

Update

Pensions Law

October 23, 2006

Wrongful Dismissal Damages for Loss of Pension Benefits

Where an employee's employment has been terminated and he or she has received damages in lieu of notice, is he or she entitled to accrue pension benefits during the notice period? A recent Ontario case examined the law in this area and determined that absent specific limiting language in the plan document, the dismissed employee generally is entitled to continue to accrue pension benefits during the notice period.

In the *Taggart v. Canada Life Assurance Co.* case, upon termination of employment after 30 years of service, the employee was given 2 months working notice and 22 months pay in lieu of notice. The employee participated in the company's defined benefit registered pension plan and supplemental plan. Both plans determined benefits based on a formula that incorporates years of service. The employee took the position that he was entitled to continue to accrue pensionable service during the 22 month notice period in addition to the 2 month working notice period. There was no language specifically addressing this in the pension plan documents. The plan text did contain general language, which the employer claimed limited the employee's rights.

The Court examined the relevant legal principles and concluded that damages for wrongful dismissal generally should include damages for the loss of pension benefits that would have accrued to the terminated employee had he or she continued to work through the notice period. Unless there is a contractual term that limits this right, a terminated employee is entitled to damages for lost pension benefits during the entire notice period. For example, if the relevant pension documents contain express language, this entitlement may be limited.

The Court concluded that there was no express limiting provision in the relevant pension documents and therefore Mr. Taggart was entitled to continue to accrue pensionable service during the entire notice period.

It is clear that if employers wish to avoid the result in *Taggart*, pension plans and other relevant documents such as employment contracts must contain certain express limiting language.

If you have any questions regarding this decision, or any other pensions matter, please contact any member of our Pension, Benefits and Compensation Group.

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