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CV 02767

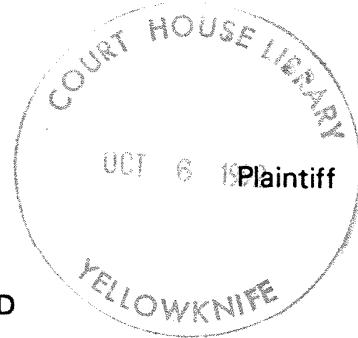
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

COLIN HUDSON

- and -

GIANT YELLOWKNIFE MINES LIMITED



Defendant

Judgment for the plaintiff in an amount of \$14,840.16 and costs in an action for damages for wrongful dismissal.

Heard at Yellowknife on September 11th 1992

Judgment filed: October 1st 1992

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Plaintiff: Michael D. Triggs, Esq.

Counsel for the Defendant: Katherine R. Peterson, Q.C.

Copy of reasons for judgment

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

COLIN HUDSON

Plaintiff

- and -

GIANT YELLOWKNIFE MINES LIMITED

Defendant

REASONS FOR JUDGMENT

This action for damages arising from the plaintiff's dismissal, other than for cause, from his employment by the defendant as its Human Resources Coordinator at Giant Mine, Yellowknife, turns chiefly on the question of reasonable notice.

The plaintiff, aged 36 years at the time of his dismissal, had been employed by the defendant for 10 years in various capacities, commencing as a personnel assistant and rising to his final position some three years before the dismissal took place. He was offered a severance package of compensation equivalent to three months notice, but declined to accept that package as an accord and satisfaction of his employment contract, which was not reduced to writing or subject to any collective agreement.

In his position as Human Resources Coordinator, the plaintiff was responsible for hiring hourly-rated employees and administering certain other personnel programs on behalf of the defendant, including the handling of first and second stage grievances and advising senior management on the resolution of grievances at the third stage as well as the defendant's employee housing program at Giant Mine and in Yellowknife.

As in the case of **William Hall v. Giant Yellowknife Mines Limited**, unreported, September 30th 1992 (N.W.T. S.C. No. CV 02774), the plaintiff was devastated by surprise on being abruptly notified of his dismissal on November 23rd 1990. He had no advance warning or any reason to expect that his employment would be terminated. The letter notifying him of this reads as follows:

November 23, 1990

Mr. Colin Hudson
Box 3024
Yellowknife, N.W.T.
X1A 2M2

Dear Colin:

The recent economic climate surrounding the Pamour Group of Companies has necessitated a review of staffing requirements at both the Timmins and Yellowknife Locations. As a result of this review, the decision has been made to terminate your employment effective November 23, 1990. In recognition of your service to the Company, the following terms have been developed to assist you and are detailed below.

- * Your current base salary will be continued (less normal statutory deductions) until February 28, 1991. During this period, your pension benefits will continue to accrue following which you will receive a letter from the Company describing your pension status and options.
- * The Northern Living Allowance and Heating Allowance will be continued until February 28, 1991 provided you maintain a residence in Yellowknife and do not find alternative employment prior to February 28, 1991.
- * Extended Health Care, Drug, Dental, Life Insurance and Accidental Death and Dismemberment Benefits will all be continued until the completion of the payment period. Sickness and Long Term Disability Benefits are not extended beyond November 23, 1990.
- * Airfare Benefit from Yellowknife to Edmonton will be paid on your November cheque.
- * Any outstanding vacation entitlement will be calculated as of December 31, 1990. The Company agrees to pay this amount, less statutory deductions, in a lump sum on or before January 7, 1991.

- * Regarding relocation of household goods (excluding vehicles), the Company will pay the lesser of:

- (a) \$10,000; or
- (b) Total amount associated with moving your household goods to another location within Canada. This amount would be paid following receipt of invoices.

In order to qualify for this relocation allowance, you must relocate within six months of your date of termination.

Your contributions to the Company have been appreciated, and we wish you the very best of luck with your future endeavours.

Yours truly,
GIANT YELLOWKNIFE MINES LIMITED

(Signed) Michael P. Gross

Michael P. Gross
Vice President, Operations

It is urged on behalf of the plaintiff that he was entitled to between 12 and 15 months notice of the termination of his employment. The defendant, through its counsel, concedes that a reasonable period of notice in all the circumstances would have been between 8 and 10 months. I find that a period of 8 months would have been reasonable, if not generous, in this case.

In reaching this conclusion I have not ignored the manner in which the plaintiff was dismissed, nor his length of service with the defendant, his age or the character of his employment at the time of termination. I have also taken into account the unavailability of similar employment at Yellowknife in the ensuing months, as evidenced by the documentary exhibits to the plaintiff's affidavit on file. The plaintiff's work hours while employed by the defendant were such as to leave him free to carry on a business after hours on his own

account. He continued that business and entered into other business ventures following his dismissal by the defendant.

The financial statement dated July 19th 1991 (almost 8 months following his dismissal) shows a personal investment of \$28,000 in those businesses, with a total net income after expenditures of \$8,325.05. I understand that the period covered by the statement was the first 6 months of 1991. Be that as it may, the plaintiff told the court that he had netted between \$10,000 and \$15,000 annually in one of these businesses before termination of his employment by the defendant. He also withdrew \$16,000 from the other business, by way of deferred remuneration, sometime between March and June 1992. Part of that, at least, appears to be attributable to his efforts during the 8 months immediately following his dismissal. I find that \$6,000 of this is attributable to that period. There is an additional amount of \$6,515 which the plaintiff earned as a sales representative for Pioneer Industrial Supply Ltd. in the first three months of 1991.

Adding the above amounts, we obtain:

income per statement of July 19th 1991	:	\$8,325.05
deferred remuneration taken in 1992	:	6,000.00
earnings as sales representative for Pioneer Industrial Supply Ltd.	:	6,515.00
		<hr/>
Earnings during the 8 months immediately following dismissal	:	\$20,840.05
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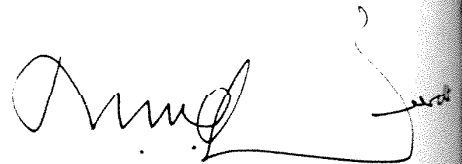
The amount payable to the plaintiff in lieu of notice can be calculated as follows:

1. monthly salary	\$4,028.00
2. monthly fuel allowance	251.34
3. northern living allowance	493.00
4. vacation pay (4% of salary)	161.12
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Monthly total:	\$4,933.46
	<hr/>
5. 8 months at \$4,933.46	\$39,467.68
6. Less salary etc. paid by defendant	13,787.47
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Balance:	\$25,680.21
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7. Less earnings:	10,840.05
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Damages:	<u>\$14,840.16</u>

The earnings referred to in item 7 above are calculated on the basis of the \$20,840.05 shown above, less \$10,000 (which I estimate the plaintiff would have earned from his business while he was employed by the defendant in a comparable 8 month period). The amount of \$13,787.47 mentioned in item 6 above does not include vacation pay to the end of the plaintiff's period of employment. That vacation pay, amounting to \$4,815.00, was paid to the plaintiff in January 1992.

The plaintiff shall therefore have judgment in the amount of \$14,840.16 together with costs in quadruple column 2 of the Schedule to the **Rules of Court**.

In conclusion, both counsel are to be complimented in both this case and the case of **William Hall v. Giant Yellowknife Mines Limited**, above mentioned, for their excellent trial briefs and for coming to an agreement as to such facts as were not in issue, thus reducing the time occupied by the trials in both cases and making my task a much less burdensome one.

A handwritten signature in black ink, appearing to read 'M.M. de Weerd', with a long horizontal flourish extending to the right.

M.M. de Weerd
J.S.C.

Yellowknife, Northwest Territories
October 1st, 1992

Counsel for the Plaintiff: Michael D. Triggs, Esq.

Counsel for the Defendant: Katherine R. Peterson, Q.C.

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