

## ***Beware of the Dreaded Oral Agreement!***

A recent Ontario decision serves as a good reminder to employers to be weary of entering into oral employment agreements.

In *Mineault v. E.S. Fox Limited*, the employee was hired in September 2014 from a union hiring hall as a General Foreman for a specific project. Of note, the position was outside of the scope of the collective agreement. The employee was advised when he was hired that the project was expected to last until late spring or early summer 2015. The employee was terminated in December 2014. The employee was without employment until March 2015.

The employee commenced a wrongful dismissal action against the employer and sought damages equivalent to his salary and benefits from the time of his termination until the time that he commenced his new employment.

Of note, both parties agreed that the collective agreement should be relied upon for determining financial compensation. However, the employer also relied on the collective agreement for other provisions, such as the termination provision which provided that the employer could terminate without notice or compensation, other than providing four hours' notice or wages in lieu of notice. The employer argued that it was industry practice to use the collective agreement to govern all terms and conditions of work.

In making its decision, the court made the following important findings:

1. The employer entered into an oral, fixed-term agreement for the duration of the project.
2. The employer had the onus of establishing that the industry practice of applying the terms of the collective agreement to all employment relationships. The court found that the employer did not meet this requirement and, therefore, the employee was entitled to common law reasonable notice.
3. An employee subject to a fixed-term agreement without an early termination provision is entitled to damages for the remaining balance of the fixed-term agreement.

Accordingly, the employee in this case would have been entitled to damages for the entire fixed-term but was only seeking damages for his period of unemployment. The court awarded \$50,150.00 in damages as requested by the employee.



Again, we stress the importance of employment agreements for all employees, regardless of level or length of time (even a short-term project)! A properly drafted employment agreement in this case would have significantly limited the employer's liabilities upon termination of employment.

If you feel your employment agreements require an update, please reach out to e2r® to speak with an advisor.

