Court of King's Bench of Alberta

Citation: O'Driscoll v Suncor Energy Inc., 2026 ABKB 43

Date: 20260119
Docket: 2113 00573
Registry: Fort McMurray

Between:

Michael O'Driscoll

Plaintiff

- and -

Suncor Energy Inc.

Defendant

Reasons for Judgment
of the
Honourable Justice Maureen J. McGuire

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[1] This is an action for wrongful dismissal brought by Michael O'Driscoll ("the Plaintiff") against Suncor Energy Inc. ("the Defendant"). The Defendant asserts that the Plaintiff's conduct amounted to just cause for termination, while the Plaintiff disputes this and seeks damages based on what he claims is a reasonable notice period of 16 months.

Summary of the Relevant Evidence

[2] The Plaintiff was hired by the Suncor on April 19, 2010, and was promoted to Shift Supervisor at the Base Plant location in Fort McMurray on January 19, 2018. At the time of termination in February 2021, the Plaintiff was 55 years old and held a leadership role with substantial duties and responsibilities, including supervising a multi-skilled, unionized

workforce, managing safety performance, assigning work, and verifying proper completion of assignments. It was estimated that 20 to 30 employees reported directly to Mr. O'Driscoll in his role as Shift Supervisor. In the field, however, it was not just those direct reports that Mr. O'Driscoll was responsible for supervising; he would work together with other supervisors with responsibility for all employees working in the assigned area.

[3] A year prior to his termination, in January 2020, the Plaintiff had been placed on a Performance Improvement Plan ("PIP") due to concerns about inconsistency and his rushing through preparation and execution of tasks. Specifically, the employer identified a date on which a dozer in the area of the Plaintiff's supervision was not utilized for a period of eight hours. He was told that supervisors are required to manage resources, equipment and assets to maximize utilization and drive efficiencies.

[4] The Plaintiff went on medical leave from April 2, 2020, to October 2, 2020, due to stress and anxiety he attributed to workplace bullying by a former supervisor. Upon return, the PIP was extended, and the Plaintiff's direct supervisor changed to Matthew Brown in late November 2020.

[5] It appears no further concerns were raised about the Plaintiff's performance before a night shift in January 2021. The Plaintiff worked the night of January 11-12, 2021, and at the end of the shift he returned from the work site to the complex a few minutes early. Although shift supervisors have some discretion with respect to the timing of shift change, when Matthew Brown saw Mr. O'Driscoll in the complex earlier than expected he was concerned and looked at the vehicle GPS logs. The GPS logs showed that Mr. O'Driscoll's truck had been immobile from 11:45 pm until 6:53 am. This caused Mr. Brown greater concern, because Mr. O'Driscoll's area of supervision was not only a single pit site, but also included some roads in the area of that pit. Mr. Brown's concern was that if O'Driscoll was stationary in one area, then he wasn't supervising all the roads. In his cross-examination, Brown explained, "for an individual to be parked off out of the way and not in their work area or – or observing their work area was of concern".[1] Brown looked not only at the GPS logs for O'Driscoll's vehicle for the January 11-12 shift, but also looked at his Dec 28-29, 2020 night shift, his Dec 29-30 night shift, his Dec 30-31 night shift, his Jan 9-10 night shift, and his Jan 10-11 night shift.

[6] As a result of the concern, Brown interviewed the Plaintiff at the start of his next shift, the evening of January 12, 2021. Before telling O'Driscoll that he had already looked at the GPS logs, Brown asked O'Driscoll what his night looked like the previous night. O'Driscoll candidly answered that he had first gone to check edges on a grader and then parked in Kame pit. He said he didn't tour the areas because "they just needed sand and the graders looked after it." He said he stayed in Kame pit because he didn't need to be on the roads "and 1007 is important" ("1007" was later explained as reference to a hydraulic shovel). "Last night was not a normal night. I just wanted it to go smooth, so I watched the shovel." He told Brown that he lined up graders on the radio, but didn't check on them. All of this is consistent with what the GPS data showed.

[7] At the end of that interview, Brown sent the Plaintiff home and told him not to report to site until contacted by management or Human Resources. A formal investigation then commenced, and at the conclusion of that investigation, on February 3, 2021, Mr. O'Driscoll was

[1] There was no evidence the Plaintiff was parked "off out of the way" or not in his work area. The GPS records showed otherwise.

terminated. The HR investigator, Jessica Polson, concluded that O'Driscoll had been sleeping on the job.

[8] Three other shift supervisors were working in the same mine area the night of January 11-12, 2021. GPS data and subsequent expert analysis confirmed that the three other supervisors were nearby O'Driscoll throughout much of the shift the employer accused O'Driscoll of not working. Stephen Murphy's vehicle arrived next to O'Driscoll's at 10:36 pm and was there when O'Driscoll's vehicle was moved a short distance at 11:44 pm. Murphy left at 11:59 pm, just as another supervisor, Anthony Cornish arrived at O'Driscoll's truck. Mr. Cornish's vehicle was parked next to the Plaintiff's for over three hours, until 3:08 am, and during the time he was there, Mike Giles was also with them from 2:25 am until 2:58 am. There was only a period of 3 hours and 44 minutes where the Plaintiff's truck was stationary, and he was not in the company of other supervisors.

[9] The Plaintiff's evidence is that he was not sleeping during the shifts in question. He testified that he was supervising equipment operators, monitoring the radio, and addressing safety concerns, particularly with a bulldozer operator, Bob Cox. The Plaintiff states that his logbooks, which could have corroborated his activities, were left in his truck and were not returned to him after his suspension.

[10] The Plaintiff's evidence was corroborated in several respects by the evidence of Anthony Cornish. Mr. Cornish was interviewed on January 20, 2021, by Ms. Polson as part of the HR investigation. On October 21, 2024, Cornish provided an affidavit in this case attaching the notes of that interview as his past recollection recorded of the relevant events. Mr. Cornish confirmed that there was a stuck truck that night that required extraction. Mr. Cornish also confirmed that the Plaintiff had expressed concerns about Bob Cox, particularly with respect to his lack of confidence on the equipment. This was communicated in a discussion they had about "who to keep an eye on, pay extra attention to." Additionally, Mr. Cornish confirmed in his affidavit that he was visiting with the Plaintiff during the shift in question (as was also confirmed by the GPS data).

[11] It is significant to note that the Defendant had the ability, if it had wanted to do so, of using GPS data to confirm or dispute any information, including that there was a stuck truck, and what other vehicles were necessary to extract it, and how long the extraction took. The Defendant has chosen not to tender any of that evidence. The Defendant also failed to preserve radio communication recordings/dispatch records that could have confirmed or disproved the evidence about what work was done by way of radio communications on the night in question, and what supervisors were communicating to others over the radio. Jessica Polson, the HR investigator, testified that Suncor destroyed the dispatch records.

[12] The Plaintiff asserts that the HR investigation was flawed, as the investigator failed to interview all relevant witnesses, did not preserve radio recordings, and did not consider the corroborating GPS evidence showing proximity to other supervisors. I agree there were significant problems with Jessica Polson's investigation and with the conclusions she drew. Her evidence exhibited tunnel vision and a determination to draw inferences against Mr. O'Driscoll. For example, Ms. Polson gave evidence that in concluding that Mr. O'Driscoll was asleep for the 7 hours and 7 minutes that his truck was not moving she relied on an inference she drew from someone else's interview of Anthony Cornish. She had the notes of Mr. Cornish's interview that said that Cornish saw the Plaintiff around 12:00-1:00 am in the Kame pit. When asked about that

information she testified: “This comment does not say that they spoke. [...] And I believe it means to say he didn’t see or hear from him the rest of the night.” She ignored the notes of an interview of another supervisor, Mike Giles, which also suggested that he also had stopped and talked with the Plaintiff around 1:00 am. She completely ignored objectively reliable GPS data that showed those supervisors were together with O’Driscoll from midnight until 3:00 am. She testified that she never looked at GPS records prior to Mr. O’Driscoll’s termination, despite that it was the GPS records that initiated the concern of Mike Brown that caused the investigation to be referred to her. A further, and perhaps more obvious example of how Ms. Polson’s tunnel vision affected her conclusions was in her evidence of how she relied on hearsay information that O’Driscoll’s radio ID had not been picked up on the dispatch system the night of January 11-12 as evidence that O’Driscoll was dishonest when he claimed to have been on the radio all night. She accepted the second-hand information as reliable evidence against the Plaintiff. But she chose to disregard the very same hearsay evidence of radio communications when it was contradictory to information from Bob Cox. She found Bob Cox to be a credible interviewee despite that what Cox said was inconsistent with the conclusion O’Driscoll did not use the radio during that shift. Despite the dispatch records being a critical piece of evidence in her conclusion the Plaintiff’s version of events was untrue, she did not obtain those critical records to review as part of her investigation, and she did not ensure they were preserved for purposes of the litigation.

Applicable Legal Principles

[13] The onus is on the employer to prove just cause for termination on a balance of probabilities. The determination of just cause requires a contextual analysis, considering the nature and seriousness of the alleged misconduct and whether it is reconcilable with sustaining the employment relationship. (***McKinley v BC Tel***, 2001 SCC 38; ***Baker v Weyerhaeuser Co***, 2022 ABCA 83)

[14] A finding of misconduct does not, in itself, give rise to just cause for termination. The core question is whether the employee’s behaviour was such that the employment relationship could no longer viably subsist.

[15] Progressive discipline or alternative sanctions should be used before terminating an employee for misconduct, except in the most serious circumstances.

[16] The measure of damages for wrongful dismissal is the salary and benefits the employee would have earned during the period of reasonable notice. The purpose of damages is to put the employee in the position they would have been in had proper notice been given (***Carroll v ATCO Electric Ltd.***, 2018 ABCA 146 at para 17). In Alberta, damages for wrongful dismissal are viewed from the perspective of damages flowing from breach of the implied term to provide payment in lieu of notice, as opposed to viewing the termination itself as the breach (***Styles v AIMCO,*** 2017 ABCA 1 at para 34).

[17] The assessment of what constitutes reasonable notice of termination involves consideration of what are known as ***Bardal*** factors: the character of the employment; the length of service; the employee’s age; and the availability of similar employment having regard to the employee’s experience, training, and qualifications. (***Wallace v United Grain Growers Ltd.***, [1997] 3 SCR 701 at para 81)

[18] Where bonuses, overtime, or other variable compensation are an integral part of the employee's compensation, and there is no clear contractual limitation, they should be included in the calculation of damages, typically based on historical averages. (***Singer v Nordstrong Equipment Ltd.***, 2018 ONCA 364 at paras 21-25)

[19] The duty to mitigate requires the employee to take reasonable steps to seek comparable employment. In this case, there is no dispute that the Plaintiff did that.

Suncor has failed to show just cause

[20] The Defendant argues that the Plaintiff was terminated for cause due to gross breach of his duties as Shift Supervisor; specifically, his failure to actively supervise and ensure safety on two shifts where his vehicle was stationary for extended periods.[2] The Defendant relies on GPS data to establish the Plaintiff's truck did not move for long periods on two shifts. But primarily it argues that an inference of a failure to perform duties should be drawn from what the Defendant says are the Plaintiff's inconsistent explanations for the GPS data.

[21] The Plaintiff argues that the Defendant's position amounts to an attempt to reverse the onus, requiring the Plaintiff to prove he was not sleeping or derelict in his duties. The law is clear that the burden rests with the employer to prove just cause on a balance of probabilities.

[22] The evidence establishes that the Plaintiff was on a PIP, but the evidence of Jessica Polson was that the PIP did not play any role in the decision to terminate. The concern of the stationary vehicle was viewed by the employer as a new issue, and there is no evidence that the Plaintiff was given a warning or that any progressive discipline was considered for this.

[23] The Plaintiff's explanations for his inactivity are not significantly inconsistent. While details of explanations developed throughout the course of the litigation, as is often the case, from the very first statement of the Plaintiff to his supervisor, his explanation has been consistent. He didn't tour the areas and remained at the Kame pit site because that was what he considered important, and he watched the operations there to ensure there were no problems. He managed the roads by communications over the radio. This has been his consistent position from the conversation with Mike Brown on January 12, 2021, through to his testimony in court at trial.

[24] The Plaintiff's version of events is confirmed in part by the GPS data and by the evidence of Anthony Cornish. The absence of other corroborating evidence (dispatch records and log book) is due to the failure of the Defendant to preserve all relevant evidence.

[25] The Defendant's position relies heavily on the inferences drawn in a selective view of the evidence which ignores exculpatory evidence in favor of an assumption that the Plaintiff was asleep on the job. No witness observed the Plaintiff asleep, and to the contrary, the evidence suggests interaction with others throughout much of the shift.

[26] In these circumstances, I find that the Defendant has established little more than an initial basis for suspicion. The Defendant has attempted to flip the onus onto the Plaintiff by pointing to the basis for suspicion and then demanding that the Plaintiff prove the contrary, despite the Defendant's failure to preserve any evidence that might well have provided corroboration of the

[2] While there were two shifts with long stationary periods shown by GPS data, the employer investigation focused only on the January 11-12 shift and the earlier instance was entirely ignored in the employer's investigation. Nor was any evidence led at trial in relation to the earlier shift, other than the fact that it is shown in GPS data.

Plaintiff's version of events. All the Defendant has really established is that a vehicle assigned to the Plaintiff was stationary for lengthy periods on two occasions approximately a month apart. This is far from proof that the Plaintiff was sleeping, or that he was derelict in his duties. The Defendant has not met its onus to establish just cause for the termination on a balance of probabilities.

[27] The Defendant argued that even if the Plaintiff was not sleeping, and even if he was working all night supervising an employee whose abilities required close supervision and assisting with the extraction of a stuck bulldozer, that just cause could still be supported. It seems to be the Defendant's newly developed theory of the dismissal, that the Plaintiff's duty to supervise the roads required that he personally drive around the roads to personally inspect the condition of the roads, regardless of what other matters might need his supervisory attention and regardless of weather conditions and the ability to obtain reliable information from drivers on the roads about road conditions. The Defendant argued that the failure to have personal eyes on the roads frequently throughout the shift was a serious safety breach that justified the termination.

[28] This argument was not the actual basis for Mr O'Driscoll's termination. Nor was it a theory that appears to have been contemplated during the process of preparing the evidentiary foundation for the argument. No evidence was led about a clearly identified and communicated duty to personally inspect roads at any particular interval. No evidence was led about standard practices of others in the Plaintiff's position, and whether obtaining reliable information from drivers on the roads about the state of the roads was acceptable. And while the Defendant had the ability to provide GPS information about supervisors' driving habits generally, the Defendant did not apparently even make any attempt to do any such analysis.

[29] There is no basis in the evidence to conclude that the Plaintiff did not make a reasonable decision in prioritizing supervisory duties at a particular site on one occasion when weather conditions were such that the obtaining of reliable road reports from drivers fulfilled the responsibility to supervise those roads. If the failure to personally drive roads at any particular interval throughout a shift were actually a significant dereliction of safety procedure, one would have expected Suncor to have articulated that concern at the time of Mr. O'Driscoll's termination, and one would have expected Suncor to have made other relevant inquiries in this regard during its internal investigation. Further, had it in fact been the employer's true belief that poor prioritization of duties was the actual misconduct, with no prior history of any concern of this nature, coaching would have been the appropriate response, not termination.

Reasonable notice

[30] The Plaintiff was 55 years old at termination, had 11 years of service, and held a supervisor-level role where he directly supervised 25 to 30 employees.

[31] There is no formula or grid that easily determines what is reasonable notice in a particular case. Nor are there even identifiable guideline range categories established through jurisprudence. The reasonableness of the notice is to be decided with reference to each particular case, having regard to the circumstances known as *Bardal* factors (***Bardal v Globe & Mail Ltd.***, (1960), 24 DLR (2d) 140 (Ont HC)). In ***Nelson v Champion Feed Service Inc.***, 2010 ABQB 409, Graesser J, after an extensive review of comparator cases, concluded: "The cases cited show a range of 15 to 24 months, for management-type employees with lengthy service."

[32] Assessing the Plaintiff's circumstances together with comparison to the authorities relied on by the parties, a reasonable notice period of 16 months is appropriate. The undisputed components of compensation should therefore be calculated at the agreed upon amounts for a period of 16 months.[3]

[33] In reaching this conclusion, I have considered the following cases provided by the parties:

[34] In ***O'Sullivan v Cavalier Tool***, 2010 ONSC 3937, aff'd 2011 ONCA 480, the period of employment and age of the plaintiff was similar to Mr. O'Driscoll's. The court found, and the Ontario Court of Appeal upheld, the appropriate period of notice was 18 months. Like Mr. O'Driscoll, that plaintiff worked in a supervisory capacity, although it is significant that in that case the plaintiff had been in that supervisory capacity for over twelve years. Mr. O'Driscoll was promoted to supervisor approximately three years prior to his termination.

[35] In ***Scott v Lillooet School District No. 29,*** (1991) 5 BCAC 262, 15 months' notice was held to be appropriate for a school maintenance supervisor with 11.5 years of service who was earning $44,000 annually.

[36] In ***Styba v University of B.C.,*** 1995 CanLII 1610 (BC SC), an office administrator and secretary with 11 years of service, earning $27,000 annually, was awarded 14 months' notice.

[37] In ***Bowey v Baker Hughes Canada Co***., 2014 ABQB 289, a 13-year employee of a well-servicing company was awarded ten months' notice. The Defendant has relied on this case, stating in its brief that the plaintiff was 67 years of age. He was not. The case shows the plaintiff was 37 years old at the time of his termination. And although the Defendant describes this plaintiff as a "top level supervisor", the plaintiff in this case had worked his way up through the ranks and had been promoted to a level three supervisor earing $51,421 plus bonuses only nine months before his termination.

[38] The plaintiff in ***Baker v Weyerhaeuser Co***., 2020 ABQB 808, was a sawmill supervisor with 14 years' service, four of which were with the Alberta location of the company. A notice period of one year was considered appropriate by the trial judge, although no reasons for that determination of notice period were given. The plaintiff appealed, in part based on the lack of reasons with respect to the assessment of the notice period. The Court of Appeal (2022 ABCA 83) dismissed the appeal noting the principle of deference to a trial judge's assessment of damages.

[39] The Defendant has cited other cases. Because those cases involve circumstances where significantly longer periods of service led to awards of longer notice periods, or where much younger plaintiffs were awarded shorter periods of service, I have found those cases less helpful.

Mitigation

[40] There is no dispute that Mr. O'Driscoll mitigated his losses by quickly obtaining other, although lower paying, employment within three months. There does not appear to be any dispute that the amount earned over a 16-month notice period was $143, 476.75.

[3] Base salary of $117,436, Fort McMurray location index of 14% or $16,441.04, bi-weekly shift differential of $2,685.54, shift changeover premium of $6,812, bi-weekly shift overtime of $11,743.68, savings plan contributions of $1,334.58, and benefits of $8,052.20. (all calculated on an annual basis)

Disputed element of compensation: Unscheduled overtime

[41] The evidence shows that the Plaintiff regularly earned substantial amounts in unscheduled overtime (averaging $59,599 per year in the three years prior to termination).

[42] These amounts were significant components of the Plaintiff's overall compensation. As such, an amount for unscheduled overtime should be included in the calculation of damages, based on the average as calculated by the Plaintiff. (***Matthews v Ocean Nutrition Canada Ltd.***, 2020 SCC 26 at paras. 52–55; ***Eberle v Sunhills Mining Limited Partnership***, 2018 ABQB 389 at para 36).[4]

[43] The Defendant's argument that unscheduled overtime is discretionary and should be excluded is an argument without foundation in the evidence. The Defendant argued that damages should be determined based upon what the Plaintiff would have earned if he had been terminated with working notice, and that the court should infer that an employee would not have been eligible for overtime if the company had decided to give working notice. Such an inference is not supported by the evidence. Ms. Polson's evidence was simply that she had not heard of a similar situation having occurred previously, but she also gave evidence that she is not involved in scheduling overtime for a supervisor such as the Plaintiff. The Plaintiff's historical earnings, including his earnings in 2020 when he was on a performance improvement plan, support the inclusion of the amount claimed in the notice period calculation.

Disputed element of compensation: "Supervisor's bonus"

[44] The Plaintiff also claims damages for what he refers to as a "supervisor's bonus". The Defendant, and the evidence contained in Ms. Polson's supplemental affidavit, identifies the bonus as an "Annual Incentive Program". The Annual Incentive (bonus) is paid out in Q1 of the year following the performance year. For example, the bonus that appears as part of Mr. O'Driscoll's 2020 compensation is the bonus earned in 2019.

[45] An Annual Incentive Program (AIP) amount of $29,074 was part of Mr. O'Driscoll's compensation in 2019, based on a 2018 performance rating of "successfully meets expectations". In 2020, that bonus was $18, 656 based on a 2019 performance rating of "partially meets expectations". The average of these two years is $23,865.

[46] In determining whether a bonus is an amount properly included in damages for wrongful dismissal, there are two considerations. The first consideration is whether, but for the termination, the employee would have been entitled to the bonus during the reasonable notice period. And if so, the second consideration is whether there is something in the bonus plan that would unambiguously remove or limit the employee's entitlement. (***Matthews v Ocean Nutrition Canada Ltd.***, 2020 SCC 26 at para 55)

[47] Jessica Polson's evidence included information about the terms of the Annual Incentive Program and the circumstances that would impact the eligibility for the award. Certain employment status changes affect eligibility for receipt of the AIP award. Relevant to the consideration of the AIP award as a component of total compensation for damages purposes is the clause stating the effect of not-for-cause involuntary termination. The terms of the program

[4] The three-year average was also the basis used for calculating overtime in *Carmichael v Suncor Energy Inc* (28 Nov 2024), Calgary 2301-15636 (AB KB)

specify that in situations of involuntary termination that is not a termination with just cause, the employee is not eligible for an award for the performance year. This means that had Mr. O'Driscoll's employment been properly terminated with notice or compensation in lieu of notice, he would not be eligible for any AIP award in 2021 – the year of termination. Mr. O'Driscoll's annual compensation summaries for 2019 and 2020 provided him with information on where he could find the detailed information about the Annual Incentive Plan on the employer website. In that way, the limits on the program were communicated to him. As a result, the AIP award does not form a part of the Plaintiff's total compensation for purposes of calculating a 16-month notice period quantification of damages.

[48] However, when Mr. O'Driscoll was terminated in January 2021, he did not receive his AIP award that that was based on the 2020 year. The terms of the program do not indicate that an employee would ever be denied an award for a year in which the employee was employed and working. That is compensation earned in the year preceding termination, even if it is paid out in the year of termination.

[49] According to the program terms, where an employee is absent on leave for a portion of the year, the period of time on leave is not eligible, but there is no reason in the evidence I have that justifies the total denial of the 2020 AIP award which should have been paid in Q1 of 2021. As Mr. O'Driscoll was on a medical leave of absence for six months of 2020, he ought to have received half of the annual award.

[50] The evidence before me that informs as to how the AIP award is calculated is found in Mr. O'Driscoll's Employee Compensation Summaries for 2019, and 2020. Individual performance is only one factor in determining the amount of the award, and that factor is weighed as only 20% of the total. 80% of the calculation relates to corporate performance and business unit performance. Given that 2020 was the year of the start of the global COVID-19 pandemic, it is entirely possible that corporate performance for the Defendant, like many corporations, declined during at least some of that year. But I have no evidence of that. It may well be that the Defendant's business flourished during that period when others struggled. The Defendant has chosen not to provide evidence of the AIP awards and the numbers that would contribute to corporate and business unit performance, and the Plaintiff does not have that evidence to provide. In these circumstances, taking into account that Mr. O'Driscoll was on a performance improvement plan as of January 2020, the 2019 AIP award of $18, 656, which was based upon a 2019 performance rating of "partially meets expectations" appears to be a fair comparator. An amount of $9,328 should be added to the total calculation of damages, reflecting a reasonable amount for loss of the AIP award that the Plaintiff had earned in the year prior to his termination.

Defendant's counterclaim for repayment of Housing Allowance

[51] The Defendant has counterclaimed for the repayment of a housing subsidy the Plaintiff received in accordance with Suncor's Wood Buffalo Housing Program.

[52] In 2014, the Mr. O'Driscoll was approved for the housing subsidy, and he began receiving biweekly payments of $602.50 commencing January 24, 2014. The subsidy payments continued consistently in that amount through January 2016, and after that date the amounts varied. There is no dispute about what amounts were paid out to the Plaintiff under the subsidy

program. All payments are shown in a Subsidy Payment Summary Sheet which was in evidence before the court.

[53] Although only Suncor employees were eligible for the housing subsidy program, the program was not an employment benefit in the sense of a housing allowance that would form a component of overall compensation. The housing subsidy was a separate contract, linked to employment by the terms of the agreement that related to eligibility and termination.

[54] Section 4, paragraph (b) of the agreement states:

> In the event that:
>
> i) I cease to be employed by Suncor;
>
> […]
>
> I promise to repay to Suncor, upon demand, all payments advanced for my benefit by Suncor pursuant to this Agreement (including the initial lump-sum payment, if any, and the monthly payments) during the most recent twenty four (24) months of my employment with Suncor, excluding periods of long term leave (as approved by Suncor), on the basis as described in the Program Guidelines & Standards Document.

[55] Suncor takes the position that, because the employment termination date was February 3, 2025, and because the termination clause clearly states the recipient of payments is required to repay all payments advanced during the 24 months prior to the recipient's ceasing employment, Mr. O'Driscoll owes Suncor for reimbursement of all amounts paid pursuant to the subsidy program subsequent to February 3, 2019, which would be 24 months prior to the termination.

[56] Between February 3, 2019, and February 3, 2021, the subsidy payments totaled $9,361.86.

[57] The Plaintiff does not dispute the fact of the agreement or the general applicability of the repayment clause 4(b). He does not dispute that he received the amount claimed in the 24 months prior to February 3, 2021. However, he takes the position that the 24-month period should be calculated as the 24 months preceding the end of the notice period that he ought to have received. Calculated this way, assuming he had been properly given a 16-month period of working notice, the 24 months of repayments would be those payments subsequent to June 3, 2020. Further, as Mr. O'Driscoll was on approved leave until October 2, 2020, and clause 4(b) excludes leave periods from the repayment requirement, only payments subsequent to October 2, 2020, are owed. The total amount of subsidy payments received subsequent to October 2, 2020, is $1,130.84.

[58] Although employment is one of the qualifying requirements for the subsidy program, the program is not a part of the employment contract. The calculation of a 16-week reasonable notice period is a calculation to quantify damages resulting from the employment contract. The housing subsidy is not a component of compensation and therefore does not have any role in the calculation of damages for breach of the employment contract. As a separate and independent contract, the Plaintiff cannot use the employment breach damages calculation to alter the terms of the subsidy agreement. To do so would be to treat the subsidy agreement as a component of compensation, which it is not. To deem any date other than February 3, 2021, as the date he "ceased to be employed by Suncor" would alter the terms of the housing subsidy contract. The

Plaintiff argued that, but for Suncor's wrongful termination, he would have not ceased to be employed on February 3, 2021, and would have continued his employment for at least another 16 months. That argument amounts to a claim that Suncor breached an implied condition of the housing subsidy contract – the implied condition being that he would not be terminated without just cause. But as the Supreme Court said in ***Vorvis v Insurance Corp. of B.C.***, [1989] 1 SCR 1085 at 1095: "The situation at bar, however, is not one in which a term must be implied to cover a situation not within the contemplation of the parties, but rather one where the parties made specific provision for the events which occurred." The Plaintiff's argument contradicts and would narrow the broad express wording of "cease to be employed" in the contract.

[59] Mr. O'Driscoll was required to repay amounts received through the housing subsidy program in accordance with the repayment clause sent out at paragraph 4(b) of the agreement.

[60] The Defendant's calculation of $9,361.86, fails to take into account the long-term leave period of April 2 to October 2, 2020. Leave periods are expressly excluded from repayment in paragraph 4(b). During the period in 2020 when Mr. O'Driscoll was on a medical long-term leave of absence, $1,557.22 in subsidy payments were received. The evidence of J. Polson was that Mr. O'Driscoll was also on a paid leave of absence during the investigation period from January 12, 2021, until the date of termination. During that period, $463.46 in subsidy payments were received. The total amount he was obligated to repay, therefore, was $7,341.18 ($9,361.86 less the leave period amounts of $1,557.22 and $463.46).

[61] The Defendant's counterclaim is allowed in the amount of $7,341.18.

Summary

[62] Mr. O'Driscoll was wrongfully dismissed. His damages are to be calculated on the basis of a 16-month notice period. That amounts to:

Base salary of $117,436 x 1.33	$156,189.88
Fort McMurray location index $16,441.04 x 1.33	$21,866.58
bi-weekly shift differential of $2,685.54 x 1.33	$3,571.77
shift changeover premium of $6,812 x 1.33	$9,059.96
bi-weekly shift overtime of $11,743.68 x 1.33	$15,619.09
savings plan contributions of $1,334.58 x 1.33	$1,774.99
benefits of $8,052.20 x 1.33	$10,709.16
unscheduled overtime of $59,599 x 1.33	$79,266.67
	$298,058.10

[63] Deducting from this the acknowledged mitigation amount of $143,476.75 leaves damages of $154,591.35

[64] In addition, he is entitled to $9,328 on the basis of the Annual Incentive Program award that should have been paid to him in 2021 for the 2020 employment period. The total amount of damages, therefore, is $163,909.35.

[65] The amount to Suncor in the counterclaim is $7,341.18.

Heard on the 12th day of June, 2025.
Dated at the City of Edmonton, Alberta this 19th day of January, 2026.

Maureen J. McGuire
J.C.K.B.A.

Appearances:

Lluc Cerda
for the Plaintiff, Michael O'Driscoll

Michael D. Aasen
for the Defendant, Suncor Energy Inc.