Case In Point

A Cautionary Tale: Appellate Court Upholds Judgment Against Employer for Punitive Damages, Aggravated Damages and “Unusually High” Costs

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In Ruston v. Keddco MFG. (2011) Ltd., 2019 ONCA 125 (CanLII)(*Keddco*), a unanimous Court of Appeal for Ontario upheld a substantial damages and costs award against an employer that breached its “duty of good faith and fair dealing in the manner of dismissal.”

The *Keddco* decision serves as an important reminder for employers across Canada that the failure to act fairly and in good faith throughout the termination process can result in significant financial liability and reputational harm.

The Background

The plaintiff was hired by Keddco as a sales representative in 2004 and moved quickly up the ranks. When Keddco was acquired by Canerector Inc. in 2011, he became President of Keddco and was referred to as a Division Manager of Canerector.

In June 2015, the plaintiff’s employment was terminated. He was told that he was being dismissed for cause and that he had committed fraud. No details were provided. When he indicated that he would be hiring a lawyer, his employer advised him that, if he did, a counterclaim would be commenced against him and it would be “very expensive.”

Approximately one month later, the plaintiff commenced a claim against his former employer, seeking damages for wrongful dismissal. Keddco responded with a counterclaim, alleging cause and claiming damages of $1.7 million for unjust enrichment, breach of fiduciary duty and fraud, as well as $50,000 in punitive damages.

After an 11-day hearing, the trial judge found that the employer had failed to prove cause or any of its other allegations against the plaintiff. She also found that its counterclaim had been an intimidation tactic and that it had breached its obligation of good faith and fair dealing in the manner of dismissal. Ultimately, the trial judge dismissed Keddco’s counterclaim and awarded the following to the plaintiff:

- damages in lieu of notice based on a 19-month notice period, including bonus and benefits, totalling approximately $479,000;
- punitive damages in the amount of $100,000; and
- aggravated damages in the amount of $25,000.

In a subsequent costs decision, substantial indemnity costs in the amount of $546,684.73 were awarded.

The Court of Appeal

The Court of Appeal dismissed all aspects of Keddco’s appeal, including its motion for leave to appeal the trial judge’s costs award.

First, on the issue of reasonable notice, the Court deferred to the trial judge’s “careful and cogent reasons for her decision that a 19 month period was appropriate.” The plaintiff had only 11 years of service, but there were many other factors that justified a lengthy notice period, such as his age (54 years old), his level of education (Grade 12), and the serious nature of the allegations made against him.

Second, with respect to the aggravated and punitive damages award, the Court found that the evidentiary record provided ample support for the trial judge's conclusion that Keddco had breached its duty of good faith and fair dealing in the manner of dismissal by, in particular, threatening the plaintiff not to make a claim and then commencing a counterclaim that was intended to (and did) cause him stress.

The Court also expressly rejected Keddco's argument that the same underlying conduct could not give rise to both aggravated and punitive damages. It held:

[18] It does not follow from the fact that this is the same conduct which the trial judge referred to in making the aggravated damages award that an award of punitive damages amounted to either double recovery or double punishment. That is because aggravated damages aim to compensate a plaintiff for heightened damages caused by the breach of the employer's duty of good faith and fair dealing in the manner of dismissal, while punitive damages seek to punish and denunciate inappropriate or unfair conduct.

Finally, the Court declined to interfere with the $546,684.73 costs award. Despite recognizing that the award was "unusually high," the Court upheld the trial judge's determination that the figure was fair and reasonable in the circumstances.

Three Key Takeaways

The *Keddco* case does not necessarily break new ground; however, in showcasing the significant liability that can flow from the dismissal of a single employee, it offers a cautionary tale for all employers. Our three key takeaways are set out below.

1. There is no common law "rule of thumb" that a dismissed employee is entitled to one month's notice for every year worked. Courts have repeatedly rejected this premise over the past two decades, stressing that length of service is only one of many factors that must be weighed in determining a reasonable notice period.
2. An employer may be liable for aggravated damages *and* punitive damages if it breaches its duty of good faith and fair dealing in the manner of dismissal. These two heads of damages serve distinct purposes, and may therefore be based on the same underlying conduct without amounting to double punishment.
3. The dismissal of an employee for cause is a serious matter. If done in bad faith or in an unfair manner, the employer assumes the risk not only of direct financial liability, but also of broader reputational harm. The *Keddco* case exemplifies this risk, as the decision has garnered mainstream media attention.