CITATION: Boyle v. Salesforce.com 2025 ONSC 2580
COURT FILE NO.: CV-23-00695396-0000
DATE: 20250428

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
	)	
ADAM BOYLE	)	*Sunira Chaudhri* and *Shelby M. Matthews*, for the Plaintiff
Plaintiff	)	
– and –	)	
	)	
SALESFORCE.COM CANADA CORPORATION	)	*Jennifer Heath* and *Brooke Auld*, for the Defendant
Defendant	)	
	)	
	)	
	)	
	)	**HEARD: January 28, 2025**

L. BROWNSTONE J.

Introduction

[1] The plaintiff, Adam Boyle, moves for summary judgment on his claim for wrongful dismissal against the defendant Salesforce.com Canada Corporation. Salesforce agrees the claim is suitable for summary judgment and asks that "the Plaintiff's motion for summary judgment be granted on the basis of amounts paid to-date, with costs to be paid by the Plaintiff".

[2] Mr. Boyle worked for Salesforce for about eight years. At the time his employment was terminated on January 4, 2023, his job title was Senior Success Signature Engineer - Core. He was 49 years old.

[3] On January 4, 2023, Salesforce notified Mr. Boyle in writing that his employment would be terminated effective eleven-and-a-half weeks later, on March 24, 2023. About ten percent of Salesforces' workforce was terminated at that time. Mr. Boyle was on holiday when the letter was delivered to him by email. Mr. Boyle first heard of his termination by text from a colleague who advised him that he had been deactivated on Slack.

[4] During the notice period, Mr. Boyle received salary continuation, severance pay (in respect of which an error was noticed by Salesforce and an additional payment made about a year later), and participation in his benefits. He continued to receive some benefits after termination.

[5] Mr. Boyle's employment contract contains a termination clause purporting to limit his entitlements on termination. Mr. Boyle argues the clause does not comply with the *Employment Standards Act*, 2000, S.O. 2000, c. 41 and is unenforceable. He claims he is entitled to 14 months' notice and to punitive damages, aggravated damages, or damages for the breach of the duty of good faith in contractual relations because of Salesforce's actions in the termination.

[6] Salesforce argues the employment contract was freely signed by Mr. Boyle and is enforceable. In the alternative, Mr. Boyle's common law damages should be 9 months' notice, less 3 months for his failure to take appropriate steps to mitigate his damages and for his failure to produce his notice of assessment during the mitigation period.

[7] I will consider the following issues:

a) The admissibility of Salesforce's original termination letter;

b) The appropriateness of summary judgment;

c) The enforceability of the termination clause;

d) If the clause is not enforceable, the length of Mr. Boyle's reasonable notice period;

e) Whether Mr. Boyle's notice period entitlement should be reduced;

f) The elements of compensation on which Mr. Boyle's damages are to be calculated;

g) Whether Mr. Boyle is entitled to punitive damages, aggravated damages, or damages for the breach of the duty of good faith in contractual relations; and

h) Whether Mr. Boyle is entitled to special damages for expenses occurred in his mitigation efforts.

Preliminary Issue: Salesforce's original termination letter is admissible

[8] Salesforce brought a preliminary motion seeking an order that the unredacted termination letter is inadmissible, as it contains an offer to settle the employment dispute. Mr. Boyle argued that the letter is necessary to support his allegations of bad faith, as part of those allegations rests on the content of that letter. I agreed that the letter should be introduced, given the allegations of bad faith that relate in part to the letter's contents. I gave the following reasons delivered orally:

> I do not accept the broad proposition that termination letters that contain settlement offers are not, in relevant part, subject to privilege. However, the plaintiff has raised the manner of termination in his amended claim and has claimed punitive damages. I must assess relevance based on the pleadings. I will therefore permit the parties to make reference to the termination letter, including the portions that Salesforce seeks to redact, in argument.

Issue One: Is summary judgment appropriate?

[9] Under r. 20.04 of the *Rules of Civil Procedure*, the court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence, or if the parties agree to have all or part of the claim determined by summary judgment and the court is satisfied that it is appropriate to grant it. Rules 20.04(2.1) and (2.2) provide the court with expanded fact-finding powers to make this determination.

[10] In accordance with *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 57, in order to be appropriate for summary judgment, the evidence before the court must be such that a judge is confident that she can fairly resolve the dispute.

[11] The court must first determine if there is a genuine issue requiring trial based only on the evidence before it, without using the extended fact-finding powers in r. 20.04. There is no genuine issue requiring trial if the evidence allows the court to fairly and justly adjudicate the dispute through this proportionate procedure: *Hryniak*, at para. 66.

[12] If there appears to be a genuine issue requiring a trial, the court must determine if the need for a trial can be avoided by using the powers in rr. 20.04(2.1) and (2.2). These powers may be used if it would not be against the interests of justice to do so: *Hryniak*, at para. 66.

[13] The moving party bears the evidentiary burden of showing there is no genuine issue requiring a trial. Parties are required to put their best foot forward: *Canada (Attorney General) v. Lameman*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11.

[14] I am confident that I am able to find the facts on the materials before me, and that I am able to fairly and justly adjudicate this dispute using this proportionate procedure. I agree with the parties that the summary judgment procedure is appropriate for this case.

Issue two: Is the termination clause enforceable?

[15] Prior to starting work at Salesforce, Mr. Boyle signed an employment contract that contained a clause limiting his entitlements in the event his employment was terminated without cause. The termination provisions read in relevant part as follows.

> 6. Termination
>
> You understand and agree that the termination provisions contained in this section shall continue to apply at any time in the future, regardless of the duration of your employment, and despite any changes that may occur in your compensation, job functions, responsibilities or title, so long as you continue to be employed by the Company.

Except as provided herein, you will have no claim whatsoever against the Company or any of its Affiliates, or any of its or their officers, directors or employees for damages, wages, bonus, termination pay, severance pay, whether statutory or otherwise, or pay in lieu of notice whether statutory or otherwise, arising out of or relating to your employment or the termination thereof.

Please note that, in all cases, your rights and entitlements under any incentive program, including any applicable Incentive Compensation Plan for sales roles, shall terminate effective your last day of active employment with the Company. In the event of any inconsistency between this provision and the language of any applicable incentive program, this provision will prevail.

6 (b) Cause

The Company has the right, at any time and without notice (or pay in lieu), to terminate your employment under this Agreement for Cause. In the event that you are terminated for Cause, the Company's obligation shall be limited solely to the payment of any portion of the Base Salary, and vacation pay, if any, that shall have been accrued by you prior to the date of termination.

6 (c) Without Cause

In the absence of Cause, the Company may, at its sole discretion and for any reason whatsoever, terminate your employment by providing to you that minimum period of notice (or pay in lieu) and severance pay, if any, to which you are entitled pursuant to the applicable employment or labour standards legislation. The Company will also, if required, continue your enrollment or participation in the Company Benefit Plans for that minimum period of notice to which you are entitled pursuant to the employment or labour standards legislation. All of your rights and entitlements under the Company Benefit Plans shall terminate effective at the end of that period. In addition, the Company will pay any portion of the Base Salary, and vacation pay, if any, that shall have been accrued by you up to the date of termination.

6 (d) By You

If you voluntarily terminate your employment with the Company, you agree to provide the Company with at least two (2) weeks' written notice of your resignation. You further acknowledge and agree that the Company may, in its sole discretion, waive this requirement for notice of your voluntary termination. If we do so, you will only be entitled to payment of your Base Salary and vacation pay, if any, that shall have been accrued by you to the date of such waiver.

[16] Cause is defined in schedule A of the agreement as “any act or omission by you that would in law permit the Company to, without notice or payment in lieu of notice, terminate your employment.”

[17] One of the many documents annexed to the contract that Mr. Boyle was required to sign at the time he accepted the employment offer was a “global employees handbook”. That handbook contained the following clauses:

> The company is regulated by different local laws where it operates globally. If there is a conflict in these laws, you should consult the Company's legal department to resolve the conflict appropriately. In general, local laws will apply.
>
> Except for certain non-U.S. jurisdictions, the Company's employment relationship with all of its employees is one of employment “at will,” which means that employment may be terminated by either the employee or the Company at anytime, with or without cause. If you are located outside of the U.S. and have an employment agreement, the terms of those agreements will prevail if there is any conflict with the policies in this handbook. However, all other policies will apply.

[18] Right above the line where Mr. Boyle was required to sign the handbook the following statements appear:

> I understand that:
>
> > The policies in the Global Employee Handbook are not a contract and that my employment is "at will." This means that the Company or I can end my employment at any time with or without cause or advance notice.
> >
> > The Company can change policies, procedures, or benefits at any time.

[19] The parties are in broad agreement about the legal principles to be applied in assessing the validity of the termination clause. Where they part company is on how those principles apply to this clause.

[20] In *Wood v. Fred Deeley Imports Ltd*., 2017 ONCA 158, the Court of Appeal at para. 28 summarizes relevant considerations in interpreting termination clauses in employment contracts. The court notes that the ESA is remedial legislation, intended to protect the interests of employees. Termination clauses should be interpreted in a way that encourages employers to draft agreements that comply with the ESA. If a termination clause intends to rebut the presumption of reasonable notice, its wording must be clear. Importantly, employees should know at the beginning of their employment what their entitlement will be at the end of their employment. Further, when the court is faced with a termination clause that could reasonably be interpreted in more than one way, courts should prefer the interpretation that gives the greater benefit to the employee.

[21] More recently, in *Waksdal*e *v. Swegon North America Inc*., 2020 ONCA 391, at paras. 10-11 the Court of Appeal has cautioned that an employment agreement must be interpreted as a whole, not on a piecemeal basis. The court is to look at the entire agreement at the time it was executed, not at the time of termination. It therefore does not matter whether an invalid clause was relied on by the employer at the time of termination. If any termination provision violates the ESA, all termination provisions are invalid: *Rahman v. Cannon Design Architecture Inc*., 2022 ONCA 451, at para. 30.

[22] Mr. Boyle says the termination provisions conflict with the ESA. Mr. Boyle states the cause provision in s. 6(b) reproduced in paragraph 16 above improperly contemplates withholding ESA notice if the common law standard of cause is met. At the very least, Mr. Boyle argues, the clause is ambiguous about the cause standard to which it refers. The clause therefore conflicts with s. 2(1) and 9(1) of Termination and Severance of Employment O Reg 288/01, which require a high level of employee misconduct to establish disentitlement from termination pay- the conduct has been described as "being bad on purpose*": Rahman* at para. 28. Mr. Boyle also points to the "at-will" provisions in the documentation as being against the ESA and creating ambiguity.

[23] Mr. Boyle further argues that the without cause provision in s. 6(c) set out in paragraph 16 above is unenforceable and contrary to the ESA because it does not provide for the payment of a bonus over the statutory notice period.

[24] Salesforce claims the contract is ESA-compliant. It argues that the definition of cause does not refer to the common law or just cause. It does not import a standard that could potentially violate the ESA. Salesforce disputes Mr. Boyle's entitlement to the bonus during the statutory notice period, as it claims that Mr. Boyle's lack of entitlement to a bonus during this period is clear and unambiguous in his employment terms.

[25] In my view, applying the governing principles to this contract clearly results in the unenforceability of the termination provisions. There is no practical way that an employee in Ontario could be aware, when signing the contract, of the terms that would govern his termination. The ambiguity contained in the documentation, all of which Mr. Boyle was required to sign prior to commencing employment, is explained by Salesforce's choice to use one contract for employees in many jurisdictions. Salesforce repeatedly claims to be able to terminate employment at will. It then says that this provision will not apply in certain jurisdictions outside of the U.S. If the employee is uncertain, he should consult the Company's legal department. It is impractical to expect a potential employee, who has not yet started employment, to consult the future employer's lawyer before signing an employment agreement to understand what kind of misconduct, if any, is cause for termination.

[26] I therefore find the provision is not compliant with the ESA, or at least ambiguous as to whether it is complaint, and is therefore unenforceable. Mr. Boyle is entitled to payment in lieu of reasonable notice.

Issue three: What is Mr. Boyle's reasonable notice period?

[27] Mr. Boyle claims that his reasonable notice period is 14 months. Salesforce argues that the notice period should be nine months, which should be reduced for his failure to mitigate and failure to produce his notice of assessment during the mitigation period.

[28] Mr. Boyle was about two months shy of his fiftieth birthday when his employment was terminated.

Length of service

[29] Mr. Boyle claims he was induced to join Salesforce and that his previous employment should factor into his length of service calculation. Mr. Boyle argues that he left secure employment to join Salesforce. I do not agree that Mr. Boyle was induced to join Salesforce. The evidence shows that a recruiter sent him a message on LinkedIn and he then applied for the job, at which he would earn a higher salary. I do not agree that this amounts to inducement, or even comes close to it. Sending a message or two hardly amounts to an aggressive pursuit of an employee, or even persuasion. Even if there had been inducement, it would have minimal, if any, effect after eight years of employment at Salesforce.

[30] Mr. Boyle's length of service is eight years.

Character of employment

[31] Mr. Boyle states that he held a specialized position, integral to Salesforce's success and ability to serve its customers in urgent and high-stakes situations in a timely way. Although he argues that his work "followed the sun", in cross-examination he agreed that he did not work more than 44 hours per week. Mr. Boyle states his position was managerial because he was involved in mentoring, interviewing candidates, and helping his peers.

[32] I agree with Salesforce that the evidence does not support Mr. Boyle's claim that he held a managerial position. Mr. Boyle had no authority to hire, fire, or discipline employees. There is no evidence of him being involved in budgeting and no evidence that people reported to him. Rather, he was a senior-level technical employee.

[33] I do not take away from Mr. Boyle's success in his employment by this conclusion. The evidence demonstrates that he was an excellent mentor, a great team player, and a knowledgeable employee who provided first-rate customer service dealing with urgent matters.

Availability of comparable employment

[34] Mr. Boyle argues that there was limited available comparable employment, which is why it took him 14 months to find new employment. He says he was forced to retrain and update his certifications to find comparable employment. Further, he was subject to a non-competition clause until June 24, 2023. Mr. Boyle deposed that at the time, there had been other large-scale layoffs in his sector, so there was significant competition for jobs in his field. There were over 100 people who would apply to many of the jobs posted.

[35] Salesforce argues that Mr. Boyle did not need to retrain. Rather, he chose to do so and seeks to have Salesforce foot the bill for this choice. Salesforce argues that Mr. Boyle's claim that he had to retrain is inconsistent with his claim that he was the most trusted and skilled "go-to guy" for the most complex technical support issues. Further, Salesforce's only competitor was Microsoft, so the non-competition clause had limited reach.

Conclusion regarding notice period

[36] Taking the above factors and analysis into account, as well as the cases the parties have provided that indicate a range between nine and fifteen months depending on the applicable *Bardal* factors, I find that an 11-month notice period is appropriate.

Issue four: Should Mr. Boyle's entitlement be reduced?

[37] Salesforce argues that Mr. Boyle's entitlement should be reduced for his failure to appropriately mitigate and for his refusal to produce his Notice of Assessment during the mitigation period. The latter, Salesforce argues, should cause the court to draw an adverse inference about Mr. Boyle's true income during that period.

[38] Salesforce bears the burden of proving that Mr. Boyle's mitigation efforts were unreasonable.

[39] In order to prove that an employee has failed to mitigate, an employer must demonstrate that (1) the employee failed to take reasonable steps to mitigate damages, and (2) if reasonable steps had been taken, the employee would have been expected to secure a comparable position reasonably adapted to their abilities: *Lake v. La Presse*, 2022 ONCA 742, at paras. 7, 12.

[40] The standard for job efforts in mitigation is not perfection: *Lopez-Gonzalez v. Reliance Legal Services Ltd*., 2022 ONSC 2255, at para. 16.

[41] Salesforce argues that Mr. Boyle's choice to "upskill" after only three months and 18 job applications was unreasonable. Moreover, Salesforce argues that Mr. Boyle did not need to pause his job search efforts to pursue new certifications; he could have done both simultaneously.

[42] I find that Salesforce's evidence is insufficient to meet its burden to demonstrate that Mr. Boyle's efforts were unreasonable. The question is not whether there might have been a different approach, which appears to be Salesforce's argument. The question is whether the approach and mitigation efforts Mr. Boyle did choose were unreasonable. I do not find that Salesforce has established that they were. Mr. Boyle looked for work, did not receive a job offer, and determined that upgrading his skills would make him more competitive, especially in a field where, as he testified, he was competing against younger candidates.

[43] Further, Salesforce's evidence did not establish that had Mr. Boyle not retrained, he could have found work more quickly.

[44] However, I agree with Salesforce that Mr. Boyle's refusal to produce his notice of assessment for the mitigation period is a significant issue. In its factum that predated the motion by more than a month, Salesforce argued:

> The Plaintiff refused to provide his 2023 Notice of Assessment. Combined with his failure to apply for El, there is a serious question as to whether he received any mitigation earnings in 2023 that should be set off against his claimed damages. Salesforce Canada submits that an adverse inference should be drawn with respect of the Plaintiff's failure to produce his Notice of Assessment - i.e. presume that the Plaintiff earned income during the common law notice period - reducing his alleged damages entitlement.

[45] Mr. Boyle refused this basic production request. Two days before the motion was to be argued, which was a month after receiving Salesforce's factum and five months after refusing to produce the notice of assessment, Mr. Boyle swore an affidavit annexing his notice of assessment and income tax return for 2023. Salesforce objected to this late-breaking change of heart. Mr. Boyle advised the court that he did not seek to rely on the affidavit or the notice of assessment in support of his motion and that he would stand by his earlier record.

[46] Mr. Boyle's counsel was unable to provide any satisfactory explanation for this refusal when asked to do so by the court. Her explanation was that there was other evidence of his earnings during that period that had been provided, and that evidence was sufficient.

[47] In my view, there can be no acceptable reason for such a refusal. Obviously, Mr. Boyle's income during the mitigation period is a significant issue in this dispute. Salesforce is entitled to proper evidence of what that income was. That evidence is neatly provided in a notice of assessment. That is the document that provides the objective answer to the question. There is simply no reason for refusing to produce it.

[48] I agree with Salesforce that in the circumstances, an adverse inference should be drawn that the document would not support Mr. Boyle's income figures. Salesforce asks for the equivalent of three-months' notice to be deducted for this failure. I find that to be a reasonable position and I grant that request.

[49] Mr. Boyle's notice period is therefore reduced to eight months.

Issue Five: What are the elements of compensation on which Mr. Boyle's damages are to be calculated?

[50] Mr. Boyle's base salary at the time his employment was terminated was $120,565.33, and Salesforce contributed $5,000 annually to his RRSP.

[51] Mr. Boyle was granted coverage for basic life insurance, basic accidental death and dismemberment insurance, short term disability insurance, and long-term disability insurance for

a period of eight months. As I have found eight months to be the net appropriate notice, there is nothing owing for these benefits.

[52] Mr. Boyle had health and dental coverage for seven months, but not all of his benefits continued. He seeks to have his health benefits compensated at the rate of 5% for those seven months, and 10% for the remaining month of notice. Salesforce states that Mr. Boyle received full group benefits until March 24, 2023, and partial benefits until August 31, 2023. This is consistent with Salesforce's provision of continued salary and other benefits until March 24, 2023. Salesforce also paid its contributions to Mr. Boyle's RRSP until March 24, 2023.

[53] I find that Mr. Boyle is entitled to benefits calculated at 5% of his base annual salary for the pro-rated period of 5 months, from March 23, 2025, to the end of August, 2025, and at 10 per cent for the remaining month of the notice period. He is entitled to pro-rated RRSP contributions for the notice period from March 24, 2023, onward.

[54] Mr. Boyle seeks payment of the value of his bonus earned from the commencement of the fiscal year to the date of termination. In 2022, Mr. Boyle's annual bonus was $12,808.06 in 2022, and he seeks stub bonus payment for fiscal 2023, and a pro-rated bonus entitlement over the notice period. He received an advance on his 2023 bonus of $2898.89 in September 2022, consistent with Salesforce's midyear pre-payment practice.

[55] Salesforce relies on exclusionary restrictions in its gratitude bonus plan. The 2023 bonuses were paid in April 2023, and Mr. Boyle was no longer an active employee on that date. The plan provides that "[u]nless otherwise provided by applicable law or otherwise provided by the Administrator, an employee who ceases employment with the Company... for any reason prior to the date bonuses are paid for a bonus period will not be eligible for and will not earn any bonus award for that bonus period."

[56] Further, the year-end payment is based on company and individual performance. Salesforce argues that Mr. Boyle had access to the Salesforce bonus plan on its intranet, and states there were numerous internal articles posted about the bonus plan. Salesforce employees are asked to review and acknowledge its policies on an annual basis, which includes the gratitude bonus plan. Salesforce states the plan unambiguously removes Mr. Boyle's bonus entitlement: *O'Reilly v. IMAX Corporation*, 2019 ONCA 991, at para. 32.

[57] Mr. Boyle claims the exclusionary requirement of being an active employee is unenforceable. Mr. Boyle states that there is no evidence that Salesforce brought the bonus plan to Mr. Boyle's attention prior to hiring him or at any time thereafter. There are no signed acknowledgements by Mr. Boyle that he received a copy of the bonus plan. Further, he would have been employed in April 2023 but for the wrongful termination, so he is entitled to that bonus as part of his regular compensation during the notice period: *Matthews v. Ocean Nutrition Canada Ltd*., 2020 SCC 26, [2020] 3 SCR 64

[58] I find that Mr. Boyle is entitled to his bonus amount for fiscal year 2023. He ought to have been employed in April 2023, the date on which the bonuses were paid out. Salesforce claims Mr. Boyle would have received a lower bonus in fiscal year 2023, and Salesforce used a lower corporate multiplier that year, but does not provide backup documentation or calculations. I therefore find Mr. Boyle's bonus for 2023 should be calculated based on his 2022 bonus of $12,808.06, but Salesforce is to be credited with the $2898.89 advance payment it made in September 2022.

[59] In accordance with the Court of Appeal reasoning in *Poole v. Whirlpool Corporation*, 2011 ONCA 808, I also find that Mr. Boyle is entitled to a pro-rated bonus during the notice period. While Salesforce testified that the bonus plan was available to all employees, and that employees were asked to acknowledge Salesforce's polices on an annual basis, it produced no evidence of Mr. Boyle having done so. The bonus plan did not accompany his employment contract. In cross-examination, Mr. Boyle stated that he did not remember seeing the plan, nor did he receive emails about the plan. I therefore find that Mr. Boyle is entitled to a pro-rated share of his bonus of 10% of his salary for the portion of his eight-month notice period that falls within fiscal year 2024.

Issue six: Is Mr. Boyle entitled to punitive damages, aggravated damages, or damages for the breach of the duty of good faith in contractual relations?

[60] Mr. Boyle's claim for these damages is based on the manner in which he learned his employment was terminated, and Salesforce' conduct in the termination letter and following.

[61] Mr. Boyle was on vacation at the time of the termination. He learned his employment had been terminated when he received a text from a work colleague that said "oh shit. I just saw you're deactivated on slack... I hope they give you a fat package." The text message prompted Mr. Boyle to check his work e-mail, where he found his termination letter. Mr. Boyle texted back to his colleague: "Yup, I'm officially part of the 10% [of the employee count that was being terminated]. No worries. On to better things for sure. I was very unhappy in my role at SF over the past year, so this is a good thing."

[62] There was no telephone call or zoom meeting related to the termination. Mr. Boyle argues that the termination was callous and impersonal and that he found it mentally distressing.

[63] Salesforce argues that given the size of the workforce reduction, about 10% of its employees which amounted to over 3000 employees, it was not possible to conduct individual termination meetings. Mr. Boyle says that as a sophisticated employer, Salesforce could have provided either human resource personnel or management personnel to conduct meetings. Its failure to take these steps amount to a breach of its duty of good faith and fair dealing.

[64] In my view, the circumstances surrounding Mr. Boyle's termination, while not ideal, do not demonstrate bad faith on Salesforce's part. Mr. Boyle relies on *Zesta Engineering Ltd. v. Cloutier*, 2010 ONSC 5810, for the proposition that termination close to the Christmas holidays supports his claim for bad faith damages. Salesforce's conduct is a far cry from the employer's

conduct summarized at para. 335 of *Zesta*. Salesforce was a large employer terminating a significant number of staff shortly after the Christmas holidays. The evidence does not support that Mr. Boyle experienced distress beyond that which can be expected to accompany news of this kind.

[65] Mr. Boyle then claims the termination letter contained "sophisticated breaches" of the ESA. The termination e-mail stated "[e]ffective immediately, you are relieved of all job duties and will begin a non-working notice period. This means you will remain on Salesforce payroll through your termination date of March 24, 2023, at which time your severance will begin. You can use this transitional time to focus on finding your next job opportunity."

[66] Mr. Boyle relies on *Morris v. ACL Services Ltd*., 2014 BCSC 1580 in support of his argument that, as he was not expected or able to work for Salesforce during the notice period, the notice period was an improper attempt to avoid lump-sum ESA payments. In *Morris*, the employee was unable to work during the notice period due to illness. The court noted that the employee, being ill, must also be presumed to be unable to seek work during the notice period. The employee was therefore protected by the applicable legislative provision, which stated:

> 67 (1)A notice given to an employee under this Part has no effect if
>
> (a)the notice period coincides with a period during which the **employee** is on annual vacation, leave, temporary layoff, strike or lockout or **is unavailable for work due to** a strike or lockout or **medical reasons**, [emphasis added]

[67] *Morris* does not assist Mr. Boyle. That case interprets and applies a provision in the British Columbia legislation focused on employees who are unavailable for work for medical reasons. While Mr. Boyle was not expected, and indeed not permitted, to work during the working notice period, he was able to seek work and tell potential employers he was still employed.

[68] Further, Mr. Boyle complains that the termination letter did not indicate that Mr. Boyle would receive his statutory entitlements during the notice period if he found other employment, and there was evidence that Salesforce would consider this a resignation. The offer did not advise Mr. Boyle what he would receive as of right, regardless of whether he accepted the offer. He would not be provided his bonus unless he signed a release. Salesforce also erred in its determination of the amount of severance pay owing, and paid Mr. Boyle the amount it owed him about a year later.

[69] I do not view these complaints as rising to the level that would award Mr. Boyle moral or punitive damages. The termination letter did, in fact, tell Mr. Boyle that he would receive statutory severance pay on the next regularly scheduled payroll after March 31, 2023. Mr. Boyle could use the working notice period as he wished – he could seek work, or he could wait until the notice period ended to begin his job search. I agree that Salesforce took the position that it was not required to pay Mr. Boyle his bonus unless he signed a release. While I have not acceded to this position, Salesforce took the position based on the wording of its bonus policy. There is no indication it took this position in bad faith. Finally, Salesforce corrected the error in the amount of

severance pay it owed Mr. Boyle when it realized it had made an error. An error does not amount to bad faith or reprehensible behaviour.

[70] Salesforce's conduct is nothing like that of the employer in *Pohl v. Hudson's Bay Company*, 2022 ONSC 5230, on which Mr. Boyle relies. In *Pohl*, the employer walked a loyal, 28-year employee out the door, offered him a job designed to extinguish his termination rights, failed to pay the employee the amounts required as a lump sum after his employment was terminated, did not issue a record of employment within the required time period and, when it did, issued them incorrectly. None of those actions, or any equivalent actions, were engaged in by Salesforce.

[71] I find that there was no breach of good faith or fair dealing by Salesforce. Salesforce was not untruthful, misleading, or unduly insensitive. It did not fail to be reasonable and forthright with Mr. Boyle. Mr. Boyle's distress and feelings of hurt, disrespect, and anxiety are understandable feelings that accompany terminations and do not go beyond what would normally be expected: *Teljeur v. Aurora Hotel Group*, 2023 ONSC 1324 at para. 46, aff'd 2024 ONCA 213. Nor do I find that Salesforce's actions in how it terminated Mr. Boyle constitute a marked departure from ordinary standards of decent behaviour, requiring retribution, deterrence, and denunciation. *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419 at para. 79. Salesforce was managing a large layoff. It may have done so imperfectly, but it did not do so in a way that attracts moral, aggravated, or punitive damages.

[72] I therefore find that Mr. Boyle is not entitled to moral or punitive damages, or damages for the breach of the duty of good faith in contractual relations.

Issue seven: Is Mr. Boyle entitled to special damages, reimbursing him for out-of-pocket expenses related to his mitigation attempts?

[73] Mr. Boyle seeks reimbursement for out-of-pocket expenses he says he incurred in his mitigation efforts. Salesforce states the expenses were not necessary for him to find work as they related to "upskilling" Mr. Boyle did not need, and Salesforce should not be required to cover the expenses. It certainly should not have to pay $1235 USD for courses Mr. Boyle failed and retook.

[74] While I have found that Mr. Boyle's upskilling efforts were not unreasonable, I find that he has not demonstrated this upskilling was necessary to find employment. More importantly, he has not established that the expenses were incurred due to Salesforce's failure to provide him with reasonable notice. His circumstances are nothing like those of the employee in *Robinson v. H. J. Heinz Company of Canada LP*, 2018 ONSC 3424, a case on which Mr. Boyle relies. There, the employee had been induced by the employer to relocate. The employer had then breached the employment contract. The court held it was foreseeable that the employee's damages would include the cost of relocating close to her new employment, and that the timing of the sale of the house was directly tied to those mitigation efforts. There is no comparison to the facts in Mr. Boyle's case.

[75] Therefore, I find Mr. Boyle is not entitled to repayment of these expenses.

Disposition

[76] I find Mr. Boyle is entitled to summary judgment granting him the following:

a. Pay in lieu of reasonable notice for a total of 8 months (11 months less 3 months for reasons outlined above.). The amounts already paid shall be deducted from this amount;

b. Payment of his stub bonus for fiscal year 2023 in the amount of$12,808.06, less the $2,898.89 advance payment;

c. Payment of a pro-rated share of his bonus of 10% of his salary for the portion of his eight-month notice period that falls within fiscal year 2024;

d. Payment of benefits calculated at 5% of his base annual salary for the pro-rated period of 5 months, and at 10 per cent for one month.

e. Payment of pro-rated RRSP contributions for the notice period from March 24, 2023, onward.

[77] The parties are encouraged to agree on costs of the trial. Should they be unable to do so, the plaintiff may provide costs submissions of no more than three pages double spaced, along with any offers to settle, within 7 days. The defendant shall have 7 days to respond, with the same page limits. There shall be no reply submissions. These submissions may be sent to my judicial assistant at linda.bunoza@ontario.ca.

L. Brownstone J.

Released: April 28, 2025

CITATION: Boyle v. Salesforce.com 2025 ONSC 2580
COURT FILE NO.: CV-23-00695396-0000
DATE: 20250428

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ADAM BOYLE

Plaintiff

– and –

SALESFORCE.COM CANADA CORPORATION

Defendant

REASONS FOR JUDGMENT

L. Brownstone J.

Released: April 28, 2025