Among other

things, the Defendant argued that the lower court's award of damages was inappropriate. The Court rejected all of the Defendant's arguments, including this one, upholding the lower court's decision.

The Court held that the lower court's reasons were consistent with the facts and the law of damages in lieu of lost vacation and other perquisites, and specifically noted that the lower court's damages awards were entirely consistent with the record before it. The Court found that the Defendant did not provide the lower court with evidence to refute the Plaintiff's position that he was neither aware of any relevant policy changes on compensation and perquisites, nor did he agree to them. Because the law on policy changes requires that an employer make an employee aware of such changes and get their agreement before a court will find that policy changes apply to the employee, the Court held that the lower court appropriately determined that the Plaintiff remained entitled to his unused vacation and lost perquisites.

Procedurally, the Court also reasoned that it was appropriate for the lower court to award the damages under appeal. While these damages carried a significant dollar-value, the lower court's reasons did not show that it misapprehended the evidence before it or that it made errors in law that needed to be overturned. Instead, the Court concluded that the award of damages aligned with the lower court's powers on a summary judgment motion.

Takeaways

This case emphasizes the crucial importance of ensuring that employees are explicitly notified of any policy changes affecting their employment. Where such policy changes affect the remuneration of an employee, employers should also be aware that failure to obtain the agreement of the affected employee to the policy change can render it legally unenforceable. As demonstrated by this decision, failure to notify an employee and obtain their agreement can be costly, particularly if a policy change affects a bonus or equity compensation.

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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