

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: THE PLAINTIFF SOUGHT AN APPEAL OF THE TRIAL DECISION THAT AWARDED HIM DAMAGES FOR WRONGFUL DISMISSAL BUT DENIED HIS CLAIM FOR BENEFIT SCHEMES

Administrative law – Judicial review – Appeals – Standard of review – Palpable and overriding error – Correctness – Employment law – Wrongful dismissal – Damages

Carroll v. ATCO Electric Ltd., [2018] A.J. No. 460, 2018 ABCA 146, Alberta Court of Appeal, April 17, 2018, J. Watson, B.L. Veldhuis, M. Crighton, JJ.A.

The appellant was trained as an engineer and was employed by the respondent since 1981. He was terminated without cause on May 4, 2010, and commenced vacation leave until his retirement on August 27, 2010. The respondent agreed to pay the appellant a lump sum over 28 months. The plaintiff was awarded 24 months of notice in lieu of cause for termination commencing on May 4, 2010. However, the trial judge found that the appellant was not eligible for any benefit scheme under the terms of those schemes due to termination by retirement.

The standard of review was that of palpable and overriding error. The appellant raised three issues on appeal. First, the appellant contended that the date of the reasonable notice period commenced on May 7, 2010. The Court was not able to find that the trial judge committed an overriding error in this respect as the evidence showed that the appellant was aware that he was not returning to work on May 4, 2010.

Second, the appellant sought an award of 28 months arguing that there were “exceptional circumstances” to justify an award beyond the 24 months awarded at trial. The appellant argued that the trial judge ought to have considered that the respondent paid his lump sum compensation over a 28-month period. The Court concluded that there was no palpable and overriding error as the trial judge considered all relevant factors and the employer acted fairly in allowing the appellant to move towards pension eligibility by commencing his vacation leave.

Finally, the appellant argued that the trial judge erred in concluding that, based on the language of the plans, the benefit schemes could not be vested after termination. The Court dismissed this aspect of the appeal as there was no palpable and overriding error. The Court concluded that no benefits could be vested after termination.

In the result, the Court dismissed the appeal.

This case was digested by [Jackson C. Doyle](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Jackson C. Doyle at jdoyle@harpergrey.com.