

Terry HALIFAX v. NORTHERN NEWS SERVICES LTD.

2005 NWTTC 05
File: T-3-CV-2004000021

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

Terry HALIFAX

Plaintiff

- and -

NORTHERN NEWS SERVICES LTD.

Defendant

REASONS FOR JUDGMENT
of the
HONOURABLE CHIEF JUDGE Brian A. Bruser

Heard at: Yellowknife, Northwest Territories
March 21, 2005, and May 19 & 20, 2005

Decision: May 30, 2005

For the Plaintiff: Mr. T. Halifax

For the Defendant: Mr. B. Valpy

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**IN THE MATTER OF:**

Terry HALIFAX

Plaintiff

- and -

NORTHERN NEWS SERVICES LTD.

Defendant

[1] The plaintiff, Terry Halifax, is a former employee of the defendant company, Northern News Services Ltd. which has its offices in Yellowknife, Northwest Territories. The defendant owns and operates several newspapers, including The Inuvik Drum, located in Inuvik, Northwest Territories.

[2] Mr. Halifax commenced this action on October 29, 2004. The trial took place in Yellowknife on three days in 2005: March 21, May 19 and May 20.

[3] The plaintiff is claiming \$10,000.00 and costs. The basis for his claim is unlawful dismissal. He had been employed as editor of the Inuvik Drum. His duties included photography, writing, editing, circulation issues, advertising, responding to enquiries, supervising paper carriers, and general office supervision.

[4] The plaintiff's claim focuses on the following grounds:

1. He initiated contact with the defendant to work at the Inuvik Drum. He was hired in February, 2002. It is common ground that a condition of the employment was that he would be provided with staff housing. This was done. The housing was lost, through no fault of either party. This occurred after the plaintiff had occupied his unit. He found new accommodation on his own. The defendant initially objected for reasons connected to the

administration of its financial affairs, but did not pursue its objection. When residing in staff housing, the plaintiff had \$500.00 deducted from his pay each month as rent. He understood that he was also receiving \$750.00 each month as a housing allowance; it was his further belief that when he found his own accommodation, the defendant was to continue the payments of \$750.00 each month. He claims under this ground that the defendant failed to honour these payments after he moved out of staff housing.

Analysis

[5] This first ground fails.

[6] The evidence of the plaintiff establishes that he regarded the monthly payments of \$750.00 as “housing income.” He said: “I was promised something that was never delivered.”

[7] His argument fails because there never was a failure by the defendant to honour its contractual obligations of paying the extra \$750.00 each month during the course of the employment. I prefer the clear and certain evidence of Jody Hodder, the defendant’s payroll and benefits clerk as to how compensation was dealt with.

[8] Mr. Hodder testified that the income paid to the plaintiff under the terms of employment was broken down in the following way:

The annual base salary was \$39,000.00. The defendant added \$750.00 each month (\$9,000.00 annually) to address the high cost of living in Inuvik. Exhibit D-5 establishes that the salary was broken down into two components: the base monthly salary of \$3250.00 plus “\$750.00 per month for housing.” The “stubs” that were attached to the plaintiff’s paycheques show that the combined salary was consistently \$4,000.00 per month. They prove that the last deduction for staff housing was with the June, 2003 pay. There was no breach of contract regarding the \$750.00 per month for housing.

The defendant continued to pay this amount both while the plaintiff was in staff housing, and after he secured his own private accommodation. This ground of the plaintiff's argument is without merit; had he taken more care in his communications with the defendant, he could have clarified this issue without resorting to litigation based upon misapprehension of his own creation.

2. The plaintiff claims that his employment was terminated without cause and without notice, or, if there was notice, that it was inadequate. He argues that he is entitled to "severance pay." This is a common term for termination pay. This ground requires a more lengthy analysis than the first ground.

Analysis

[9] The period of employment was from February, 2002 to the end of October, 2003. The plaintiff had previously worked for the defendant. The employment period giving rise to these proceedings is a distinct period; nevertheless, the previous employment is of relevance because it assists the court in understanding the narrative, and, to some extent, the relationship between the parties. In the past, the relationship between the plaintiff and the defendant was not always a happy one, but despite problems in the relationship, the defendant thought highly enough of Mr. Halifax' talents in the field of newspaper journalism to hire him for the Inuvik bureau.

[10] The defendant alleges that it had cause to dismiss the plaintiff without notice, and without termination pay for the following reasons:

1. The plaintiff communicated poorly, and often abrasively with his immediate superiors and with one of his colleagues;
2. In his dealings with the company, the plaintiff was not always honest, candid, and forthright and was misleading and insensitive to other employees;
3. The plaintiff failed to follow important company policies;

4. The plaintiff had indicated to Bruce Valpy, the defendant's managing editor, that he was looking elsewhere for employment.

[11] The defendant had the usual right of an employer to terminate the employment of Mr. Halifax without cause, but with notice, or, failing adequate notice, by payment of reasonable termination pay. The defendant also would have had a right to terminate the employment with cause, and without notice, and without termination pay, in appropriate circumstances.

[12] The defendant did give notice by an e-mail from Mr. Valpy to Mr. Halifax on September 26, 2003 (Exhibit 3). Exhibit 3 states in part:

Your employment with Northern News Services Limited will end as of October 15, 2003. Please consider this as two weeks notice effective September 26, as called for in territorial labor legislation section 14.03(2). You will be receiving accumulated vacation pay and vacation days. If you have any questions, feel free to call me. I will be sending this by courier to Inuvik as well.

[13] Subsections 14.03(1) and (2) of the *Labour Standards Act*, R.S.N.W.T. 1988, as amended, state:

14.03(1) No employer shall terminate the employment of an employee who has been employed by that employer for a period of 90 days or more, unless the employer

- (a) gives the employee notice of termination;
or
- (b) pays the employee termination pay.

(2) An employer who wishes to terminate the employment of an employee by notice of termination shall

- (a) give the employee written notice of termination of not less than
 - (i) two weeks, if the employee has been employed by the employer for less than three years, and
 - (ii) an additional week for each additional year of employment, to a maximum of eight weeks; and
- (b) indicate in the notice of termination the date
 - (i) on which the notice is given, and
 - (ii) on which the employment is terminated.

[14] The defendant went further than required because it allowed the plaintiff to remain to October 31, 2003. This is 16 days past the effective date of termination mentioned in the notice.

[15] Allowing the plaintiff to remain past October 15 did not nullify the notice because the plaintiff was not left with the impression that the defendant had changed its mind. It was mutually understood that he had to go, but that he could remain to October 31. This later date was of benefit to both parties: the plaintiff continued to receive his salary, and the defendant had the benefit of the continuing valuable work of the plaintiff. The defendant and the public held the plaintiff's skills, and his work, as a journalist in high regard. Nevertheless, the time for a parting of the ways had arrived.

[16] Because notice was given, the issue of termination with cause need not be explored in detail. I do, however, mention that none of the evidence by itself, or in totality, satisfies me that the defendant had any cause to terminate the plaintiff, other than the usual right of an employer to terminate an employee for company reasons and in accordance with the common law and territorial legislation.

[17] The defendant was required to give reasonable notice to the plaintiff. It provided notice, and in an appropriate manner, thereby complying with that part of its legal obligations.

[18] Was the notice sufficient in the circumstances? It appears to conform to the *Labour Standards Act*. Each case turns on its own facts, but always under the guiding principles of the applicable law.

[19] The plaintiff had been employed for approximately 20 months. His work was valued by his employer. The company benefited from his good work. There were rough spots in the relationship between the plaintiff and his superiors, and between the plaintiff and one co-worker.

[20] It is my view that the defendant was not obligated to provide any more notice than it gave. The notice provided was within the acceptable range. For this reason, the defendant's notice obligation has been discharged.

[21] For the reasons given, I dismiss the claim.

[22] In summary, the plaintiff was under a misapprehension as to the nature of the benefits over and above his base salary, and the notice of termination was proper as to form and duration. Because the notice was reasonable, there was no requirement for the defendant to offer any termination pay. I add that termination pay was not part of the verbal contract of employment, and the defendant at no time offered it after the employment began.

[23] Costs are awarded to the defendant.

[24] I take into consideration that the claim of the plaintiff was not well-founded, and the fact that the trial took place over a three day period in two stages. The plaintiff was put to considerable expense in having to travel to Yellowknife for trial purposes on two occasions, and he was ultimately unsuccessful. Lost wages for him and for the defendant's witnesses are not recoverable in proceedings of this sort. I have also factored in that on the first day of the trial, the cross-examination of the plaintiff might have been completed, but for the medical situation in Mr. Valpy's family. Had the cross-examination been concluded on the first day set for trial, Mr. Halifax could have remained in Inuvik, where he resides, and someone in Yellowknife might have represented his interests for the remainder of the trial. What might have occurred had the cross-examination concluded on the first trial date is nevertheless very uncertain; possibly nobody would have been available or the plaintiff may have incurred expenses for further representation. Possibly a friend could have filled in for him at no cost. I have balanced all these factors in arriving at the amount of the costs to be paid by the plaintiff to the defendant. I have also considered that the *Territorial Court Civil Claims Rules*, as amended this year, require that the rules be "... construed liberally, so as to secure an

inexpensive, expeditious and just determination of every proceeding.” This passage is significant because of the word “inexpensive.”

[25] I award costs in the amount \$500.00. If the defendant has reasonable disbursements in addition to the award of costs, I shall consider them; they are to be submitted to the clerk of the court within 14 days of the date of filing of this judgment. The clerk is to provide copies to the plaintiff forthwith upon receipt from the defendant.

Brian A. Bruser
Chief Judge, T.C.

Dated this 30th day of May, 2005
in Yellowknife in the Northwest Territories.

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