IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: **Hyde v. Reliance Offshore Canada Inc.,** 2010 NSSM 2

Date: 20100112
Claim: SCCH 319601
Registry: Halifax

Between:

Karen Elizabeth Hyde

Claimant

v.

Reliance Offshore Canada Inc

Defendant

Adjudicator: W. Augustus Richardson, QC

Heard: January 5, 2010 in Halifax, Nova Scotia.

Appearances: Karen Hyde, for herself, Claimant
Jessica White, for the defendant Reliance Offshore Canada Inc

By the Court:

[1] The claimant Ms Hyde was hired by the defendant Reliance Offshore Canada Inc to work as an accommodation steward on the Rowan Gorilla III oil rig. Of that there is no dispute. The employment contract permitted the defendant to terminate the claimant without cause. Again there is no dispute. The dispute concerns whether in the circumstances of this case the defendant ought to have given some notice to the claimant to enable her to remove her personal belongings from the rig.

[2] Ms Hyde was hired in April 2009. She worked three weeks on and three works off the rig. She would be taken to and from the rig by helicopter.

[3] Ms Hyde discovered on her first three-week stint that the rig lacked entertainment resources. It was not–as it had been represented to her by the defendant–"like a five-star hotel." It did not have the promised TV, internet, gym or phone service.

[4] On her next stint she came prepared. She brought a large number of personal DVDs and a personal DVD player. Other employees on the rig also had personal DVD players. As an accommodation to her fellow-workers on the rig Ms Hyde left her DVDs in the radio room, which was staffed 24/7. She prepared a sign-out list. People who wanted to borrow a DVD would sign for the DVD, take it away and then return it. The list was controlled by the radio room operator. Ms Hyde was not the only one who did this.

[5] There were no problems with this system. She experienced no loss or theft of her DVDs. When she had returned to the rig on a previous occasion the DVDs were still there. She attributed this to the fact that the DVDs were kept in the radio room, which was always staffed with someone who made sure that the DVDs were signed out.

[6] Ms Hyde was scheduled to rotate off the rig in normal course on August 24, 2009. There were some problems on the rig and she was evacuated off the rig on August 20th instead. While there was an evacuation of some of the workers (including Ms Hyde) it was not an emergency. She had time to remove the DVDs had she chosen. However, at that time she expected to be returning to the rig on her next scheduled stint, so she did not remove them.

[7] On August 28th Ms Hyde (who was onshore at this point) was advised that her contract was being terminated. Her evidence was that she then began trying to retrieve (or at least get the defendant retrieve) the personal belongings that she had left on the rig in the expectation of returning. These included the DVDs, a shower caddy and a back rub tool. The defendant eventually was able to retrieve and return the last two items–but not the DVDs, which had gone missing.

[8] Ms Hyde's evidence was that given the way personnel matters were organized she was certain that the defendant knew before August 28th that it intended to terminate her. She testified that based on her experience on the rig, and with what had happened with other employees, she was certain that the defendant probably knew on August 20th that it was going to terminate her once they got her back on land.

[9] The defendant (who had a representative there in addition to its counsel Ms White) did not provide any evidence. I am accordingly prepared to find as a fact that the defendant did know on August 20th that it planned to terminate Ms Hyde once she was back onshore.

[10] Ms Hyde says that if the defendant knew it was going to terminate her it should have given her notice so that she could remove her personal belongings. She analogized to the case of

an office. Where a office worker is terminated he or she is provided with an opportunity to clear out his or her office or cubicle, albeit perhaps under the eyes of a security guard. Why, she asked, couldn't the same be done in this case?

[11] The defendant's position was that an employer at common law is not under a duty to take care for the safety of its employees' belongings: *Tremear v. Park Town Motor Hotels Ltd* [1982] 4 WWR 444 (Sask QB), and *Deyong v. Shenburn* [1946] KB 227 (CA), cited in *Tremear*. It also said that there was no bailment, and that in any event, Ms Hyde knew or ought to have known that it was not safe to leave her personal belongings on board the rig, especially since she knew that she could be terminated without cause when, for example, as was the case here, when she was onshore.

[12] I agree that this is not a case of bailment. There was no evidence that the claimant entrusted her property in any way to the defendant. I also agree that no duty arises on the part of an employer to take care of its employees' property "merely because of the relationship which exists between a master and a servant:" *Deyong, supra*, cited in *Tremear, supra* at para.9.

[13] However, that does not end the inquiry. I am satisfied on the basis of *Tremear, supra* as well as the cases cited and discussed therein that an employer ***may*** assume a duty of care with respect to the property of its employees in a proper case. The duty arises not out of the employment relationship *per se* but out of "the day to day relationship of one man to another:" Tucker, J in *Deyong, supra* cited in *Tremear, supra* at para.12. In other words, liability may arise out of the normal negligence principles of proximity and duty of care.

[14] In this case the defendant employed the claimant, amongst others, to work on an ocean oil rig. I am satisfied that it knew or ought to have known that its employees would need means to entertain themselves while on the rig. It did not provide such facilities and on the evidence appears to have been content to let its employees arrange it for themselves. In doing so it stood to benefit to some degree, inasmuch as employees who were deprived and denied all forms of entertainment on their off-hours would not make very good employees.

[15] I am also satisfied on the evidence that neither the defendant nor the owner of the rig nor the leasor of the rig at the material time provided any secure facilities for the storage of personal belongings on the rig, although they had in the past. The evidence is that such facilities as did exist no longer worked. For example, the claimant's room had a broken door that did not latch, let alone lock. The upright lockers in the room were unusable: one was too warped to close and open without serious force and the other was too twisted to close.

[16] In my opinion an employer who:

a. hires workers to work on a secluded site, where

b. the employees are expected to live during their off-hours, as well as work during their on-hours, but

c. provides no means of personal entertainment, and

d. knows that employees have taken matters "into their own hands," so to speak, by bringing their own entertainment devices, and

e. has provided secure facilities for the storage of personal items (*i.e.* rooms and lockers) that no longer work,

can be taken as having assumed a duty of care to take some meaningful steps to provide employees with a means for the "better protection" of their personal property: see, for e.g., *Hubbard v. Sisters of St Joseph's* [1943] OWN 703 (CA), cited in *Tremear, supra* at para.13; *Stevenson v. Toronto Bd of Education* (1919) 49 DLR 673 (CA) and the result in *Tremear* itself.

[17] I am satisfied on the evidence that the defendant breached its duty to provide its employees with a way to "better protect" their property. In the case at bar it is also clear in my view that the claimant's solution to this problem–storing her DVDs in the radio room–was not unreasonable. The room was staffed 24/7 by radio room operators who, on her evidence, had accepted the task of controlling access to the DVDs.

[18] Nor was it unreasonable for her to leave the DVDs there when she rotated off the rig in normal course. She had every expectation of returning. She had returned in the past without experiencing any loss of DVDs while she was gone. Had the employer provided a secure facility for the storage of personal property her routine rotations off the rig would not have provided any risk of loss. It was the defendant's breach of its obligation to provide such a facility–not the claimant's work-around–that eventually led to the loss of the DVDs by reason of theft.

[19] I next turn to the question of whether the defendant ought to have warned her that she was going to be terminated so as to give her time to remove her personal belongings.

[20] I have already found on the evidence that the defendant did know on August 20th that the claimant was going to be terminated. I am also satisfied that the defendant cannot have been surprised to learn that its employees left their personal property on board the rig when they rotated off. People do not clean our their offices when they leave work or go on vacation, nor do they clean out their lockers. They expect to return and that being the case leave their personal property at their place of employment. So the defendant must be taken to have known–or ought to have known–that the claimant might leave personal property on board the rig when she left on August 20th.

[21] There was no evidence offered in evidence as to why the defendant did not notify the claimant that she was going to be terminated once she got back onshore. Ms White suggested in her cross-examination of the claimant that it had to do with security concerns–that the defendant never terminated employees on board the rig because they could only be removed via helicopter and that took time to arrange.

[22] There are three difficulties with this submission.

[23] First, there was no evidence to that effect.

[24] Second, even if that was the reason, I see no reason why the defendant could not have timed its notice of termination to shortly before the arrival of a helicopter, and have one of its supervisors who were on board follow the claimant around to ensure that she did not get up to mischief. The claimant's evidence was that there was regular helicopter service to the rig. So it would not have required any special trip just to take a terminated employee off the rig.

[25] Third, and in any event, the issue concerning security does not address the defendant's initial breach–the failure to provide secure storage facilities. If the defendant had provided such facilities then it could follow its practice of withholding notice until the employee was off the rig without prejudice to the security of the employee's personal property. The interests of both would have been met: the employer could maintain its security, and the employee to be terminated could secure his or her property.

[26] I am accordingly satisfied that the defendant is liable to the claimant for the loss of her DVDs. This brings me to the question of quantum.

[27] The claimant claims $$1,015.41 for DVD replacement costs. She produced a list of all of the 55 missing DVDs. The list was sent by email to the defendant on November 10, 2009. I accept that all these DVDs were on the rig and that they went missing.

[28] The claimant calculated her loss by looking up the retail price of new copies of the DVDs in question, and then adding those prices up. With respect, this is not the proper approach.

[29] In my opinion the claimant is only entitled to the fair market value of the DVDs as of the date of loss. On the evidence they were "used" DVDs as of the date of loss. They were not new, unused DVDS in their original cases and wrapped in cellophane. A couple had been purchased in China (where the retail price might not have been the same). In total they would not have been worth the retail prices assigned to them. They would have been worth much less. I also take judicial notice of the fact that the retail prices of DVDs, at least with respect to those for "older" movies, seems to be going down every year. One sees some in "bargain bins" in grocery stores and drug stores for as little as $5.00 or $10.00 new.

[30] Taking these factors into account, and doing the best that I can with respect to damages, I am prepared to allow $7.00 per DVD, for a total of $385.00 plus costs. I will make an order to that effect.

Dated at Halifax, this 12th day of January, 2010

Original: Court File)
Copy: Claimant)
Copy: Defendants)

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W. Augustus Richardson, QC
ADJUDICATOR