

Six Months' Service = Six Months' Severance

A very recent decision from the British Columbia Superior Court reaffirms that short service employees will be awarded disproportionate reasonable notice awards if the circumstances fit.

Mr. Greenless worked for Starline Windows Ltd. for 6 months before being terminated and was awarded 6 months reasonable notice. Here is what led to Mr. Greenless being awarded one month of notice for each month of service.

Prior to being hired by Starline, Mr. Greenless worked for Trevor Jarvis Contracting Ltd. as a salesperson. His total compensation was approximately \$100,000 and he had been employed for 18 months when he received a call from the Sales Manager at Starline inviting him in for a job interview. Mr. Greenless was not actively looking for a new job when he received this call.

Over the course of two meetings, the Sales Manager at Starline spoke to Mr. Greenless about the business and its prospects, his prospects if he took the job, expectations around compensation, which projects they would assign him to and in particular "*his vision for growth for the company and opportunities for the future*". Mr. Greenless left the meetings with the expectation that he would be earning \$100,000 in approximately 6-9 months' time working on new construction projects. He also left with the perception that his commission rate would be reviewed after 3 months which would result in increased earning potential.

Mr. Greenless was offered the job and given an offer of employment. Given the representations made regarding earnings and growth potential, Mr. Greenless was persuaded to take the job. He signed the offer and resigned from his current job. It is important to note that the offer did not contain a termination provision.

Mr. Greenless' understanding of his new job did not pan out as expected once he was on board; he was ultimately terminated after 6 months and provided one week of notice. Starline also refused to provide him with a letter of reference. Mr. Greenless sued for wrongful dismissal citing inducement and bad faith on the part of Starline as the reasons for which he deserved a higher than usual reasonable notice award. It should be noted that it took Mr. Greenless 7 months to find alternate employment.



The judge concluded that the starting point for the notice period should be 2-3 months based upon a prior decision with a similar fact scenario and indicated that this should be increased given the limited availability of alternate employment and some degree of inducement by Starline. The judge found that Mr. Greenless was entitled to 6 months' notice of termination.

This case is a great reminder of how careful employers must be during the recruitment process when trying to persuade an employee to resign and join their team. It is clear from this case that persuading an employee with any kind of "bait" (i.e. preferable assignments/projects, compensation expectations, etc.) can lead to higher than usual payouts if the employment relationship does not work out.

Furthermore, and which you have heard us say time and time again, an enforceable termination provision is a critical part of the employment agreement. Had there been one in this case, it is very likely Mr. Greenless would have only been entitled to one week of notice.

If you have any questions regarding recruitment processes, employment agreements or terminations, please contact e2r® to speak with an Advisor.

