# Surprising Reinstatement Decision Of The Human Rights Tribunal Upheld

You may recall that last year, the Ontario Human Rights Tribunal ("the Tribunal") raised the eyebrows of employers when it ordered that a terminated employee be reinstated to her position with full seniority almost a decade after she had left the workplace. In *Fair v. Hamilton-Wentworth District School Board*, 2013 HRTO 440 ("*Fair*"), the employee was awarded, among other things, reinstatement (which included nine years of back pay) and $30,000 for compensation for the injury to her dignity, feelings and self-respect. To read our prior e-lert on this decision, click here.

Until recently, the Tribunal had generally been of the view that its reinstatement powers should be exercised in limited circumstances. As a result, many were surprised to see the Tribunal reinstate an employee almost ten years after her termination. Such a decision results in an uncharacteristically large damages award and also leaves the employer with the undoubtedly uncomfortable task of re-integrating the employee back into the workplace.

It was therefore no surprise that the employer in *Fair* brought an application for judicial review of the Tribunal's decision before a panel of the Ontario Superior Court of Justice, Divisional Court ("Divisional Court"). Among the several grounds raised, the employer challenged the appropriateness of the reinstatement award in the circumstances.

On September 29, 2014, the Divisional Court released its decision on the application,[1] upholding the decision of the Tribunal and awarding an additional $15,000 in costs against the employer in respect of the judicial review process.

The Divisional Court made short order of the employer's quarrel with the reinstatement award. It held that the Tribunal has broad remedial authority and that, while reinstatement is unusual, there is no barrier or obstacle to the remedy at law. The Divisional Court concluded that the Tribunal's decision with respect to remedy is "intelligible, transparent and with justification. The outcome is within the range of reasonable expectation."

While one could argue that such a result was not within anyone's reasonable expectation at the time, with Court approval of the Tribunal's decision in Fair, employers should now have little doubt that the Tribunal's power to reinstate is a risk on any termination that is found to result from unlawful discrimination.

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