Case In Point

Employer's Egregious Mistreatment of Disabled Employee Leads to Increase in Damages Award

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In a recent wrongful dismissal case, *Strudwick v. Applied Consumer & Clinical Evaluations Inc.*, the Court of Appeal increased the amount of damages awarded to an employee from $113,782 to $240,000, for what the Court of Appeal described as "a marked departure from any conceivable standard of decent behaviour" in an employer's treatment of its employee.

The employee commenced employment in 1995, became deaf in 2010 and was terminated without cause in 2011 at age 56 after 15 completed years of service. She worked part-time in data entry with a salary of approximately $21,000 per year at the time of her termination of employment. At the hearing of the lower court proceedings, the employee led evidence that the employer's attitude towards her changed upon her becoming deaf. For example, the employer refused many reasonable accommodation requests, including having the Canadian Hearing Society attend her workplace to determine what accommodations would be needed, and it was suggested to her that she quit and go on disability.

The employee was then terminated for her participation in a voluntary group of employees that met at the defendant's place of employment, a group encouraged by the employer. On one occasion, the employee did not select a topic from those she had prepared or speak on any topic for the requisite one or two minutes. The following day, the employer berated the employee in front of more than 12 other employees. She was then told that her employment was being terminated for insubordination and wilful misconduct as a result of her conduct at the voluntary group meeting. The employee was provided a letter confirming her termination with a cheque for three months' pay. When she refused to sign an acknowledgment and waiver, she was immediately escorted off of the premises and the cheque was taken back.

Applying *Wallace v. United Grain Growers Ltd.,* the lower court awarded the defendant approximately $50,000 as wrongful dismissal damages based on a "bump-up" in the notice period from 20 to 24 months, as a result of the employer's conduct. The court further awarded an amount for lost benefits, $20,000 in human rights damages, and approximately $19,000 for aggravated damages/intentional infliction of mental distress.

The employee appealed the damages award and sought an increase in damages to more than $1 million on the basis of the employer's egregious conduct. The employer cross-appealed the $40,000 in costs awarded to the employee.

The Court of Appeal concluded that the appellant's claim was limited to that specified in her pleadings, namely $240,000 plus a damages amount equal to her loss of collateral benefits. The Court accepted the 24 month notice period as reasonable in the circumstances, but found that the lower court erred in applying a *Wallace* bump-up in the notice period, which courts no longer apply in Ontario.

The Court of Appeal further increased the damages awarded under the *Human Rights Code* from $20,000 to $40,000 on the basis that the lower court erred by not taking into account the fact of the "abject failure" of the employer to accommodate the employee and the abuse she suffered to increase her difficulties at work. The Court also increased the damages for intentional infliction of mental distress to approximately $35,000, as the lower court failed to consider the increased costs of therapy resulting from the appellant's permanent deafness and the non-pecuniary losses flowing from actions of the respondent, and increased the aggravated damages award to $70,000.

With respect to the increase in aggravated damages, the Court of Appeal noted that the employee had been confronted in front of an estimated 13 other employees, yelled at and called the employee a "goddamned fool," and was informed of her

termination for a senseless reason.

Of further relevance to the increase in damages was the fact that the employer tendered a record of employment that delayed the employee's ability to receive employment insurance.

The Court of Appeal rejected the employer's cross-appeal for a decrease of the $40,000 in costs awarded by the lower court.

This case is a good reminder to employers that courts will heavily penalize employers who treat their employees unfairly and without dignity and respect. The case also emphasizes the importance of employers taking the appropriate steps to accommodate employees in the workplace, failing which employers become exposed to significant potential damages awards in court, under numerous heads of damages.