MANAGEMENT COUNSEL
Employment and Labour Law Update

SHERRARD KUZZ LLP
Employment & Labour Lawyers

Employee Not Entitled to Make Further Claim After Signing Full and Final Release

When employers negotiate a settlement agreement in an employment dispute, they often experience apprehension whether the settlement will really be effective to prevent an employee from bringing a future claim. In *Preston v Cervus Equipment Corporation*,[1] the Court of Appeal for Ontario provided reassurance that employees will be held to their bargains; and courts are not permitted to rewrite settlements based on an employee's claim the settlement was unfair.

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What happened in *Preston?*

Mr. Preston was employed with Cervus Equipment Corporation from 2014 until his employment was terminated without cause in January 2018. At the time of his dismissal, Preston had 4,964 vested stock options worth approximately $75,900. The Cervus's stock plan stipulated that upon termination of employment, all vested stock would automatically be redeemed.

Preston rejected Cervus's severance offer, and commenced a court action for wrongful dismissal against Cervus. In his lawsuit, Preston made no claim for his vested stock options, even though he had received no payment for the stock.

The parties settled the wrongful dismissal action for just over $100,000. With the benefit of independent legal advice, both parties executed settlement documents consisting of minutes of settlement and a full and final release discharging Cervus from all further liability. The settlement documents contained expansive language which provided as follows:

> Cervus and Mr. Preston have agreed to fully and finally settle all matters and entitlements (earned or claimed) arising from or relating to Mr. Preston's employment (or the cessation thereof), **including all matters and entitlements (earned or claimed) that were raised (or could have been raised)** in the Action…**inclusive of any and all entitlements that Cervus may owe, or which may have accrued,** to Mr. Preston pursuant to statute, contract, common law or otherwise.

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...the Court of Appeal for Ontario provided reassurance that employees will be held to their bargains; and courts are not permitted to rewrite settlements based on an employee's claim the settlement was unfair.

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> **I further declare that I have no entitlement under or from, or any claim of any nature or kind against the Releasees in respect of, any bonus, share award, stock option, deferred share or similar incentive plan offered by or on behalf of the Releasees…**
>
> **[emphasis added]**

The day before Cervus signed the settlement documents, Preston emailed Cervus requesting payout for his vested stock. Cervus did not respond and signed the settlement documents the following day.

After the settlement documents had been executed, Cervus refused Preston's request for the stock payment on the basis the settlement precluded any such claim. In response, Preston brought a motion for summary judgment before the Ontario Superior Court of Justice, seeking damages of $75,900 (the value of the stock). He submitted that the settlement documents did not address the vested stock because they were not part of the wrongful dismissal action. He claimed the stock had automatically become his property upon his dismissal.

Motion judge granted judgment against Cervus

The motion judge relied on a rule of contractual interpretation that requires the words used in a settlement agreement to be interpreted in the context of surrounding circumstances. The judge considered the fact the stock options vested automatically upon termination, and that the interpretation argued by Cervus would make *"little economic sense"* for Preston:

> [Preston] states that the settlement of the wrongful dismissal action would yield little benefit if he gave up the $75,949.81. Indeed, the entire net benefit of the wrongful dismissal action from the initial proposal by [Cervus] would be less than $7,000. I accept that the wrongful dismissal action makes little sense if [Preston] forgoes the redeemed vested share units.

The motion judge found that the meaning of the language in the settlement documents releasing claims to stock awards should be confined to "stock […] awards which have either not been awarded or not been redeemed and which were still subject to the terms of the Plan. The Plan, by its very wording, no longer had any application to the redeemed vested stock units."

Court of Appeal reversed the decision

Cervus appealed to the Court of Appeal, which reversed the motion judge's decision on the basis the judge:

i. Incorrectly allowed factual circumstances to overwhelm the actual wording of the settlement and release, effectively re-writing the contract between the parties. Said the court, "In this regard, we do not accept [the judge's] conclusion that the release of stock units applied only to stock awards which have either not been awarded or not been redeemed. The parties could have specified this result but chose not to do so."

ii. Failed to acknowledge that the release specifically referred to the release of any claim for stock options.

iii. Ought not to have considered the economic benefits of a settlement except when a party is under disability.

This is consistent with the principle that settlements that say they are final should be regarded as such, and no party should be able to run roughshod over the agreement once signed.

"In this regard, we do not accept [the judge's] conclusion that the release of stock units applied only to stock awards which have either not been awarded or not been redeemed. The parties could have specified this result but chose not to do so."

Lessons learned

The decision is a good reminder of the importance of clear, precise, and inclusive language in any settlement documentation, particularly (but not exclusively) when the intention is to fully and finally bring an end to all disputes between parties. Settlement documents should include language that generally releases the employer from all employment-related claims, and specifically releases the employer from any claim that could still be outstanding.

Note: Preston has sought leave to appeal to the Supreme Court of Canada. We will keep readers apprised.

To learn more and for assistance, contact your Sherrard Kuzz LLP lawyer or our firm at info@sherrardkuzz.com.

[1] 2024 ONCA 804 *[Preston]*

DID YOU KNOW?

72-months after a worker's injury, the worker's WSIB loss of earnings benefits could be locked in until age 65. This means the employer will be financially responsible for ongoing benefit payments, subject to limited exceptions like continued return-to-work efforts which could delay the lock-in. To learn more and for assistance contact Sherrard Kuzz LLP.

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Employee Works for One Month – Receives Five Months Common Law Notice

In a recent decision, the Oshawa Small Claims Court awarded a one-month service employee five months of common law reasonable notice. The decision confirms that although length of service is often the predominate factor in determining reasonable notice, there are other factors which can result in even a short-service employee being awarded a lengthier period of notice. In this case, the seasonality of the employee's employment was the chief factor that led to an unexpectedly high award.

What happened?

The court heard a wrongful dismissal claim[1] from a golf superintendent, Michael Smith, who was hired at Lyndebrook Golf Club on May 7, 2022, shortly after the start of the 2022 golf season.

Less than one month after he started work, Smith was dismissed, after a dispute with the owner. He was given two weeks' pay in lieu of notice. Smith viewed this payment to be inadequate, and sued, asking to be paid out the remainder of the 2022 golf season.

After finding the dismissal to be without cause, the judge heard arguments from counsel as to whether Smith's employment was for a fixed term (guaranteeing that Smith would receive a payout of the contract), or for an indefinite term (meaning that Smith's employment was terminable on reasonable notice.

The judge ruled that Smith's employment was terminable on reasonable notice.

The most effective way for an employer to be protected against an employment claim is through an enforceable employment agreement that defines an employee's entitlements in the event of termination of employment, drafted by an experienced and knowledgeable employment lawyer.

What was the appropriate notice period?

The court awarded five months reasonable notice. In reaching this conclusion, the court considered the usual factors - length of service, age, character of employment, and availability of similar employment. However, it also noted that the level of reasonable notice for a seasonal worker is dependent on the type of position the employee held and when in the season (or off-season) employment was terminated.

The judge noted the following:

> …in determining the appropriate notice period, the factors [to be considered include] unique circumstances of seasonal employment, such as the length of time remaining until the season begins or until the season ends and the limited employment prospects in the off-season.
>
> In the present case, Smith was a very short-term employee, fired early mid-season. Clearly not an ideal time to be fired from this type of job. **In my view, the level of reasonable notice for seasonal workers, is very dependent on when in the season (or off-season) their employment was terminated, and the type of position that they held. The amount of reasonable notice for a short-term general labourer in a seasonal position will, in my view, be much more modest than for a long-term skilled worker, in a seasonal position.** A general labourer groundskeeper at a golf course, for example, can more readily transfer their shovel, wheelbarrow, and tractor driving skillset to a broad range of alternative jobs, whereas a specialist, like Smith, can only replace his work at another golf course, and those positions would not be readily available, especially mid-season.
>
> Working against Smith is his short tenure with Lyndebrook. Working in his favour, however, is his very skilled position with the employer, and being fired mid-season which would… make reemployment in his field very difficult: something that Lyndebrook didn't hotly contest, and nor could they, in my view, given O'Brien's concession that these positions should be shored up before the season, and her admission that Smith was the only Golf Superintendent to respond to her late employment posting.
>
> **[emphasis added]**

Of additional interest, by finding the contract not to be a fixed term agreement, Smith was subjected to the duty to mitigate - a reduction in his claim, on account of earnings realized from alternative employment.

Takeaway for employers

In the law of wrongful dismissal, one cannot automatically assume a short-service employee will have no significant claim. There are a myriad of factors that can be taken into consideration, and employers can be exposed any time a termination of employment occurs.

The most effective way for an employer to be protected against an employment claim is through an enforceable employment agreement that defines an employee's entitlements in the event of termination of employment, drafted by an experienced and knowledgeable employment lawyer.

To learn more and for assistance, contact your Sherrard Kuzz LLP lawyer or info@sherrardkuzz.com.

[1]Smith v Lyndebrook Golf Inc., 2024 CanLII 103671 (ON SCSM).

MANAGEMENT COUNSEL

Please join us at our next HReview Breakfast Seminar:

HReview
Seminar Series

Accommodation Update

Workplace accommodation can be a challenge for even the most seasoned HR professional.
Join us as we discuss some of the most common (and challenging) accommodation issues. Topics include:

1. **Accommodation Basics**
   - What is "accommodation" under human rights law?
   - What is the meaning of "undue hardship"?
   - What are the obligations of the workplace parties, including the employee and union?
2. **Family Status Accommodation**
   - What are an employee's obligations in the context of childcare accommodation?
   - What information is an employer entitled to seek?
   - Balancing return-to-the-office/work with childcare accommodation.
3. **Disability Accommodation**
   - Addressing mental health accommodation issues, including those associated with returning to the office/workplace.
4. **Drugs and Alcohol in the Workplace**
   - Case law update on accommodation of a substance use disorder.
   - Can an employee be dismissed for failing to participate in a drug or alcohol test?
   - How to effectively use a last chance agreement.

DATE: **Wednesday, March 5, 2025; 9:00 a.m. – 10:30 a.m.**
WEBINAR: **Via Zoom** (registrants will receive a link the day before the webinar)
COST: Complimentary
REGISTER: **Click here by Wednesday, February 26, 2025**

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