Case In Point

British Columbia Court of Appeal Finds Canada Emergency Response Benefit Not Deductible from Wrongful Dismissal Damages

Date: December 5, 2022

On November 29, 2022, the British Columbia Court of Appeal released *Yates v. Langley Motor Sport Centre Ltd.*, in which the Court of Appeal ruled that payments received by an employee under the Canada Emergency Response Benefit (CERB) should not be deducted from wrongful dismissal damages.

The Court of Appeal held that broader policy considerations, including the desirability of equal treatment and promotion of socially desirable conduct, as well as the purpose of the CERB program supported the conclusion that CERB payments should not be deducted from wrongful dismissal damages. The Court of Appeal did, however, uphold the British Columbia Supreme Court's refusal to award punitive damages.

Background

The appellant, Shelby Yates, worked for Langley Motor Sport Center Ltd. (Langley Hyundai) as a marketing manager and event coordinator. Ms. Yates was placed on a temporary layoff effective March 24, 2020 as a result of the COVID-19 pandemic. Her layoff period was extended until it expired on August 30, 2020. Under the British Columbia *Employment Standards Act* (*ESA*), her termination date was deemed to be retroactive to the start of the layoff period (i.e., March 24, 2020).

Ms. Yates received CERB during the layoff period. She brought a civil claim against Langley Hyundai, seeking wrongful dismissal damages, as well as aggravated and punitive damages. The British Columbia Supreme Court awarded Ms. Yates five months of common law reasonable notice, but denied her aggravated and punitive damages claims. The lower court deducted $10,000 from her damages on account of the CERB payments Ms. Yates received as of her deemed termination date.

At the Court of Appeal

Ms. Yates appealed the trial judge's decision to deduct CERB payments from the damages awarded for wrongful dismissal, and his refusal to award punitive damages. The appeal succeeded in respect of the deduction of CERB payments, but not on the issue of punitive damages.

Deduction of CERB Payments

A "compensating advantage" issue arises when a plaintiff receives a benefit that results in compensation beyond their actual loss and either: (a) the plaintiff would not have received the benefit but for the defendant's breach, or (b) the benefit is intended to be an indemnity for the sort of loss resulting from the defendant's breach.

The Court of Appeal discussed that Ms. Yates received CERB payments because she ceased working "for reasons related to COVID-19" and not because of a breach of her employment contract. The CERB payments were intended as a wage subsidy and served as an indemnity for the loss of wages resulting from an employer's breach of an employment contract.

With respect to the compensating advantage issue, the Court of Appeal reasoned that a weighing of the broader policy considerations favoured a conclusion of non-deductibility. The Court of Appeal discussed that it seemed wrong for the

employer to enjoy a “windfall” from an income support program designed to benefit workers. The desirability of equal treatment for those in similar situations also weighed against deductibility. An employee who is dismissed the day before the expiration of the temporary layoff period would presumptively have their period of notice run from that point forward and any CERB payments received before that date would not be deductible. The Court of Appeal discussed that the same outcome should apply where a dismissed employee’s deemed termination date is the beginning of the temporary layoff period.

The Court of Appeal also discussed that non-deductibility would remove the incentive for an employer to manipulate the timing of the termination of an employee on a temporary layoff to allow the temporary layoff period to expire. The Court of Appeal stated that the non-deductibility of CERB payments would not result in an employee being “better off” after their employer’s breach of the employment contract. Accordingly, the Court of Appeal held that these policy considerations militated against the deductibility of CERB payments from Ms. Yates’ damages and allowed her appeal on this ground.

As to punitive damages, there was no evidence Langley Hyundai acted in a “harsh, vindictive, reprehensible and malicious” manner. As a result, this part of the appeal was denied.

In declining to deduct any CERB payments from an award for wrongful dismissal, this appellate court has provided greater clarity on what had previously been some uncertainty from the courts on this issue.

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