Wilson v. Atomic Energy of Canada Limited: No Right to Dismiss Non-Unionized Employees Without Cause for Federally-Regulated Employers

July 15, 2016

On July 14, 2016, the Supreme Court of Canada ("SCC") released its judgment in *Wilson v. Atomic Energy of Canada Limited*. The Majority of the Court allowed the appeal and restored the decision of the Adjudicator, holding that the *Canada Labour Code* (the "Code") *does not* permit dismissals on a without cause basis, even where adequate severance pay is provided. As discussed in our January 27, 2015 bulletin, before that judgment, there was ongoing jurisprudential controversy over the issue of whether a federally-regulated employer could lawfully dismiss an employee without cause under the Code. Some adjudicators had held that the Code does not permit dismissals without cause while others disagreed.

Background

The complainant in that case, Mr. Joseph Wilson, worked for Atomic Energy for four and a half years. He was dismissed on a "without cause" basis with a monetary severance package equalling six months' pay. He filed an unjust dismissal complaint under section 240 of the Code. In defence, the employer argued that he was terminated with a generous dismissal package that exceeded the statutory requirements under sections 230 and 235 of the Code.

The Adjudicator decided that the Code only permits dismissals for cause. He ruled that employers cannot escape the unjust dismissal provisions of the Code (sections 240-245) by resorting to the termination and severance payment provisions of sections 230 and 235 of the Code or by giving a sizable severance package.

Mr. Justice O'Reilly of the Federal Court quashed the adjudicator's decision. He held that the Code permits employers to terminate employees without cause as long as notice and severance pay under sections 230 and 235 are provided, but specified that the employee may still complain that his/her dismissal is unjust or that the reasons given by the employer were unjustified. Under his reasoning, a dismissal may be made "without cause" provided that the dismissal is not "unjust".

The Federal Court's conclusion was upheld by the Federal Court of Appeal ("FCA"). In its decision, the FCA concluded that the Code did not contain explicit language to rebut the common law principle that employers may dismiss non-unionized employees without cause by providing reasonable notice or compensation. The court confirmed that there is nothing in the Code granting non-unionized employees a "right to a job". To the contrary, the FCA found that sections 230 and 235 of the Code, which require that notice and/or compensation be given, expressly allow an employer to terminate an employment relationship without cause.

Supreme Court Decision

Madame Justice Abella, writing for the Majority, reviewed the Adjudicator's ruling, applying the standard of reasonableness in the analysis. The Majority of the Court concluded that the Adjudicator's decision was reasonable and consistent with the approach "overwhelmingly applied" to unjust dismissal decisions under the Code.

The Court stated that the Code has completely replaced the common law principle that there is a right to dismiss on reasonable notice without cause or reasons. The court went on to state that the "galaxy" of discretionary remedies provided for under the Code, in particular reinstatement, and the open-ended equitable relief permitted by section 242 of the Code would be inconsistent with the right to dismiss without cause. In its analysis, the majority examined the intention of legislators when the Code provisions were introduced in the 1970s, and concluded that it was clear that Parliament intended to provide protections to federally-regulated non-unionized employees.

Ultimately, the Majority of the Court concluded as follows:

Only by interpreting the Unjust Dismissal scheme as representing a displacement of the employer's ability at common law to fire an employee without reasons if reasonable notice is given, does the scheme and its remedial package make sense... It is an outcome that is anchored in parliamentary intention, statutory language, arbitral jurisprudence, and labour relations practice. To decide otherwise would fundamentally undermine Parliament's remedial purpose.

Notably, three of the judges provided a dissenting opinion, stating that a dismissal without cause is not *per se* unjust, so long as adequate notice is provided. The minority concluded, among other things, that it would be absurd to grant a federally regulated employer the opportunity to dismiss an employee without cause where the employee chooses to challenge the termination in the civil courts, but a federally regulated employer cannot dismiss an identical employee without cause where that employee challenges the termination under the Code. The minority pointed out that, in this scenario, the legal basis of the employment relationship would be determined post-termination depending on the mechanism by which the employee challenges his or her termination.

As a result of this decision, the Majority of the SCC has confirmed that the Code provides expansive protections to non-unionized employees much like those available to employees covered by a collective agreement. Employers should keep in mind that employees may still pursue the common law remedy of reasonable notice or pay in lieu thereof in the civil courts instead of availing themselves of the dismissal provisions found in the Code. However, if an employee files an unjust dismissal complaint under

the Code, an employer cannot rely on having provided reasonable notice as a defence and an adjudicator may award reinstatement and compensation to an employee, not only for the duration of the notice period, but for all losses related to the termination.

This decision puts to rest the jurisprudential controversy over the issue of whether a federally-regulated employer may dismiss an employee without cause under the Code. Going forward, employers will have to keep in mind the potential consequences of terminating an employee without cause or risk an unjust dismissal complaint under the Code and the range of remedies for employees contemplated by the Code.

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