Case In Point

Termination Clause in Federal Employment Agreement Enforceable

Date: April 2, 2015

The recent decision in *Luney v. Day & Ross Inc*. is good news for employers. The Plaintiff worked for an interprovincial trucking company subject to the *Canada Labour Code* ("*Code*"). The Defendant terminated the Plaintiff's employment without cause and offered the Plaintiff a severance package that it asserted was consistent with the termination clause in the employment contract.

The Plaintiff brought a summary judgment motion seeking a finding that the termination clause was unenforceable on two grounds: (1) that it was ambiguous and therefore did not rebut the presumption of reasonable notice at common law; and (2) that it violated the *Code* as it did not provide for benefits.

The motion judge dismissed the Plaintiff's motion. The Plaintiff then appealed to Divisional Court. The relevant section of the employment contract read as follows:

If your employment is terminated for other than 'just cause', or if a competent tribunal should rule that your termination was 'unjust', you will be entitled to two weeks notice or pay in lieu of notice and a severance of one week's regular pay for each full year of service, less statutory deductions. The payments are not to exceed the equivalent of 15 weeks pay.

It is understood and agreed that in the event the aforesaid notice and severance entitlements are not in conformity with the notice and severance provisions prescribed by the Canada Labour Code or other similar legislation, the statutory minimums shall apply and be considered reasonable notice and severance.

Dismissing the appeal, the Divisional Court found that the wording was sufficiently clear to rebut the presumption of reasonable notice. It also rejected the Plaintiff's argument that the failure to mention benefits was fatal. This was due to the inclusion of the wording that provided if the severance entitlements are not in conformity with the severance prescribed by the *Code*, the statutory minimums shall apply. The takeaway for employers is to include language indicating that statutory minimums will prevail in order to defend against claims that the language is unclear or otherwise unenforceable.