Case In Point

Court Weighs in on Mitigation and Returning to Work with Former Employer

Date: September 20, 2013

The Court of Appeal for Ontario has upheld a lower court decision which found the plaintiff (Mr. Chevalier), who had been constructively dismissed, was not entitled to damages after he declined an offer of re-employment from his former employer. It held that the trial judge had properly considered and applied the legal principles, concluding on the evidence that the plaintiff would not have been subjected to an atmosphere of hostility, embarrassment or humiliation had he returned. As stated by the Court “This was the trial judge’s call to make.”

Mr. Chevalier was 55 years old with 33 years of service with Active Tire and Auto Centre (“Active Tire”) and its predecessor. He had been “laid off” from his employment as a Service Centre Manager for reasons relating to economic difficulties. The employer later acknowledged that it was under the erroneous belief that it was entitled to lay him off. Two weeks after his lay-off, Mr. Chevalier commenced a wrongful dismissal action against Active Tire. Five days after commencing the claim, Active Tire recalled Mr. Chevalier to work, at the same location and with the same responsibilities, duties and remuneration. In subsequent correspondence, Active Tire’s counsel wrote and conveyed Active Tire’s apology for its mistake in laying him off and again offered to continue his employment in the same position. Mr. Chevalier declined and continued his wrongful dismissal claim.

At trial, Active Tire acknowledged it constructively dismissed Mr. Chevalier when it temporarily laid him off. Therefore, the only issue was whether Mr. Chevalier failed to mitigate his damages when he refused to return to work. Mr. Chevalier claimed he was not required to return to work because, prior to the lay-off, Active Tire had engaged in conduct to “make his life miserable” in order to cause him to leave his employment. In other words, Mr. Chevalier felt the workplace was hostile.

The trial judge ruled in favour of Active Tire and found that Mr. Chevalier should have mitigated his damages by accepting the offer of re-employment. He concluded that the workplace was not as acrimonious as asserted by Mr. Chevalier and that prior to the lay-off, Active Tire was simply managing Mr. Chevalier’s performance and was not trying to force him to quit. In addition, the trial judge accepted that the decision to lay-off Mr. Chevalier was made in an honest but mistaken belief. Although the fact he had already left the workplace and sued the company was relevant, it was not determinative. The trial judge ruled that a reasonable person in Mr. Chevalier’s position would have accepted the offer to return to the workplace. Because Mr. Chevalier should have returned to work when requested, but refused, no damages were awarded.

Mr. Chevalier appealed. The Court of Appeal, in brief reasons, rejected the appeal as it found no basis to interfere with the trial judge’s fulsome reasons.

This decision is consistent with the law of mitigation on offers to re-employ dismissed employees. The central question is: Would a reasonable person accept such an opportunity to return to his or her previous employer? Courts will not require an employee to accept employment with his or her former employer if to do so would mean working in an environment of hostility, embarrassment or humiliation. In this case the trial judge found that neither the workplace nor the working relationship between the parties was acrimonious, and the plaintiff should have mitigated by returning to work.

Chevalier v. Active Tire & Auto Centre Inc., 2013 ONCA 548 (CanLII)