WeirFoulds LLP

(Tap-Tap-Tap… Is This Thing On?) Attention Employers – Be Aware: Court Awards Moral Damages Based on Recording of Termination Meeting

July 4, 2023

By Daniel Wong, Seth Holland

In *Teljeur v Aurora Hotel Group*, 2023 ONSC 1324, Justice McKelvey of the Ontario Superior Court of Justice awarded a terminated employee $15,000 in moral damages because the employer acted in bad faith in the course of termination. In coming to this decision, Justice McKelvey relied primarily on the employee's recording of the termination meeting that was presented to the Court.

The Facts

John Teljeur was the General Manager of Pinestone Resort & Conference Centre for approximately three years before being dismissed without cause. The defendant, Aurora Hotel Group ("Aurora"), operated the Pinestone Resort.

Mr. Teljeur was informed of the termination of his employment through a closed-door meeting with two Aurora executives. During the meeting, the executives made several representations, including that Aurora would be providing Mr. Teljeur with eight weeks' pay in lieu of notice, which exceeded his minimum entitlements under the *Employment Standards Act*, 2000 ("ESA").

After the termination, Mr. Teljeur brought an action against Aurora and a related company for wrongful dismissal. Mr. Teljeur recorded the termination meeting and subsequently used this recording at trial to corroborate his argument that Aurora treated him in bad faith in the manner of dismissal.

Court Decision

Mr. Teljeur brought a motion for summary judgment against Aurora for the amounts claimed. Justice McKelvey awarded Mr. Teljeur seven months' common law reasonable notice, and awarded damages for unpaid expenses that remained owing to Mr. Teljeur following his dismissal.

Justice McKelvey also held that moral damages were appropriate in this case. Moral damages are available to an employee where the employer engages in conduct during the course of a dismissal that is unfair or is in bad faith being, for example, untruthful, misleading or unduly sensitive. Justice McKelvey held that moral damages were owing to Mr. Teljeur because Aurora failed to adhere to the ESA on multiple occasions and did not follow through on their promises made during the termination meeting. These failures also resulted in Mr. Teljeur experiencing mental distress.

First, Justice McKelvey found that Aurora failed to provide Mr. Teljeur with written notice of termination as required by section 54 of the ESA. Mr. Teljeur's recording of the meeting revealed that he asked Aurora on at least three occasions for his termination to be provided in writing. The recordings revealed that Aurora agreed to do so, but at trial Aurora provided no evidence to demonstrate that

they ever gave Mr. Teljeur notice of his termination in writing.

It was also revealed that Aurora did not provide Mr. Teljeur with his minimum ESA entitlements in accordance with section 11(5) of the ESA. This section requires that employers provide employees their ESA entitlements no later than seven days after the employment ended or the next pay day. In this case, Aurora said that they mailed a cheque to Mr. Teljeur, but the cheque never reached him. Aurora subsequently sent a new cheque five months later. Justice McKelvey held that this was a significant delay and a clear violation of the ESA.

Furthermore, Aurora had failed to reimburse Mr. Teljeur for $16,680.03 in expenses that he paid on behalf of Aurora. Section 60(1)(a) of the ESA provides that during the notice period, the employer shall not reduce the employee's wage rate or alter any other term or condition of employment. Justice McKelvey rejected the argument that it was acceptable to withhold this payment because the parties were disagreeing over whether interest on the sum was owed. The recording of the termination meeting revealed that Aurora had promised to pay the outstanding amount within a week.

Lastly, the recording caught Aurora promising to pay eight weeks of severance to Mr. Teljeur. Despite these promises, the employer only paid Mr. Teljeur's minimum ESA entitlements.

Justice McKelvey concluded that these actions were untruthful, misleading and unduly insensitive and therefore constituted bad faith. Justice McKelvey found that it would be reasonable for the employer to believe that these actions would cause the employee mental distress given that Mr. Teljeur experienced significant delay in receiving his financial compensation. Consequently, Aurora was ordered to pay $15,000 in moral damages in addition to the other amounts noted above.

Takeaways for Employers

The decision in *Teljeur* is a reminder to employers that they must strictly adhere to their ESA obligations, particularly in the context of an employee dismissal. It is the employer's responsibility to ensure practices comply with the ESA, including the payment of unpaid wages, termination pay and severance pay within stipulated time periods. In this case, Aurora failed to provide Mr. Teljeur's notice of termination in writing and did not pay their ESA entitlements until five months after employment was terminated.

Employers should also be cognizant of their behaviour and representations made to employees during termination meetings. In this case, Aurora made several promises during the termination meeting and subsequently failed to deliver on them. These empty promises were recorded and presented to the court and contributed to an award of $15,000 in moral damages against Aurora.

To reduce this risk, employers should adequately prepare for termination meetings. Individuals conducting these meetings should be trained to cover brief necessary topics during the meeting and avoid engaging in hypothetical discussions or negotiations. More simply, employers and their representatives should act as if all their meetings are being recorded and will be shown to a Court, as employee recordings are becoming more prevalent in wrongful dismissal litigation particularly given the prevalence of remote work and meetings that occur remotely via online video platforms.

For assistance with your organization's compliance with the ESA or advice on any other employment law matter for your organization, please feel free to contact a member of WeirFoulds' Employment & Labour Practice Group.

For more information or inquiries:

Daniel Wong

Toronto
416.947.5042

Email:
dwong@weirfoulds.com

Daniel Wong is Chair of the Firm's Employment & Labour Practice Group with a practice that is focused on employment and labour relations.

Seth Holland

Toronto
416.947.5004

Email:
sholland@weirfoulds.com

Seth Holland is an Associate in the Employment and Labour Law Practice Group at WeirFoulds LLP.

WeirFoulds LLP

www.weirfoulds.com

Toronto Office
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office
1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035