



What's New in HR Law

Court Awards Wrongful Dismissal Damages before Employee even Commenced Work

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Bottom Line

In *Kim v BT Express Freight Systems*, the Ontario Superior Court of Justice recently awarded a Plaintiff three (3) months' notice in a wrongful dismissal action where the employer rescinded an offer of employment *before* the Plaintiff had begun working in their new position.

Background

The Plaintiff accepted a job offer from the Defendant organization, BT Express Freight Systems, in February of 2019. The Plaintiff then informed their existing employer that they had accepted employment elsewhere and resigned.

In March of 2019, days before the Plaintiff was scheduled to start the position with BT Express, the general manager of BT Express informed the Plaintiff that the organization was

This update is for general discussion purposes and does not constitute legal advice or an opinion.

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“terminating/withdrawing” the job offer. The Plaintiff’s former employer had already filled the Plaintiff’s old position.

The Court Awards Wrongful Dismissal Damages

On a motion for default judgment, the Court found that the Plaintiff had entered into an employment contract with BT Express, and that BT Express breached that contract when it revoked the offer of employment without cause and without providing advanced notice.

Importantly, the Court noted that a valid employment contract will create an employment relationship and may attract liability for wrongful dismissal damages for a breach of that contract, even in circumstances where the employee has not yet started their new job or performed any work for the employer.

Assessing the reasonable notice period, the Court considered the fact that the Plaintiff had not been actively seeking employment but, rather, was contacted by BT Express when it found the Plaintiff’s resume on a job search website. BT Express was found to have induced the Plaintiff to leave the Plaintiff’s former employment on the basis that the Plaintiff would receive a \$30,000 per year pay increase.

The Court also considered the existence of a three (3) month probationary period in the contract, but found the probationary period was not applicable because the Plaintiff was not afforded the opportunity to work in the role. However, the Court noted the existence of a probationary period, and its length, are relevant factors in determining what damages may be appropriate.

Ultimately, the Court determined that a reasonable notice period of three (3) months was appropriate in the circumstances. While the Plaintiff quickly secured alternate employment, it was for a salary much lower than BT Express had promised. BT Express was ordered to pay the difference between the Plaintiff’s salary at the time of the hearing and the \$80,000 salary that had been promised.

Check the Box

Employers should keep in mind the potential liability involved with making offers to employees that they later have to revoke, and only extend offers of employment where there is a legitimate need or vacancy to be filled.

Careful drafting in an employment contract can also help mitigate risks associated with terminating the employment of employees – even ones who have not yet started working. A termination provision that is carefully drafted to limit liability may avoid costly common law notice obligations. Similarly, and particularly in cases where it is uncertain whether the position will materialize, including a provision that reserves the employer’s right to withdraw or rescind the offer before the employee starts working may help to establish realistic expectations and

avoid additional damages that may be imposed where inducement or bad faith conduct is found.

Need more information?

For more information about employment agreements or related litigation, contact [Madeline Davis](#) at 416.408.5528, or your regular lawyer at the firm.



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