
CANADA / JUDGMENT

Tucker v. Weyerhaeuser Company Limited

2008 BCSC 349

COURT

Supreme Court of British Columbia

DECIDED

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2008 BCSC 349 Tucker v. Weyerhaeuser Company Limited

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tucker v. Weyerhaeuser Company Limited,

2008 BCSC 349

Date: 20080326

Docket: S066230

Registry: Vancouver

Between:

Keith Tucker

Plaintiff

And

Weyerhaeuser Company Limited/

Compagnie Weyerhaeuser Limitee

Defendant

Before: The Honourable Mr. Justice Ehrcke

Reasons for Judgment

Counsel for the Plaintiff

R. Press

Counsel for the Defendant

C. D. Veinotte

Date and Place of Trial/Hearing:

February 26 - 28, 2008

Vancouver, B.C.

Introduction

- [1] After working for the defendant, Weyerhaeuser Company Limited ("Weyerhaeuser") for almost 15 years, the 45-year-old plaintiff, Keith Tucker, was terminated without cause from his job as a Forestry Supervisor level 3 on July 28, 2006. He was given no severance or other payment in lieu of notice, and he therefore sued for damages for wrongful dismissal. He now applies for judgment on his claim pursuant to Rule 18A.
- [2] Weyerhaeuser submits that the claim for damages should be dismissed, either because Mr. Tucker had been given sufficient working notice, or because he had agreed to forgo severance pay if he did not accept a transfer following a special work assignment in Armstrong, or because he failed to mitigate. In the alternative, Weyerhaeuser has also brought its own motion for an order pursuant to Rule 18A(8) that this matter is unsuitable for summary determination and should be placed on the trial list to resolve conflicts in the evidence.
- [3] The evidence that has been placed before me includes affidavits of three representatives of the defendant, Jay Mervyn, Bob Taylor, and Sandy Stuart, two affidavits of the plaintiff, and portions of the examinations for discovery of the plaintiff and of Jay Mervyn.
- [4] While there are some discrepancies between the affidavit evidence filed by the plaintiff and that filed by the defendant, the differences are more about the parties' subjective interpretation of events rather than bald contradictions regarding objectively observable facts. Moreover, both parties have been through the discovery process, and excerpts from the examinations for discovery have been adduced by each side. I am satisfied that it is possible to find the facts necessary to decide this case on the materials now before me and that it would not be unjust to do so. Given the amount involved and the cost of a conventional trial, I am satisfied that this case is suitable for determination by summary trial under Rule 18A, notwithstanding some inconsistencies in the evidence: *MacMillan v. Kaiser Equipment Ltd.* (2004), 33 B.C.L.R. (4th) 44 (C.A.); *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.); *Dahl v. Royal Bank of Canada*, 2005 BCSC 1263. The defendant's application to remit this matter to the trial list is dismissed.

Facts

- [5] Mr. Tucker lives with his wife and three school-age children on a ranch in Armstrong, British Columbia. He graduated from the University of British Columbia in 1984 with a Bachelor of Science degree in Forestry and Forest Ecology. He earned his registered professional forester designation in 1988.
- [6] On September 30, 1991, he was hired as a Forester by Weyerhaeuser in its planning department for Lumby Timberlands. In 1994 he was promoted to the position of Forestry Supervisor 3. For a period of time, he also worked as a Log Buyer.
- [7] In 1999 as part of Weyerhaeuser's restructuring, the number of employees at the Lumby office was reduced from eleven to eight. Some employees took a severance package, while others accepted a transfer to other locations in British Columbia. The remaining Weyerhaeuser staff, including Mr. Tucker, was told that eventually the Lumby Office would close.
- [8] In 2002, Weyerhaeuser further reduced the size of the Lumby office. The three employees who lost their jobs were given a severance package.
- [9] By the beginning of 2004, Weyerhaeuser had traded the majority of its forest license commitments in the area to a local firm, Tolko Forest Products ("Tolko"), and on May 3, 2004, it announced that its Lumby office would close permanently.
- [10] However, Weyerhaeuser had commitments remaining in the Lumby area that would extend beyond the closure of the Lumby office. The main commitment was a harvesting obligation of the remaining 10,000 cubic metres of allowable cut to the Spallumcheen First Nations.
- [11] Weyerhaeuser asked the remaining Lumby employees, including Mr. Tucker, what they would consider in terms of future employment. Mr. Tucker said he wanted to continue working in the Lumby area for as long as Weyerhaeuser had work available there.
- [12] Following discussions with his supervisor, Jay Mervyn, Mr. Tucker accepted a position (the "Armstrong Position") working out of his home in Armstrong, with responsibilities for silviculture in the Lumby area, supervising the Spallumcheen First Nation logging crew, and supervising Weyerhaeuser's Lumby area log sort. Weyerhaeuser admitted during argument that if Mr. Tucker had not accepted the Armstrong Position, he would have been offered a severance package like the other Lumby employees who were let go.
- [13] Mr. Tucker emailed Jay Mervyn on May 6, 2004, asking for a written offer of the Armstrong Position. Weyerhaeuser provided a letter agreement dated May 12, 2004, which read:

Dear Keith,

This will confirm our offer to you as a result of the closure of Weyerhaeuser's Lumby office. It is my pleasure to offer you a continued role as Forestry Supervisor III with Weyerhaeuser's Okanagan Falls business unit.

Your salary will remain the same and continue to be deposited bi-weekly to the bank of your choice. You will continue to be covered by our Advantages benefits package.

You will be required to work out of your home office once the Lumby office is closed or sold. Weyerhaeuser will provide necessary computer arrangements to allow computer access from home. This arrangement is intended to be in place while you are in your current role. In the future if your role changes, this special arrangement ends.

Keith, I am pleased to have you accept this role and look forward to continuing to work with you. We think you'll find the work challenging and rewarding. If you agree with the terms of this offer, please sign the statement below and return it to me by May 21, 2004. Please call me with any questions you might have.

Sincerely,

Jay Mervyn

cc: HR Manager

[14] Mr. Tucker signed the letter indicting his acceptance of the Armstrong Position. Before doing so, however, he added in his own handwriting the words "for a minimum of two years" at the end of the penultimate sentence of the penultimate paragraph, so that it read:

This arrangement is intended to be in place while you are in your current role for a minimum of two years.

[15] Mr. Mervyn, on behalf of Weyerhaeuser, accepted the handwritten addition, and Mr. Tucker began working in the Armstrong Position. I shall refer to the May 12, 2004 letter including the additional handwritten words as the "2004 Agreement".

[16] Weyerhaeuser takes the position that in addition to the written 2004 Agreement, there were also oral discussions that formed part of the understanding between it and Mr. Tucker. Weyerhaeuser says there was an oral agreement that Mr. Tucker would accept a transfer out of Lumby when the work there ended in about two years, and that if he did not accept a transfer at that time, he could be terminated without severance. At paragraph 30 of his affidavit, Mr. Tucker specifically denies that there was any such agreement or understanding.

[17] On November 23, 2005, Mr. Mervyn told Mr. Tucker that eventually the work under the 2004 Agreement would come to an end. He told Mr. Tucker that Weyerhaeuser had two job openings, one in Vavenby and one in Princeton. The supervisors at the Vavenby and Princeton locations agreed to hold their positions open for Mr. Tucker until the Spring of 2006, but counsel for Weyerhaeuser agreed in argument that this information was never communicated to Mr. Tucker.

[18] Mr. Tucker told Mr. Mervyn that he wanted to stay in the Lumby area and was not interested in taking either of those positions, although he would be interested in taking another position with Weyerhaeuser if it were closer to his home in Armstrong.

[19] Mr. Tucker consulted with his family about the Vavenby and Princeton positions and on November 25, 2005, he sent Mr. Mervyn an email saying:

Jay, thank you for the invitation to apply for the Princeton and Kamloops openings. However, Michele and I feel it would be best for us to wait (and hope) something comes up closer to home.
--Keith

[20] After receiving that email, Mr. Mervyn discussed the matter with Mr. Taylor, and it was decided to send Mr. Tucker a letter formally offering the two positions.

[21] By letter dated November 30, 2005 (the "Transfer Letter"), Weyerhaeuser offered Mr. Tucker the positions as a Forestry Supervisor at its Kamloops (Vavenby) or its Princeton operations. The Transfer Letter reads:

Dear Keith:

Re: Offer of Employment

This letter will confirm our offer of employment as a Forestry Supervisor for our Kamloops or Princeton Forestlands operations. If you accept either of these roles, it is our expectation that you would relocate to the location. Relocation details can be discussed by calling Sheila Anderson, Relocation Specialist at 250-828-7387. As previously discussed with you, your role in Okanagan Falls will terminate in 2006. We wanted to ensure you had considered these roles and understand what the implications may be if you are unable to accept our offer.

If there are any questions or information you wish clarified, please contact either Bill Aspinall or Rob Marshall. Please acknowledge acceptance of our offer, by returning a signed copy of this letter to me by December 9, 2005.

Keith, you are a valued member of our forestlands team and we have appreciated your contribution over the last 14 years. We understand this is a difficult decision for you and will respect your decision.

Sincerely,

Weyerhaeuser

Bill Aspinall Rob Marshall

Forestlands Manager Forestlands Manager

Kamloops/Vavenby Forestlands Princeton Forestlands

- [22] The Transfer Letter was not signed personally by either Mr. Aspinall or Mr. Marshall. Sandy Stuart, Weyerhaeuser's Human Resources Co-ordinator of the BC Interior Region, signed for Rob Marshall. Mr. Tucker recognized her signature and knew Ms. Stuart was responsible for human resources issues for Weyerhaeuser's British Columbia Interior Operations, of which he was a part.
- [23] Mr. Tucker spoke on the telephone with Ms. Stuart about the Transfer Letter on December 9, 2005 after several unsuccessful attempts to reach her in the preceding days. He says he asked Ms. Stuart whether his turning down the Vavenby and Princeton positions would have any effect on his right to receive severance once his work under the Armstrong Position was done. Ms. Stuart told him that turning down the positions in the Transfer Letter would have no impact on his entitlement to severance. She said that any transfer to another Weyerhaeuser operation would have to be agreed to by Mr. Tucker, and that Weyerhaeuser would pay Mr. Tucker severance if he did not take a transfer. Ms. Stuart specifically told Mr. Tucker that Weyerhaeuser could not transfer him unless he agreed to take the transfer. Ms. Stuart in her affidavit deposes that Mr. Tucker's general description of the call is accurate, but says she believed he was asking general questions about severance options for employees at Weyerhaeuser.
- [24] Mr. Tucker then signed the Transfer Letter below the line reading, "I have read the above terms and decline the offer of employment from Weyerhaeuser Company as stated" and returned it on December 9, 2005.
- [25] Mr. Tucker continued working in the Armstrong Position and continued to make inquiries about staying on with Weyerhaeuser in a position within commuting distance from his home, for example in Kamloops or Okanagan Falls.
- [26] On June 19, 2006, Mr. Mervyn told Mr. Tucker that Weyerhaeuser's activities in the Lumby area were nearing an end and that he would likely be finished at the end of July 2006.
- [27] On June 26, 2006, Mr. Tucker sent an email to Ms. Stuart asking her for information regarding his severance package and the various decisions that needed to be made in terms of getting the severance arrangements in place.
- [28] On July 12, 2006, Mr. Mervyn wrote Mr. Tucker a letter addressing the issues raised in his email to Ms. Stuart. In that letter, Mr. Mervyn said, "we currently anticipate that your last day with Weyerhaeuser will be July 28, 2006." He went on to assert that Mr. Tucker agreed in 2004 that he would accept a move to another location when the Armstrong Position came to an end, and since he had turned down the Princeton and Vavenby positions, he was not now entitled to any severance.

- [29] Weyerhaeuser terminated Mr. Tucker's employment effective Friday, July 28, 2006. His annual salary at the time was \$78,211.44 or \$82,961.51 when his professional dues, annual bonus and RRSP match were added.
- [30] Mr. Tucker says he was devastated by his termination. He says he became physically ill and experienced difficulty sleeping. He says he suffered embarrassment because some of his friends suspected his termination without severance must have been for cause. He therefore seeks an extension of the usual notice period on account of what he alleges is Weyerhaeuser's bad faith conduct.
- [31] On Monday, July 31, 2006, Mr. Tucker began working on an irregular basis for Tolko. Over the next 17 months, he billed Tolko for a total of 135 days of work and earned pre-tax income of \$34,532. On December 14, 2007, Tolko ceased using Mr. Tucker's services, and he has been without any form of job-related income since then.
- [32] Mr. Mervyn agreed in his examination for discovery that if Mr. Tucker had not accepted the Armstrong Position, Weyerhaeuser would have ended his employment in 2004 without notice and paid him a severance package in lieu of notice.
- [33] Weyerhaeuser's policy manual states that employees will be eligible for severance pay if they are terminated for any reason other than cause. It also states that policies may change without notice and that the manual is not a contract between Weyerhaeuser and employees. The manual instructs employees who have questions about involuntary termination to "talk to your supervisor or HR contact."

Issues

- [34] The parties stated the issues in a number of different ways during argument, but the essential points to be decided are these. What is the effect of the 2004 Agreement? Does it constitute valid notice of termination? Was there an oral component to the 2004 Agreement by which Mr. Tucker agreed to forgo severance at the end of the Armstrong Position if he did not accept a transfer offered by Weyerhaeuser? Did the Transfer Letter amount to valid notice of termination? If not, when did Mr. Tucker receive valid notice of termination? What is the appropriate notice period for an employee in Mr. Tucker's position? Should that notice period be shortened because the employees were aware of how the restructuring would eventually affect the Lumby operations? Did Mr. Tucker fail to mitigate? Did Weyerhaeuser's conduct amount to bad faith of a kind that would justify an extended notice period?

The Effect of the 2004 Agreement

- [35] The evidence led by Weyerhaeuser is that its understanding of the 2004 Agreement was that when the Armstrong Position was over, Weyerhaeuser would offer Mr. Tucker a transfer, and he would accept the transfer or he would resign without further notice or severance pay. In his affidavit, Jay Mervyn deposed at paragraph 8:

8. I had a number of meetings with Mr. Tucker about his future with Weyerhaeuser prior to the official closure of the Lumby office. At that time, Mr. Tucker had two options. He could either:
- (a) choose to leave Weyerhaeuser and accept a current severance package; or
 - (b) remain with Weyerhaeuser in the New Position including the component requiring the Transfer (to a similar position held prior to the New Position with no loss of pay or benefit) within Weyerhaeuser when the Lumby work was at an end.
- [36] The difficulty with Weyerhaeuser's position is that the evidence does not establish Mr. Tucker ever agreed to forgo his right to severance if he failed to accept a transfer offer when the Armstrong Position came to an end. Indeed, Mr. Tucker emphatically states that he did not agree to this.
- [37] Bob Taylor, who was Jay Mervyn's boss, swore an affidavit in which he said he told a meeting of Lumby employees in 2004 that Mr. Tucker would remain in the Lumby area and work from his home for approximately two years, after which he would transfer to a different Weyerhaeuser location. He says Mr. Tucker was present at that meeting. But even if Mr. Taylor's recollection of that meeting is correct, it does not establish that Mr. Tucker agreed he would forgo severance pay if he refused a transfer.
- [38] On Weyerhaeuser's version of things, Mr. Tucker's agreement that he would either accept a transfer or forgo severance was the most important part of the 2004 Agreement. But if that were the case, it is difficult to understand why that would not be reflected in the written language of Mr. Mervyn's letter to Mr. Tucker. That letter is completely silent on the issue of what will happen when the Armstrong Position ends. It contains no mention whatsoever of either transfers or severance. In light of Mr. Tucker's emphatic evidence that he never agreed to forgo his right to severance pay if he refused to accept a transfer away from the Lumby area, I conclude on a balance of probabilities that there never was any such agreement, although Weyerhaeuser may erroneously have assumed that there was.
- [39] In any event, even if Mr. Tucker had entered into an agreement that when the Armstrong Position came to an end, he would either accept a transfer or would be terminated without severance, I find that Weyerhaeuser never fulfilled the condition precedent to denying him severance. That is, Weyerhaeuser never offered him a transfer when the Armstrong Position came to an end, and therefore, he never refused such a transfer. The only transfer offer Weyerhaeuser made was in November 2005, some eight months prior to the Armstrong Position coming to an end. Although Weyerhaeuser now says it would have held the Vavenby and Princeton positions open for him until the summer of 2006, counsel for Weyerhaeuser concedes there is no evidence this was ever communicated to Mr. Tucker. Therefore, even if the 2004 Agreement could be interpreted in the manner that Weyerhaeuser urges on the court, Mr. Tucker never did the act that Weyerhaeuser says would have triggered his forfeiture of severance. He never refused to accept a transfer offer at the time the Armstrong Position came to an end.

Was The 2004 Agreement Valid Notice of Termination?

- [40] Weyerhaeuser argues that the 2004 Agreement or the meetings leading up to it constituted notice of termination, and therefore, Mr. Tucker had more than two years' working notice. I do not agree with that submission.
- [41] The requirements for effective notice of termination were discussed by our Court of Appeal in *Kalaman v. Singer Valve Co.* (1997), 38 B.C.L.R. (3d) 331 (C.A.) at para 38. The notice must be specific and unequivocal, so that a reasonable person would understand the employment would end on a date certain in the future:

38 Counsel agree that, to be valid and effective, a notice of termination must be clearly communicated to the employee. A notice must be specific and unequivocal such that a reasonable person will be led to the clear understanding that his or her employment is at an end as of some date certain in the future. Whether a purported notice is specific and unequivocal is a matter to be determined on an objective basis in all the circumstances of each case. Counsel cited *Gibb v. Novacorp International Consulting Inc.* (1990), 48 B.C.L.R. (2d) 28 at 34 (C.A.) and *Yeager v. R.J. Hastings Agencies Ltd.* (1984), [1985] 1 W.W.R. 218 at 228-29 (B.C.S.C.) as authority for that legal proposition.

- [42] In the present case, the 2004 Agreement did not clearly communicate that Mr. Tucker's employment with Weyerhaeuser would end. On the contrary, the language used in the letter spoke of Mr. Tucker's continuing role with the company. Although the letter suggested that the Armstrong Position would not last indefinitely, it never mentioned the end of an employment relationship between Mr. Tucker and Weyerhaeuser. A reasonable person reading that letter would understand it to be about a particular work assignment or role with the company, and not about a time-limited term of employment.
- [43] As to the submission that the meetings and events leading up to the letter could constitute working notice, I find that the terms of the letter so clearly imply a continuing relationship with the company that a reasonable person would understand that his employment was not being terminated, no matter what might have been said at earlier meetings.
- [44] Moreover, even if the 2004 Agreement could be construed as a warning that Mr. Tucker's employment would eventually come to an end, there is no date certain specified when that would happen. Mr. Tucker added the words "for a minimum of 2 years" to the letter. Mr. Mervyn accepted that amendment to the letter. Telling an employee that his current role would be in place for a minimum of 2 years cannot be construed as notice that his employment would end on a date certain in the future. On the contrary, it is the opposite of such notice.

Was The 2005 Transfer Letter Valid Notice of Termination?

- [45] Weyerhaeuser argues that the Transfer Letter dated November 30, 2005 was clear notice of termination. Again, I cannot accept that submission.

- [46] First, the letter did not unequivocally speak of an end to the employment relationship. On the contrary, it offered continued employment if the Kamloops or Princeton position were accepted. The letter never suggested a time when Mr. Tucker's employment would end, but only when his current Armstrong Position would end. Even as to that, it did not specify a date certain in the future, but only stated that "your role in Okanagan Falls will terminate in 2006." Finally, it did not specify what the consequence would be if Mr. Tucker refused to accept the Kamloops or Princeton position. Rather, it said somewhat vaguely that Weyerhaeuser wanted Mr. Tucker to "understand what the implications may be if you are unable to accept our offer", without ever stating what those implications in fact would be.
- [47] In an effort to clarify this vague implication, Mr. Tucker took the reasonable step of phoning one of the persons who signed the letter, Sandy Stuart, Weyerhaeuser's Human Resources Coordinator for the BC Interior Region. Contacting her was in accordance with the suggestion in Weyerhaeuser's policy manual that such inquiries should be directed to Human Resources personnel. He asked her if refusing the Vavenby or Princeton transfers would affect his right to severance, and she said it would not. Even accepting Weyerhaeuser's submission that Ms. Stuart had no authority to bind Weyerhaeuser on the issue of entitlement to severance, Mr. Tucker acted reasonably in seeking clarification from her of the vague implication in the November 30, 2005 Transfer Letter. Putting it at its best for Weyerhaeuser, she failed to accurately clear up that vague implication. Given the totality of the circumstances, Weyerhaeuser has not shown that the 2005 Transfer Letter gave Mr. Tucker clear notice that he would be terminated without further notice and without severance if he did not accept the Kamloops (Vavenby) or Princeton positions.

When Did Mr. Tucker Receive Valid Advance Notice of Termination?

- [48] I find on the evidence that through June 2006 Mr. Tucker expected that his employment with Weyerhaeuser would continue in some form. It was not until he received the July 12, 2006 letter from Mr. Mervyn that he knew his employment would terminate at the end of July.
- [49] The plaintiff argues even that letter did not amount to valid notice because it said, "we currently anticipate that your last day with Weyerhaeuser will be July 28, 2006." Counsel for the plaintiff says that is not clear and unequivocal notice of a date certain. I do not agree. When Mr. Tucker received that letter, he clearly knew his last day with Weyerhaeuser would be July 28, 2006.
- [50] Accordingly, I find that Mr. Tucker had 2 weeks working notice of his termination.

The Appropriate Notice Period

- [51] Mr. Tucker had worked for Weyerhaeuser for almost 15 years. He was in a position of responsibility for which his education and professional qualifications were well-suited. Counsel has referred me to a number of cases, including: *Ansari v. British Columbia Hydro and Power Authority*, [1986] B.C.J. No. 3005 (S.C.), *aff'd* [1986] B.C.J. No. 3006 (C.A.); *Lesiuk v. British Columbia Forest Products*, [1984] B.C.J. No. 3008 (S.C.) *rev'd on appeal* [1986] B.C.J.

No. 1241 (C.A.); *Araki v. Balco Industries Ltd.*, [1987] B.C.J. No. 2601 (Co. Ct.); *Campbell v. MacMillan Bloedel Ltd.*, [1976] B.C.J. No. 339 (S.C.); and *Landry v. Canadian Forest Products Ltd.*, [1992] B.C.J. No. 979 (C.A.).

[52] Given Mr. Tucker's age, length of service, level of responsibility, and employment prospects, an appropriate notice period would be 16 months.

Should The Notice Period Be Shortened Because Employees Were Aware Restructuring Would Eventually Affect Lumby Operations?

[53] Weyerhaeuser argues that the notice period should be shortened due to the fact that economic restructuring of the company was the cause of the termination, and that the employees were generally aware for some time that operations in Lumby would eventually be closed down. It relies on *Porter v. Highmont Operating Corp.* (1990), 29 C.C.E.L. 164 (B.C.S.C.), var'd (1991), 36 C.C.E.L. 1 (B.C.C.A.).

[54] The facts in *Porter* were very different from the present case, however. There, the employee was aware the company was closing down operations, and he had been transferred from production to work as a security guard watching over the company's assets as the close down was completed. Mr. Tucker, in contrast, reasonably anticipated that his employment with Weyerhaeuser might well continue beyond July 2006.

[55] *Porter* was distinguished in *Tatla v. Western Fibres Ltd.*, 2004 BCSC 1770. There, although the company was downsizing, it had expressed optimism that the plaintiff would remain employed in some capacity, so that when his dismissal did occur, it came as a surprise to him. In my view, the present case is more similar to *Tatla* than it is to *Porter*.

[56] I would not reduce the notice period below 16 months.

Did Mr. Tucker Fail To Mitigate?

[57] Weyerhaeuser argues that Mr. Tucker should have made greater efforts to mitigate his losses by looking for alternative work earlier than he did. However, the evidence is that he was terminated on a Friday, and started alternative work with Tolko the following Monday. Although that employment was not a permanent, full-time job, it was sufficient for him to earn \$34, 532 over the following 17 months. There is no evidence that Mr. Tucker could have done anything that would have resulted in more complete mitigation. His failure to accept the transfer offers to Vavenby or Princeton cannot be considered a failure to mitigate, because those offers came eight months prior to his notice of termination. He could not reasonably be expected to make efforts at mitigation before he knew when he would be let go. On the evidence, he was not aware that Weyerhaeuser would have held those positions open for him until the Armstrong Position came to an end.

Is Mr. Tucker Entitled To Extended Notice Due To Bad Faith?

- [58] The plaintiff argues that Weyerhaeuser's conduct amounted to bad faith of a kind that should justify an extended notice period. It relies on *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, where the Supreme Court of Canada held an employer's bad faith conduct in subjecting an employee to callous and insensitive treatment at the time of dismissal was a factor for which the employee may properly be compensated by an addition to the notice period.
- [59] As to what the requirement of good faith means, the Court said at para. 98:
- 98 The obligation of good faith and fair dealing is incapable of precise definition. However, at a minimum, I believe that in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive.
- [60] Mr. Tucker says that Weyerhaeuser has shown bad faith by alleging the existence of an agreement to forgo severance if a transfer was not accepted at the end of the Armstrong Position. He submits that this is equivalent to the situation in *Wallace*, where the employer falsely alleged just cause in order to deny the employee his entitlement to notice.
- [61] I do not agree that the facts in the present case are in any way comparable to those in *Wallace*, or that Weyerhaeuser's conduct amounts to bad faith. To allege just cause for dismissal in order to force a settlement, when the employer knows such cause did not exist, has the predictable effect of exposing the employee to significant and unjustifiable embarrassment and distress. That is the kind of "economic hardball" that the Supreme Court of Canada was seeking to suppress.
- [62] In the present case I find no evidence that Weyerhaeuser acted callously and deceitfully in its dealings with Mr. Tucker. I do not accept the plaintiff's contention that Weyerhaeuser's interpretation of the 2004 Agreement was simply a strategy devised after the fact in an attempt to deny him compensation to which they knew he was entitled.
- [63] Rather, on the evidence before me, the most plausible inference is that Weyerhaeuser was simply mistaken about what Mr. Tucker had agreed to in 2004. Weyerhaeuser assumed, incorrectly, that Mr. Tucker had agreed he would accept a transfer after the Armstrong Position was over or he would forgo severance. Similarly, Weyerhaeuser assumed that Mr. Tucker understood that the Vavenby and Princeton positions would be held open for him until the end of the Armstrong Position, although it now concedes that this was never communicated to Mr. Tucker.
- [64] Weyerhaeuser may have been careless in making these false assumptions, but I do not find that this amounts to bad faith of the type that should result in an increased notice period.

Conclusion

[65] Both parties have agreed that together, they can calculate the proper amount of damages once the court has fixed the appropriate notice period. I find that the appropriate notice period is 16 months and that Mr. Tucker was given 2 weeks working notice. I find that Mr. Tucker made all reasonable attempts to mitigate his damages. In accordance with the request of the parties, I leave it to them to calculate the appropriate amount of damages. If they cannot agree, they are at liberty to apply to the court.

The Honourable Mr. Justice W. F. Ehrcke

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