

SUPREME COURT OF NOVA SCOTIA

Citation: Imperial Oil Ltd. v. Atlantic Oil Workers Union, Local No. 1, 2004 NSSC 201

Date: 20040503
Docket: SH 131911
Registry: Halifax

Between:

Imperial Oil Limited & McColl-Frontenac Incorporated

Plaintiffs

v.

Atlantic Oil Workers Union, Local No. 1, and
The Individuals Listed in Schedule "A"

Defendants

LIBRARY HEADING

Judge: The Honourable Justice John D. Murphy

Heard: September 30th, October 1st, 2nd, November 6th, 2003 in Halifax

Written Decision: October 8, 2004 (*Oral decision rendered May 3, 2004*)

Subject: **Severance and Pension Benefits:** Application under Rule 25.01(1)(a) for determination of questions of law based on an agreed statement of facts.

Summary: Texaco operated an oil refinery in Dartmouth, NS, where the individual Defendants – some of whom belonged to the Defendant union – were employed. Texaco administered a pension plan for employees at the refinery. In 1988 Texaco adopted an employees' severance package known as the Texaco Canada Severance Allowance Program (TCSAP), which was available to employees at the refinery. Eligible employees could opt for TCSAP within 24 months after a "change in control" of the company. The TCSAP benefits were "in full satisfaction of all claims of an Eligible Employee on Termination on account of salaries and wages, Merit Awards, pension entitlements and all other benefits of employment." They were also stated to be "in full satisfaction of all claims against the corporation" and "inclusive of, and not in addition to, any benefits or allowance prescribed by employment statutes..." Employees who opted for TCSAP were required to sign a release. The refinery eventually came under the control of Imperial Oil, operating as McColl-Frontenac, and the TCSAP was retained. Subsequently, McColl-Frontenac employees each of whom received TCSAP payments, sought and obtained under the *Pension Benefits Act* a partial wind-up of the pension plan, which Imperial unsuccessfully appealed, without

raising the release as a defence. About 79 employees under the age of 50 received a benefit under the partial wind-up, in addition to TCSAP, in the form of “grow-in” benefits.

Issue: The Plaintiffs claim that the Defendants improperly pursued a partial wind-up of the pension plan, contrary to the severance agreement, resulting in some Defendants receiving enhanced pension benefits.

Preliminary issues

(1) The Court had jurisdiction to hear the matter as against employees covered by the collective agreement. The language of the agreement and of the *Trade Union Act* did not place the dispute within the exclusive jurisdiction of an arbitrator.

(2) The Plaintiffs’ claim was not *res judicata*. While the interests of the same parties were represented in this proceeding as had been represented in the earlier proceeding to obtain the pension plan wind-up, the question to be decided in this case was not the same cause of action or issue as had been determined in the earlier proceedings.

(3) The Plaintiffs’ claim was neither contradictory to the rule against collateral attack nor to the principle of finality. This was not a collateral attack because the object of the action was not to invalidate or render inoperable the wind-up order. Rather, it was a claim to determine the relationship between the order and the TCSAP benefits, or to interpret TCSAP and the Release in the context of the wind-up order.

Result: (1) The *Pension Benefits Act* was an “employment statute” for the purposes of the TCSAP agreement, since it contributed to the “floor of rights” available to employees and it applied to “pension plans for persons employed in the province.”

(2) The Defendants did not breach the release by seeking or obtaining a partial wind-up order and grow-in benefits. The release applied to specific named companies, subsidiaries and affiliates, but its language did not bar an application to the Superintendent for a statutory benefit, which was not a direct claim against a releasee. Further, the wording of the release did not support the Plaintiffs’ claim that a Defendant who did not benefit from the wind-up order should be jointly and severally liable with respect to benefits received by others. Each document was an individual release that related to a specific person’s termination from employment. Its plain meaning did not extend to the claims arising from another person’s termination. Alternatively, if the release did not have the plain meaning ascribed by the Court, it was ambiguous, and the *contra proferentum* rule required that it be construed against the Plaintiffs. Whether based upon the plain meaning of the release or the *contra proferentum* rule, the release’s operation was restricted to claims against named releasees and related or affiliated companies arising from an

employee's own separation.

(3) The 79 Defendants who received benefits both under TCSAP and under the partial wind-up were unjustly enriched. The parties' stated intention in concluding the TCSAP agreement was to provide for severance as well as pension entitlements. The employees who received funds under the partial wind-up as well as under TCSAP were compensated twice on account of their pension claims, once under the TCSAP and once under the Pension Benefits Act. They were enriched, and the Plaintiffs were correspondingly deprived of the funds. There was no juristic reason for the enrichment. (**Garland v. Consumers Gas Co.**, [2004] S.C.J. No. 21 applied)

(4) The release was not an illegal contract. The Defendants accepted TCSAP payments, which exceeded the statutory minimums, in substitution of the statutory payments to which they were entitled. Further, the employees were not absolutely entitled to the **PBA** benefit. In any event, even if the TCSAP or the release were illegal, unjust enrichment would still provide relief to the Plaintiff in the circumstances.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***