Court of Queen's Bench of Alberta

Citation: Baker v Weyerhaeuser Company Limited, 2020 ABQB 808

Date: 20201223
Docket: 1603 07188
Registry: Edmonton

Between:

Tyler Baker

Plaintiff

- and -

Weyerhaeuser Company Limited

Defendant

Reasons for Decision
of the
Honourable Madam Justice D.A. Sulyma

I. Introduction

[1] The Plaintiff ("Baker") was first employed by the Defendant ("Weyerhaeuser") in Kenora, Ontario. Employment commenced December 4, 2001. Baker applied for a job in Drayton Valley and was offered employment there April 26, 2011. He was dismissed by letter dated December 21, 2015 and termination was effective that day. Baker alleges the termination was without cause, alternatively based on an incident clearly manufactured as a reason for termination or blown out of proportion and in bad faith. Weyerhaeuser alleges the termination was made with cause on the basis of safety violations and misconduct that caused a breakdown in the employer/employee relationship.

[2] At the time of dismissal, Baker was a supervisor of the B-shift in the Drayton Valley Sawmill. The B-shift ran 10 ½ hours and his position was supervisor of safety quality production repairs and included a duty to communicate regarding the shift and any maintenance needs. Over the years he reported to different sawmill managers without incident or poor performance

reviews and no warnings from management. That is until the last quarter of 2014 when Sean Cheeseman ("Cheeseman") was transferred from the Grande Prairie plant to Drayton Valley and became Baker's immediate superior with the title of Mill Manager.

[3] The actions that led to dismissal revolved around matters that occurred in the fall of 2015. At that time, his shift was not achieving the same output of "board feet" as was the other shift, A-shift. However, he felt that his greater efforts were beginning to show in B-shift's productions by Fall 2015, despite having lost an experienced millwright to another team and losing another member of his team to the A-team. Despite his own views that his performance was improving, and despite the personnel inadequacies of his team, he received a hand-delivered letter dated November 16, 2015 which was entitled "Written Warning" which cited a warning as a result of continued poor performance as a supervisor and overall shift results in 2015. The letter also stated "Many times throughout 2015 you have had several performance-based discussions with myself [Sean Cheeseman] and Matt Snow with respect to poor shift results and related performance issues." This was a letter signed by Cheeseman as Unit Manager and Matt Snow as Department Manager.

[4] The letter stated that most recently on November 9, 2015, he has been told he was to be moved to another shift to give him a fresh start. It stated "It was clear you were not happy about that decision and lacked taking responsibility for the associated feedback."

[5] The letter required that Baker develop a personal improvement plan that would include "the direct feedback given as referred to in this letter".

[6] Matters between the parties cascaded over the ensuing timeframe. The matters that were in discussion included the changing of shift supervisors, the attitude of Baker to Cheeseman and vice versa, allegations of not properly attending to supervision duties and lastly, a safety incident and the failure to report such. Although these issues were covered as being discreet allegations of reasons for termination, they were part of the general basis for termination and that is poor performance. Indeed, the evidence that was led through Cheeseman showed that despite earlier positive performance reviews that Cheeseman was unhappy with Baker's performance and attitude and by the Fall of 2015, I find he looked for and cited reasons for termination rather than looking at the whole of Baker's record and relied only on his personal bias.

II. Evidence and Analysis

[7] The main evidence in this case is that of the Plaintiff, Tyler Baker, and Sean Cheeseman, his superior and the main decision maker in the decision to terminate Baker. Firstly, it is alleged that Baker failed to properly deal with a small fire and failed to report it and/or falsified records. Of the group that dealt with the fire, one individual was not called as a witness. As he would have been part of the termination for cause centered on that incident, I draw an adverse inference against Weyerhaeuser for this failure in evidence.

[8] It should be noted that Baker's personnel file on issues of safety was noted "no issues" until the middle of November. In particular, November 10, 2015, was the first time that Cheeseman actually discussed job performance with Baker. Indeed, the memo from Cheeseman to the HR Manager, Tracy Danis, entitled "Rumours on the floor about Tyler walking off the job today" indicates that she was surprised by the Memo as she said she did not think Tyler was doing that bad of a job. She noted that his numbers had improved. That is when the record and

the evidence indicate that Cheeseman felt termination was in order due to Baker's behaviour over the shift change. This was the first time that Cheeseman discussed job performance, and in that conversation, Baker was told that the leadership did not like Baker. I accept his evidence that that is what Cheeseman said. That was a highly inappropriate remark in a discussion of job performance. It should not be relevant whether Baker was likable or not liked by anybody. Only his performance and the change in shifts should have been relevant in this conversation.

[9] Baker called Cheeseman "classless" which I view as Cheeseman's main reason to terminate Baker. This is the first time that Cheeseman referred to Baker as being disrespectful as one of the grounds for termination. Having considered all of the evidence, I prefer the evidence of Baker to that of Cheeseman on the details of that conversation and in details of how this matter was handled.

[10] The Defendant in making its case led evidence including expert evidence regarding the importance of safety measures around the issue of fire. I accept that this would be a matter of grave, immediate and first concern in the context of an operating sawmill. In fact, that appears to me to be obvious.

[11] The incident referred to by the management and the witnesses called was from the beginning characterized as a minor fire in the basement of the small canter lines. Welding had been performed at that site and a "falsify Hot Work Permit" was filled in by Baker.

[12] This was the incident that Cheeseman states led him to make up his mind to terminate Baker. A video was produced which shows how the crew dealt with this incident. I can only say that by the manner and actions of the employees shown in that video that there did not appear to be a grave concern regarding this minor fire. Clearly, smoke and flames were observed and the employees, including Baker, went about calmly to contain the danger.

[13] There were safety issues raised by Weyerhaeuser about this incident. Particularly that the area was not properly swept by the time the welding started and that Baker had improperly filled out or "forged" a safety document. This revolved around a permit to do "hot work".

[14] Cheeseman was told about this incident by another employee the next day. He then found another ground of poor performance in that Baker did not report the fire at the time it occurred or at the end of that shift.

[15] I accept that there were grounds for discipline surrounding the incident and Baker. However, I am of the view having heard Cheeseman's evidence that his real reason for recommending termination after this incident was his view that Baker had been and continued to be disrespectful to him. This was a clear, and in my view, real basis for termination when one follows the relevant emails.

[16] Indeed, I conclude that the improperly focused termination was about Cheeseman being angry at Baker for not treating him as "the boss". Those are my words.

[17] I not only observed Cheeseman on the stand. His emails are just short of being hysterical and so obviously an attempt to appeal to "higher management" (my words) about what ought to have been seen as very manageable employment issues within his own job description as the immediate supervisor of Baker. His immediate recourse to higher management does not reflect well on his own management ability. Ms. Dennis' investigation of the fire incident was not by any means a thorough investigation. There was no comprehensive report that came from this investigation. Any purported discussion about the decision involved Cheeseman and Mr. Snow

making bare statements about performance in their emails to higher management and HR. There were no emails in response that asked for more details, asked for the personnel file to be reviewed, asked how any other employees involved in the minor fire had been disciplined.

[18] The recipients of Cheeseman's emails on this matter did nothing to investigate Baker and his records. They certainly did nothing to investigate the characterization of the events or bases for termination cited by Cheeseman. They were bound by law to determine whether such things as delay in reporting an incident or whether disrespect or any allegation gave rise to a violation of trust rendering a continuing relationship impossible. This they were bound to do.

[19] Indeed, there was in this whole case, a very short period of time from trouble between Cheeseman and Baker being brought up November 10, 2015 to termination December 16, 2015. None of the witnesses nor Cheeseman compared the decision to terminate with the whole of Baker's record of employment of 14 years.

[20] Importantly, cross-examination of Cheeseman indicated that Stewart MacIntyre, who was involved in the incident, was suspended as a result for 3 ½ days. This despite the fact that he had a previous record of employment concerns. None of Weyerhaeuser's witnesses could account for the extreme difference in the discipline imposed on Baker as compared to other employees involved in the same incident.

[21] The company's procedure guidelines regarding discipline and termination were entered in evidence. Few of the steps taken here conformed to that policy directive.

[22] Cheeseman also criticized Baker for what he perceived as poor leadership. That was cited as another cause for termination, in particular, that Baker did not follow through on an employment plan as he had been directed to do in November. I accept Baker's evidence. This basis of termination, in my view, was thrown into the mix as it was the least of matters discussed between the parties and, in my view, was just thrown in by Cheeseman after the real decision was made. Cheeseman in citing this as a basis for termination did not account for this having been an ongoing direction to Baker to do when all other events took over. Certainly, no others in management were pursuing this issue at the time.

[23] It may well be that these incidents by one to another or cumulatively would constitute just cause for termination. But this would, in my view, involve a better record that would describe them as such and a reconciliation of the suddenness of these events as compared with the whole of Baker's employment history, which showed an employee whose performance was not questionable at all.

[24] In so finding, I am aware of the flurry of emails between Cheeseman and other persons involved in personnel matters. I have already referred to what I find were manufactured reasons for termination decided on by Cheeseman and not properly canvased further by the persons who received the emails at higher management. There were no written warnings until the warning that was issued November 10, 2015 and I find on all of the evidence the corporation acted improperly on being pressured by Cheeseman and Cheeseman in this time frame was pursuing an improper termination. Certainly, several bases cited for termination were blown up.

[25] Authorities in this area deal with the rationale governing the issue of dismissal in employment law. This is summarized in ***Carroll v Purcee Industrial Controls Ltd***, 2017 ABQB 211 at paras 49 to 53.

[49] Mr. Carroll's statement on June 4, 2013 indicating his intention to repatriate his family to Canada in July 2013 cannot be read in isolation, but rather must be interpreted contextually. The discussion in May was initiated by Mr. Carroll to negotiate the terms of his departure. Had he intended to clearly resign, there would be no need to follow up on June 4. Mr. Peterson's response that he would be "fully ready in a couple of days" is consistent with someone who is contemplating the proposal outlined by Mr. Carroll in his May 31 email. Objectively, no reasonable person in of Mr. Peterson's position would have considered Mr. Carroll to have resigned. In my view, Mr. Carroll's statement that he intended to return to Canada with his family was an emotional reaction to once again being stalled by Mr. Peterson.

[50] Importantly, each time Mr. Carroll offered to resign his employment, the offer was coupled with an invitation to negotiate the terms of his departure, including a severance package. There is no evidence before me to demonstrate that Mr. Carroll ever indicated an intention to resign on a specific date without reference to a severance package. This is important in two respects. First, it is difficult in such a circumstance to argue that the resignation is clear and unequivocal when it is tied to a proposal for terms of severance. But secondly, it calls into question an employer's ability to accept that resignation, if in fact it is valid, if the employer does not also accept the terms proposed by the employee. Here, Mr. Carroll's resignation was not accepted as offered by Mr. Carroll in his May 31, 2013 email. It was purportedly accepted on completely different terms: *Oxman v Dustbaine Enterprises Ltd* (1988), 32 OAC 154, 23 CCEL 157 (Ont CA) at paras 6-7.

[51] At any time following receipt of Mr. Carroll's offer to negotiate the terms of his departure, Mr. Peterson could have confirmed whether Mr. Carroll truly intended to resign, or otherwise negotiate the terms of his departure. Instead, Mr. Peterson's June 7, 2013 letter purports to accept Mr. Carroll's resignation without further discussion and on completely different terms than those offered by Mr. Carroll.

[52] Considering all of the circumstances before me, I conclude that Mr. Carroll has satisfied the onus of proving that he was dismissed. His resignation was not clear and unequivocal, but rather an invitation to discuss the terms of his exit from the Defendant companies and in any event, the employer purported to accept his resignation on completely different terms.

. . .

[53] In the alternative, the Defendants argue that Mr. Carroll repudiated the employment contract by refusing to continue working in Madagascar – an essential part of his job duties. In such a situation, the employer is entitled to accept the repudiation and treat the employment relationship as terminated because there is no longer an agreement between the parties as to the fundamental terms of the contract: *Roden v Toronto Humane Society* (2005), 2005 CanLII 33578 (ON CA), 259 DLR (4th) 89, 202 OAC 351 (CA) [*Roden*].

[26] The steps of assessment referred to in the law, are the steps that were not taken by the Defendant in this case. There was no substantive consideration of Cheeseman's bare conclusion and recommendation reached that dismissal was warranted in this case.

[27] As quoted above, the Supreme Court in ***McKinley v BC Tel***, 2001 SCC 38, addressed the law that applies to the allegation of dishonesty at paras 48 and 49.

> 48 In light of the foregoing analysis, I am of the view that whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically, the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.
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> 49 In accordance with this test, a trial judge must instruct the jury to determine: (1) whether the evidence established the employee's deceitful conduct on a balance of probabilities; and (2) if so, whether the nature and degree of the dishonesty warranted dismissal. In my view, the second branch of this test does not blend questions of fact and law. Rather, assessing the seriousness of the misconduct requires the facts established at trial to be carefully considered and balanced. As such, it is a factual inquiry for the jury to undertake.

[28] In this case, the allegation relates to dishonesty regarding matters stated in the hot work permit. The defendant in this case did not question the degree of dishonesty. In this case, clearly the plaintiff was trying to clean up the documentation to not reflect badly on his failure to follow the hot work process. This basis for termination should have been questioned in terms of its magnitude around the whole of the incident and the management's failure to actually delve into these issues.

[29] The Defendant should also have followed the evidence regarding the other employee who was a labour union executive or department head taking it upon himself to report this to Cheeseman and Cheeseman making his abrupt decision.

[30] As stated in ***Tymko v 4-D Warner Enterprises Ltd***, 2018 BCSC 372, there are a number of factors to consider in assessing the seriousness of an employee's misconduct including as it relates to safety issues. But as stated "at the end of the day, the only question is whether the employee engaged in misconduct which caused a breakdown in the employment relationship." It might well be that a full consideration of Baker's employment history and the magnitude of the failures cited as reasons for termination does show ultimately a breakdown in the employment relationship. However, there was no detailed consideration of any such factors. The higher management merely accepted Cheeseman's conclusory reasons without proper investigation.

[31] The Ontario Court of Appeal in ***Plester v PolyOne Canada Inc,*** 2013 ONCA 47 dealt with a similar fact situation where the employer focussed on one incident in the case of a 17-year employee with an almost unblemished record. At paras 8 to 12 they noted:

> [8] Considering the importance of workplace safety, the trial judge characterized the respondent's conduct as a serious mistake, compounded by his delay in

> reporting. She then considered how such breaches were viewed by PolyOne. She concluded that an incident involving another employee, Mr. Glassford, provided a good comparison. Mr. Glassford was an Operations Manager, and breached the same Cardinal Rule as the respondent. As Mr. Glassford was not terminated as a consequence of his breach of the Cardinal Rule, PolyOne's dismissal of the respondent was not a proportionate response.
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> [9] . . . Nevertheless, we agree that management's failure to terminate Mr. Glassford at that time cannot be used as a comparator, and the trial judge erred in treating it as such.
>
> [10] We appreciate that an employer's ability to respond strongly and swiftly to violations of rules designed to ensure workplace safety reinforces the importance of such rules, and promotes a culture of workplace safety. We also appreciate that a line-supervisor, such as the respondent, is generally subject to a higher standard than a line worker. And, given PolyOne's fully warranted concerns about workplace safety, we agree with the trial judge that the respondent made a serious mistake. However, the respondent's mistake did not appear to have put any other persons at risk, and he was a long-standing, good, hard-working employee with only minor incidents of past discipline as a line-worker, pre-dating his promotion to line-supervisor some six years before.
>
> [11] Moreover, the trial judge accepted that the respondent planned to report his violation; what occurred was an intended short delay in reporting, as opposed to a suppression of a violation. We are not persuaded by PolyOne's argument that that the respondent's conduct was such a violation of trust that a continuing relationship was impossible.
>
> [12] In the result, we agree with the trial judge that, in these circumstances, dismissal without notice or pay in lieu of notice was not warranted.

[32] Again, the law requires a detailed consideration of all factors. That did not occur at all in this case.

[33] I am satisfied by the evidence that the Defendant did not follow its own or any other proper policy that would justify the sudden termination of this 14-year employee on December 16, 2015. I conclude that the Plaintiff has proved that the Defendant dismissed him without cause. I conclude that the Plaintiff has proved that the actions of the Defendant in terminating Baker were made in bad faith and blown far out of proportion in considering Baker's long-time employment.

[34] Indeed, during closing argument, counsel for Weyerhaeuser indicated that the Defendant was very concerned about this litigation as it had not been involved in wrongful dismissal litigation in their history. It leads me to wonder if the decision makers reviewed their file at all. Cheeseman handled this on his own impetus choosing to shoot off emails to higher management. The communications had all of the indications that this was a private vendetta and including Ms. Danis' facile investigation, none of the management involved in the communications appeared to question whether Cheeseman had followed policy and procedures in reaching his decision and none of them weighed factors ever referred to in the case above, or indeed questioned that decision had been properly weighed against other factors such as his unblemished employment

record, treatment of other employees involved in the minor fire and the immediacy of Baker being asked to complete an employment plan. Management should not accept bare conclusions of one employee in a chain of management when considering sanctions against another employee cited for poor performance, unsafe performance or anything else such as the alleged "fraud." This would include questioning the difference in discipline between Baker and Stewart MacIntyre. It may well be that such an investigation would reveal reasons for the differences in discipline and reasons for the heightened and immediate concerns in November and December of 2015. However, none of the responsible management individuals questioned or directed an investigation of these matters.

[35] Indeed, Cheeseman himself stated he was trying to save the company from paying Baker on termination. I find again that e-mail indicated that management decided to terminate first and walked back to plump up cause.

III. Conclusion

[36] The Plaintiff has proved his case and damages. He did not obtain new employment until the late Fall of 2016. I consider the appropriate term of notice would have been one year and his damages will be calculated on that basis.

[37] I have considered the claim for punitive damages. I do not find that the conduct of the Defendant here found basis for such. The Plaintiff has not made out that claim.

[38] Costs can be spoken to.

Heard on the 3rd to the 7th days of February, 2020.
Dated at the City of Edmonton, Alberta this 23rd day of December, 2020.

D.A. Sulyma
J.C.Q.B.A.

Appearances:

Carter D Greschner and Robyn Graham
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