 Surprise decision brings surprise results

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For Law Times

Little more than four months after the Supreme Court of Canada heard the appeal of Honda Canada Inc. v. Keays, the court’s decision was released. The court had the opportunity to alter the practice of both employment law and the common law in general. The largest punitive damages ever awarded to an employee had the possibility of being reinstated by the highest court in the country and the chance of a new tort of discrimination could have been created, allowing individuals discriminated against to use the court system as a means for remedy. Despite all of this possible change, a surprising decision was reached.

Kevin Keays worked for Honda for 14 years. In 1997, he was diagnosed with chronic fatigue syndrome and went on long-term disability until 1998, when his benefits were discontinued. Returning to work, Keays was placed in a disability program which entitled him to take days off work as long as he met two criteria: that the absence was due to his condition and he provided a doctor’s note to Honda supporting the reason for each absence.

Abiding by these rules, Keays provided Honda with the corresponding notes. However, Honda became concerned about how often he was absent from work, as well as the lack of medical evaluation referred to in each doctor’s note. In response to these concerns, Honda asked Keays to meet with a new doctor, who Honda had suggested. Keays’ counsel advised him not to attend such a meeting without an explanation as to what it would entail, which Honda had not provided. After rejecting the notion of the meeting many times, Honda terminated Keays.

As a result of the termination, Keays sued Honda for wrongful dismissal. The trial judge decided in favour of Keays and awarded him $500,000, designed to thermore, an award of punitive damages Honda had terminated him. Fur- Keays sued Honda for wrongful

The court upheld the award of 15 months’ pay in lieu of notice. However, this ruling was surprisingly distinct from the two courts below in regards to both the bad-faith and punitive damages.

The court analyzed the four points on which the trial judge had based his finding of bad faith and came to the conclusion that such a finding was either without evidentiary support or consisted of an overridingly palpable error. According to the court, no evidence existed which indicated that Honda had deliberately misrepresented Keays’ and Honda’s own doctor’s medical views in regard to his disability, or that Honda’s doctor took a “hardball” approach towards Keays and his condition. Additionally, the trial judge made an overridingly palpable error by finding that Honda’s decision to end Keays’ accommodation was a form of reprisal for Keays’ retention of legal counsel. Rather, the accommodation was stopped in order to confirm Keays’ disability. Also, a further overridingly palpable error was made by the trial judge when he decided to consider Keays’ disability during the post- termination period. The court stated, “...this was not compensable under the Wallace [v. United Grain Growers Ltd.] umbrella because there was no evidence that the disability was caused by the manner of termination.”

In regards to the trial judge and Court of Appeal’s awards of punitive damages, the court decided that there was no act committed by Honda that deserved such an award. The court cited Vorvis v. Pilot Insurance Corp. of British Columbia and Whiten v. Pilot Insurance Co. as follows: “This court has stated that punitive damages should ‘receive the most careful consideration and the discretion to award them should be most cau- The court said in regards to the accommodation program requiring Keays to provide a note for each absence: “The differential treatment was meant to accommodate the particular circumstances of persons with a particular type of disability and to assist employers in accommodating an employee who is disabled and the employee’s responding obligation. The employer is required to perform a thorough investigation of the employee’s disability and the employee is required to cooperate fully with this process.

In finding that Honda’s acts were not worthy of damages for conduct in dismissal or punitive damages, the court has clarified what is acceptable conduct of an employer when accommodating an employee. Unreasonable requests by employers in an attempt to accommodate employees may result in employers constructively dismissing their employees, entitling employees to notice along with potentially additional damages due to the conduct of dismissal where the employee’s actual losses will be considered, as well as potential punitive damages as a result of the employer’s misconduct, providing the employer’s actions are akin to the conduct contemplated in Whiten and Vorvis.”

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