IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Jackson v. SNC Lavalin Engineers & Constructors Inc. et al,*** 2003 BCSC 394

Date: 20030314

Docket: S024274
Registry: Vancouver

Between:

ELLEN JACKSON

PLAINTIFF

And

SNC LAVALIN ENGINEERS & CONSTRUCTORS INC. and KILBORN ENGINEERING PACIFIC LTD.

DEFENDANTS

Before: The Honourable Mr. Justice Masuhara

Reasons for Judgment

Counsel for the Plaintiff: N.R. Howell

Counsel for the Defendants: T. Sigurdson

Date and Place of Hearing: November 13, 2002 and December 20, 2002 Vancouver, B.C.

[1] This is an action for wrongful dismissal by Ms. Jackson against SNC Lavalin Engineers & Constructors Inc. ("SNC Lavalin") and Kilborn Engineering Pacific Ltd. ("Kilborn") (collectively "the defendants"). SNC Lavalin acquired Kilborn in 1996 and Kilborn continues to carry on business under its own name.

[2] The Human Resources Handbook of SNC Lavalin states that the company "is the largest Canadian engineering firm and one of the biggest in the world.… Its revenues exceed $1 billion" and that it seeks to consistently attain equity returns that rank it with the top 5 publicly listed EPC companies in the world.

[3] The plaintiff is a secretary seeking judgment under Rule 18A on the basis that the notice and severance totalling 15 weeks she received after 15 years of service fell short of her employer's obligation to give reasonable notice.

[4] On February 28, 2002, SNC Lavalin terminated her employment without cause by giving three weeks' working notice and twelve weeks' paid notice. During her employment, she held administrative support positions. At the time of her termination, she held the position of Executive Assistant to the manager of engineering.

[5] The plaintiff claims she is entitled to fourteen months salary at $3,240.50 per month which, after deducting the sum of $10,884.00 relating to the thirteen weeks pay and two weeks of working notice, amounts to $34,483.00.

[6] The issues that arise in this case are:

1. Was the notice provided reasonable? If not, then what is the reasonable period of notice applicable in the circumstances of this case?

2. Did the plaintiff take reasonable steps to mitigate her damages?

Reasonable Notice

[7] The general principle applicable to this case is that an employer is required to provide reasonable notice of termination to an employee. Failure to provide this notice results in the employer being liable in damages: ***Ansari v. British Columbia Hydro & Power Authority*** (1986), 2 B.C.L.R. (2d) 33 (S.C.), aff'd (1986) 55 B.C.L.R. (2d) xxxiii (C.A.). In this case, counsel for the defendants advised that she would not rely upon the company's written severance policy that gave rise to the 15 weeks' notice provided to the plaintiff.

[8] Both counsel cited ***Bardal v. Globe & Mail Ltd.*** (1960), 24 D.L.R. (2d) 140 (Ont. H.C.) as the starting point in determining the reasonableness of the notice provided. At 145 the Court states:

> 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 availability of similar employment, having regard to the experience, training, and qualification of the servant.

[9] Authorities in support of various periods of notice were provided by both counsel.

[10] Plaintiff's counsel submitted authorities that supported the view that the reasonable period was fourteen months.

[11] Defendants' counsel submitted authorities that supported the view that the reasonable period ought to be in the range of eight to nine months, however, the notice period should be reduced to five to seven months (less the notice already provided) due to job availability and for failure to mitigate. This period also includes a 4-6 week period to recognize a transition period for the employee. I note that the notice of 15 weeks provided by the employer, while consistent with their written policy, is still short of the low end of the range submitted by their counsel.

[12] I am also mindful of defendants' counsel's comments regarding ***Zaraweh v. Hermon*** (2001), 94 B.C.L.R. (3d) 223 (C.A.), where the Court of Appeal confirmed the trial judge's award of ten months for a 12 year secretarial employee who was 54 years old and noted that it was at the upper end of the range. However, I note that in the instant case, the plaintiff, while close in age, has had a longer term of service by 25 percent.

[13] Ultimately, each case must be decided on the specifics of their own facts in terms of the appropriate period of notice.

Availability of Similar Employment

[14] In terms of the availability of similar employment, the defendants sought the opinion of an expert who is a consultant specializing in the human resources area and has given expert evidence on issues of job search, employment availability and related issues in this Court in the past.

[15] In this case, he opined that a person in circumstances similar to the plaintiff's could have found employment within four to six months once a transition period to "find focus" had been undertaken by a terminated employee. His view was such a transition period would be in the range of four to six weeks. I note however, that this transition period range is a general comment and does not appear to be specific to the plaintiff's circumstances.

[16] The expert's approach to the issue of availability of alternate employment was that:

1. he looked at the job market for the six month period ending July 2002 (the most recent period for which there are statistics) and concluded there was an upward trend;

2. he looked at the availability of jobs for workers in situations similar to the plaintiffs and stated he found over 100 relevant positions and set out 25 illustrative examples; and

3. he reviewed statistical evidence on the time it usually takes for a person in similar circumstances to find alternative employment, generally, and then with specific regard to the impact of age on the time for re-employment.

[17] He concluded it would be unlikely a person at age 53 would be unemployed for longer than 23.5 weeks or 5.7 months. He estimated the period of the plaintiff's unemployment to be between four to six months on the grounds that the plaintiff lives in an urban area, is a woman (who tend to find work more quickly than men) and had access to career transition services. The career transition services were a one day seminar provided by SNC Lavalin and a seminar sponsored by Human Resources Canada.

[18] In reviewing the expert's evidence, I conclude that it provides limited assistance. Of the three factors which he considered in his opinion, the first was a Help Wanted Index for B.C. which is considered an indicator of labour demand produced by Statistics Canada. Based on his review, he concluded that "[t]here has been no contraction or negative trend during Ms. Jackson's notice period." His finding was that the July 2002 Index was 117.5, 1996 being the reference year. The problem with this was that he was wrong. Under cross-examination it was brought to his attention that the actual number was 97.9. While the Index was 94.8 in March 2002 when the employee was terminated, a comparison of the Index from July 2001 to July

2002 shows a sixteen percent reduction in the Index. Further, the expert acknowledged that if the Index were compared to September 2002, there would be a further downward trend in the Help Wanted Index from July 2002. In addition, the unemployment rate had increased in British Columbia from 7 percent in July 2001 to 8.6 percent in July 2002. Given the conflict in the interpretation and use of the statistics, I find that his conclusion that demands for employees are "strong and stable" and that the "current and recent employment market is healthy" to be suspect.

[19] In terms of reviewing sample jobs that had been advertised, it is fair to say that of the 25 jobs that were specifically reviewed by the expert, seven were jobs advertised during the transition period of four to six weeks and there was no evidence that these positions were advertised or available beyond the period; another four were part time, on call, or temporary maternity leave positions; one required a degree in science and three years in an environmental lab; and another nine required accounting experience, graduation from a post secondary program or proficiency in specific computer software platforms. In my view, these jobs were not applicable to Ms. Jackson and I am unable to conclude that for the plaintiff that there was as the expert stated "a considerable supply of opportunity."

[20] Counsel for the defendants made references to the 1987 resume of the plaintiff which indicated that she had taken three courses in the accounting area in 1979. The intent of this reference was to indicate that the plaintiff had a wider scope of skills that would have enhanced her job finding opportunities and that they had not been adequately considered by the plaintiff in her job search.

[21] I am not persuaded by this argument. The courses were completed in 1979. The evidence of the plaintiff is that she never used these skills during her employment with the defendants. There has been a vast change in accounting systems since the late 1970s. While the basic accounting construct remains, the systems in place in the current day business organization are far more technologically advanced and different. This has accentuated a considerable change in business practices. The evidence of the plaintiff is that the accounting department workers at SNC Lavalin were given special training, and the plaintiff has never received training in this area. I find that her marketability is not enhanced by her limited experience with accounting over 20 years ago.

[22] As stated above, the information upon which the expert based his conclusions is general and subject to considerable interpretation. It does not apply directly to the specifics of the plaintiff and, accordingly, I am unable to place much weight on the conclusions in the report.

[23] The key factors that I have considered in the determination of reasonable notice in this case are:

(a) The plaintiff's age was 53 years at the time of termination.

(b) The term of the employment was 15 years which I consider to be one of long service.

(c) The work performed throughout the term can be characterized as administrative support or secretarial. The last job position was stated to be Executive Assistant to the Manager of Engineering Services. It appears that this last assignment was at a senior level in this category of work.

(d) The plaintiff has a lack of knowledge of updated computer programs and an absence of formal training which makes her less qualified than many in her field.

(e) The employer was not alleging cause for termination. Rather, termination was as a result of the employer closing its local office due to a lack of business.

(f) The employer is a large and sophisticated employer and business organization

(g) The employer provided a one day career transition seminar however; there was no further evidence of a longer program to assist terminated employees to find employment.

(h) Both parties acknowledged that a transition period for a terminated employee was appropriate before a job search were to begin. In the case of a longer term employee, the inclination would be for a longer period than the four to six weeks discussed by the defendant's expert.

(i) The plaintiff received the equivalent of 15 weeks notice, which is comprised of 3 weeks working notice and 12 weeks paid notice.

(j) Contrary to the defendant expert's evidence, I do not find that there was a "strong" and "healthy" job market during the relevant period. Rather, my view of the submitted evidence was that conditions were relatively weak.

[24] Given the foregoing factors, and considering the submissions and authorities provided by counsel, I find that the reasonable period of notice is twelve months.

Mitigation

[25] However, in terms of mitigation I find the plaintiff's efforts were limited. While the plaintiff monitored newspapers and the Internet for job opportunities, had four networking lunches, attended a positive employment planning seminar in September 2002, she submitted only two job resumes on her own initiative in August 2002 and September 2002. She submitted six resumes in response to jobs identified in the expert's report however, this was well after the ads had been placed. The plaintiff's evidence reveals limited activity on her part. In the absence of factors that would explain the lack of activity, I find that the plaintiff has not adequately mitigated her damages.

[26] A deduction of one month is warranted in the final calculation of the appropriate level of damages to be awarded the plaintiff.

Conclusion

[27] I find that the plaintiff is entitled to damages relating to 11 months of salary less the 15 weeks of pay already provided plus court ordered interest.

[28] Costs of this matter are awarded to the plaintiff at Scale 3.

"D.M. Masuhara, J."
The Honourable Mr. Justice D.M. Masuhara