The “Fix” Is In: Alberta Employee Awarded 34.5 Months’ Damages for Breach of Contract



Rice v Shell Global Solutions Canada Inc.[1] – a recent decision by Alberta’s Court of Queen’s Bench – is the latest warning to employers about the dangers of fixed-term employment arrangements.

Background

The employee, a Chartered Professional Accountant, started working for Shell Global Solutions Canada Inc. (“Shell”) in September 2008. Initially, the employee was employed pursuant to a two year fixed-term contract. The contract was extended until June 2011, at which time the employee was converted to “regular, full time employment”.

In 2016, the employee applied for the position of Indirects Manager. Shell offered her the job by way of email which read, in part:

> *The desired First Day on Payroll will be:* ***1/APR/2016***
>
> *Your Assignment Length will be:* ***4 years***

The employee accepted the offer; however, she did not receive a written contract or any other documentation in furtherance of Shell’s email.

10 months later, in February 2017, Shell terminated the employee’s employment on a without cause basis. She received a combination of working notice and pay in lieu of notice through mid-May 2017. The employee subsequently obtained alternative employment with another company in September 2017.

Nevertheless, the employee sued Shell for damages for wrongful dismissal.

The Parties’ Positions

At the summary trial, the employee argued that Shell had promised her four years of fixed-term employment. Therefore, she should receive 34.5 months of damages based on the remaining period of the agreed upon term. In the alternative, she argued that she was entitled to 15 months’ reasonable notice.

In its defence, Shell argued that the employee's term of employment was indefinite and terminable on reasonable notice. Shell submitted that the period of reasonable notice should be in the range of 8 ½ months and, further, that the employee had mitigated her losses by obtaining alternative employment.

The Court's Decision

The Court agreed with Shell that the employee's arrangement was not a "traditional fixed-term contract"; however, the words contained in Shell's 2016 offer (i.e., "Your Assignment Length will be: 4 years") were not redundant and should be given meaning. According to the Court, the proper meaning was that Shell could not terminate the employee's employment without cause during the first four years of the arrangement.

The Court went on to say that this interpretation was supported by the surrounding circumstances, including that the employee worked on a major capital project and Shell was a sophisticated organization that could reasonably be expected to predict and budget for its staffing needs.

In assessing damages, the Court relied on the well-known principle in employment law that – in the absence of an enforceable early-termination provision – an employer who terminates an employee prior to the end of his or her fixed-term must pay the dismissed employee damages in lieu of his or her compensation to the end of the agreed upon term. Therefore, the Court held that the employee was entitled to 34.5 months' damages.

Fortunately for Shell, the Court went on to find that the employee's earnings from alternative employment must be deducted from her damages. Relying on the Alberta Court of Queen's Bench decision in *Stewart v DIGI Canada Incorporated,*[2] the Court held that an employee whose fixed-term contract is breached must still mitigate his or her damages and any sums earned from alternative employment within the balance of the term must be deducted from the employer's liability.

In this regard, it should be noted that the approach taken by the Courts in Alberta differs significantly from the approach taken by legal decision-makers in some other provinces, including Ontario (where the employee's compensation to the end of the fixed-term is treated as "liquidated damages", and there is no obligation on the employee's part to mitigate).[3]

Lessons for Employers

This case serves another important reminder to employers about the risks associated with fixed-term employment arrangements. Even the Court in this case acknowledged that fixed-term employment arrangements are, generally speaking, "contrary to the contracting parties' interests and the reality of the need for flexibility both by employers and employees".

Instead of offering fixed-term employment arrangements, employers should consider limiting their liability by offering indefinite-term employment contracts with enforceable termination clauses. When fixed-term employment arrangements are absolutely necessary for business reasons, employers must ensure that they are clearly drafted and that they contain an enforceable early-termination clause.

Footnotes

1. 2019 ABQB 977.
2. 2007 ABQB 662.
3. For example, see: *Howard v Benson Group Inc (The Benson Group Inc), 2016 ONCA 256.*

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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