Employers Beware: 24 Month “Cap” for Reasonable Notice may Not be a Cap at All

When an employee successfully sues his or her ex-employer for wrongful dismissal, the Court is then tasked with assessing the amount of notice which should have been provided to the employee. Over the years, Courts have tended to cap reasonable notice damages at 24 months, even for the longest-serving employees. A recent decision of the Ontario Superior Court of Justice represents a break from this norm.

In Hussain v. Suzuki Canada Ltd., the plaintiff was a 65-year-old employee with 36 years of service with Suzuki when he was terminated without cause as part of a corporate restructuring. The plaintiff argued that given his extraordinarily long service, level of importance, and his expectation of retiring with Suzuki, he was entitled to 30 months' notice.

While the Court acknowledged that 24 months notice tends to represent the higher end of damages for wrongful dismissal, the Court found that given the plaintiff's age, length of service, and poor job prospects, there were "exceptional circumstances" warranting a notice period of 26 months.

Although at present this decision is somewhat of an outlier, employers should be aware that damages in lieu of reasonable notice for long-service employees - particularly those in supervisory roles whose age and specialization may make alternative employment harder to find - could exceed the traditional 24-month "ceiling". Similar results are even more likely where a Court finds that the employee was terminated in bad faith.

If you have any questions about damages for wrongful dismissal, or any other questions relating to workplace law, please do not hesitate to contact a Mathews Dinsdale lawyer.

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