

COURT OF APPEAL FOR ONTARIO

CITATION: Amerato v. TST-CF Solutions LP, 2022 ONCA 808

DATE: 20221121

DOCKET: C70398

Doherty, Feldman and Trotter JJ.A.

BETWEEN

Cassandra Amerato

Plaintiff/Respondent (Appellant by Cross-Appeal)

and

TST-CF Solutions LP cob as TST-CF Express

Defendant/Appellant (Respondent by Cross-Appeal))

Lyndsay Hone, for the appellant, TST-CF Solutions LP

Ronald Flom, for the respondent, Cassandra Amerato

Heard: November 16, 2022

On appeal from the judgment of Justice William S. Chalmers of the Superior Court of Justice, dated January 26, 2022, and reported at 2022 ONSC 5339.

REASONS FOR DECISION

[1] The trial judge found that the plaintiff, Cassandra Amerato (“Ms. Amerato”), was wrongly dismissed by her employer, TST-CF Solutions LP (“TST”). TST appealed, arguing that the trial judge’s finding that Ms. Amerato was terminated by TST flowed from the trial judge’s failure to consider material evidence and his misapprehension of relevant parts of the evidence. Counsel’s submissions focused primarily on the meaning to be given to two letters delivered to Ms. Amerato by TST at the same time. One letter referred to a termination of Ms. Amerato’s employment. The other letter referred to a job change.

[2] Counsel for TST further argued that even if there was evidence capable of supporting a claim of constructive dismissal, the trial judge’s decision was based on a finding of actual termination. Counsel pointed out that Ms. Amerato did not plead she was constructively dismissed and argued that she could not rely on a finding of constructive dismissal to support the trial decision.

[3] TST also took issue with one aspect of the trial judge’s damage calculation.

[4] Ms. Amerato submitted that the appeal should be dismissed. She cross-appealed, arguing that she was entitled to payment for vacation days not taken in the year prior to her dismissal.

[5] At the end of oral argument, the court dismissed the appeal and allowed the cross-appeal with reasons to follow. These are those reasons.

## **The Main Appeal**

[6] There are no grounds upon which this court can interfere with the trial judge's finding that the respondent was terminated from her employment effective February 1, 2021. The trial judge took into account the relevant correspondence and communications between counsel. We do not agree that he misapprehended the evidence in any material way.

[7] A trial judge is not required to refer to each and every relevant piece of evidence in his reasons, much less each and every arguable gap in the evidence. The trial judge's reasons read, as a whole, demonstrate a firm grasp of the evidence and an appreciation of its relevance to the positions put forward by the parties. The trial judge's finding, particularly at paras. 25-26, was reasonably supported by the evidence. We cannot interfere with his findings.

[8] In respect of the damage claim, TST submits that the trial judge erred in his treatment of the seven-week period between Ms. Amerato's notice of termination and the effective date of her termination. TST argued that, as Ms. Amerato continued under her employment agreement during that seven-week period, the trial judge should have treated her as if she received her salary for that seven-week period even though, in reality, she received less than her salary as she was on disability and not working full-time. On TST's submission, the trial judge, in

calculating damages, should effectively have deducted the seven weeks from the notice period awarded.

[9] In our view, the trial judge properly treated the amount earned by Ms. Amerato during the seven weeks as relevant to her mitigation of damages. Considered from the perspective of mitigation, the actual amount paid to Ms. Amerato during the “working notice” period was the relevant amount.

[10] The appeal is dismissed.

### **The Cross-Appeal**

[11] At trial, Ms. Amerato submitted she should receive damages for loss of group benefits and lost vacation pay. The trial judge awarded neither. On appeal, Ms. Amerato limits her argument to a claim for lost vacation pay.

[12] In declining to award lost vacation pay, the trial judge indicated that “the uncontradicted evidence is that TST-CF Solutions LP does not carry forward vacation pay”.

[13] The trial judge misunderstood the evidence on this point. Ms. Amerato testified she was entitled to carry forward to 2021 pay in lieu of vacation days accrued during 2020. She indicated she was entitled to be paid for 19½ vacation days earned in 2020. Ms. Amerato’s calculation was not challenged at trial. The employer’s evidence was that it was “not company policy” to carry forward vacation pay.

[14] Ms. Amerato's evidence as to her understanding of her entitlement to vacation pay is consistent with the requirements of the *Canada Labour Code*, R.S.C. 1985, c. L-2, s. 188. That provision does not appear to have been put before the trial judge. We are satisfied, however, that had the trial judge not misunderstood Ms. Amerato's evidence, he would have included the value of her entitlement to 2020 vacation days in the damage award. That amount is \$4,417.80.

### **Conclusion**

[15] The appeal is dismissed. The cross-appeal is allowed and para. 1 of the judgment is varied to add the sum of \$4,417.80. Ms. Amerato is entitled to her costs of the appeal and the cross-appeal. The parties have agreed on costs for the appeal and the cross-appeal in the total amount of \$20,000, inclusive of disbursements and relevant taxes.

"Doherty J.A."  
"K. Feldman J.A."  
"G.T. Trotter J.A."