Jurisdictional Issues In Maritime Employment Law

The Federal Court of Canada's recent decision in *Konteft* v. *Lower Lakes Towing Ltd.*, 2024 FC 96 (CanLII) confirms that maritime employment law requires careful consideration of jurisdictional issues.

Most wrongful dismissal claims in Canada are governed by provincial or territorial legislation and filed with the respective provincial or territorial court. However, employees working in the maritime industry, including those who work on a boat, may be subject to federal legislation and their claims for damages arising out of employment may be filed with the Federal Court of Canada.

In *Konteft*, the chief engineer of a ship was dismissed from employment and filed a claim against his former employer seeking damages for wrongful dismissal.

The employer brought a motion to strike the employee's claim on the following basis:

a) the Federal Court did not have jurisdiction to award damages arising out of termination of the employee's employment;

b) the two-year limitation period to bring the claim had expired; and

c) the choice of forum clause in the employment contract assigned jurisdiction to the provincial courts of Ontario.

Federal Court Jurisdiction

The Federal Court held that it had jurisdiction over the employee's claim for wrongful dismissal damages.

The Court held that damages for wrongful dismissal are captured by the term "other remuneration or benefits" in section 22 of the *Federal Courts Act* – as set out below – and that provides the Federal Court with jurisdiction over such claims:

Maritime jurisdiction

(2) Without limiting the generality of subsection (1), for greater certainty, the

Federal Court has jurisdiction with respect to all of the following:

….

(o) any claim by a master, officer or member of the crew of a ship for wages, money, property or other remuneration or benefits arising out of his or her employment …

Limitation Period

In most provinces and territories, the basic limitation period to bring a wrongful dismissal claim is two years from the date of termination of employment.

Because the matter in *Konteft* fell under federal jurisdiction and related to Canadian maritime law, the Court confirmed that the three-year limitation period under the federal *Marine Liability Act* applied. The employee's claim was not barred by the expiration of the limitation period.

Choice of Forum Clause in Employment Contract

Employers and employees are generally free to select the law and forum that governs an employment contract.

In *Konteft*, the employment contract contained the following "choice of forum" clause:

This Agreement is made and shall be construed in accordance with the applicable federal laws of Canada and the laws of Ontario. Officer agrees that all disputes and hearings and procedures related to this Agreement or Employee's employment will, subject only to the requirements of any administrative tribunal, be heard or resolved in Ontario, including before the Courts of Ontario.

The Federal Court held the clause was ambiguous as to whether it assigned jurisdiction *exclusively* to the Ontario Court of Justice, the Ontario Superior Court of Justice or the Ontario Court of Appeal. In the Court's view, the words "the Courts of Ontario" includes the Federal Court because it also sits in Ontario.

Because the employment contract was drafted by the employer, the Court proceeded on the basis of the *contra proferentem* rule and interpreted the choice of forum clause in favour of the employee. It found the choice of forum clause did not prevent the claim from being pursued in the Federal Court.

Takeaways

- Certain employment relationships may be governed by federal legislation and fall within the jurisdiction of the Federal Court.
- A choice of forum clause in an employment contract can be valuable but must be properly drafted. When the employer drafts the clause and it is ambiguous, a court will generally interpret the clause in favour of the employee.
- When in doubt, consider seeking the assistance of capable legal counsel to confirm whether provincial or territorial or federal legislation applies to a particular employment relationship, and whether the particular provisions in an employment contract are enforceable.

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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