

Supreme Court Awards Wrongfully Fired Employee Post-Termination Bonus



It's getting harder and harder to enforce termination notice limits.

An important new Canadian Supreme Court case confirms that employees who get wrongfully dismissed may qualify for not only termination notice but bonuses they'd have gotten during the notice period.

What Happened

A senior chemist would have made a fortune under his long-term incentive plan (LTIP) had he still been with the nutrition company when it was acquired for \$543 million. But since he no longer worked there, the company didn't think it had to honour his LTIP rights when the "Realization Event" occurred. It turns out that the company was wrong.

The Case

After ping-ponging around in the Nova Scotia courts, the case landed in the Supreme Court of Canada, which ruled that the company had constructively dismissed the chemist and had to pay him the bonuses that he'd have earned during the reasonable notice period. And the Realization Event/acquisition did happen during the notice period. So, had he not been wrongfully terminated, he'd have gotten the LTIP bonus.

The other significant aspect of the case is that the LTIP plan purported to limit payments to "active" employees. but the Court said this language wasn't "absolutely clear and unambiguous" enough to strip the chemist of his benefits rights [*Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26, October 9, 2020].

Takeaway

The *Matthews* case parallels what's been taking place in courts all around the country with regard to contract clauses purporting to strip wrongfully terminated employees of their so called common-law notice rights, i.e., rights to damages and payments beyond the minimum required by employment standards law. In this case, the principle was applied not to a termination notice limit in a

contract but the terms of an employee benefit plan. As with such contractual provisions, *Matthews* shows that strict and unambiguous language is required to deprive an employee of a bonus or benefit during the notice period.