



e2r Alert!

Disproportionate Reasonable Notice Awards for Short Service Employees

As you are aware, when determining common law reasonable notice periods, courts generally assess the typical factors such as the employee's age, length of service, income, character of employment and the ability to find comparable employment.

Usually, a lengthy period of employment will skew common law reasonable notice awards upwards, however, judges have taken to awarding sizable reasonable notice awards to short service employees.

We outline three cases (three of many) that illustrate this trend (note that none of the employees had an employment agreement with an enforceable termination provision):

Grimaldi v. CF+D Custom Fireplace Design Inc. (Ontario)

Mr. Grimaldi was employed for just over four months when he was terminated without cause. At the time of termination, Mr. Grimaldi was a 50 year old Senior Project Manager with a total compensation inclusive of base salary of \$90,000, a car allowance and benefits. Mr. Grimaldi was awarded 5.5 months of reasonable notice – more than his length of service! In determining the award, the Court noted that this brief period of employment would “require him to explain to prospective employers why he was terminated so soon after being hired” and therefore make it harder to get another job.

Humphrey vs. Mene Inc. (Ontario)

Ms. Humphrey was terminated for cause six months after being promoted to COO. At the time of termination, Ms. Humphrey had three years of service and was 32 years old with a total annual compensation of approximately \$220,000. The Ontario Court awarded her 12 months reasonable notice. One of the reasons cited for the generous award was that being terminated six months after being promoted would be difficult to explain to prospective employers therefore making it more challenging to find comparable employment.

Chapple v. Big Bay Landing Ltd. (British Columbia)

Mr. Chapple was terminated after 26 months of employment. At the time of termination, Mr. Chapple was 61 years old, working as the Remote Resort Manager earning \$84,000. The BC court awarded Mr. Chapple nine months reasonable notice. The BC Court adopted the approach of a previous Court of Appeal decision that stated short-service employees (specifically with less than 3 years service) receive proportionately longer notice periods, as compared to other employees.

Takeaways

Do not assume that short service employees are less costly to terminate. In fact, as noted above (and in many decisions not outlined here) the exact opposite may be true. Short service employees may find it takes longer to secure comparable employment as they find it challenging to explain the short stint on their resume to prospective employers.

This highlights the immense value of enforceable employment agreements with a well drafted termination provision.

If you have any questions regarding employment agreements or if you would like your employment agreements reviewed, please contact ClientCare to schedule a call to discuss with an Advisor.