
CANADA / JUDGMENT

Mohammed v. Dexterra Integrated Facilities Management

2020 BCSC 2008

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 2008 Mohammed v. Dexterra Integrated Facilities Management

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mohammed v. Dexterra Integrated Facilities Management,

2020 BCSC 2008

Date: 20201217

Docket: S203239

Registry: Vancouver

Between:

Jafeef Mohammed

Plaintiff

And

Dexterra Integrated Facilities Management

Defendant

Before: The Honourable Mr. Justice Walker

Reasons for Judgment

Counsel for the Plaintiff:

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Place and Dates of Trial:

Vancouver, B.C.

November 23-24, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 17, 2020

Table of Contents

Introduction. 3

Facts. 3

Issues. 8

Proper Notice. 8

General Principles. 8

Length of Employment 10

Job Status and Responsibility. 11

Age. 11

Inducement 14

Determination. 15

Mitigation. 16

Conclusion. 16

Introduction

- [1] In this wrongful dismissal action, the plaintiff, Jafeef Mohammed, says he was given insufficient notice when the defendant, Dexterra Integrated Facilities Management ("Dexterra"), terminated his employment without cause on November 11, 2019. Mr. Mohammed was 51 years old when his employment as a supervisor of Dexterra's cleaning staff at the Tsawwassen Mills Mall was terminated.
- [2] Dexterra is in the business of providing management and operations solutions in Canada, including cleaning and maintenance services.

- [3] Dexterra acknowledges that Mr. Mohammed's employment was terminated without cause but asserts that the four weeks' working notice it gave to Mr. Mohammed was sufficient in law such that the action should be dismissed.

Facts

- [4] In this section, I set out my findings of fact.
- [5] Mr. Mohammed was raised in Fiji where he completed his schooling. His highest level of education is grade 12.
- [6] Mr. Mohammed began his employment with Carillion in June 2018. Carillion later became known as Dexterra. For the purpose of this action, Carillion and Dexterra are treated as the same entity (and I will refer to them as Dexterra in these reasons).
- [7] Mr. Mohammed has worked in the cleaning maintenance field since approximately 1996. He worked for three different cleaning companies before starting at Dexterra. In each of his positions in the cleaning and maintenance industry, including his job with Dexterra, Mr. Mohammed was employed as a supervisor. His initial employment was with a company called Sodexho who had a cleaning contract with Simon Fraser University in Burnaby. He worked for that company until 2006 when Sodexho lost its cleaning contract. He joined another company -- Marquise (also referred to as "Compass") -- and worked for it until 2013. When Marquise lost its contract, Mr. Mohammed secured employment with another company -- Hallmark.
- [8] Mr. Mohammed worked night or graveyard shift hours for Sodexho, Marquise, and Hallmark. His hours were generally 11:00 o'clock p.m. to 7:00 o'clock a.m. As Mr. Mohammed grew older, he found his health suffered from those hours and decided to look for daytime hours. He was planning to leave Hallmark as soon as he could find day shift work elsewhere. In the meantime, Mr. Mohammed sought extra hours to augment his hours at Hallmark. Mr. Mohammed stayed in contact with an individual named Jay Marsh, whom he had worked with at Marquise. He knew Mr. Marsh had many contacts in the maintenance industry and thought he would know of potential day shift job prospects.
- [9] In early 2018, Mr. Mohammed followed up with Mr. Marsh to see if he was aware of any opportunities in the industry to work extra hours, or possibly a full-time day shift position. He asked if Mr. Marsh's employer, Dexterra, had any day shift positions available and wondered whether it would hire him if it did. Mr. Marsh told Mr. Mohammed that there were. He introduced Mr. Mohammed to Cory Couture, Dexterra's senior operations manager. Mr. Marsh knew of Mr. Mohammed's work and told Mr. Couture that Mr. Mohammed was a solid employee who would be a great addition for the company. When they met, Mr. Mohammed told Mr. Couture that he would be happy to join Dexterra if it had a position with day shifts available. Mr. Mohammed testified that Mr. Couture replied that he would "do something" and that "he made the space for me", and offered him employment as a supervisor for part-time day shift work.

[10] Mr. Mohammed accepted the offer and signed an employment contract with Dexterra on June 20, 2018, which provided his employment with the company would commence on June 22, 2018. It included provisions dealing with probation and termination, as follows:

The first ninety (90) calendar days of employment are probationary, unless otherwise stated in a collective agreement at your place of work.

We are a multi-location company. The Company reserves the right to decide the location where you will be stationed and to transfer or change the location of the workplace, from time to time, based on its business needs and operational requirements.

Please note that if you worked for the company previously and your employment was discontinued as a result of your resignation or termination, the date shown on this letter is considered the date used for the purpose of determining your seniority with the company.

[11] Mr. Mohammed continued to work for Hallmark on night shifts and worked for Dexterra at Tsawwassen Mills Mall during the day on his days off from Hallmark. He was paid \$18 per hour by both companies.

[12] Mr. Mohammed never worked for Dexterra prior to June 2018. There is no evidence to prove Mr. Mohammed's submission that Dexterra had a relationship or affiliation with his prior employers sufficient to treat his employment since Marquise as continuous.

[13] A short time later, Mr. Marsh told Mr. Mohammed of the possibility of a full-time day shift position for the company. Dexterra's contract with Tsawwassen Mills Mall was in jeopardy due to quality issues posed by its night shift staff; the Mall was not always in condition to be opened to the public in the morning. Dexterra began looking for a supervisor to ensure that its cleaning and maintenance service met its contractual requirements. Mr. Couture offered the job to Mr. Mohammed (without conducting a formal interview), which he accepted. He quit his position with Hallmark and started in his new position as a supervisor of the day shift with a pay increase of \$2 per hour to \$20 per hour.

[14] Dexterra did not make any promises to Mr. Mohammed regarding length of service, prospects for advancement, or severance on termination of his employment. Mr. Mohammed admitted that what he was told when he was hired by Dexterra was he was "welcome to join our team". Mr. Mohammed did not raise any concerns with Dexterra about his decision to leave his employment with Hallmark. He admitted that he was happy that he had a job working day shifts and that he was not reluctant to leave Hallmark. Mr. Mohammed also acknowledged that he was not necessarily concerned about the wages he would be paid at Dexterra and that he was focused on securing day shift work.

[15] In his full-time position with Dexterra, Mr. Mohammed was responsible to ensure that the Tsawwassen Mills Mall was properly cleaned and ready to open to the public in the morning. His job duties encompassed supervision of a team of workers of six to eight people per shift. He also participated in cleaning and maintenance work (e.g., shampooing carpets and cleaning). He testified that half of his time was spent in supervision and the other half in

cleaning and maintenance. He did not have the authority to hire, fire, or discipline employees and had no authority over payroll.

[16] On October 10, 2019, he was called into a different manager's office and told that Dexterra's contract with Tsawwassen Mills Mall was not renewed and as a consequence, Dexterra was terminating the employment of all of its staff (over 40 people) working at the Mall. Mr. Mohammed was given a letter dated the same day informing him of the termination of his employment with the company.

[17] In the termination letter, Mr. Mohammed was advised of the reason for his termination and that he was being given four weeks' working notice:

As you know, Dexterra provides facilities services at its accounts/locations on a contractual basis solely at the client's invitation. We have been given notice by the client at Tsawwassen Mills Mall advising that the facilities services offered by Dexterra are no longer required.

As a result, your employment with Dexterra will be terminated, without cause, effective November 11, 2019. We need you to continue to work diligently during this process to ensure that the quality of service and professionalism provided to our client are maintained.

In accordance with employment standards requirements, you will receive the following:

a) Working Notice

Effective today, October 10, 2019, you will receive 4 weeks of working notice. You will continue to work and be paid accordingly during this period.

[18] The termination letter also advised Mr. Mohammed that the company would do its best to transfer its employees to nearby worksites and offer comparable roles and compensation:

Please note, Dexterra will do the best to transfer employees to nearby worksites and offer comparable roles and compensation. If Dexterra is able to offer transfer to a nearby worksite, this letter and its terms and conditions will be null and void. If you choose to decline the offer of transfer the company will consider this your formal resignation from your job at Dexterra.

[19] Dexterra's manager who met with Mr. Mohammed to advise of the termination of his employment admitted in her evidence that the company did not make the efforts it said it would to find work for its employees working at the Mall. The company, she said, had no other work available for them.

[20] Mr. Mohammed's statement of earnings and deductions dated December 6, 2019, for the pay period ending November 30, 2019, shows that his year-to-date gross earnings total \$39,977.46.

- [21] Mr. Mohammed was able to secure new full-time employment with Alpine Maintenance starting November 11, 2019, as a supervisor earning a higher wage at \$22 per hour. His employment there was terminated on January 13, 2020. There is no evidence to explain why he lost that job. His gross earnings with Alpine Maintenance were \$11,844.14 (\$10,084.14 of earnings plus \$1,760 as pay in lieu of notice).
- [22] Mr. Mohammed has not worked since. He testified he has been unable to find a job in his field. He has looked for work, mainly through online portals. He signed up for job notification services, where he received regular emails advising of job postings for cleaning and maintenance supervisor or technician positions. He applied for two jobs in January, four jobs in February, one in March, one in September, and for various jobs in October and November. He explained that the COVID-19 pandemic has impacted his ability to find work.

Issues

- [23] Dexterra admits Mr. Mohammed's employment was terminated without cause. The primary issue for determination is the amount of notice it was required to give to Mr. Mohammed.
- [24] There are other issues for determination. From the pleadings and the submissions of the parties, these questions also arise for determination of Mr. Mohammed's claim:
- (a) Was Mr. Mohammed "lured" or induced to work for Dexterra, and if he was, what effect does that have on the notice period?
 - (b) Were Marquise and Hallmark sufficiently related to Dexterra that Mr. Mohammed's employment with those companies be taken into account in determining the notice period?
 - (c) Did Mr. Mohammed mitigate his damages?
- [25] I was advised by his counsel that Mr. Mohammed is not pursuing his claim for aggravated damages.

Proper Notice

General Principles

- [26] The purpose of notice is to bridge the gap between dismissal and new employment: *Shinn v. TBC Teletheatre BC*, 2001 BCCA 83 at para. 16.
- [27] Notice must be reasonable in the individual circumstances of the case. It is determined as at the date of termination of employment and not by subsequent events: *Dunlop v. B.C. Hydro & Power Authority* (1988), 32 B.C.L.R. (2d) 334 at 339-40, 2 W.W.R. 518 (C.A.); *Sifton v. Wheaton Pontiac Buick GMC (Nanaimo) Ltd.*, 2010 BCCA 541 at para. 50. Consequently, economic circumstances at the time of termination may be a factor, although they are not to attract undue influence: *Sifton* at paras. 48-51. Those arising post-termination, such as those from the COVID-19 pandemic, can be relevant to mitigation if they impact the availability of equivalent employment: *Sifton* at paras. 35, 48.

[28] The factors considered when determining notice are discussed in the oft-cited case of *Bardal v. Globe and Mail Ltd.*, 24 D.L.R. (2d) 140 at 145, [1960] O.W.N. 253 (Ont. H.C), and are known as the "Bardal factors":

There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be decided with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

[29] The Bardal factors continue to be applied in this province. One notable example is *Ansari v. British Columbia Hydro & Power Authority*, 2 B.C.L.R. (2d) 33, [1986] 4 W.W.R. 123 (S.C.) [cited to B.C.L.R.], where Chief Justice McEachern (as he then was) said, in part, that while the Bardal factors are not an exhaustive list of factors to consider when assessing notice, they are the most important factors (at 37):

It is not the function of damages for wrongful dismissal to penalize the employer for the manner of dismissal nor to compensate the employee over and above the damages flowing from the breach of the contract of employment for his loyal or useful service to the employer. This had been settled law since at least 1883 when the Supreme Court of Canada held that vindictive damages cannot be awarded for breach of contract: *Guildford v. Anglo-French SS. Co.* (1883), 9 S.C.R. 303 [N.S.]. The House of Lords reached a similar conclusion in *Addis v. Gramophone Co.*, [1909] A.C. 488, where it was said at p. 491:

I cannot agree that the manner of dismissal affects these damages. Such considerations have never been allowed to influence damages in this kind of case.

Our Court of Appeal arrived at a similar conclusion in *Vorvis v. I.C.B.C.* (1984), 53 B.C.L.R. 63, 4 C.C.E.L. 237, 9 D.L.R. (4th) 43, per Craig J.A., at pp. 251-52.

In short, damages for wrongful dismissal are founded in contract and the focus of the inquiry is what damages, assessed in accordance with the principles I shall discuss, flow from the breach.

In what is often regarded as a leading case, *Bardal v. Globe & Mail Ltd.*, [1960] O.W.N. 253, 24 D.L.R. (2d) 140 (H.C.), McRuer C.J.H.C. said at p. 145:

In *Gillespie v. Bulkley Valley Forest Indust. Ltd.*, 1 W.W.R. 607, 50 D.L.R. (3d) 316 (B.C.C.A.), it was said that the factors enumerated by McRuer C.J.H.C. should not be regarded as exhaustive but, with great respect, they are indeed the most important factors, and other matters which have crept into the assessment of this kind of damages are not of great significance.

[30] Other cases similarly hold that the Bardal factors are predominant but not exhaustive, but also point out that the determination of the proper notice period is assessed on a case-by-case basis: *TCF Ventures Corp. v. The Cambie Malone's Corporation*, 2016 BCSC 1521 at para. 60, citing *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paras. 25-32.

Length of Employment

- [31] The length of Mr. Mohammed's employment with Dexterra was 17 months.
- [32] Mr. Mohammed has not established that Dexterra is related to his prior employers. They are separate corporate entities.
- [33] This is not a case where, as Mr. Mohammed argues, his notice period should be assessed as if he were a continuous employee since he worked for Marquise. The analysis in *Dobbs v. The Cambie Malone's Corporation*, 2011 BCSC 1830 at paras. 9, 48, 50 and in the "gap in service" cases (e.g., *Matheson v. Canadian Freightways Ltd.*, 2003 BCSC 1728; *Cheong v. Grand Pacific Travel & Trade (Canada) Corp.*, 2016 BCSC 1321; *Wilson v. Sandwell and Company Ltd.*, [1989] B.C.J. No. 1343) cited by Mr. Mohammed in his submissions are also irrelevant to the analysis given the factual circumstances of this case.
- [34] Consequently, for the reasons I discuss below, I view the assessment of the notice period to fall within the line of "short service" cases, taking into account Mr. Mohammed's job duties (including the importance of his role to help Dexterra maintain its contract with Tsawwassen Mills Mall) and his age. Length of service is less of a predominant factor where the job tenure was relatively short: see, e.g., *Shinn* at para. 16; *Hill v. Johnson Controls L.P.*, 2006 BCSC 826 at paras. 46-50; *Cheong* at para. 77.

Job Status and Responsibility

- [35] The nature of the employee's job, particularly its status and the amount of responsibility, is also a factor in assessing notice: see, e.g., *Nardulli v. C-W Agencies Inc.*, 2012 BCSC 1686 at para. 421, rev'd in part on other grounds 2014 BCCA 31; *Dobbs* at paras. 42-43.
- [36] Dexterra says that even though Mr. Mohammed was a supervisor, his position was non-managerial; he lacked the authority to hire, fire, discipline, and to be involved with payroll. In that respect, I agree. However, he was not, as Dexterra says in its written submissions, an "hourly worker in a low-level position whose duties included a substantial amount of physical cleaning tasks" who worked for Dexterra for 17 months before being let go. Mr. Mohammed was responsible to ensure the crew of six to eight workers in his unit properly carried out their tasks. His role was particularly important to Dexterra given its maintenance staff's performance issues at Tsawwassen Mills Mall. I disagree with Dexterra's submission that his role with Dexterra was "not 'crucial'" to the company's operations; it was crucial to its performance at the Mall. His job duties and responsibilities must be seen in this context for the purpose of determining notice.

Age

- [37] In *Dobbs*, Madam Justice Wedge commented on the greater difficulty faced by older employees:

- [39] As the Ansari case states, those considerations do not comprise an exhaustive list, nor is any one factor to be considered in priority over the others. As all of the cases indicate, what is reasonable depends on the unique circumstances of each case.
- [40] The company in this case does not dispute that Mr. Dobbs' age, 51, is a relevant consideration. The case law amply supports that concession. In the case of *Orlando v. Vancouver Coastal Health Authority*, 2005 BCSC 926, Mr. Justice Taylor said at para. 49: "It is no secret that employees terminated at such an age have a much greater difficulty finding employment than do those of a younger age."
- [41] Taylor J. cited Harding J. in *Birch v. Grinnell Fire Protection*, [1998] B.C.J. No. 1602 (S.C.) at para. 21 where he said: "[M]any potential employers these days are reluctant to hire new employees over the age of 50."
- [38] Unlike the position of the employer in *Dobbs*, *Dexterra* does not acknowledge that Mr. Mohammed's age at termination (51) should have any significant impact on the notice period. *Dexterra* relies on certain cases it says demonstrate a "modern approach" to considering age such that it now matters when the employee is at or close to age 60: *King v. DST Systems Inc.*, 2018 ONSC 533 at para. 10; *Sciancamerli v. Comtech (Communication Technologies) Ltd.*, 2014 BCSC 2140 at paras. 30-31, 33; *Sollows v. Albion Fisheries Ltd.*, 2017 BCSC 376 at paras. 73-75.
- [39] However, the Supreme Court of Canada has yet to acknowledge a different approach should be taken to its approach in *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229, 76 D.L.R. (4th) 545 [cited to S.C.R.] and *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, 170 D.L.R. (4th) 1.
- [40] *McKinney* was a case involving mandatory retirement and Charter rights. At 299, Mr. Justice LaForest, in writing for the majority, said that persons over 45 have greater difficulty finding work:

The objective of ss. 9(a) and 4 of the Human Rights Code, 1981 is to extend protection against discrimination to persons in a specified age range. The protection as originally prescribed was limited, we saw, to persons between the ages of 45 and 65, an age group considered with considerable justification to be most in need of protection. Barring specific skills, it is generally known that persons over 45 have more difficulty finding work than others. They do not have the flexibility of the young, a disadvantage often accentuated by the fact that the latter are frequently more recently trained in the more modern skills. Their difficulty is also influenced by the fact that many in that age range are paid more and will generally serve a shorter period of employment than the young, a factor that is affected not only by the desire of many older people to retire but by retirement policies both in the private and public sectors. By 1982, youth employment had also become a more serious factor and the protection was extended, we saw, to the ages of 18 to 65.

[Emphasis added]

[41] Those comments were applied by the Court in a different factual context (an alleged discrimination to pension entitlement due to age) in *Law*:

101 As the appellant states, reflected in the age distinctions in the survivor's pension provisions of the CPP appears to be the notion that young persons experience fewer impediments to long-term labour force participation and are generally in a better position than older persons to replace independently over the long run as a working member of Canadian society the income of a deceased spouse. It seems to me that the increasing difficulty with which one can find and maintain employment as one grows older is a matter of which a court may appropriately take judicial notice. Indeed, this Court has often recognized age as a factor in the context of labour force attachment and detachment. For example, writing for the majority in *McKinney*, supra, La Forest J. stated as follows, at p. 299:

Barring specific skills, it is generally known that persons over 45 have more difficulty finding work than others. They do not have the flexibility of the young, a disadvantage often accentuated by the fact that the latter are frequently more recently trained in the more modern skills.

Similar thoughts were expressed in *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986 at pp. 998-99, per Iacobucci J., and at pp. 1008-09, per McLachlin J., regarding the relevance of increased age to a determination of what constitutes reasonable notice of employment termination. See also *Moge v. Moge*, [1992] 3 S.C.R. 813 at pp. 881-83, per McLachlin J., regarding the relevance of increased age to a determination of a former spouse's ability to support himself or herself.

[Emphasis added]

[42] Mr. Mohammed drew my attention to discussions in a text and journal article characterizing age 50 as a dividing line for increased notice periods.

[43] The text he referred to is Ellen E. Mole, *Wrongful Dismissal Practice Manual*, 2nd ed., (Markham, ON: LexisNexis Canada Inc., 2004) (loose-leaf) vol. 1 at 2-7-101:

Age 50 and above - For most employees in their 50's or above, age tends to increase the length of the notice period, presumably due to the well-known problems of older people in finding new employment. Employees dismissed in their mid-50's may be particularly vulnerable, as they may be too young to retire but too old to easily retrain, while employees dismissed in their 60's may in effect be forced into early retirement.

[44] The article was penned by Professor Thornicroft: Kenneth W. Thornicroft, "Severance Pay and the Older Worker: Negotiated Versus Litigated Outcomes Under Canadian Common Law" (2015) 52:4 *Alta. L. Rev.* 779. Based on his statistical analysis of Canadian appellate court decisions addressing reasonable notice from 2000 to 2011, Professor Thornicroft states at 794, 796-797:

[I]t appears that Canadian appellate courts are awarding employees 50 years of age or older an additional notice component, separate from that associated with tenure, perhaps recognizing that these older employees will have a particularly difficult time when searching for new work (at 794).

As previously noted, dismissed employees who were at least 50 years old, and independent of tenure, recovered about 3 months' additional notice by reason of their older age. This latter result undoubtedly reflects a judicial recognition that older employees face a difficult job search following dismissal (at 796).

Older workers have disproportionate levels of long-term unemployment and when they do find new work, it is more likely to be non-standard work such as part-time work, casual employment and self-employment (at 796-797).

[Footnotes omitted.]

[45] I will conclude with my observation that Dexterra's submission concerning a "modern rule" departing from the dicta of the Supreme Court of Canada and long line of cases following, so that age 60 is the "new 50", is best viewed from the remarks in *Sciancamerli* at paras. 24-31: each case must be determined based on individual circumstances on a case-by-case basis. Evidence of the impact of age is a factor but the traditional approach that age over 50 is seen as a potential detrimental factor to finding employment has not been discarded.

Inducement

[46] I reject Mr. Mohammed's submission that he was induced by Dexterra to leave his employment with Hallmark. There is no basis in the evidence to make that finding. To the contrary, there was no recruitment or persuasion of Mr. Mohammed by Dexterra. He was not reluctant to leave Hallmark and was seeking full-time day shift hours elsewhere, which he found at Dexterra: *Nicholls v. Columbia Taping Tools Ltd.*, 2013 BCSC 2201 at paras. 224-231; *Sollows* at paras. 37-48.

[47] As I have found, Mr. Mohammed was planning to leave Hallmark to find day shift work, and specifically sought out Mr. Marsh's help. He sought out work from Dexterra and was not concerned about wage or prospects for advancement. Dexterra did not make him any promises (e.g., severance, job security, and prospects for advancement) other than offering him employment as a part-time, and later full-time, supervisor working day shift hours at a specified hourly wage. I disagree with Mr. Mohammed's submission that Dexterra's offer of a full-time position for day-shift work can be characterized as an inducement to leave Hallmark in the factual circumstances of this case. Mr. Mohammed has not established that inducement and the weight to be given to it in considering notice as discussed in the case law are engaged here: *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, 152 D.L.R. (4th) 1; *Munoz v. Sierra Systems Group Inc.*, 2016 BCCA 140; *Pollock v. Cotter*, 2005 BCSC 1799.

Determination

- [48] I have considered the cases cited by the parties concerning the range of proper notice.
- [49] The cases cited by Mr. Mohammed -- where inducement, totality of service for related employers, and gaps in service are considered -- in support of his submission that the notice period is no less than 14 months are inapplicable in view of my findings. His alternate submission is that if I view this to be a short-service case, then relying on *Chung v. Quay Pacific Property Management Ltd.*, 2020 BCSC 714, *Mackie v. West Coast Engineering Group Ltd.*, 2009 BCSC 1775, *TCF, Dobbs, and Hill*, the notice period is 8 to 12 months.
- [50] Dexterra's position is that a reasonable notice period is 1 to 3 months, citing *Dodich v. Leisure Care Canada*, 2006 BCSC 93, *Tymko v. 4-D Warner Enterprises Ltd.*, 2018 BCSC 372, *MacAlpine v. Medbroadcast Corp.*, 2003 BCPC 133, and *Skene v. Dearborn Motors Ltd.*, [1990] B.C.W.L.D. 445, 29 C.C.E.L. 107 (C.A.).
- [51] I agree with Dexterra that the cases cited by Mr. Mohammed to support his alternate position are not analogous to the facts of this case. The plaintiffs in those cases all had a longer tenure in positions higher up the managerial chain in their respective organizations than did Mr. Mohammed. At the same time, the range Dexterra says is established from their cited cases falls short of what I view to be the reasonable range of notice in Mr. Mohammed's circumstances, particularly when I consider his specific job duties, importance of his role to Dexterra, age, and the impact of the short-service authorities.
- [52] In my opinion, the reasonable notice period in this case is five months.

Mitigation

- [53] Mr. Mohammed, as is the case for any employee terminated without cause, is obliged to mitigate his damages. The onus falls on Dexterra to demonstrate that he failed to do so: *Luchuk v. Starbucks Coffee Canada Inc.*, 2016 BCSC 830 at para. 39; *Munoz* at paras. 60-61.
- [54] In the parties' agreed statement of facts, Dexterra admitted that Mr. Mohammed sought employment following his termination from Alpine and has not found alternate employment.
- [55] Mr. Mohammed's unchallenged evidence establishes that he made efforts to find employment in his field since losing his job with Alpine. His evidence that the COVID-19 pandemic has negatively affected his ability to find work is also unchallenged. Dexterra has not proven that Mr. Mohammed has failed to act reasonably to look for alternate employment. It did not challenge Mr. Mohammed's efforts in cross-examination and did not tender any evidence to demonstrate that other job opportunities were available to him. Dexterra has not discharged its onus to prove a failure to mitigate.

Conclusion

- [56] The notice period Dexterra was obliged to give Mr. Mohammed was five months.
- [57] Dexterra did not take issue with Mr. Mohammed's submission that the best method to determine his damage award is based on his year-to-date earnings in paragraph 16 of the agreed statement of facts, i.e., \$3,634.31 a month predicated on 1/11th of \$39,977.46.
- [58] The total amount Dexterra should have paid Mr. Mohammed was \$18,171.55 plus holiday pay and benefits.
- [59] From that amount must be deducted the working notice of four weeks that Dexterra paid to Mr. Mohammed, together with any vacation and benefits it paid during that month.
- [60] In addition, the amount Mr. Mohammed was paid by Alpine during the notice period -- \$11,844.14 -- must also be deducted from the award, because a plaintiff cannot recover for avoided loss: Neilson v. Vancouver Hockey Club Ltd. (1988), 51 D.L.R. (4th) 40 at 43-44, 25 B.C.L.R. (2d) 235 (C.A.), leave to appeal ref'd [1988] S.C.C.A. No. 714. There is no evidence that Mr. Mohammed was paid benefits or vacation pay by Alpine.
- [61] In the result, \$11, 844.14 plus four weeks' wages and holiday and medical benefits that Dexterra paid to Mr. Mohammed for working notice must be deducted from his award.

"Walker J."

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