Harris v Town of Hay River, 2024 NWTSC 47

Date: 2024 10 30
S-1-CV 2017 000 363

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IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

WILLIAM HARVEY HARRIS

Plaintiff

-and-

TOWN OF HAY RIVER

Defendant

MEMORANDUM OF JUDGMENT

OVERVIEW

[1] The Plaintiff, William Harvey Harris, was employed by the Defendant, Town of Hay River (the "Town"), from April 14, 2014 until October 13, 2015. He held the position of Director of Finance and Administration. He was formally terminated on October 13, 2015, effective immediately. The reasons for the termination are in dispute, but what is not in dispute is that the Plaintiff was terminated without just cause.

[2] Given that the Plaintiff's termination was without cause, the issues before this Court are:

a) What is the appropriate notice period;
b) Did the Plaintiff take all reasonable measures to mitigate his damages; and
c) Is this a case where aggravated or punitive damages are appropriate.

[3] For the reasons that follow, I find the appropriate notice period is eight months, that the Plaintiff took all reasonable measures to mitigate damages, and that this is not a case for aggravated or punitive damages.

BACKGROUND

[4] The Plaintiff was hired by the Town on March 21, 2014 with a start date of April 14, 2014. At the time of hire, the Plaintiff was 67 years of age. The Plaintiff has an impressive background. He has Bachelor and Master Degrees of Business Administration, was a member of the Society of Management Accountants and was a founding member of the Northwest Territories Society of Management Accountants, to name only a few of his accomplishments. He lived in Hay River from 1975 to 1984 where he worked as an accountant. Subsequently, he worked at the senior management level with several health care facilities in Canada before spending 12 years in the United States as president of a health care facility. He has received recognition for his work within the business community in the United States and was particularly proud of his work assisting with housing unhoused veterans.

[5] The Plaintiff was hired into a senior management position with the Town, being the Director of Finance and Administration. He had a number of staff reporting to him and had overall responsibility for the effective management and administration of the financial and administrative functions of the Town. He reported directly to the Senior Administrative Officer ("SAO"), who was then David Steele.

[6] The terms of his employment were governed by his letter of offer dated March 21, 2014, as well as the Management Personnel Employment By-law 2240 (the "By-Law") which was incorporated by reference in his letter of offer. At trial, the Plaintiff took issue with the validity of the By-Law, however, there is no evidence upon which I can find the By-Law was not properly authorized.

[7] At the time the Plaintiff was hired by the Town, he had been employed in a similar position with the Town of Fort Smith for a period of approximately three years. The Plaintiff asserts he had been induced by the Town to leave this position to take on the position with the Town, therefore increasing the appropriate notice period.

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[8] By all accounts, there were no issues with the Plaintiff's job performance during the initial period of his employment. If there were concerns, they were not communicated to the Plaintiff. No performance appraisal was done during his employment, contrary to the requirements of the By-Law.

[9] On February 5, 2015, Town employees went on strike, a strike which lasted until August 14, 2015. As a management employee, the Plaintiff was excluded from the collective bargaining unit and continued working in his role as Director of Finance and Administration. He was assisted in carrying out his job duties by Stacey Barnes, who was also an excluded employee. Between the Plaintiff and Stacey Barnes, they carried out all the finance and administration duties that would otherwise have been shared with four others in their department who were on strike. There is no question that this was a difficult time for the Town and that the workload on the Plaintiff, and other management employees, changed and increased during this period. In addition to a significantly increased workload, it appeared from the evidence of Stacey Barnes and the Plaintiff that there were communication issues, and some confusion, with respect to who was responsible for ensuring certain key functions were carried out during the strike period. One counsellor (now Mayor), Kandice Jameson, described the Finance Department as being a "mess" during the strike period and expressed a concern about lack of timely financial reporting. The Plaintiff disputed that characterization. From his perspective, some tasks which were not carried out, such as bank deposits, had been assigned to Ms. Barnes and asserted that the financial reporting had been done and provided to his direct report, the then SAO, David Steele.

[10] The then SAO, David Steele, testified in a positive manner with respect to the Plaintiff's performance during the strike period. Contrary to the evidence of Kandice Jameson, Mr. Steele testified that he had received very few complaints from the public with respect to matters involving the Plaintiff's position. There were a few issues he identified, such as some land transactions which did not complete in a timely manner, but overall, Mr. Steele believed the management team, including the Plaintiff, were doing a good job given the significant strain placed on them during the strike situation. In Mr. Steele's view, during the strike there was significant conflict between management and union staff. He was of the view that union staff were attempting to undermine the work of management. He felt that there were extraordinary circumstances at the time and that it was not a pleasant environment for the management team.

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[11] On September 7, 2015, shortly after the strike ended, the Plaintiff and Mr. Steele met. Mr. Steele advised the Plaintiff his position was being restructured and that the Town would be advertising for a Director of Corporate Services. Mr. Steele testified that he did not tell the Plaintiff he was fired but he certainly suggested that it would be a good opportunity to look for work elsewhere. Mr. Steele knew that Council was unsatisfied with the Plaintiff's performance but testified that he (being Steele) "had no appetite for hearing that" and believed that removing one of the committed members of the management team would have destroyed the Town's capacity. The Plaintiff's evidence was that he was told that he was going to be terminated. Mr. Steele, however, denied using those words, saying he was trying to keep the discussion as positive as possible. Nonetheless, the Plaintiff left the meeting understanding that the Town would be advertising a new role to replace his job and that he would not be considered for this new role. He believed his employment was soon to be ended. During that same meeting, Mr. Steele advised the Plaintiff that he had just submitted his resignation. This was the last substantive discussion the Plaintiff had with Mr. Steele as Mr. Steele left the Town shortly thereafter.

[12] The evidence of the Town with respect to the issue of the new position of Director of Corporate Services was that this reorganization had been underway since soon after the Plaintiff was hired and that the creation of the new position was not related to any concerns the Town had with the Plaintiff's performance. Nonetheless, at the time the Plaintiff met with Mr. Steele, it is clear there were concerns by Council about the Plaintiff's performance, particularly during the strike period.

[13] The Plaintiff subsequently reached out to the Town on several occasions with respect to the status of his employment, including after he saw the new position of Director of Corporate Services advertised. It was his view that the new position was similar to his current position. He received no substantive response to those communications until October 13, 2015.

[14] On October 13, 2015, the Plaintiff received a letter terminating his employment. The first paragraph of that letter reads:

> Harvey, the Town of Hay River has decided to terminate your employment, without cause, effective immediately. This is based largely on your request to be terminated by the Town.

[15] Notwithstanding the unusual characterization of the Plaintiff requesting to be terminated, the letter of termination is clear the termination was without cause. The

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Plaintiff was offered six weeks of pay in lieu of notice. At the time of his termination, the Plaintiff was 69 years of age.

[16] The Plaintiff subsequently looked for employment elsewhere in the Northwest Territories. He applied for positions in the communities of Enterprise, Fort Simpson, and Smith Landing, and made inquiries of some individuals as to potential job opportunities. His evidence was that he did not look for employment in the Hay River area as it was emotionally too difficult, however, he looked for employment in surrounding communities. He did not find employment.

[17] At the time of trial, The Plaintiff was 77 years of age.

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ANALYSIS

What is the Appropriate Notice Period?

[18] In his pleadings, the Plaintiff asserts he was induced from his employment with the Town of Fort Smith, a position which he had held for three years, and, as such, the appropriate notice period should be increased to reflect this inducement from his prior employment with the Town of Fort Smith. The Plaintiff also points to the relative seniority of the position as well as his age as factors justifying a higher notice period. He seeks 18 months' pay in lieu of notice as well as damages equivalent to the value of his employment benefits.

[19] The Town takes the position that the six weeks of notice is appropriate. They assert that the Plaintiff was not induced away from his position with the Town of Fort Smith but was invited to apply with no guarantee of being offered the position. They point to the *Employment Standards Act*, SNWT 2007, c 13, ss 37(1) and 38(2), and assert that they have exceeded the statutory minimum of two weeks that the Plaintiff was entitled to under the *Employment Standards Act*. Respectfully, I disagree. The *Employment Standards Act* expressly provides that it sets out minimum standards that employers must meet and preserves rights at common law: see sections 4 and 103.

[20] As noted by Iacobucci, J in *Machtinger v HOJ Industries Ltd*, 1992 CanLII 102 (SCC) in considering equivalent provisions to the NWT statutory scheme:

> It is also clear from ss. 4 and 6 of the Act that the minimum notice periods set out in the Act do not operate to displace the presumption at common law of reasonable notice. Section 6 of the Act states that the Act does not

> affect the right of an employee to seek a civil remedy from his or her employer. Section 4(2) states that a "right, benefit, term or condition of employment under a contract" that provides a greater benefit to an employee than the standards set out in the Act shall prevail over the standards in the Act. I have no difficulty in concluding that the common law presumption of reasonable notice is a "benefit", which, if the period of notice required by the common law is greater than that required by the Act, will, if otherwise applicable, prevail over the notice period set out in the Act. Any possible doubt on this question is dispelled by s. 4(1) of the Act, which expressly deems the employment standards set out in the Act to be minimum requirements only.

[21] In addition to the statutory scheme found in the *Employment Standards Act*, the Town relies on the By-Law to support its position that the Plaintiff was only entitled to two weeks of severance pay.

[22] The relevant portions of the By-Law are as follows:

> 16.SEVERANCE PAY
>
> (a) An employee who has one year or more of continuous employment and who is laid off shall be entitled to be paid Severance Pay at the time of lay-off.
>
> (b) In the case of an employee who is laid off, the amount of the Severance Pay shall be two (2) weeks' pay for the first complete year of continuous employment and one (1) week's pay for each succeeding complete year of continuous employment. The total amount of Severance Pay that may be paid under this Section shall not exceed twenty-eight (28) weeks' pay.

[23] The By-Law does not define what constitutes a layoff of an employee. In the absence of a definition, we must look to the case law for guidance. The Supreme Court of Canada, in *Canada Safeway Ltd v RWDSU, Local 454*, 1998 CanLII 780 (SCC) held that the phrase "layoff" describes an interruption of an employee's work short of termination. McLachlin and Cory JJ stated at para 73:

> While in common parlance the term "layoff" is sometimes used synonymously with termination of the employment relationship, its function in the lexicon of the law is to define a cessation of employment where there is the possibility or expectation of a return to work. The expectation may or may not materialize. But because of this expectation, the employer-employee relationship is said to be suspended rather than terminated.

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[24] In completing its analysis, the Court stated at para 74:

> The suspension of the employer-employee relationship contemplated by the term "layoff" arises as a result of the employer's removing work from the employee. As stated in *Re Benson & Hedges (Canada) Ltd. and Bakery, Confectionary and Tobacco Workers International Union*, Local 325 (1979), 22 L.A.C. (2d) 361 at p. 366:
>
> > Arbitrators have generally understood the term "layoff" as describing the situation where the services of an employee have been temporarily or indefinitely suspended owing to a lack of available work in the plant...

[25] There is a plethora of caselaw defining “layoff”, however, much is specific to labour arbitrations interpreting collective agreements negotiated between unions and employers or to statutory regimes setting out the rights owed to employees who are laid off (see, for example, sections 42 and 24 of the *Employment Standards Act* addressing temporary layoffs). Without additional context provided by a collective agreement or statute, I rely on the ordinary meaning of the phrase “layoff” to mean a temporary suspension of the employment relationship, usually for reasons relating to the availability of work or other environmental circumstances, which suspension might become permanent depending on the factors specific to the employer’s business and actions of the employee.

[26] An additional factor supporting a narrower interpretation of the By-Law is that the By-Law purports to limit management employees’ entitlement to severance pay to a relatively modest amount of compensation. While not identical to the *Employment Standards Act*, the severance amounts in the By-Law are similar to the statutory minimum amounts for short to medium term employees and are generally lower than what an employee would be entitled to at common law. If the Town wished to oust civil remedies for wrongful termination, the Town should have used clearer language in the By-Law.

[27] With respect to the Town’s reliance on the By-Law, when viewed in the context of the letter terminating the Plaintiff’s employment, there are two issues. Firstly, the language used by the Town in the termination letter is that they are terminating the Plaintiff’s employment and ending the employment relationship. They are not purporting to lay him off nor are they purporting to rely on the restructuring of his position as grounds for the termination. They are terminating him without cause. The By-Law does not deal with what is owed an employee who is terminated without cause.

[28] Secondly, the Town suggests that the Plaintiff invited the termination. This conclusion appears to have been reached by the Town based on the Plaintiff’s

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communications to the Town following his meeting with Mr. Steele on September 7, 2014, during which Mr. Steele told the Plaintiff he should look elsewhere for employment and that a new position would shortly be advertised. Given that Mr. Steele left his position after advising the Plaintiff of this news, it is understandable that the Plaintiff would seek clarity on the issue of his continued employment. It is even more understandable given the Plaintiff saw a job advertisement for the new position soon after his conversation with Mr. Steele. To characterize those inquiries as seeking to be terminated defies common sense.

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[29] In any event, the Plaintiff was terminated and not laid off and, therefore, the Town cannot rely on the provision of the By-Law to limit its damages.

[30] Having reached the conclusion that neither the *Employment Standards Act* nor the By-Law apply to limit damages, the issue is then raised as to what are the Plaintiff's remedies. Employment contracts can be definite or indefinite. In this case, the Plaintiff's employment contract was indefinite, and the Town is clear in the dismissal letter that they were not relying on cause to dismiss the Plaintiff. The general rule for indefinite contracts is that the employer can terminate the employment without cause if the employer gives the employee reasonable notice of termination as defined by law. If the employer fails to provide reasonable notice the employee will be entitled to damages for the reasonable notice period: see Ellen E. Mole, *Wrongful Dismissal Practice Manual*, 2nd ed (Markham, Ont.: LexisNexis Canada) (loose-leaf 2006) at 1-1 to 1-7.

[31] The calculation of the reasonable notice of termination period depends on a number of factors. The classic statement of the principles applicable is found in *Bardal v Globe & Mail*, 1960 CanLII 294 (ON SC), 24 DLR (2d) 140 at 145:

> There can be no catalogue laid down as to what is reasonable notice in particular classes of cases. The reasonableness of the notice must be determined with reference to each particular case, having regard to the character of the employment, the length of service of the servant, the age of the servant and the availability of similar employment, having regard to the experience, training and qualifications of the servant.

[32] This list of factors is not exhaustive. See *Machtinger v HOJ Industries Ltd.*, *supra*; *Wallace v United Grain Growers Ltd.*, 1997 CanLII 332 (SCC), *Minott v O'Shanter Development Co.,* 1999 CarswellOnt 1 (ONCA) [*Minott*]. Other factors may have to be considered when appropriate.

[33] In assessing damages, I should not apply any rule of thumb, such as a month per year of service, but should review all the factors in the case, weighing and balancing all those factors to arrive at an appropriate notice period: *Minott, supra* at para 73.

[34] In this case, the employment was at a senior management level, which has historically attracted a greater notice period: *Cronk v Canadian General Insurance Co*, 1995 CanLII 814 (ON CA). However, in recent years, courts have moved away from the traditional view that a more senior position will enhance the notice period and that a more junior position will be deserving of lesser notice: see *Di Tomaso v Crown Metal Packaging Canada LP*, 2011 ONCA 469 at paras 27 and 28 [*Di Tomaso*]. However, often where courts have criticized the presumption that a more senior employee will be entitled to greater damages, they have done so in the context of reviewing the awards granted to more junior employees, holding that a junior employee may have just as difficult a time finding similar employment as will a more senior employee. In addition to *Di Tomaso*, see also *Medis Health and Pharmaceutical Services Inc v Bramble*, 1999 CanLII 13124 (NB CA)

[35] To the extent that the character of employment is relevant on the facts of this case, it is relevant to the Plaintiff's ability to find equivalent employment given that the primary objective of notice is to provide the terminated employee with a reasonable opportunity to seek alternate suitable employment. In this case, the Plaintiff was a senior level manager, responsible for the overall administration of the financial affairs of the Town and for the direction and supervision of a number of employees. He reported directly to the most senior employee of the Town, the SAO. He was responsible for a budget of approximately $10,000,000. As such, given the financial and staff responsibilities, it is fair to characterize the Plaintiff's position as a key position within the organization with significant responsibilities.

[36] Prior to being employed by the Town, the Plaintiff had worked in a similar position with the Town of Fort Smith for 3 years. Before the Plaintiff worked with the Town of Fort Smith, the Plaintiff had been employed as the President of a 248-bed health care facility for 12 years. Throughout his career, he has always held high level executive positions carrying significant responsibilities.

[37] I heard evidence of the Plaintiff's attempts to find similar employment in the geographic area and I accept that there would not be many equivalent positions in the Northwest Territories available to the Plaintiff, which would make it more difficult for the Plaintiff to have found equivalent employment within a short time

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frame. As such, the character of his employment would tend to support a longer period of notice.

[38] The Plaintiff was employed for a relatively short period of time, only 18 months, which might suggest a shorter period of notice is appropriate. However, a short period of employment will not always lead to a short period of notice. Overemphasizing a short period of service to the detriment of other factors is an error in principle: See *Love v Acuity Investment Management Inc*, 2011 ONCA 130 at para 19, where the court overturned an award of five months for service of a senior vice president of 2.53 years, finding that the court erred in not giving appropriate weight to the character of the employment and the challenges of finding equivalent employment.

[39] It is important that I keep in mind that the purpose of a reasonable notice period is to provide the Plaintiff a chance to find comparable employment: See *Lin v Ontario Teachers' Pension Plan Board*, 2016 ONCA 619, 352 OAC 10, at para 54; *McKay v Camco, Inc*, 1986 CanLII 2544 (ON CA)

[40] The Plaintiff was 69 years of age when he was terminated. Indeed, he alleges that it was his view that the primary reason for his termination was age related. I find that the Plaintiff's age was not a factor in his termination, however, I also find that given his age at the time of termination, it is reasonable that it might take more time to find alternative work. See *McKinney v University of Guelph*, [1990] 3 SCR 229 (SCC) at para 92. Courts have held that, generally speaking, a longer notice period will be justified for older, long-term employees who may be at a competitive disadvantage due to their age: See *West v Mex Precision Wire Corporation*, 2018 ONSC 6572 at para 23 where a twelve month notice period was held appropriate for 59 year old employee who had been terminated a year into his employment after being induced to leave his prior employment. See also *Burns v Oxford Development Group,* 1992 CanLII 14141 (ABKB) where a 56-year-old senior employee who was terminated after 18 months of service was held entitled to twelve months of notice.

[41] Indeed, the Plaintiff's evidence at trial was that he still had not found employment, many years after being dismissed. Having said that, it was also evident that much of his focus has been addressing matters arising from his termination and there was no evidence led as to attempts to find employment in recent years.

[42] Although discussed above in the context of assessing the character of the Plaintiff's employment, I will turn to the issue of the availability of similar employment for someone in the Plaintiff's field.

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[43] The Plaintiff was questioned about attempts he made to find other employment. He testified that at the suggestion of his former SAO he reached out to a senior individual at the Department of Municipal and Community Affairs, Government of the Northwest Territories, with whom he had dealt before. The Plaintiff identified three or four other jobs in the NWT and northern Alberta for which he was qualified. While the evidence led was not extensive, it would be reasonable to say there were a handful of other equivalent positions available in the NWT and northern Alberta. The senior level of the Plaintiff's position would tend to support an inference that it would be more difficult to find an equivalent position, particularly when considered in light of the Plaintiff's age.

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[44] In addition to the *Bardal* factors which I have considered, the Plaintiff has also raised the issue of inducement from his stable employment with the Town of Fort Smith which, if it existed, would potentially increase the reasonable notice period. The evidence at trial did not establish inducement. The Plaintiff's testimony was that he applied for the Director of Finance and Administration position while visiting Hay River and talking to the then Mayor, Andrew Cassidy. Andrew Cassidy confirmed the brief nature of the conversation in his evidence at trial. The Plaintiff subsequently applied for the position and was interviewed together with another candidate. The Plaintiff has the burden of proving the inducement. He has not met that burden. There is no evidence the Plaintiff was promised the job or otherwise induced to leave his employment. The Plaintiff's claim of inducement fails.

[45] In all the circumstances, given the nature of the Plaintiff's employment with the Town, his age and the challenges in finding equivalent employment within a short period of time, I find that a reasonable notice period is eight months.

[46] At the time the Plaintiff was terminated, he was paid $107,102 per annum which works out to $54.74 per hour. The evidence at trial was that the Plaintiff had not received a step increase to $57.42 per hour at the conclusion of his first year of employment with the Town. The Town argued that because the Plaintiff had not received his performance evaluation, he was not entitled to what would otherwise have been an automatic increase in his salary. Section 15.3 of the Bylaw provides that employees "shall be granted a salary increment each year", however, expressly provides that such increments are subject to an annual performance evaluation which "shall" be conducted annually. The Plaintiff did not receive a performance evaluation, likely because his year's anniversary fell during the strike period. Given the positive comments made about the Plaintiff's performance by Mr. Steele, it is reasonable to believe that had his performance been evaluated, he would have

received the automatic step increase. The failure of the employer to conduct an evaluation should not be used against the Plaintiff. As such, for the purposes of calculating the eight month notice period, the higher hourly rate of $57.42 should be applied.

[47] In addition to eight months of notice, the Plaintiff is entitled to the value of his employer provided benefits as set out in his employment letter dated March 14, 2014.

Did the Plaintiff Fail to Mitigate his Damages?

[48] The Town has argued that the Plaintiff failed to mitigate his damages. The evidence is clear that the Plaintiff applied on a number of jobs following his termination but was unsuccessful. He applied for positions in Enterprise, Fort Simpson and Smith Landing but was not successful. He talked to a number of individuals about employment, but those discussions were not fruitful. He communicated regularly with his former supervisor, David Steele. These were all reasonable attempts to mitigate.

[49] However, the Town relies on the fact that the Plaintiff refused to consider a position within the Hay River area as evidence of his failure to mitigate. Specifically, there was evidence that there was a position at the Hay River Reserve and that the Plaintiff did not apply for that position as he did not want to live in Hay River and believed he could not live on the reserve. The Town points to this as evidence of the Plaintiff's failure to mitigate. However, there was no specific evidence as to exactly when this position on the Hay River Reserve became available. The Plaintiff's evidence is he became aware of this position close to a year after his termination. With reference to the time frame, in response to a question as to whether it was a year later or six months later, the Plaintiff stated, "it was more toward the year than six months". Hence, regardless of whether his actions in not applying for this position were reasonable or not, it did not fall within the reasonable notice period range.

[50] The Plaintiff's evidence was also that he did not apply for any jobs within Hay River. It was clear from his evidence that his termination profoundly impacted his outlook on living in Hay River. He was emotional as he described how eager he had been to return to Hay River after having worked there forty years ago and having very much valued his time in Hay River when he was younger. It was also clear that his reputation meant a great deal to him and that he felt it had been sullied by gossip in the community around his termination. His decision to not look for work in Hay

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River because of those factors is an understandable reaction but is not reasonable. Had there been a job available in Hay River, he would have been obliged to attempt to apply and to mitigate his damages, but there was no evidence led that would suggest there was a job available for which he had not applied, and hence, the issue of mitigation does not arise in this context.

[51] I find, in all the circumstances, the Plaintiff did attempt to mitigate his damages.

Is This a Case for Aggravated and Punitive Damages?

[52] The Plaintiff has also claimed aggravated damages. To succeed on this ground, the Plaintiff must prove that the Town engaged in conduct during the course of the dismissal that was unfair or in bad faith by being untruthful, misleading or unduly insensitive. The Plaintiff must prove that the conduct caused mental distress which was within the contemplation of the parties. *Honda Canada Inc v Keays*, 2008 SCC 39 at paras 57 and 59 [*Keays*].

[53] There is no doubt that the manner of the Plaintiff's termination was not well handled. The Town was not happy with the Plaintiff's performance and left it to Mr. Steele to handle the issue, as the then SAO. Mr. Steele did not deal with the issue, preferring, as he said, to "keep things positive". Mr. Steele then left his position after this conversation, leaving the Plaintiff legitimately wondering about the status of his employment. It took five weeks for the Town to respond to the Plaintiff's requests for clarification and then, when the Town did clarify his employment status, the Town purported to be terminating the Plaintiff at the Plaintiff's request. All of this was unfortunate and poorly handled.

[54] Notwithstanding the unfortunate handling of the Plaintiff's termination, there is also no evidence that the Town was acting unfairly or in bad faith. Mere ineptness is not sufficient to attract damages for mental distress. The Town was undergoing a change of leadership with Mr. Steele's resignation and some time was necessary to transition someone into that role. The evidence is also not clear as to whether the Town was aware of the lack of action by Mr. Steele with respect to Town Council's unhappiness with the Plaintiff. On the heels of a contentious and lengthy municipal strike, it is not surprising that the Town was facing some organizational challenges and that their internal processes may not have been functioning well at the time.

[55] I find that this is not a case for aggravated damages.

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[56] The Plaintiff has also claimed punitive damages. Unlike aggravated damages, punitive damages are not intended to compensate employees for damages but are intended to sanction employer conduct which is malicious and outrageous: *Keays supra* at 62. For the same reasons that I decline to award aggravated damages, I also decline to award punitive damages. There simply is no evidence of malicious or outrageous conduct.

Conclusion

[57] I order judgment in favour of the Plaintiff in the following amount:

a) Eight months of salary at $57.42 per hour for a total amount of $74,646;
b) Damages in an amount equivalent to the value of the Plaintiff's employment benefits for eight months; and
c) Pre-judgment interest pursuant to the *Judicature Act*, RSNWT 1988 c J-1, s 56.

[58] The Town may deduct from the amount owing to the Plaintiff any amounts which have already been paid to the Plaintiff.

[59] If there are any difficulties agreeing on the amount of the employment benefits, the parties may speak to this matter.

[60] The Town has asked for an opportunity to speak to the issue of costs. The Town and the Plaintiff may approach the registry to obtain a date to speak to costs.

S. M. MacPherson
J.S.C.

Dated at Yellowknife, NT, this
30th day of October, 2024

William Harvey Harris: Self-represented
Counsel for the Defendant: Chris Buchanan

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MEMORANDUM OF JUDGMENT OF
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