

NOVA SCOTIA COURT OF APPEAL
[Cite as: Hazel v. Card , 1999 NSCA 139]

Chipman, Hart and Hallett, JJ.A.

BETWEEN:

JAMES CARD and GLENROSA)	Lisa M. Gallivan
FARMS LIMITED, a body corporate)	for the appellants
)	
Appellants)	
)	
- and -)	
)	
KEVIN HAZEL)	Randall P.H. Balcome
)	for the respondent
Respondent)	
)	
)	
)	Appeal heard:
)	November 16, 1999
)	
)	Judgment delivered:
)	November 19, 1999
)	
)	

THE COURT: Appeal dismissed per reasons for judgment of Hallett, J.A.: Hart and Chipman, JJ.A. concurring.

HALLETT J.A.:

[1] In early February, 1996, the respondent, a farm hand, had his employment terminated without notice. He was given two weeks severance pay. He sued for wrongful dismissal.

[2] The farm was owned by the appellant, Mr. Card, through his company, the appellant, Glenrosa Farms Limited. The respondent began work on the farm in May of 1992. The respondent was the son of a Mrs. Hazel. Mr. Card was going with Mrs. Hazel at the time; they were married about one year after he hired the respondent. The trial judge found that the respondent was apparently a hard worker. He also found that the respondent was disrespectful and unco-operative with Mr. Card.

[3] In the fall of 1995 the farm operation was not going well and Mr. Card, who was over 70 years of age, considered selling. He and Mrs. Hazel had separated. In January of 1996 Mr. Card separated his shoulder. As a result, he entered into an agreement with a Mr. Casey, a neighbouring farmer, to manage the farm with a view to Mr. Casey buying it.

[4] Mr. Casey wanted to get started afresh. On February 10th, 1996, he decided to dismiss the two employees at the farm. Mr. Casey used his own employees to assist in the operation of the appellant's farm in this management period. On April 2nd, 1996, Mr. Casey entered into an agreement to buy the farm.

[5] The trial judge found:

I find that just cause for the termination has not been established. The onus is on the defendant to do so and he has failed to satisfy this onus on a balance of probabilities. Firstly, the decision to terminate was made by Mr. Casey and not Mr. Card. This was due to a change in management with a view to the eventual purchase of the farm. The evidence does not establish that this decision was based on Mr. Hazel's treatment of Mr. Card. It was simply a decision by Mr. Casey to start with new workers, a clean slate so to speak, and in this regard he terminated both Mr. Sprague and Mr. Hazel and treated them and considered them both equally. In any event, Mr. Card had condoned the behaviour and actions of Mr. Hazel right through and especially in October of 1995, after Ms. Hazel had left. He did not take any steps to have Mr. Hazel change either his performance or his behaviour. There were no warnings, reprimands, or any attempts to set new rules or guidelines. Mr. Card just simply did not try, perhaps because he was resigned to selling the farm instead, due to the reasons he cited. The disrespectful treatment of Mr. Card during this tumultuous relationship was not considered by Mr. Card as having reached a point during the period July, 1993, to February, 1996, where dismissal was considered and for that reason the necessary corrective measures or warnings were not given.

[6] The trial judge held that eight weeks' notice would have been reasonable in the circumstances.

Issues on Appeal

[7] The appellant asserts that the trial judge erred: (i) in failing to find just cause for dismissal on the ground that the trial judge misapprehended and failed to consider the evidence that the respondent organized and participated in a stoppage of work; that he organized and participated in group complaints about Mr. Card's management of Glenrosa Farms Limited; and that the respondent directed verbal abuse and obscenities at Mr. Card continuously during his employment on the farm; (ii) in his application of the principle of condonation; and (iii) his assessment of the respondent's mitigation efforts.

Disposition of the Appeal

[8] The finding of the trial judge that the appellants failed to prove that the dismissal was justified is supported by the evidence of Mr. Casey that both farm hands were dismissed because Mr. Casey had taken over the management of the farm and wanted to have a fresh start. The respondent was not dismissed, as alleged by counsel for the appellants, because of his lack of diligence as a worker or because of his disrespectful treatment of Mr. Card.

[9] The trial judge was well aware of the respondent's disgraceful attitude towards Mr. Card.

[10] Having reviewed the transcript there is no reason for this Court to interfere with the trial judge's finding as to why the respondent was dismissed (**Toneguzzo-Norvell (Guardian ad litem of) v. Burnaby Hospital**, [1994] 1 S.C.R. 114). The trial judge did not err in finding that the appellants had failed to satisfy the burden of proof on the issue of just cause.

[11] In view of the foregoing conclusion there is no need to deal with the alleged error of the trial judge in finding that Mr. Card condoned the abusive behaviour of the respondent.

[12] On the issue of mitigation, the evidence clearly supports the trial judge's finding that the respondent took reasonable steps to mitigate his damages.

[13] I would dismiss the appeal with costs to the respondent of \$750.00 plus disbursements.

Hallett, J.A.

Concurred in:

Hart, J.A.

Chipman, J.A.