We Know The Pandemic Has Made Every Day Feel Like A Year, But Come On!



Many are familiar with the general idea that, when it comes to reasonable notice, one month per year of service is the usual starting point. In the case of *Dalton v. Fraser Valley Fire Protection Ltd.*, though, a 3-day employee was awarded wrongful dismissal damages equating to one month per ***day*** of service.

Typically, enhanced notice periods for short-term employees occur when other factors exist in a wrongful dismissal case: inducement from secure employment, specialized nature of the job, etc. However, there were no acknowledged "special factors here", other than the fact that the Employer did not raise its performance concerns with the employee prior to dismissing him from employment. While this would certainly be an issue if the Employer specifically dismissed the employee for cause, the decision does not suggest that cause was argued by the Employer here.

Instead, the Employer argued that, while the reasons for dismissal were the employee's lack of productivity and inability to get along with co-workers, since he was a probationary employee they were entitled to dismiss him as such without any pay or notice. The Court took issue with this argument, stating:

[25] …There are a number of problems with this argument, however. Firstly, the Claimant testified that it was not a term of his employment that he would have a probation period. He denied ever receiving or signing any document making this a term of his employment contract. FVFP's own records do not show that this was ever communicated to the Claimant or that he ever agreed to this condition. There is no mention of this in any of the Human Resources Manager's notes or in any email presented at trial, and no formal written contract of employment was ever signed between the parties. For this to be a term of the employment contract, there must be evidence of acceptance of this condition on the part of the Claimant, either expressly or by conduct. No such evidence was presented at trial.

Accordingly, the Court then turned its mind to the proper measure of damages. Taking into account the employee's age (67), length of service (3 days!) and other factors, the Court awarded 3 months' damages.

While we are not about to suggest that the new "standard" for common-law reasonable notice is "one month per day", this case does highlight the need for a proper employment agreement. Notwithstanding the whole "just cause" discussion that permeates the case – which is, in our view, a legal red herring – the real takeaway

for employers here is that a properly drafted employment agreement could have significantly limited, if not eliminated, the risk for the Employer regardless of the reasons for the employee’s dismissal.

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