#26

Citation: ☼ Date: ✸
File No: 20400
Registry: Abbotsford

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
ABBOTSFORD

BETWEEN:

THEODORE CHARLES SOUCIE

CLAIMANT

AND:

ICEFIELDS PARAMEDIC SERVICES LTD.

DEFENDANT

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE R. B. CARYER

Counsel for the Claimant:	C. DRINOVZ, ESQ.
Counsel for the Defendant:	C. WARDELL, ESQ.
Place of Hearing:	Abbotsford , B.C.
Date of Hearing:	June 13, 2012
Date of Judgment:	September 06, 2012

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Corrigendum to the

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE R.B. CARYER

Counsel for the Claimant:	C. WARDELL, ESQ.
Counsel for the Defendant:	C. DRINOVZ, ESQ.
Place of Hearing:	Abbotsford, B.C.
Date of Hearing:	June 13, 2012
Date of Judgment:	September 6, 2012

[1] The names of counsel have been changed in the style of cause to show as follows:

C. Wardell as Counsel for the Defendant and
C. Drinovz as Counsel for the Claimant.

R.B. CARYER
Provincial Court Judge

[1] This is an action for wrongful dismissal. The Claimant worked as a medic for the Defendant company ("Icefields"). He is alleging that he was constructively dismissed from his new position as a supervisor having been demoted back to a line medic. Further he is alleging that he could not accept the position in mitigation of his losses due to the unworkable personal relationship between himself and the two principals of the company, Dimitry Tyunin and Svetlana Zanazovski.

[2] He further alleges that regardless of what position he was in, Mr. Tyunin fired him at the end of February, 2010 for no just cause and without reasonable notice. He seeks damages as a result.

[3] The claim is for four months salary at the supervisor's pay rate which would constitute a fixed contract term or in the alternative a reasonable pay out as an indefinite seasonal employee of 3 – 4 months salary in lieu of notice.

[4] The Defendant denies that there was a set contract for supervisory services and further argues the inherent seasonal nature of the work in Northern British Columbia negates any extended period of notice of termination. Further the Defendant argues that the Claimant did not mitigate any losses he incurred.

[5] The trial took place June13, 2012. Because we ran out of time that day for counsels' submissions, the parties were given until July 20, 2012 to file their arguments. Voluminous materials were duly filed. It has taken some time to review the materials that counsel have provided. As well, due to the court's schedule the Judgment has been delayed until September 06, 2012.

[6] The claimant is a qualified industrial medic. He began working in the oil patch industry in 2007 with a company called Canruss Paramedic Oil Services ("Canruss"). His evidence is that he was hired over the telephone by Mr. Tyunin who was a principle of the company. He worked for Canruss for a period of approximately one year. He was frequently dispatched by Mr. Tyunin. Apparently Ms. Zanazovski assisted Mr. Tyunin at this Canruss business although she testified that she did not know the Claimant until she hired him for her own company, the Defendant Icefields. She testified that she separately interviewed the Claimant on the advice of Mr. Tyunin. The Claimant denies that there was ever a second interview with Ms. Zanazovski and states that his employment on the jobsites simply flowed between the two companies.

[7] It appears to me that the arrangements for dispatching the Claimant by whatever company were at best haphazard. The bottom line was that positions for medic were being filled by Icefields and Canruss and that the Claimant was one of several medics dispatched out to different sites to fulfil the contract that the companies had with the various businesses doing work in the north of British Columbia. Mr. Tyunin did much of the dispatching for either company. The Claimant felt that his employment relationship was primarily with Mr. Tyunin.

[8] I do not feel that for the purposes of my judgment the separation of the two companies is of significance. The common denominator remained Mr. Tyunin.

[9] Mr. Tyunin and Ms. Zanazovski are a married couple. Mr. Tyunin, at some point severed his relationship with Canruss and now works exclusively with Icefields. Both parties acknowledged that up until this cause of action occurred, they felt that the

Claimant was a good employee and very capable. Indeed that is why they asked him to help out with the supervisory position in early 2010.

[10] The Claimant takes the position that his work as a medic was continuous from his hiring by Canruss until he says he was dismissed by Icefields in February 2010. He acknowledges that the work is seasonal by nature although since the innovation of "fracking" there is more work done in the oil fields during the traditionally slow summer months. By the documentation filed it is clear that during 2009 the Claimant worked throughout the summer on various work sites. In fact he was laid off in May 2009 but worked 21 days in June and every day in July and August, 2009. So, although it is seasonal, the amount of work is always dependent on what types of work sites a company like Icefields is contracted to provide medic services for.

[11] An issue arose between the Claimant and the Defendant and Mr. Tyunin in September 2008. The Claimant had mismanaged his financial affairs and was being pressured by his bank. He asked the Defendant to pay him bi-monthly as required under the Employment Standards Act, RSBC 1996. He testified that Mr. Tyunin declined to do so. The Claimant requested a pay advance of $2000.00. He was given this money but was lectured by Mr. Tyunin. The Claimant felt demeaned by this. Inadvertently he was over paid by $2,000.00 resulting in a debt to the Defendant.

[12] The Claimant was frustrated at not being paid every two weeks. He felt that this was his right and that he could manage his financial matters better if he were paid in that fashion. Accordingly the Claimant resigned from his position and found employment with Central Interior First Aid ("CIFA"). He advised Mr. Tyunin and the parties separated

on amicable terms. Unbeknownst to them that there had been an overpayment of $2,000.00.

[13] It appears from the documents filed that the Claimant resigned from CIFA in November, 2008 to work for a different company, Denchant, as of November 17, 2008.

[14] At some point after the Claimant had resigned and commenced working for CIFA, Mr. Tyunin requested the return of the $2,000.00. The Claimant was having difficulty still in being able to meet his financial obligations. At Christmas time of 2008 (Dec. 08/08) Mr. Tyunin e-mailed the Claimant and asked him about being repaid. The e-mail itself is somewhat cryptic and perhaps a touch threatening although nothing inappropriate. The Claimant was laid off at Christmas time by his employer. He e-mailed Mr. Tyunin January 22, 2009 and suggested somewhat tongue in cheek that perhaps the Defendant could magnanimously forgive the debt. He further suggested that he could work off the debt by providing medic services to the Defendant for 10 shifts. The latter option was accepted by the Defendant.

[15] In early February the Claimant was re-hired by the Defendant. The appropriate forms were filled out and signed February 08, 2009. From that point on the Claimant worked to pay off his debt then worked 3 days in March, 30 days in April, no days in May and then pretty much most days for the rest of the year of 2009. Based on his number of days worked in 2009, the Claimant worked 219 days from the end of February through December, his employment equalled close to a full time regular position.

[16] I am satisfied that the Claimant resigned his position with the Defendant in September 2008. The forms he filled out for Employment Insurance purposes in early 2009 stated that "I quit to take another job". The reason stated was; "CIFA appeared to have more work for me than Icefields and offered better money/conditions so i (sic) took the better job".

[17] The Claimant argues that because the Defendant refused to follow the Employment Standards Act that for the purpose of determining his length of employment with the Defendant he should not be considered to have resigned in September 2008. I reject this argument. The Claimant worked under those conditions for almost one year. It cannot be said that he felt forced to leave because of the payment style of the Defendant. His own words belie that position. Indeed he was looking for different positions as of September 01, 2008.

[18] So I am of the view that for the purposes of any calculations, the Claimant's employment term with the Defendant commenced as of the end of February 2009. I am taking into account that of the 13 days he worked in February,10 were to pay back the original overpayment of $2,000.00.

[19] Equally, it is clear that the Claimant's employment terminated Feb. 28, 2010.

[20] In December 2009 the parties came to an agreement that the Claimant would work as Supervisor. The evidence differs as to the extent of the duties and the basic reason for the new position for the Claimant but the parties do agree that he was to receive a salary of $17 per hour. This was an increase of $1 an hour over his medic

position. The Claimant testified that initially the term was for 3 – 4 weeks to cover for Mr. Tyunin.

[21] On January 21, 2010 the Claimant e-mailed Mr. Tyunin and Ms. Zanazovski stating that since the supervisory term was nearing termination, if they wished, he would agree to continue on in the role and if not, he was content to return to the field as a medic. The Claimant further requested a written job description "that would underline my duties and terms of employment". I have not seen any such written document.

[22] The parties completely disagree over what the extension of the claimant's role as a supervisor entailed. The Claimant has testified that there was a fixed term until the end of June 2010. He said that he made a concession of not claiming any overtime during this term in order that the Defendant could, in effect, amortize his pay over the possibly leaner off season months as he continued to perform the supervisory role.

[23] The Defendant has stated through both witnesses that due to the uncertain seasonal nature of their work that they would never have agreed to keep someone in full time employ at $17 an hour until June of any year. And they certainly did not make that contract with the Claimant. In fact, although 3 new employees were added in January 2010, there was a reduction of 7 in February, including the Claimant, and a further staff reduction of 2 in March and 5 in April.

[24] In essence, the Defendant has said that the extension was "until further notice". Mr. Tyunin used this phrase. Both witnesses said that the Claimant did a good job in the supervisory role. There was no real issue with his performance. However it was not a fixed term or permanent position. They stressed the seasonal nature of their industry.

[25] In January Mr. Tyunin and Ms. Zanazovski went on a holiday. Due to some error, the Claimant's February 01, 2010 pay cheque bounced. It was returned NSF. This, not surprisingly, caused the Claimant significant problems with his own finances. The resulting problems caused some strain between the parties.

[26] The Claimant testified that Ms. Zanazovski treated him poorly after this issue regarding his paycheque. He stated that he was given menial tasks, more like an errand boy than a supervisor or medic. He testified that he had made changes for the better in the management of the company, had hired a number of medics and generally devoted himself to his new position. He said that he kept a running log of his hours worked but had no intention of claiming the overtime as he expected to be paid as a supervisor until June.

[27] At some point Ms. Zanazovski sent him out to work as a medic. On February 18, 2010 he was again told he would be going out to a site for 12 hours. He ended up working for 4 days. He had not taken personal belongings as he thought he would be out in half a day. When he returned on February 22, 2010 he was exhausted. Ms. Zanazovski then asked him to go to different site. The Claimant refused as he was not qualified for that job and was too tired and felt he could not go. Apparently a meeting took place between the parties.

[28] The Claimant alleges that his position as supervisor was terminated at this time. He stated he was given a couple of days off and was required to return to be dispatched to a site to work as a medic. It is this meeting and the subsequent positioning as a medic that he says was a demotion of such an extent that he was effectively dismissed.

He did go out to the new site. He testified that he was there for only a few hours when Ms. Zanazovski telephoned him and told him that he would be paid $14 an hour as that was all he was worth. The Claimant felt this was untenable.

[29] Ms. Zanazovski denies that any such conversation took place.

[30] On this date, February 26, 2010, the Claimant sent an e-mail to Mr. Tyunin and Icefields. Interestingly, the Claimant referenced his pay being cut by $1.00 to the $16.00 an hour pay rate for a medic not the $3.00 cut to $14.00 he testified to. He refused to accept his reduction in duties although he had actually gone to the site and commenced his work. He made reference to the supervisor's job being extended to the end of June 2010 and advised that he was now claiming for the overtime he had worked in January and February because "you have broken your word about the length of the supervisory job".

[31] Icefields replied to the Claimant stating that the Claimant's position as supervisor had been ended due to "shortage of income". The reply denied the allegations in the Claimant's e-mail and further went on to state that Icefields would pay the Claimant as a supervisor through February 28, 2010 whereupon the Claimant would be "relieved". Icefields further agreed to pay all the overtime asked for by the Claimant.

[32] The Claimant was also eventually paid a "bonus" of $700.00 less taxes. There was an Employee Retention Program at Icefields that rewarded good employees. The maximum was $1,000.00 a year. The Claimant stated that Ms. Zanazovski told him he only received $700.00 because he was unreliable.

[33] Ms. Zanazovski testified that the Claimant was given the bonus because he had worked hard as a supervisor. Quite frankly, I find the payment of a bonus to the Claimant to be odd given the situation as it was unfolding. As well, I am troubled by Icefields so quickly paying out any overtime demanded by the Claimant. It appears to me that Icefields was trying to minimize their liability for "relieving" the Claimant February 26, 2010.

[34] As outlined in this judgment, the witnesses have testified with significant differences. It is my opinion that all of the witnesses presented what they felt was the best way to convince the court of the merits of their own positions. However, because of the rather informal nature of the dealings between them, the exact terms of reference to decide this case are at best unclear.

[35] I have read the extensive submissions of counsel and have examined the case authorities provided to me. In order to conclude this matter as quickly as possible I will not review the law in this judgment. The basic issue here is whether the Claimant was improperly dismissed by the Defendant. It is a fact driven decision.

[36] I am unable to conclude that there was fixed term of supervisory employment through June, 2010. There is no reference to such a term between the parties until the Claimant e-mailed Icefields February 26, 2010. That was expressly denied immediately by the Defendant and of course was denied at trial. Further, there was no evidence that when the Claimant was sent out to a site February 18, 2010 in the medic's position, that he considered this to be inappropriate or any type of demotion.

[37] I accept that the Claimant thought he was entitled to a longer term as supervisor but there is no evidence before me to corroborate that belief. By its nature the work is seasonal and can be sporadic. The Claimant had worked 3 days in March 2009, 30 days in April 2009 and was laid off for the whole month of May 2009. I accept that the Defendant would not have entered into a fixed term contract with the Claimant through June 2010.

[38] The Defendant has taken the position that the Claimant was a valued, productive employee until the February 26th e-mail. Icefields has taken the position that the Claimant was available to perform either a supervisor's role or a medic's role.

[39] The Claimant has disagreed with that position. However the Claimant did go out to a site February 18th. He was left out there in difficult conditions for 4 days. Understandably such treatment caused him frustration. The Claimant has stated that the relationship had begun to deteriorate between he and the principals of Icefields after his pay cheque had bounced in early February. I accept this evidence.

[40] It is understandable that the Claimant would react to what he perceived to be a breach of his term as supervisor by sending the e-mail of February 26th. I do not see that e-mail as a resignation.

[41] Immediately "relieving" him in response to that message suggests the true tone of the Defendant's attitude toward the Claimant. Rather than discuss the issue, the Defendant effectively fired the Claimant with absolutely no notice. It was not a layoff, it was not a seasonal adjustment rather it was a dismissal.

[42] This dismissal was completely without cause. Nothing the Claimant had done or said warranted his immediate removal from his position as a medic. Instead it appears to me to have been an excuse for the Defendant to get rid of someone who was complaining about his treatment at the hands of Ms. Zanazovski and Mr. Tyunin. This I am satisfied went back to the issue of the bounced cheque.

[43] Accordingly, I find that the Claimant was dismissed from his position without just cause and without reasonable notice. He is therefore entitled to damages from his wrongful dismissal.

[44] As I have stated earlier, I have found that the appropriate length of employment that applies to this case is one year. That is the time from after the Claimant had paid his debt to the Defendant in February 2009 until his final pay day of February 28, 2010. There is nothing to suggest that even with other staff reductions in February, March and April that the Claimant would have been laid off. Apart from the change in the personal relationships of the parties, there was nothing suggested that described the Claimant as anything but a good employee.

[45] The Claimant was basically left with no job, no housing and no meal allowance in the dead of winter in Northern British Columbia. Certainly not an enviable position. The conduct of the Defendant suggests an arrogance and cavalier attitude toward the Claimant.

[46] The Claimant has eventually found employment with Shaw Safety where he has been working for 1 ½ years. He tried to find work after he was dismissed and did find intermittent jobs. I do not consider mitigation to be an issue in this case.

[47] I am left with determining the appropriate notice in this case. I have determined that the length of employment was one year. Further I am satisfied that the Claimant was considered an excellent employee by the Defendant. In fact he was offered the supervisory role because he was such a good employee. As well, the Claimant performed the duties of a supervisor for approximately 7-8 weeks apparently doing the job quite well. In the normal course the Claimant would have had every expectation of continuing his work with the Defendant in either of his capacities. Unfortunately the relationship soured. I have found that the Defendant improperly dismissed the claimant and did so in a way that suggests an ulterior motive to the dismissal.

[48] I consider these factors to be aggravating. Accordingly, I am satisfied that in the circumstances of this case the Claimant is entitled to 6 weeks notice. I have taken an average of the Claimant's 2009 monthly payments from June through December to calculate the appropriate figure. I took out the highest and lowest months. The net result is a figure of $6,475.00 per month. Applying a multiplier of 1½ as a 6 week period the amount awarded to the Claimant is $9,712.50.

[49] I have heard that there was an allowance for meals and accommodation. The figures are not clear to me. However I am satisfied that for such a 6 week period the Claimant would have had a benefit of approximately $1,000.00.

[50] Vacation pay entitlement at a rate of .04 applied to the $9,712.50 figure nets vacation pay of $388.50

[51] I have taken into account the fact that the Claimant was paid until February 28, 2010 although dismissed February 26, 2010 when determining the notice period of 6 weeks.

[52] Further, I do not consider the bonus payment of $700.00 to factor into any award for damages.

[53] Accordingly my judgment in favour of the Claimant is $11,101.00.

[54] Interest on that amount will be calculated on a pre-judgment basis from February 28, 2010.

[55] Any filing fees, service costs or search fees will be reimbursed to the Claimant. Counsel for the Claimant will provide those figures to counsel for the Defendant.

[56] Payment will be made to the Claimant on or before October 12, 2012.

R.B. CARYER
Provincial Court Judge

BRITISH COLUMBIA

Pre Judgment

Prepared by: Ministry of Attorney General

File Number: 20400
Client Name: ICEFIELDS PARAMEDIC SERVICES LTD.
Schedule Name:
Principal Amount: $11,101.00

[X] Apply Payments to Interest First

Rate Table Override:
Expense:

From Date	To Date	Days	Principal (or Payment)	Balance	%Rate	Period Interest	Cumulative Interest
28-FEB-2010	30-JUN-2010	123	11,101.00	11,101.00	.2500	9.35	9.35
01-JUL-2010	31-DEC-2010	184		11,101.00	.5000	27.98	37.33
01-JAN-2011	30-JUN-2011	181		11,101.00	1.0000	55.05	92.38
01-JUL-2011	31-DEC-2011	184		11,101.00	1.0000	55.96	148.34
01-JAN-2012	30-JUN-2012	182		11,101.00	1.0000	55.35	203.69
01-JUL-2012	06-SEP-2012	68		11,101.00	1.0000	20.68	224.37

Principal Amount:	$11,101.00
Expense:	
Total Interest:	$224.37
Total Payments:	$.00
Balance Owing:	$11,325.37