

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chowanetz v. Ivor Forest Products Ltd.*,
2026 BCSC 1760

Date: 20260917
Docket: S41305
Registry: Chilliwack

Between:

James Chowanetz

Plaintiff

And

Ivor Forest Products Ltd.

Defendant

Before: The Honourable Justice Wilson

Reasons for Judgment

Counsel for the Plaintiff:

J. Johnson
F. Thompson

Counsel for the Defendant:

S. Chen

Place and Date of Trial:

Chilliwack, B.C.
September 9, 2026

Place and Date of Judgment:

Chilliwack, B.C.
September 17, 2026

[1] This is an application by the plaintiff, James Chowanetz, for damages for wrongful dismissal arising from the termination of his employment by the defendant, Ivor Forest Products Ltd. (“Ivor”), on October 8, 2025.

[2] The plaintiff was hired following contact with a recruitment agency. He was offered and accepted a position as a Moulder Technician in the late fall of 2020, with an effective start date of January 2021. At the time of his hiring, the plaintiff resided in and worked in Calgary. The defendant's plant was located in Chilliwack, and the plaintiff therefore had to relocate. He was reimbursed an agreed-upon amount by way of contribution to his moving expenses.

[3] The defendant made an offer of employment to the plaintiff by way of a letter dated October 30, 2020, which offer was accepted by the plaintiff on November 12, 2020. The offer of employment constituted a binding contract. The parties agree that the offer was a binding contract (the “Employment Offer”).

[4] Four years later, in November 2024, the plaintiff signed a new employment agreement with the plaintiff (the “2024 Contract”). The 2024 Contract was signed by both parties on November 29, 2024.

[5] The 2024 Contract contained a number of provisions for which there was no equivalent in the Employment Offer. Most importantly for the purposes of this dispute, paragraph 8.2 of the 2024 Contract included the following:

8.2 Termination Without Cause By signing below you agree that the Company may terminate your employment without cause in accordance with the following provisions:

A. Notice Period. The Company may, by written notice to you, terminate this Agreement and your employment at any lawful time without cause. In the event of termination under this section 8.2, you will be provided with the minimum amount of notice, or pay in lieu of notice, that is required pursuant to the terms of the *ESA*, plus an additional 1) week(s) of base salary.

B. Full and Final Release. You agree to execute a full and final release in favour of the Company in order to receive any amounts outlined in Section 8.2A in excess of your minimum entitlements under the *ESA*. If you do not execute a full and final release in favour

of the Company, you will receive only your minimum entitlements as provided for under the *ESA*.

C. Prior Service. Please note that the Company is not recognizing or adopting your years of prior service with any previous employer for any purpose (including the common law), except where required by the *ESA*.

D. No Contracting out of *ESA*. In no circumstances will you receive less than your minimum entitlements to notice of termination pursuant to the *ESA*.

By signing below, you agree that the entitlements set out in this Section 8.2 are the only entitlements the Company will be obligated to provide you should it terminate your employment without cause. You agree that upon the receipt of your entitlements in accordance with this Section 8.2, no further amounts will be due and payable to you whether under contract, statute or common law.

Section 8.2 will continue to be in effect regardless of the duration of your employment and despite any changes that might occur to your compensation, job function responsibilities, or title, so long as you continue to hold a position with the Company or any related entities.

[6] Clause 8.2 is significant, because it restricts the plaintiff's ability to recover damages in the event that the defendant was to terminate the plaintiff without cause, which is what happened here. The plaintiff's remedies are limited under the 2024 Contract to the statutory minimum notice as set out in the *Employment Standards Act*, plus one additional week. By contrast, under the Employment Offer, there were no clauses that limited the plaintiff's recovery in the event of a wrongful termination.

[7] For the reasons that follow, I find that the 2024 Contract is not enforceable, and the plaintiff is entitled to damages assessed under common law principles in lieu of notice. However, I do not accept that he is entitled to aggravated damages.

Background Facts

[8] In or around 2020, the plaintiff was contracted by a recruiter and was put in touch with Adrian van Nieuwkerk ("Adrian"), the president/owner of the defendant. In October 2020, the plaintiff attended Ivor's facilities in Chilliwack in person, and to have further discussions with Adrian.

[9] Thereafter, the plaintiff was provided with the Employment Offer from the defendant at a wage rate of \$31.00 per hour, which the plaintiff signed on November 12, 2020. After relocating from Calgary to Chilliwack, the plaintiff started work for the defendant in January 2021.

[10] Also relevant to this dispute is the last paragraph of the Employment Offer which is entitled “Subsequent Reviews” and contains the following terms:

Our intent is to build a long-term relationship that is productive and mutually beneficial. Each year thereafter upon the anniversary of your hire date a review will be completed to ensure that your wages are competitive with the local market for qualified Moulder Technicians.

Certainly, as you master the requirements of this position, we will expect to provide further opportunities for growth and opportunities to increase your levels of responsibility and commensurate earnings.

(the “Annual Wage Review”).

[11] Early in January 2021, another moulder technician resigned his employment from the defendant. According to the defendant, it felt vulnerable and agreed to increase the plaintiff’s wage to \$35.00 per hour from \$31.00 per hour in September 2021, in order to keep the plaintiff. The plaintiff’s understanding is that the increase was the result of the Annual Wage Review.

[12] It is not necessary for me to determine why the plaintiff was given an increased wage. What is clear, however, is that the plaintiff’s wage remained unchanged at \$35.00 per hour from September 2021, until it was increased to \$38.50 per hour in November 2024, concurrently with the signing of the 2024 Contract.

The Law Regarding New Contracts During Employment

[13] The parties agree on the applicable legal principles. A mid-employment contract amendment that restricts common law notice rights is unenforceable unless there is fresh consideration for the new or amended contract. Continued employment is not sufficient consideration. The Ontario Court of Appeal confirmed this in *Hobbs v TDI Canada Ltd.*, 2004 CanLII 44783 (ON CA).

[14] In *Hobbs*, the employer required the employee to sign an amended agreement that was not part of the original employment agreement, in order to continue to be employed. The Court stated in *Hobbs* at para 42:

The requirement of consideration to support an amended agreement is especially important in the employment context where, generally, there is inequality of bargaining power between employees and employers. Some employees may enjoy a measure of bargaining power when negotiating the terms of prospective employment, but once they have been hired and are dependent on the remuneration of the new job, they become more vulnerable.

[15] This principle was applied in a more recent British Columbia case, *Sui v HungryPanda Tech Ltd.*, 2024 BCSC 1856, citing *Krieser v Active Chemicals Ltd.*, 2005 BCSC 1370, where the Court found that adequate consideration is needed if the new terms were detrimental to the plaintiff.

[16] In *HungryPanda*, the plaintiff signed a modification to an already-existing employment agreement, and the issue was whether or not there was adequate consideration for the new employment agreement. Mr. Justice Blok affirmed a three-part test in determining whether, and to what extent, fresh consideration is required when an employment contract is amended, at para 48:

- a) Did the contract contain new terms which were detrimental to the plaintiff?
- b) If it did, what is required at law to provide adequate consideration for such changes to the employment relationship?
- c) Has the defendant established adequate consideration on the facts here?

[17] In this case, if the defendant can rely on the 2024 Contract, then the plaintiff's recovery is limited to the provisions of the *Employment Standards Act*, plus one additional week, which the plaintiff has already received. Absent fresh consideration for the 2024 Contract, the Employment Offer would still apply, and the plaintiff would not be so restricted.

Summary Trial

[18] Rule 9-7 of the *Supreme Court Civil Rules* permits a party to apply for a final determination of a dispute summarily, and without the need for a full trial. While a summary trial is still a trial process, the evidence is generally tendered by way of affidavits, rather than with the witnesses testifying in person in the courtroom.

[19] Rule 9-7(15) permits the court to grant judgment in summary trial applications unless:

- a) the issues raised by the summary trial application are not suitable for disposition under the Rule; or
- b) the summary trial application will not assist in the efficient resolution of the proceedings.

[20] The parties agree that the matter is suitable for disposition by summary trial. I agree.

Issues To Be Decided

[21] The first question is whether or not there was fresh consideration for the 2024 Contract.

[22] If there was no fresh consideration and the plaintiff is entitled to compensation based on common law principles, I must determine a reasonable notice period for the plaintiff. The defendant also argues that the plaintiff failed to mitigate his damages in the event the plaintiff's recovery is not governed by the 2024 Contract.

[23] Finally, I must also determine whether the plaintiff is entitled to an award of aggravated damages associated with the manner of his dismissal.

Was There Fresh Consideration?

[24] The defendant seeks to uphold the 2024 Contract, and says there were three aspects to the fresh consideration that led to the 2024 Contract:

- a) the plaintiff's hourly wage was increased to \$38.50 per hour from \$35.00 per hour;
- b) the defendant instituted a RRSP match program ("RRSP Match Program"); and
- c) the plaintiff was eligible for bonuses ("Bonus Program").

[25] For his part, the plaintiff says that the wage increase was the product of the Annual Wage Review as required under the Employment Offer, and that neither the RRSP Match Program nor the Bonus Program, were related to the 2024 Contract, nor were they included in it.

[26] I find it more convenient to deal with the RRSP Match Program and the Bonus Program first, before addressing the increase in the plaintiff's hourly wage.

Bonus Program

[27] On November 14, 2024, the defendant issued a letter regarding a bonus program (the "Bonus Letter"). The Bonus Letter stated the following:

November 14, 2024: Moulder Reporting Bonus Program

Ivor would like to offer the following bonus program as a means of providing incentive based pay:

- 1) \$1500.00 performance bonus paid out at the end of March subject to review.

Payment of Bonus Subject to Following Criteria:

- 1) Production Reporting: Completion and Submission of Production Reports provided by Ivor for every moulder run, by material / run #
- 2) Attendance: NO (zero) Unexcused Absences permitted in each of the 4 month periods of review in order to maintain eligibility. Absences for sickness, sick days, and vacation time-off granted will not affect eligibility for the bonus provided that any and all time off work is in compliance with Ivor's company policy.

[28] There is mention of a bonus program in the 2024 Contract, which provides for a bonus that is wholly discretionary under the section dealing with remuneration as follows:

During the term of this Agreement, and at the discretion of the Company, you may also be paid a discretionary bonus, cash or otherwise, with the discretionary bonus entitlement to be determined solely by the Company ("Bonus"). You confirm that the Bonus does not form part of your expected compensation and the payment of any Bonus is solely within the discretion of the Company.

To be eligible to earn or receive payment of a Bonus, you must be actively employed. Subject to the minimum requirements of the requirements of the *Employment Standards Act*, R.S.B.C. 1996, c. 113, as amended, and the *Employment Standards Regulation*, B.C. Reg. 396/95, as amended (collectively, the "ESA"), "active employment" shall cease as of the day upon which you give your notice of resignation or receive notice of termination of your employment with the Company.

[29] There are a couple of things to note about the Bonus Letter with reference to the 2024 Contract.

[30] First, the Bonus Letter, dated November 14, 2024, predates the 2024 Contract, which was signed on November 29, and there is nothing in the Bonus Letter that suggests that its implementation is contingent upon the signing of some form of contract.

[31] Second, the bonus as set out in the 2024 Contract is entirely discretionary, whereas the Bonus Letter provides for a sum certain, provided certain conditions are met. In other words, what was contemplated in the Bonus Letter is not the same as the bonus in the 2024 Contract.

[32] Importantly, the 2024 Contract contains an entire agreement clause at paragraph 12(a):

Entire Agreement. This Agreement constitutes our entire employment agreement and supersedes any previous written or verbal agreements between us, including any previous offers of employment. There are no conditions, warranties, representations or other agreements between the parties except as specifically set out in this Agreement.

[33] As such, by its own terms, the 2024 Contract specifically provides that the proposed bonus for a sum certain as set out in the Bonus Letter is not a part of the plaintiff's agreement with the defendant under the 2024 Contract.

[34] Put another way, it would appear that the defendant may have a full defence to any claim by the plaintiff for the bonus of \$1500 as set out in the Bonus Letter.

[35] In the circumstances, I am satisfied that the bonus as set out in the Bonus Letter was not contingent upon signing of the 2024 Contract, and likely could not be enforced by the plaintiff in any event. It follows that the only bonus in the 2024 Contract, which is entirely discretionary, cannot be additional consideration.

RRSPs

[36] It is apparent from the evidence that there were negotiations between the parties in the months preceding the 2024 Contract, including on the subject of a RRSP match program and also regarding the plaintiff's hourly wage.

[37] Shortly before the 2024 Contract was signed, on October 31, 2024, the defendant sent a letter to the plaintiff that made specific reference to a RRSP Match Program:

. . .

Additionally, your point about wanting the 5% RRSP matching from the onset due to your needing to have the option of quickly loading up your RRSP in the remaining years up to your requirement is also something I think is valid and reasonable. Ivor is onside to match 5% of your contributions to your RRSP, and we will do so to the beginning of the year of 2024 per our previous commitment to you. This means if you would like to make a lump-sum contribution, we will allow it as a means of honoring this, but normally contributions will come from matching your wage.

[38] I do not accept that the RRSP Matching Program was a benefit derived from, and constituted fresh consideration for, the 2024 Contract. First, the October 31, 2024 letter appears to confirm that the commitment for the RRSP match had already been made and therefore was not fresh consideration for the 2024 Contract.

[39] More importantly, however, although that the defendant argues the RRSP Match Program forms part of the additional consideration received by the plaintiff in exchange for the 2024 Contract, the 2024 Contract makes no mention of such a program and contains the 'entire agreement' clause as referenced above. As such,

the argument about the RRSP Match Program has the same fatal flaw as the argument about the Bonus Program.

[40] The defendant's assertion that the entire agreement clause would likely not be effective by way of a defence to a claim for either the RRSP Match Program or the Bonus Program is, with respect, unsatisfactory. The defendant sent a letter to the plaintiff on October 31, 2024, in which the defendant proposed the following offer:

1. Wage increase of \$2.50 per hour (new hourly wage of \$37.50) as Consideration for signing employee contract, attached separately.
2. RRSP matching calculated at 5% of Gross Pay up to a maximum contribution of \$5000 per year, backdated to Jan 1., 2024.
3. A performance bonus for this next 12 months, with the start date to be calculated as at October 31, 2024. The total amount of \$3200 is to be paid in installments of \$1600, paid out semi-annually.

This offer is valid until November 20, 2024.

[41] However, on November 14, 2024, the defendant sent a letter to the plaintiff that provided as follows:

This is to confirm that Ivor Forest Products LTD. (the "Company") will be transitioning all existing employees to written employment contracts. Enclosed please find the new employment contract that Ivor Forest Products LTD. will govern the terms and conditions of your employment with the Company. The enclosed contract of employment will become effective on the day you sign it; in other words, the terms of your current employment agreement with the Company (which are unwritten) will come to an end.

In exchange for your signature on the enclosed employment contract, you will receive an increased hourly wage of \$38.50.

Please sign and return the enclosed contract by November 30, 2024.

If you have any questions, please do not hesitate to contact me.

[42] The version of the 2024 Contract that was signed was sent along with this letter, which contains no mention of either a RRSP Match Program or the Bonus Program. It is not apparent on the face of the record whether the letter that included the 2024 Contract for signature was sent before or after the other letter of same date, but it could be interpreted as having revoked the offer that includes the RRSP match and the \$1500 bonus.

[43] The 2024 Contract was drafted by the defendant, and I do not accept that its argument can be bolstered by a suggestion that the contract upon which it relies in its defence of this claim is not enforceable in certain aspects or is somehow incomplete.

[44] It follows that I do not accept that the Bonus Program or RRSP Match Program can be taken into account in determining whether or not the plaintiff received additional consideration in exchange for his agreement to the 2024 Contract.

[45] This leaves only the issue of the wage increase.

Hourly Wage

[46] The plaintiff's hourly wage as set out in the Employment Offer was \$31.00 per hour. In September 2021, his hourly wage was increased to \$35.00 per hour.

[47] The plaintiff's next wage increase was not until 2024, coinciding with the execution of the 2024 Contract. Over the course of the preceding year, there had been discussions between the plaintiff and Mr. van Nieuwkerk on behalf of the defendant, during which different proposals were made and were rejected. Some of those discussions or negotiations were in writing.

[48] At the time the 2024 Contract was provided to the plaintiff, his wage had been at \$35.00 per hour since September 2021, a period of over three years. An increase from \$35.00 per hour to \$38.50 per hour represents an increase of ten percent.

[49] The question I must decide is whether the increase in the plaintiff's wage constituted fresh consideration for the 2024 Contract. I conclude that it does not.

[50] Under the Employment Offer, the plaintiff was entitled to a review of his wage pursuant to the Annual Wage Review. While the plaintiff believed that he had his first wage review in 2021, the defendant says this was not an annual review as agreed to but was because another moulder technician had resigned. There is no doubt that no wage reviews took place in either 2022 or 2023, and if I accept the defendant's

admission that no Annual Wage Review was done in 2021 either, there were three annual wage reviews that were not completed, notwithstanding the defendant's contractual obligation to do so.

[51] The defendant bears the onus of proving that the plaintiff received fresh consideration for the 2024 Contract. However, the plaintiff was contractually entitled to have his wage reviewed annually under the Annual Wage Review in the Employment Offer, and the defendant did not do so.

[52] In *Hobbs* and in *HungryPanda* (at para 50), the Court concluded that continued employment is no consideration at all. Here, the plaintiff was already contractually entitled to the Annual Wage Review, so unless the defendant can show that the plaintiff received something of value above and beyond that to which he was already entitled, there can be no consideration.

[53] There is no evidence of the prevailing rates for moulder technicians in the Fraser Valley such that the court could infer that the offer was generous to the plaintiff or otherwise provided him with a wage that was above the prevailing market rate, had the Annual Wage Review been conducted in 2021, 2022 and 2023. I would note that an increase to \$38.50 per hour from \$35.00 per hour, an increase of 10%, after three years without any increase, is not one such that I could take judicial notice of it exceeding prevailing rates absent any evidence on the point.

[54] Finally, I observe that the defendant should not be able to rely on its past failures to conduct the Annual Wage Review under the Employment Offer in order to suggest that it was being generous or otherwise was offering the plaintiff an amount in excess of the market rate it had already committed to pay him.

[55] I conclude that the defendant has failed to establish that the increase in the plaintiff's hourly wage under the 2024 Contract provided him anything he was not already entitled to under the Employment Offer and as such, the defendant has not established that the 2024 Contract is supported by any fresh consideration. The

limits to the plaintiff's recovery in the event of termination without cause in the 2024 Contract therefore do not apply, and he is entitled to damages at common law.

Common Law Damages for Breach of the Employment Contract

[56] The parties agree on the principles that apply to the assessment of damages for breach of the employment contract. At common law, an employer who terminates an employee without cause must provide reasonable notice or pay in lieu of notice.

[57] The assessment of reasonable notice is governed by the factors set out in *Bardal v Globe & Mail Ltd.*, (1960) 24 DLR (2d) 40 (Ont. High Court). In *Bardal*, the Court set out the guiding principles and a non-exhaustive list of factors that are generally accepted for determining what constitutes a reasonable notice period. Those factors include but are not limited to the nature of employment, the length of service, the age of the employee, and the availability of suitable similar employment having regard to the employee's experience, training and qualifications together with surrounding economic circumstances, as well as inducement. A restatement of those principles may also be found in *Ansari v B.C. Hydro & Power Auth.*, 1986 CanLII 1023 (BCSC) at para 15.

[58] In *McKinney v University of Guelph et al*, 1990 CanLII 60 (SCC), [1990] 3 SCR 229, the Supreme Court of Canada held with respect to persons between the age of 45 and 65 the following:

. . . They do not have the flexibility of the young, a disadvantage often accentuated by the fact that the latter are frequently more recently trained in the more modern skills. Their difficulty is also influenced by the fact that many in that age range are paid more and will generally serve a shorter period of employment than the young, a factor that is affected not only by the desire of many older people to retire but by retirement policies both in the private and public sectors. . .

[59] The plaintiff was 48 years old at the time of his termination. As such, he is at the bottom end of what might constitute an older employee for the purposes of determining damages.

[60] The plaintiff's submission is that considering his age at termination, length of service (almost five years), senior supervisory duties, specialized technical role and diminished re-employment prospects given the plaintiff's highly specialized field, the appropriate reasonable common law notice period is no less than eight months.

[61] The defendant says the plaintiff is overstating his role. The plaintiff was not a manager and did not hold "senior managerial duties", as alleged, and his primary responsibility was maintaining and operating machinery to manufacture wood products. The defendant acknowledges the plaintiff was an experienced moulder technician and did possess specialized technical knowledge, and that he did mentor junior moulder technicians, but did not hold any managerial responsibilities over them. The defendant argues a reasonable notice period would be between three and five months.

[62] The parties also disagree on the role of inducement on the plaintiff's damages. In *Wallace v United Grain Growers Ltd.*, 1997 CanLII 332 (SCC), [1997] 3 SCR 701, the Court confirmed that awarding a longer period of reasonable notice may be appropriate where the employer recruited the employee from a secure, well-paying position through representations concerning career advancement, increased responsibility, greater security, and superior compensation within the new organization.

[63] I accept the proposition that an inducement can increase the appropriate notice period, but the difficulty here is that the plaintiff has led no evidence regarding his previous employment, including providing no details regarding why the court should conclude that he left "secure" employment. There is no evidence of what position he held, how long he had held his previous position, or how much he was paid. I conclude that inducement is not a factor.

[64] No two cases are identical, and the assessment of the appropriate notice period involves placing these facts on a continuum with reference to other decisions and with reference to the factors identified in *Bardal* and *Ansari*. The parties have each referred to a number of cases in support of their respective positions.

[65] I conclude that the plaintiff was a skilled technician with specialized technical knowledge which was based on experience and on-the-job training as opposed to a formal education or a qualification such as a red seal. He mentored younger moulder technicians but was not in a management role.

[66] The plaintiff referred to *Perretta v R and A Technology Corporation*, 2021 ONSC 2111, where the plaintiff was a salesperson and held a non-managerial role, was 49 years old with five-and-a-half years of service. The Court determined that six months was reasonable notice for her.

[67] In a decision regarding a 46-year-old pipe inspector technician who had worked for the defendant for five years, the Court found the reasonable notice period to be five months: *Fredericks v 2753014 Canada Inc.*, 2008 NSSC 377. This decision was referred to by the defendant.

[68] While I find these two decisions were the closest to the circumstances in this case, the plaintiff in *Fredericks* was in more of a general labouring role and I therefore find the *Perretta* case to be closer in terms of the plaintiff's position as it relates to the ability to find comparable work.

[69] I conclude that the plaintiff was entitled to six months pay in lieu of notice.

Did the Plaintiff Fail to Mitigate His Losses

[70] The plaintiff did not begin applying for positions until approximately six months after his termination, and his only effort earlier than that was limited to contacting the recruiter who had arranged for him to contact the defendant in 2021.

[71] The parties disagree as to what a defendant must establish in order to obtain an order that would reduce the plaintiff's damages. The defendant relies on *Logan v Numbers Cabaret Ltd. (Hamburger Mary's)*, 2016 BCSC 1473, a case where two long-serving employees were placed on a layoff and not recalled to work. Neither employee made any job application efforts during the claimed notice period. The Court found that "instead of continually and assiduously applying themselves to find

employment, [the plaintiffs] chose to reflect on their options, which included moving out of the province or pursuing education.”

[72] In *Logan*, the Court distinguished between cases where the employee made efforts, but could have done more, from the cases where the employee does nothing:

[40] I disagree that the plaintiffs’ failure to discharge their duty is of no consequence unless and until Cabaret proves that suitable employment was to be found. As I read them, the cases cited by the parties that speak of the obligation of the employer to prove that employment was available in the context of the duty to mitigate defence involve circumstances where the discharged employee is being criticized by the employer in respect of his or her efforts to find work or rejecting offers of employment. In other words, the onus is on the former employer to prove that had the employee done more, they would have been successful in obtaining employment (see, e.g. *Szczypiorkowski v. Coast Capital Savings Credit Union*, 2011 BCSC 1376 at paras. 90-91). In this case, the plaintiffs did nothing other than take a recent and cursory look for job opportunities. Cabaret has proven that if the plaintiffs had read the local newspaper, which they say they did to track the progress of renovations at the restaurant, they would have seen reports of an abundance of immediate job opportunities for cooks and waitresses in the lower mainland. That they continued to receive EI benefits beyond the date this action was commenced while at the same time representing to EI that they were actively looking for work speaks poorly of their credibility.

[73] The Supreme Court of Canada in *Evans v Teamsters Local Union No. 31*, 2008 SCC 20, stated at para 30:

[30] . . . This Court has held that the employer bears the onus of demonstrating both that an employee has failed to make reasonable efforts to find work and that work could have been found . . .

[74] As such, the defendant’s burden is to prove that not only were the plaintiff’s efforts not reasonable, but that they likely would have succeeded had they tried.

[75] As this Court said in *Smith v Aker Kvaerner Canada Inc. and Kvaerner Power Inc.*, 2005 BCSC 117 at para 32, the employer’s burden in establishing a failure to mitigate is a heavy one.

[76] In this case, I have no evidence regarding the available work for moulder technicians, whether in the Fraser Valley area or otherwise. While I do not accept

that the defendant needs to establish that the plaintiff would have obtained any particular position because that would place too high a burden, some evidence of equivalent opportunities should presumably have been available.

[77] At the plaintiff's examination for discovery, when asked why he did not make any job applications between October 2025 and April 7, 2026, the plaintiff says it was because he "was dealing with EI", and "assessing his situation", "assessing his work and employment prospects, my children that are rooted in Chilliwack going to school. Possible relocation." I accept that having children in school could have an impact on the breadth of the plaintiff's job search, and delays in and having to deal with the Employment Insurance office would have been as a consequence of the defendant having failed to issue the plaintiff his record of employment ("ROE") in a timely manner.

[78] While the plaintiff's efforts fell short of what one might have expected, the Supreme Court of Canada in *Evans* requires that the defendant establish that work could have been found, and there is no evidence on that point. As such, I do not find that the plaintiff's damages should be reduced on account of his having failed to mitigate his damages.

Is the Plaintiff Entitled to Aggravated Damages?

[79] The plaintiff argues the defendant breached its duty of good faith and fair dealing in the manner of dismissal. This duty, established in *Honda Canada Inc. v Keays*, 2008 SCC 39 at para 58, requires employers to be honest, candid, and reasonable when dismissing employees. The plaintiff refers to the following actions on the part of the defendant in support of his claim for aggravated damages:

- a) issuing a disputed written warning and requiring a response within an unreasonably short timeframe;
- b) terminating the plaintiff the following day for alleged performance concerns without following its own policies regarding performance management and progressive discipline;

- c) terminating the plaintiff shortly after he raised concerns regarding payroll irregularities and other workplace issues, including the defendant's failure to pay his full vacation pay entitlement for more than one year;
- d) delaying the plaintiff's statutory entitlements;
- e) delaying issuance of the plaintiff's Record of Employment;
- f) offering additional severance only upon execution of a release; and
- g) acting in a manner that was unduly insensitive and foreseeably harmful to the plaintiff.

[80] Not every wrongful dismissal case will attract aggravated damages. In *Quach v Mitrox Services Ltd.*, 2020 BCCA 25, the Court of Appeal, citing a previous decision confirmed that an award of aggravated damages resulting from the manner of dismissal requires:

- a) a finding that an employer engaged in conduct during the course of dismissal that was unfair or in bad faith; and
- b) a finding that the manner of dismissal caused the employee mental distress.

[81] In *Quach*, the Court of Appeal confirmed that more than normal distress arising from termination is required to justify an award of aggravated damages:

[27] On the reasoning in *Honda*, not all mental distress from the fact of dismissal attracts an award of aggravated damages – the plaintiff is required to establish something well beyond the normal distress and hurt feelings that invariably accompanies loss of employment. As Mr. Justice Savage explained in *Lau v. Royal Bank of Canada*, 2017 BCCA 253 at para. 49, referring to *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, and *Saadati v. Moorhead*, 2017 SCC 28, testimony showing a “serious and prolonged disruption that transcended ordinary emotional upset or distress” may constitute a sufficient evidentiary foundation but “the demeanor of the plaintiff in the witness stand” is an insufficient basis for a finding of the requisite distress.

[82] I agree with the defendant that there is no evidence to support the plaintiff's argument that he suffered anything other than the usual upset that goes along with having been terminated. His affidavit offers no evidence in this regard. I also note that some of the plaintiff's complaints in support of his argument for aggravated damages are unrelated to his manner of termination, and in some instances, predate it.

[83] I do accept that the defendant failed to provide the plaintiff with his ROE, and as a result he was not able to start receiving the Employment Insurance benefits to which he was entitled, for several weeks. It is acknowledged that once counsel was involved, the ROE was produced within two days.

[84] I am not satisfied that the plaintiff is entitled to aggravated damages.

Disposition

[85] The plaintiff is entitled to six months' wages in lieu of notice. The plaintiff would ordinarily be entitled to costs at Scale B, but if either party wishes to address the issue of costs, they may contact Supreme Court Scheduling within 14 days of the date of these reasons to make those arrangements.

[86] Finally, I would like to thank both counsel for the very organized and efficient manner in which this case was presented.

"Wilson J."