Even Innocent Mistakes Can Lead to Punitive Damages



In *Moffatt v Prospera Credit Union*, 2021 BCSC 2463, Ms. Moffatt commenced an action against her former employer, Prospera Credit Union ("Prospera") for wrongful dismissal. She had been terminated without cause.

Prior to her termination, Ms. Moffat had been employed as a Financial Services Associate under different contractual arrangements. She had worked casual, part time, and full time. She had worked for the defendant for just under 22 months.

Ms. Moffat initially worked as a casual employee and was subsequently offered a part time position (the "Part Time Contract"). The Part Time Contract said she would be entitled to "notice…or at Prospera's sole discretion, payment in lieu of notice which will take into consideration your age, tenure, position, and employment market opportunities". This termination clause was akin to requiring reasonable notice at common law. Ms. Moffat worked under the Part Time Contract for just under one month. She worked an average of 38 hours per week.

Ms. Moffat was then offered full time employment for a fixed term to fill in for a temporary parental leave absence. The contract for the full time position (the "Full Time Contract") said Prospera could terminate her employment without cause upon providing one months' notice per completed year of service to a maximum of 12 months total. She worked under this contract for a little less than a month, at which time she was terminated.

Both the Full time Contract and the Part Time Contract said they superseded any prior employment agreement between the parties.

Ms. Moffat was terminated less than a month after beginning to work under the Full Time Contract. She was given a termination letter, which listed a reduced notice period from her contract and doubled the non-solicitation period from her contract. Both were therefore detrimental to her and beneficial to Prospera. Ms. Moffat was escorted out of the bank, crying and shaking. This was visible to customers.

Ms. Moffat said her termination was humiliating, which could have been avoided if the termination had occurred before the branch opened. Ms. Moffat had symptoms of anxiety and difficulty sleeping due to the end of her employment. She suffers from severe claustrophobia and struggles to wear a mask. As a result, she struggled to find

alternate employment.

At issue:

1. Did the Full Time Contract or the Part Time Contract apply to Ms. Moffat's employment?
2. Is the Full Time Contract invalid due to a lack of new consideration or ambiguity of its notice provisions?
3. Which notice period applies to this termination?
4. Did the manner of termination warrant an award of aggravated or punitive damages?

The court held that Ms. Moffat's salary and hours of work remained generally the same under both contracts. Therefore, continued employment alone was not fresh consideration for the Full Time Contract. The terms of the Part Time Contract governed the termination and that contract required reasonable notice at common law.

Ms. Moffat also argued the provisions in the Full Time Contract were ambiguous regarding termination. The termination clause required one month per year of employment. However, the Full Time Contract also said that either party "may end this agreement with one weeks' notice". The court held there was no ambiguity.

The court assessed Ms. Moffat's notice period as three months.

The court explained that, to collect aggravated damages, an employee must demonstrate that the employer breached its duty of good faith and fair dealing in the manner of dismissal, and the employee suffered compensable damages as a result of the breach. The public nature of a dismissal alone is insufficient to support a claim for aggravated damages and must be accompanied by other reprehensible conduct by the employer. The court decided that Prospera's conduct did not warrant aggravated damages.

Further, the court explained that punitive damages are awarded when there are wrongful acts that are so malicious or outrageous they are deserving of punishment of their own. In this case, the termination had multiple errors. The notice period in the termination letter was inconsistent with both the Full Time Contract and the Part Time Contract. The non-solicitation provision was also incorrect. Prospera argued these were oversights as they had prepared 100 termination letters due to restructuring. Prospera was willing to correct the errors as soon as Ms. Moffat's lawyer pointed them out. The court awarded two and a half months' salary to Ms. Moffat in punitive damages.

Takeaway

Employers should be careful to not make errors in terminations that are to their benefit. Even if the errors are innocent, they may result in an award of punitive damages. Also, short-term employees can receive a notice period of more than one month per year.

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