

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kurik v. CAS Ventures Ltd.*,
2024 BCSC 1862

Date: 20241008
Docket: S18609
Registry: Smithers

Between:

Duane George Kurik

Plaintiff

And

CAS Ventures Ltd.

Defendant

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Plaintiff:

A.D. Mardiros

Appearing as Representative for the
Defendant:

F. Dennis

Place and Dates of Trial:

Smithers, B.C.
August 27-30, 2024

Place and Date of Judgment:

Smithers, B.C.
October 8, 2024

Table of Contents

INTRODUCTION 3

PARTIES 3

FACTS 4

 The Project 4

 CAS Hires Mr. Kurik 4

 Removal From the Worksite 5

 Mr. Young’s Evidence 7

 Ms. Joseph’s Evidence 9

 Employment Standards Branch Complaint 9

 CAS’s Application to Dismiss 10

MR. KURIK’S POSITION 11

ANALYSIS 11

CONCLUSION 15

Introduction

[1] In this trial, Mr. Kurik seeks damages from CAS Ventures Ltd. for lack of reasonable notice when constructively dismissed from his job on the Coastal GasLink Pipeline project outside Houston, BC.

[2] Mr. Kurik worked for CAS as a tree faller and supervisor for four months in 2019, until he was excluded from the worksite at the insistence of the contractor CAS was working for. He seeks damages of six months' salary, plus aggravated damages for CAS's alleged bad faith in dealing with his termination.

[3] In response, CAS's owner, Mr. Duane "Butch" Dennis, says he tried in vain to achieve Mr. Kurik's reinstatement but Mr. Kurik's personality conflict with the contractor made it impossible. Mr. Dennis submits that, far from bad faith or unfair dealing, he went so far in trying to assist Mr. Kurik that it harmed CAS's working relationship with its contractor.

[4] For the reasons that follow, Mr. Kurik is awarded damages of \$24,000 representing reasonable notice of two months. I find no evidence of high-handed or bad faith conduct by CAS towards Mr. Kurik and so his claim for aggravated damages is dismissed.

Parties

[5] Mr. Kurik is in his early 60s and resides in Terrace, BC. He is a member of the Kwaw-kwaw-a-pilt First Nation in Chilliwack. He has worked for many years in the logging, mining, and oil and gas industries, often running heavy equipment. He is currently employed as a power engineer on the LNG Canada pipeline in Kitimat.

[6] CAS Ventures Ltd. is a British Columbia company headquartered in Smithers. It is owned and operated by Mr. Dennis, a member of the Wet'suwet'en First Nation.

Facts

The Project

[7] The Coastal GasLink pipeline is a natural gas pipeline in northern British Columbia, running from Dawson Creek to Kitimat.

[8] Its complex construction involved numerous contractors, including MacroSpiecapag Joint Venture (“MSJV”). One of MSJV’s sub-contractors was Kyah Resources Ltd., an indigenous-owned contractor, which worked on the pipeline’s right-of-way outside Houston. In 2019, Kyah hired CAS to supply a crew for clearing work along the right-of-way around 100 km southwest of Houston.

CAS Hires Mr. Kurik

[9] Messrs. Dennis and Kurik were old friends who had worked together frequently over the years.

[10] In January 2019, Mr. Dennis asked Mr. Kurik to work as a faller on the Kyah job. Mr. Kurik agreed and came from Terrace to take the job. CAS agreed to pay Mr. Kurik \$650/day, which included compensation for use of his truck and a living-out fee.

[11] Starting in mid-January, Mr. Kurik did a month’s training and then began falling work on February 14, 2019. By mid-March, he had decided to quit the job and return to Terrace. He disliked working with some of the Kyah employees and felt he was getting too old for falling work especially in the winter.

[12] Mr. Dennis suggested that, instead of leaving, he replace CAS’s recently departed site supervisor. The pay was slightly lower but it was physically easier and steadier hours. Though initially reluctant due to his concerns about Kyah, Mr. Kurik agreed because of his friendship with Mr. Dennis and desire not to quit a job. He began working as CAS’s site supervisor on March 18, 2019.

[13] As supervisor, Mr. Kuik oversaw around 10 CAS labourers supporting Kyah’s heavy machine operators along the right-of-way. Each morning, Kyah provided

CAS's instructions in a safety meeting, and then it was Mr. Kurik's responsibility to supervise CAS's performance of the work.

Removal From the Worksite

[14] On April 24, 2019, a Kyah supervisor emailed Messrs. Dennis and Kurik about corrections required to Mr. Kurik's field tickets and Mr. Kurik's conduct in the Kyah office. The email asked Mr. Kurik to "not let your frustrations build up and get upset for the wrong reasons".

[15] On May 13, Mr. Dennis emailed Kyah's operations manager, Mr. Mike Bayley, about Mr. Kurik's complaints regarding certain Kyah employees. The complaints included allowing CAS workers to operate Kyah machinery for which they were not certified, and treating one of CAS's other crew members as if he were the supervisor rather than Mr. Kurik. Mr. Dennis's evidence at trial was that he thought Mr. Kurik was justified in raising these issues on CAS's behalf.

[16] On May 14, Mr. Bayley called Mr. Dennis to say that Kyah wanted Mr. Kurik removed and excluded from the worksite effective immediately. Mr. Dennis's evidence was that Mr. Bayley provided only a brief explanation for this decision.

[17] Later the same day, Mr. Bayley emailed Mr. Dennis to say he understood his concerns, would be meeting with his group at Kyah, and then they could discuss matters further. Mr. Dennis responded by thanking Mr. Bayley for their respectful conversation about these issues.

[18] On May 16, Mr. Dennis emailed senior personnel at MSJV about the difficulties between Kyah and Mr. Kurik. He said he had seen no documentation of Kyah's reasons, the situation seemed "he said/she said", and perhaps there should be an investigation. Mr. Dennis testified that, at the time, he felt there had been some good and some bad in Mr. Kurik's performance but he was sticking up for him.

[19] Mr. Dennis asked Mr. Kurik to be patient while he tried to resolve the situation. Mr. Kurik was left in limbo. He testified that he did not expect to be paid

while not working. He was also, in his own words, obsessed with what he perceived to be the unfairness of what had happened and not in an emotional state to apply for other work. He was highly frustrated by his exclusion from the workplace, which he felt was unjustified and never formally explained or documented. He felt harassed by Kyah employees who, in his view, were trying to undermine his role as CAS's supervisor because they wanted to control the CAS workers themselves. He believed they insisted on his removal just because he was trying to do his job.

[20] From mid-May to early June, Mr. Dennis emailed Mr. Bayley and Jim Victor, Chief of the Wit Set First Nation, taking Mr. Kurik's side and questioning if there was any "legitimate reason" for his exclusion.

[21] On May 27, Ms. Goldhawk of MSJV emailed Mr. Dennis to say she had information she would like to discuss. Mr. Dennis's evidence was that, when they spoke, she provided little new information and said she would get back to him with more information. But in the end she never told him anything further.

[22] On June 2, Mr. Kurik emailed one of Kyah's managers to say that Mr. Dennis asked him to be patient "but nothing is happening and Kyah thinks it's all over but I will not be screwed over. I called [Mr. Bayley] and he says that is what the client wants and that's total BS."

[23] In August, Mr. Kurik made a WorkSafeBC complaint against Kyah, alleging bullying and harassment. On September 7, Mr. Troy Young, Kyah's general manager, emailed Mr. Dennis because Mr. Kurik had initiated an Employment Standards claim against Kyah, claiming constructive dismissal. The email stated:

Butch, you had discussions with Garry H. and Mike B. about Duane [Kurik], and though you may not recall due to illness or too soft of wording, the discussions took place. As I told you on numerous occasions, Duane's lack of performance on safety and managing his crew led our client to request his removal. Duane had been talked to on site with both Garry H. and Mike B. regarding our client's concerns with his performance, but we do not know if he communicated our concerns to you, his boss. Duane was also provided guidance by Alan C which he chose to disregard. Given the lack of response to the client's concerns, Kyah was requested to remove Duane and we notified CAS of this decision.

[24] On August 28, Mr. Kurik messaged Mr. Young regarding Kyah's bullying and harassment policy. After some back and forth, Mr. Young terminated the exchange by insisting further communication be between lawyers.

[25] On September 2 and 19, Mr. Kurik sent Mr. Dennis strongly-worded notes insisting he obtain documentation from Kyah and MSJV explaining his removal.

[26] On November 28, Mr. Dennis provided Mr. Kurik with CAS's Record of Employment. Mr. Kurik testified that he requested the record because it was clear he would not be getting his job back. It showed his work period as January 13 to May 15, 2019, and total insurable earnings of \$40,171.40. The reason for termination was "shortage of work/end of contract or season". Mr. Dennis testified that, for Mr. Kurik's sake, he tried to put down the least prejudicial reason possible.

[27] In December 2019 and January 2020, Mr. Kurik sent further strongly-worded emails to Kyah managers and Mr. Dennis. Mr. Dennis responded by commenting on the harshness of Mr. Kurik's email, and reiterating that he had done "everything in my power" with Kyah, CGL and the Wit Set Chief and Council.

[28] On April 1, 2020, Mr. Kurik was hired by Bird Construction as a rock-truck driver on the LNG project. His evidence was that, up until then, he was not in the right state of mind to take another job because "all he could think about" was how he had been mistreated.

Mr. Young's Evidence

[29] Mr. Dennis called Mr. Young, Kyah's general manager, as a witness. His direct evidence went in by way of affirming his "will-say" statement of July 28, 2023.

[30] Mr. Young described Mr. Kurik's conduct on the job as he witnessed it and as reported to him at the time by Kyah employees. The latter, while not admissible for its truth, is admissible to describe Mr. Young's understanding of the situation at the time.

[31] Mr. Young described Mr. Kurik's performance on the job in harsh terms, including as combative, unreliable, and with leadership shortcomings. He provided examples of problematic conduct, such as being argumentative with Kyah staff, and intimidation through words and body language.

[32] He testified that Kyah demanded Mr. Kurik's removal because MSJV's head of safety, Ms. Lori Davis, called him to insist on it. Mr. Young said that her main source of complaints, as described to him, were her interactions with Mr. Kurik at the worksite. He testified that when a senior person from a major contractor made such a demand, Kyah must heed it or be exposed to negative consequences under its contract.

[33] Mr. Young referred to an email, May 13, 2019, from Ms. Davis to Mr. Bayley and others at Kyah and MSJV, saying in part:

I was wondering if I can get a copy of Duane's supervisory competency sent to me. I have been observing Duane since he has been supervisory and noticed that he is unable of supervising a crew. Here are a few of my concerns:

- labourers not signed on the daily toolbox talk
- no guidance to crew on daily basis
- not signing off onto daily FLRA's
- every day it's the same conversation about where signs need to be placed and flaggers
- workers told to park on side of road with no direction on what they're supposed to be doing
- when you have a conversation, he is not receptive.

[34] Mr. Young also referred to an email he received from Mr. Bayley at the time of Mr. Kurik's removal, saying in part:

May 14, 2019 – I spoke to Butch and let him know that due to some concerns from the client he would need to remove Duane from the site effective immediately. Butch asked "why are you firing Duane?" and I let him know that "I'm not firing Duane, I am in no position to fire one of your employees." Butch said he would be going to Chief and Council plus MSJV, CGL and the Band Office. I let him know that he was more than free to do so and if there is a resolution or compromise to be had from these discussions that Duane may be able to come back but that decision could not be made at this time.

Later that evening, I received a text message from Duane saying “I think you are in over your head”.

[35] Mr. Young testified that he had numerous discussions with Mr. Dennis about Mr. Kurik, both before and after his was removed from the site, in which Mr. Dennis tried to persuade him that Mr. Kurik was doing an acceptable job. He also testified that these issues surrounding Mr. Kurik strained the working relationship between Kyah and CAS. As a result of this and other issues, Kyah took away most of CAS’s work for a time, using its own labourers instead.

Ms. Joseph’s Evidence

[36] Mr. Dennis also called Ms. Doreen Joseph, a CAS flagger. Mr. Dennis fired Ms. Joseph part way through the Kyah job, based on Mr. Kurik’s insistence that she was refusing to work or take directions. After Mr. Kurik’s departure, Mr. Dennis apologized to her and hired her back

[37] Ms. Joseph testified that she had flagged for decades without problems and she got along with everyone on the site except Mr. Kurik. She said Mr. Kurik turned on her after she reported a company truck accident he had not reported. Her evidence was that he yelled at her and treated her poorly in front of the crew, which caused her serious stress requiring hospitalization.

[38] Mr. Kurik’s evidence was that Ms. Joseph refused to work and spent most of her time in the truck chatting with friends.

Employment Standards Branch Complaint

[39] On November 15, 2019, Mr. Kurik filed a claim against CAS for termination pay with the Employment Standards Branch, under s. 74 of the *Employment Standards Act*, R.S.B.C. 1996, c. 113. He claimed damages of \$93,000 based on 10 months of expected employment.

[40] The delegate of the Director of Employment Standards dismissed his claim for damages but found he was owed gross wages of \$2,965.66, which CAS paid.

[41] In dismissing the length of service claim, the delegate said this:

Section 63 of the Act states after three consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.

One of the ways in which this liability is discharged is under section 65(1)(d) of the Act which states that section 63 does not apply to an employee employed under an employment contract that is impossible to perform due to an unforeseeable event or circumstances other than receivership or a proceeding under an insolvency [a]ct.

Mr. Kurik was employed for three months, and as such, if owed, his entitlement to compensation for length of service would be in the amount of one week's wages.

Mr. Kurik stated that he was not laid off or terminated. Mr. Dennis stated that Mr. Kurik was unable to perform work due to a decision made by Kyah, namely to prevent Mr. Kurik from attending the job site.

Kyah's decision to prohibit Mr. Kurik from attending the job site was beyond Mr. Dennis's control, and he did not anticipate that Kyah would prevent Mr. Kurik from attending the job site. Mr. Dennis stated that he asked Kyah to provide the reason Mr. Kurik was not allowed on the job site but that Kyah did not provide a reason.

At the time of Mr. Kurik's employment, Mr. Dennis states CAS had a contract for work with Kyah at only one job site. As there is no information to the contrary, I accept CAS could only keep Mr. Kurik employed if he could work at the site because there was no other alternative. I find that Kyah's decision impeded Mr. Kurik's ability to perform his contractual duties with CAS and that CAS was incapable of anticipating Kyah's decision.

I find that Kyah's unilateral and unexplained decision to prohibit Mr. Kurik from attending the job site was an unforeseeable event which made Mr. Kurik's employment contract impossible to perform.

Accordingly, I find section 65(1)(d) applies and CAS is discharged of its liability to pay Mr. Kurik compensation for length of service in accordance with section 63 of the Act.

CAS's Application to Dismiss

[42] In 2023, CAS applied to dismiss Mr. Kurik's claim in these proceedings, arguing that his wrongful dismissal claims had now been decided against him by the Director of Employment Standards.

[43] In *Kurik*, 2023 BCSC 488, Justice Punnett held that Mr. Kurik's claims should be allowed to continue because they raised different issues than what was decided against him by the Director. Punnett J. concluded as follows:

[63] The plaintiff submits it would be unjust to prevent the plaintiff from pursuing his wrongful dismissal claim. The nature of relief sought includes substantial damages, and the facts surrounding his dismissal raise issues that the Employment Standards Branch could not address and issues of credibility that the Employment Standards branch could not assess.

[64] There are significant differences between the Employment Standards Branch proceeding and this action. The purpose of the Employment Standards Branch was limited. The issues here require a trial. To apply issue estoppel would prevent the plaintiff from pursuing his claim—a claim involving significantly more in damages than he could receive in the Employment Standards process.

Mr. Kurik’s Position

[44] In final submissions, Mr. Kurik argued that he was constructively dismissed on May 15, 2019 when excluded from the job site. His pleadings say this exclusion was a repudiation of his contract of employment which he treated as constructive dismissal.

[45] In additional written submissions of September 9, 2024, Mr. Kurik sought six months’ severance, based primarily on his age and subsequent unemployment until April 2020. He submitted that severance should be calculated at \$11,000-\$12,000/month, based on his salary from CAS from March to May 2019.

[46] Although there was some reference to a fixed-term contract in the initial stages of Mr. Kurik’s closing submissions, this was withdrawn by his counsel because it was not pleaded. In any event, the evidence did not support such a finding. There was not evidence of any agreement between Messrs. Dennis and Kurik for his employment to last for any definite term. The evidence suggested only informal discussions between long-time friends about Mr. Kurik coming to work as a faller, his daily pay for doing so, and then his transfer to site supervisor with a slight drop in pay.

Analysis

[47] The purpose of reasonable notice is to provide a fair opportunity for the employee to obtain similar or comparable re-employment. Factors to be considered in the length of notice include: job responsibility, age, length of service, and

availability of other jobs (*Yates v. Langley Motor Sport Centre Ltd.*, 2021 BCSC 2175, at paras. 24-25; aff'd as to notice period, 2022 BCCA 398).

[48] Other than the issue of whether Mr. Kurik's expulsion by Kyah was justified, the facts around Mr. Kurik's departure are generally uncontested.

[49] Based on Mr. Young's evidence, I find that, by May 14, 2019, Kyah was no longer willing to have Mr. Kurik on site due to MSJV's safety manager's insistence and Kyah's own difficulties with him. I make no findings, however, about whether MSJV and Kyah's complaints about Mr. Kurik were justified. In my view, that is a multi-faceted credibility contest not resolved by the evidence one way or the other.

[50] It is uncontested that CAS did not terminate Mr. Kurik's employment when Kyah insisted he be removed. Instead, Mr. Dennis asked him to be patient while he tried to get him reinstated. Based on Mr. Kurik's emails and actions described in paras. 22-25 above, I find that, by around August 2019, he had (or should have) lost faith in his reinstatement, but remained determined to force Kyah to provide a formal explanation for his removal. I accept Mr. Kurik's evidence that he was so obsessed by his perceived unfairness of his removal that he did not look for a new job for many months. I also accept his evidence that he did not expect CAS to pay him while he was awaiting possible reinstatement but not working.

[51] Putting all this together, I agree with Mr. Kurik's pleading that he was constructively dismissed by CAS on May 15, 2019, without notice, when he was excluded from the worksite and stopped being paid. Even if his exclusion by Kyah was justified, CAS did not take the position he was dismissed for cause at the time of his removal or in its Record of Employment. Instead, Mr. Dennis asked him to be patient while he tried to get him back on the job.

[52] In seeking damages reflecting six months' notice, Mr. Kurik relied on the following cases:

- a) *Saalfeld v. Absolute Software Corporation*, 2009 BCCA 18: aged 35, awarded five months' notice after nine months as a manager/salesperson;

- b) *Yates SC*: aged 30, awarded five months' notice after eight and a half months as a salesperson;
- c) *Sewell v. Provincial Fruit Co. Limited*, 2020 ONSC 4406: aged 45, awarded four months' notice after six months as a senior salesperson; and
- d) *Engel v. Clarkson Company Limited*, [1982] S.J. No. 891 (Q.B.), 1982 CanLII 2360: aged 51, awarded four months' notice after six months as a building superintendent/maintenance supervisor, taking into account no similar opportunities for three years despite due diligence.

[53] In *Saalfeld*, the Court of Appeal rejected the submission of a “starting point” of five to six months for short-term employees in their 30s or 40s with significant responsibilities. The Court said:

[15] ... Absent inducement, evidence of a specialized or otherwise difficult employment market, bad faith conduct or some other reason for extending the notice period, the B.C. precedents suggest a range of two to three months for a nine-month employee in the shoes of the respondent when adjusted for age, length of service and job responsibility.

[Citations omitted.]

[54] Mr. Kurik was employed for only four months, first as a faller and then as a supervisor of CAS's work crew of approximately 10 labourers.

[55] In my view, the two factors supporting a notice period of more than just a month are Mr. Kurik's being fifty-seven years old at the time and Mr. Dennis asking him to be patient while he tried for reinstatement. Regarding the latter factor, what must also be taken into account, however, is that: (a) Mr. Kurik did not expect to be paid while waiting but not working; and (b) within a month or two of May 15, it was clear to Mr. Kurik, or certainly should have been, that his reinstatement was unlikely.

[56] Mr. Kurik's role as site supervisor was not one of significant responsibility. As mentioned, he took a small pay cut when moving from faller to supervisor. The evidence was that Mr. Dennis made hiring and firing and all other management decisions for CAS. It was Kyah that decided each day the work to be done by the CAS crew, and then Mr. Kurik oversaw its performance. Having never been a supervisor before, all that was required for Mr. Kurik to qualify was what he

described as a straightforward online course which he completed while working at the same time.

[57] Though Mr. Kurik came from Terrace to take the job with CAS, there was no evidence of inducement. Mr. Kurik did not suggest he left another job or opportunity to come work for CAS, or any other prejudice from taking the job. The evidence was simply that Mr. Dennis offered him the job and he came.

[58] After being excluded from the worksite on May 15, 2019, Mr. Kurik was unemployed until April 2020. It is important to take into account, however, his own evidence that he was so frustrated by the circumstances of his departure that he was not ready to take another job until then. Although I accept this evidence, in my view this was not reasonable due diligence by Mr. Kurik to find alternative employment. There was no evidence of how quickly he might have found a new job with such diligence.

[59] Taking all this into account, and in particular Mr. Kurik's age and the fact that Mr. Dennis asked him to wait and see if he could be reinstated, in my view the reasonable notice period would have been two months.

[60] Mr. Kurik's net pay was almost exactly \$12,000/month for the three months he worked after the initial training. The evidence did not suggest his work schedule would have changed over the next few months had he remained on the job. The evidence was that, due to his Indigenous status, he was not subject to income tax. Mr. Kurik is therefore awarded damages of \$24,000 for lack of reasonable notice.

[61] Mr. Kurik's claim for aggravated damages requires establishing that CAS breached its duty of good faith and fair dealing in his dismissal and he suffered compensable damages as a result of breach (*Yates SC*, para. 48).

[62] I find nothing approaching bad faith or unfairness by CAS or Mr. Dennis towards Mr. Kurik. Mr. Dennis made reasonable efforts to achieve Mr. Kurik's reinstatement. Mr. Young testified that Mr. Dennis advocated on Mr. Kurik's behalf. In evidence are Mr. Dennis's long emails to numerous parties supporting Mr. Kurik.

I accept Mr. Dennis's evidence that he also spoke with the Wit Set Chief and members of Council to see if they might assist in Mr. Kurik's return.

[63] Although some emails referred to possible further discussions and solutions, the evidence did not suggest that Mr. Dennis might have been able to reverse Mr. Kurik's removal. Mr. Young's evidence, which I accept, of his strongly-held views against Mr. Kurik and what he was told by MSJV were very much to the contrary. I accept the testimony of both Mr. Dennis and Mr. Young that Kyah's problems with Mr. Kurik were serious enough that they damaged the relationship between their two companies. It bears repeating that the evidence does not indicate whether the negative assessment of Mr. Kurik's performance was justified, but the evidence is clear that they were strongly held by key people at Kyah and reported to Kyah by MSJV.

[64] I find no evidence to support Mr. Kurik's allegation that Mr. Dennis failed to provide him with information from Kyah or others about the reasons for his exclusion. I accept Mr. Dennis's evidence that, despite his reasonable best efforts, he learned nothing more from Kyah and MSJV than that they had found Mr. Kurik too difficult to work with.

[65] In hindsight, Mr. Dennis might have recognized sooner that the decision against Mr. Kurik was irreversible. But if he was slow in that realization it was because he did not want to give up on achieving his friend's return to work, which is the opposite of bad faith.

Conclusion

[66] Mr. Kurik is awarded damages from CAS Ventures Ltd. of \$24,000, plus pre-judgment interest. Mr. Kurik's claim for aggravated damages is dismissed.

[67] Subject to the parties wishing to make submissions on costs, Mr. Kurik is awarded disbursements only, under Rule 14-1(10).

“Coval J.”