COURT OF APPEAL FOR ONTARIO

CITATION: Pateman v. Koolatron Corporation, 2025 ONCA 224
DATE: 20250324
DOCKET: COA-22-CV-0003

2025 ONCA 224 (CanLII)

Zarnett, Sossin and Copeland JJ.A.

BETWEEN

David J. Pateman

Plaintiff
(Respondent/Appellant by Cross-Appeal)

and

Koolatron Corporation

Defendant
(Appellant/Respondent to the Cross-Appeal)

Gerald Smits, for the appellant

Edward Nolan and Mark Daly, for the respondent

Heard: March 17, 2025

On appeal from the judgment of Justice Dale Parayeski of the Superior Court of Justice, dated July 22, 2022.

REASONS FOR DECISION

Introduction

[1] In 2018, the 29-year employment relationship between the respondent David Pateman and the appellant Koolatron Corporation came to an end. Mr. Pateman sued.

[2] The trial judge rejected Koolatron's position that Mr. Pateman resigned and found that Koolatron had wrongfully dismissed him. The trial judge awarded $70,603.08 in damages. He arrived at that amount by multiplying a monthly income amount by 18.5 months, to account for the 24 months' notice of termination which Mr. Pateman should have received reduced by (i) 3 months for his failure to make reasonable efforts to obtain a job with another employer and (ii) 2.5 months for the actual notice of termination Koolatron gave.

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The Appeal

[3] Koolatron appeals, raising three grounds. First, it challenges the conclusion that Mr. Pateman was terminated, asserting that he voluntarily retired. Second, it submits that the trial judge did not grant a large enough credit for Mr. Pateman's failure to make reasonable efforts to seek a job with a different employer. Third, it argues that the trial judge should also have found that Mr. Pateman was obliged to accept part-time employment with Koolatron, necessitating a further reduction of the damages awarded.

[4] We did not call on Mr. Pateman to respond to the first ground of appeal, which essentially challenges the trial judge's finding of fact. There was ample evidence to support the trial judge's conclusion that it was "obvious…that [Mr. Pateman] indeed was terminated without cause" and that Koolatron's position that Mr. Pateman voluntarily retired was simply "wishful thinking". As the trial judge

noted, Koolatron provided Mr. Pateman with a written notice of termination which cited shortage of work as the reason and made no mention of retirement. It also gave him a record of employment form that was to the same effect. The trial judge was entitled to accept the evidence of Mr. Pateman that he did not voluntarily retire. He was also entitled to reject Koolatron's suggestion that its hosting of a retirement lunch for Mr. Pateman and giving him a gift at it, all after having provided him with notice of termination, meant that Mr. Pateman should be treated as having retired.

[5] Turning to the second ground of appeal, the trial judge described Mr. Pateman's efforts to find work with other employers as "half-heartful at best". He found that [t]hey do not represent reasonable mitigation in all of the circumstances." He deducted 3 months from the notice period of 24 months to "reflect a lack of reasonable mitigation."

[6] Koolatron's submission that the deduction of 3 months was inadequate must be rejected. It was Koolatron's burden to show both that (1) Mr. Pateman failed to take reasonable steps to mitigate and (2) that if reasonable steps were taken, he would have been expected to secure a comparable position. In other words, not only was Koolatron required to show a failure to take reasonable steps, but also that the failure caused part of the loss: *Lake v. La Presse*, 2022 ONCA 742, at paras. 11-13.

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[7] The trial judge found a lack of reasonable steps but made no finding that such steps would have resulted in any mitigating employment. He accepted Mr. Pateman's essentially unchallenged evidence that there were no employment opportunities within a reasonable distance of his home. Koolatron concedes in its factum, at para. 73, that there was no evidence of any specific opportunities available to Mr. Pateman with any other potential employers.

[8] Accordingly, there was no basis for a deduction of more than 3 months based on a failure to mitigate. Indeed, as discussed below in relation to the cross-appeal, since Koolatron did not meet its burden to show that reasonable efforts would have resulted in mitigating employment, there was no basis for the 3 months deduction the trial judge made.

[9] We also reject Koolatron's third ground of appeal that the trial judge should have found that Mr. Pateman was obliged to accept a part-time position with it and that Mr. Pateman's failure to do so should result in a reduction of his damages. We see no reversible error in the trial judge's finding that although Koolatron "raised the possibility that some part-time employment was still available … [t]he terms were somewhat vague and not well communicated". The finding that there was no concrete offer of part-time employment was itself sufficient to support his conclusion that the failure to take up such work was not a breach of his duty to mitigate. It is therefore unnecessary to consider Mr. Pateman's further submission

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that his duty to mitigate would not have required him to accept even a firm and precise offer of part-time employment, had there been one.

[10] We therefore dismiss the appeal.

The Cross-Appeal

[11] Mr. Pateman cross-appeals, raising two grounds.

[12] First, he says the trial judge's reduction of 3 months for a failure to mitigate was unjustified, given the failure of Koolatron to show that reasonable efforts would have resulted in mitigating employment. We agree, for the reasons discussed above.

[13] Second, Mr. Pateman points to a mathematical error in the trial judge's calculations. The trial judge arrived at his damages figure by using a monthly income amount of $3,816.38. He derived the monthly amount by taking Mr. Pateman's calculation of $114,491.42 as his loss of income over 30 months and dividing by 30. The $114,491.42 was already net of the amount Mr. Pateman earned during the period of actual notice he received. Although the trial judge was right to make a deduction to reflect the actual notice of termination Mr. Pateman received, using this monthly amount and deducting the 2.5 months of actual notice essentially counts the same deduction twice. Koolatron does not dispute the mathematical error.

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[14] We agree with Mr. Pateman that the most straightforward way of correcting the error is to add the income earned during the period of actual notice back to the 30-month figure of $114,491.42 that the trial judge employed, and to use the resulting total of $123,501 to calculate the monthly income figure (by dividing by 30). The result is a monthly amount of $4,116.70. Reversing the deduction for mitigation means that the monthly amount should be multiplied by 21.5 months to arrive at the damages. This results in a total sum of $88,509.05 in damages, an increase of $17,905.97 to the damages awarded below.

Disposition

[15] The appeal is dismissed. The cross-appeal is allowed and the damages awarded by the trial judge are increased as set out in para. 14 above. Mr. Pateman is entitled to costs of the appeal and cross-appeal fixed in the amount of $15,000, inclusive of disbursements and applicable taxes.

"B. Zarnett J.A."
"L. Sossin J.A."
"J. Copeland J.A."

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