



EMPLOYEE WITH A CONTRACTUALLY STIPULATED TERM OF NOTICE WAS NOT REQUIRED TO MITIGATE HIS DAMAGES

When Bowes began working for Goss Power Products Ltd. (“Goss”) as Vice-President, Sales and Marketing, his employment contract provided that, upon termination without cause, Bowes would be entitled to six months’ notice if the termination occurred prior to the completion of 48 months of service. He was terminated without cause less than four years later, and was informed that he would be paid his salary for six months. In addition, he was required to look for other employment and inform Goss of his progress. Bowes obtained a new job at the same salary two weeks later.

As a result, Goss paid him the minimum entitlement of three weeks’ pay in lieu of notice. Bowes brought an action to determine whether he was required to mitigate his loss, and whether he was entitled to be paid his outstanding wages in a lump sum.

The Judge dismissed the action and Bowes appealed.

The Appeal was allowed. An employment agreement setting out a fixed term of notice, or payment in lieu of notice, should be treated as fixing damages to a contractual amount, and therefore there is no obligation on an employee to mitigate his or her damages. In this situation, the clear goals of the parties in entering into the employment agreement, which designated a stipulated sum owed upon termination without cause, were certainty and closure. Requiring an employee to mitigate his or her losses would be contrary to the objectives of the agreement. Therefore, Judge erred in determining that an agreement specifying a fixed notice period, in the event of dismissal without cause, was equivalent to damages in lieu of reasonable notice at common law. There was no presumption of mitigation, and mitigation was not applicable since the damages were a contractual sum.

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