

“Bridging” the Gap between Termination and Retirement

How should an employer calculate the appropriate reasonable notice period of a long-service employee who is terminated shortly before they would have been entitled to claim an unreduced pension? The Ontario Court of Appeal recently answered this question and offered guidance regarding whether reasonable notice can be used to “bridge” an employee to retirement.

In *Arnone v. Best Theratronics Ltd.*, Mr. Arnone was terminated from his employment due to restructuring after more than thirty years of service with the Company. The Company gave him 14.4 weeks’ reasonable notice in accordance with his minimum entitlements under the *Canada Labour Code*. Mr. Arnone was 16.8 months away from qualifying for an unreduced pension.

Mr. Arnone commenced an action for wrongful dismissal and filed a motion for summary judgment. The motion was granted and Mr. Arnone was awarded 16.8 months of reasonable notice which coincided with the period of time required to bridge his remuneration until the availability of an unreduced pension. The trial judge commented that in the absence of the pension, Mr. Arnone would have been entitled to a reasonable notice period of 22 months.

The Court of Appeal concluded that although the trial judge was correct in granting the motion for summary judgment on the basis that no genuine issue for trial existed, it erred with respect to the “bridging” issue. In particular, when determining the appropriate reasonable notice period to which Mr. Arnone was entitled, the Bardal factors (age, length of service, likelihood of re-employment, etc.) should have been applied. Simply “bridging” Mr. Arnone until retirement was not the appropriate measure. Accordingly, the Court of Appeal substituted a reasonable notice period of 22 months for the trial judge’s initial award of 16.8 months.

What can employers learn from this decision? Firstly, the Court of Appeal has made it very clear that “bridging” an employee to retirement is not the appropriate tool to be used when calculating reasonable notice. Instead, the Bardal factors must be applied. Second, if faced with a similar situation, it is always worthwhile to calculate the pension risk associated with terminating employment. Continuing pension contributions during the notice period to avoid a court judgment requiring the Company to compensate the former employee for a pension shortfall may be cheaper in the long run!

If your organization anticipates terminating a long-service employee prior to reaching pension entitlement age, please contact e2r® to discuss the possible implications.