

# COURT OF APPEAL FOR ONTARIO

CITATION: Maynard v. Johnson Controls Canada LP, 2023 ONCA 392

DATE: 20230531

DOCKET: C70923

Lauwers, Huscroft and Zarnett JJ.A.

BETWEEN

John (Jack) Maynard

Plaintiff/Moving Party  
(Respondent)

and

Johnson Controls Canada LP

Defendant/Responding Party  
(Appellant)

Samantha Gordon and Reuben Rothstein, for the appellant

Natalie C. MacDonald and Chris Randall, for the respondent

Heard: May 29, 2023

On appeal from the judgment of Regional Senior Justice Calum U. C. MacLeod of the Superior Court of Justice, dated July 4, 2022.

REASONS FOR DECISION

[1] The respondent, John Maynard, was employed under the terms of an employment contract by the appellant, Johnson Controls Canada LP, from March 2004 until his termination without cause in June 2018.

[2] In 2014, Mr. Maynard's remuneration was altered so that his compensation included a base salary, benefits, and a bonus and incentive plan distributed in the form of Restricted Stock Units ("RSU"). RSUs are a form of delayed bonus which eventually become freely traded shares of the corporation once they "vest". At the time of dismissal, Mr. Maynard's compensation consisted of a base annual salary of \$203,000, participation in the benefits plan, and the RSUs. The RSUs were regulated by the "Share and Incentive Plan", which included a forfeiture provision. It stated that if Mr. Maynard were terminated without cause "... then any [RSUs] still subject to the Restriction Period as of the date of such termination shall automatically be forfeited and returned to the Company." However, Johnson Controls retained a discretion to "waive the automatic forfeiture of any or all such [RSUs]".

[3] The motion judge found that Mr. Maynard was not told about the forfeiture provision. He only learned about it in the course of this lawsuit.

[4] Mr. Maynard's employment contract contained the following termination provisions:

14. JCCLP may terminate your employment anytime without cause, by providing you with only the accrued wages and vacation pay owing to you and subject only to

any minimum entitlements to notice of termination (or termination pay in lieu of notice) and severance pay (if any) as may be required by applicable employment standards laws. Furthermore, during the applicable provincial employment standards statutory notice of termination period only, JCCLP shall be required to comply with the applicable employment standards legislation requirements relating to your benefit plans. For greater certainty, JCCLP shall not be required to continue any benefits coverage after the end of the applicable provincial employment standards statutory notice of termination period, except in accordance with this Annex A. Your employee share of contributions to such benefit plans, if any, will be deducted from the final payment(s) made to you by JCCLP.

15. The working notice and/or pay-in-lieu of working notice and severance pay (if applicable) provisions in this Annex A include any and all entitlements, statutory or otherwise, and, without restricting the generality of the foregoing, any entitlements you may have to overtime pay, public holiday pay, vacation pay, commissions, bonuses, termination pay, severance pay or compensation in lieu of reasonable notice of termination at common law and against Johnson Controls Canada LP or its insurers for benefits of any kind, provided that you will be not be paid less than you are entitled to be paid under applicable provincial employment standards legislation.

16. In addition, if JCCLP terminates your employment without cause and you sign a release in a form acceptable to JCCLP, JCCLP will provide you with a lump-sum payment equivalent to 4 weeks of pay based on your salary for each completed year of service with JCCLP, with a minimum payment equivalent to 4 weeks of salary and a maximum payment, inclusive of the payment in Paragraph 14 above, equivalent to 104 weeks' of salary. Furthermore, after the end of the applicable provincial employment standards statutory notice of termination period, JCCLP will continue, for the number of weeks calculated in accordance with this

paragraph 16, to make its regular employer contributions towards only your group extended medical and dental coverage only. Your employee share of contributions to your group extended medical and dental benefit plans, if any, will be deducted from the payment to be made to you by JCCLP in accordance with this paragraph 16. [Emphasis added.]

[5] In the termination letter dated June 27, 2018 sent by Johnson Controls to Mr. Maynard, he was told that he would be paid \$89,652.02 (less deductions and withholdings), equivalent to eight weeks pay in lieu of notice and 14.3 weeks statutory severance as provided by the *Employment Standards Act, 2000*, S.O. 2000, c. 41, under para. 14 of the employment agreement. However, Johnson Controls told Mr. Maynard that it would pay him the sum of \$225,135.12 equivalent to a further 56 weeks of base salary and would also provide extended benefits for that 56-week period, as provided for in para. 16 of the employment agreement, but only if he signed the release attached to the termination letter.

[6] Mr. Maynard understood that the calculation in the release did not include his bonus or the value of the RSUs, which constituted 37% of his compensation package. Accordingly, Mr. Maynard refused to sign the release and started the lawsuit. It is evident that had the release included the missing RSUs, Mr. Maynard would have signed it.

[7] The motion judge granted summary judgment in favour of Mr. Maynard, awarding him the full entitlement under para. 16 of the employment contract, including the value of the RSUs.

[8] Johnson Controls appeals and argues that by signing the employment contract, Mr. Maynard gave up his entitlement to damages at common law, under para. 15, and limited himself to minimum severance payments under the *Employment Standards Act*, under para. 14. Johnson Controls argues that it was not open to the motion judge to effectively order Johnson Controls to comply with para. 16 of the employment agreement as interpreted by the motion judge.

[9] We disagree. Because Mr. Maynard was not aware of the forfeiture provision and did not agree to it when the Share and Incentive Plan came into force, the exclusion of his RSUs from the calculation in para. 16 of the employment agreement breached that provision. It was open to the motion judge to interpret the payments required under para. 16 as not being limited to base salary and specified benefits but to include the bonus/RSU elements of Mr. Maynard's compensation. The termination letter required Mr. Maynard to respond by signing the attached release by July 4, 2018, but nothing in the terms of the employment agreement permitted either an erroneous calculation or such an arbitrary deadline.

[10] In our view, it was not open to Johnson Controls to attempt to force Mr. Maynard to sign a release that was not calculated properly under para. 16 of the employment agreement. He remains entitled to execute the release now in exchange for the full amount awarded by the motion judge. Alternatively, that same amount is available to Mr. Maynard as damages for breach of contract.

[11] The appeal is dismissed with costs payable by Johnson Controls to Mr. Maynard in the amount of \$32,000 all-inclusive.

“P. Lauwers J.A.”

“Grant Huscroft J.A.”

“B. Zarnett J.A.”