What's New in HR Law

Ontario Court Suggests a Lower Evidentiary Requirement to Demonstrate Frustration of an Employment Contract

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BOTTOM LINE

The Ontario Superior Court of Justice has recently ruled that an employee's employment contract can be deemed to be frustrated if there is "enough evidence" to conclude that there is no reasonable likelihood that the employee would be able to return to work within a reasonable period of time. The Court suggested that an employer does not necessarily require evidence of permanent impairment to demonstrate frustration of an employment contract.

Facts: Employee sued for wrongful dismissal when terminated for frustration of the employment contract after a three-year absence

In September 2015, RONA Inc. ("RONA") terminated Mr. Roskaft, a 13-year employee, from his employment for frustration of contract. In doing so, RONA stated that Mr. Roskaft's employment was frustrated as a result of a "permanent" inability to perform work after a three-year leave medical leave of absence.

Mr. Roskaft started a medical leave of absence in September 2012. He first obtained short-term disability ("STD"), then long-term disability ("LTD") benefits through RONA's insured employment benefit plan. Under the terms of RONA's benefit plan, the insurer makes all decisions and payments with respect to employee benefit claims.

In order to continue to collect LTD benefits under the benefit plan, Mr. Roskaft was required to submit periodic "Return to Work" forms to the insurer. These forms addressed Mr. Roskaft's medical condition and his ability to return to work.

In late October 2014, Mr. Roskaft sent one such form to the insurance company. On this form, Mr. Roskaft indicated that he was unable to return to work, and listed his return to work date as "N/A." The insurer then sent RONA a letter indicating that Mr. Roskaft was still unable to attend work.

When RONA received such correspondence from Sun Life indicating that Mr. Roskaft was still unable to return to work, RONA concluded that Mr. Roskaft was "permanently" totally disabled and that it was unlikely he would be able to return to work within a reasonable time. RONA reached this conclusion despite the fact that the insurance company's correspondence did not indicate permanent disability. RONA then advised Mr. Roskaft that he was being terminated as a result of frustration of contract.

Mr. Roskaft filed a claim with the Ontario Superior Court of Justice (the "Court") claiming wrongful dismissal. He argued that RONA had a responsibility to make inquiries of him to determine whether he could return to work in the foreseeable future and stated that he could have provided updated medical documentation had it been requested.

To support its position that Mr. Roskaft would not have been able to return to work in the foreseeable future, RONA argued that it was entitled to rely on the documentation at its disposal, and that it was not required to seek out further medical documentation. RONA also sought to rely on post-termination evidence showing that Mr. Roskaft's condition had not improved after the termination.

Ontario Superior Court of Justice: Mr. Roskaft's employment contract was frustrated

In assessing, and ultimately dismissing Mr. Roskaft's wrongful dismissal claim, the Court confirmed that the test to determine whether an employment contract has been frustrated is whether there is a *reasonable likelihood (at the time of termination)* that an employee would be able to return to work *within a reasonable period of time*. If no such reasonable likelihood exists, an employee's contract may be deemed to be frustrated.

While the Court found that there was no explicit documentation to indicate Mr. Roskaft was "permanently" disabled, the Court found that there was "enough evidence" to conclude that there "was no reasonable likelihood" that Mr. Roskaft would be able to return to work within a reasonable period of time.

The Court ruled that RONA could rely on the documentation that it had at its disposal and that it was not necessarily required to make inquires of Mr. Roskaft. The Court cited the insurance company's decision to provide LTD benefits, Mr. Roskaft's continued representations that his condition had not improved, and the fact he was not fit to return to work.

Further, the Court allowed RONA to rely on the post-termination evidence, stating that the evidence "shed[s] light on the nature and extent of the employee's disability at the time of an employee's dismissal."

The Court did not discuss the length of time which Mr. Roskaft spent away from the workplace.

Check the Box

In the past, the Court has seemingly required employers to demonstrate near permanent disability before determining that a contract was frustrated.

This decision appears to accept a lower evidentiary threshold to demonstrate frustration of an employment contract. According to this decision, employers may only need "enough evidence" to show that an employee cannot return to work within a "reasonable time."

However, employers should still be cautious when assessing an employee who has been on an extended medical leave, as whether "frustration" has occurred will depend on the specific context of the situation.

- Before concluding that a contract of employment has been "frustrated," employers should assess the context of the situation, including the nature of the leave of absence, the evidence related to the employee's recovery, and any evidence about future prognosis.
- Any termination for frustration that is not supported by "enough evidence" will likely result in a Court awarding damages.

Forum: Ontario Superior Court of Justice

Date: June 27, 2018

Citation: *Roskaft v. RONA Inc.*, 2018 ONSC 2934

Need more information?

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