COURT OF APPEAL

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-09-001835-834 C.A.M.

November 12, 1987

CORAM: Justice Chouinard
Justice Mailhot
Justice Moisan (ad hoc)

SURVEYER, NENNIGER & CHENEVERT INC.

and

SNC/FW LTEE

Appelants

vs

MICHAEL STANLEY SHORT

Respondent

THE COURT, ruling on an Appeal against the judgment Of the Superior Court of the district of Montreal (Honorable Justice Harry L. Aronovitch) rendered on November 8, 1983, granting Respondent's action for 33 531$, with costs.

After study of the file, hearing and advisement:

Respondent, a professional engineer, was fired on December 10th, 1982, after 18 months of employment with Appelant. Appelant had retained Respondent's services after a recruiting campaign in England where Respondent was living and exercising his profession.

Respondent's firing was essentially due to the economic recession prevailing in 1982 and 1983 which carried with it a reduction of Appelant's personnel of 1 500 people, out of a total of 5 400 in 1981. The firing was done according to seniority rights and Respondent, recently employed, was among the first to be let go.

On that occasion, Appelant offered, in conformity with standards set up for the whole of its dismissed employees, a five-week-notice plus a 10,000$ indemnity to cover his return to his country origin.

Unsatisfied, Respondent sued, claiming, along with the 18 month-notice, diverse other amounts for damages, losses and disbursements.

The trial judge granted an indemnity equivalent to 6 month-notice, an indemnity for loss of fringe benefits for the same period, and a sum of 13 543, 50$ to return to England. He rejected the other claims as not having been proved to his satisfaction or as damages not being directly related with the Respondent's dismissal.

Respondent cross-appealed to obtain these damages, losses and disbursements.

On his across-appeal, Respondent has not convinced us that the trial judge had committed an error in refusing to grant the amounts claimed, nor that the notice should be increased to 18 months.

On the appeal, two questions need attention: is the 6 month-notice exaggerated? Should an indemnity to cover the cost to return be granted under the circumstances?

According to the jurisprudence (1), numerous factors of unequal importance should be taken into account on establishing a reasonable notice. The circumstances of hiring the employee, the nature of the work, the intention of the parties, the age of the employee, the abandon of a certain and remunerative employment, the difficulty to find other satisfactory employment, the length of service, the reasons for dismissal, etc.

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(1) Columbia Builders c. Bartlett (1967 B.R. 111)
Lecompte c. Steinberg (1981 C.S. 211).

When hired by Appelant, Respondent was 37 years old; he had been working for 4 years in an important business which was nonetheless experiencing difficulties and which had started a personnel reduction program; Respondent's employment was not in immediate danger but was uncertain in the long run.

He worked with Appelant as a simple chemical engineer, with the exception of a few months where he was in charge of a two man team.

The intention of the parties was certainly a long term employment and it would have been realized had it not been for the economic recession in 1982. Respondent's difficulty in finding comparable employment in Quebec or elsewhere in this country is mainly dependant on this economic recession which is independent of either party's will. It also flows, but very weakly, from his imperfect knowledge of the French language.

All these different factors of relative importance having been taken into account, but especially that of the length of employment, this Court is of the opinion that the 6 month-notice was clearly exaggerated, sufficiently to justify the intervention of this Court. A 3 month-notice appears to us to be adequate in the present case.

As far as the moving costs back to his country of origin concerned, Respondent was offered the sum of 10,000$ in conformity with the general policy established by Appelant for employees coming from outside of the country.

The trial judge considered this offer as an admission of liability. This Court is not ready to confirm this point of view. It does not appear however useful to discuss at length this point since this Court sees in this 10,000$ offer, not an admission of liability but the implementation of a policy that Appelant wanted, in all fairness, to apply to all its employees who chose to go back to their country of origin.

The trial judge was of the opinion that Respondent had been induced to come work in Canada. Respondent uses this opinion to argue for a longer period of notice.

After having examined the proof, this Court finds that Appelant did not insist more than in any normal recruiting campaign. Nothing proves that it would have

exercised on Respondent particularily a specific pressure. Respondent, tempted by the Canadian adventure, has taken his decision knowingly, freely and favourably with Appelant's offers and exposés.

A change of employment in the industrial field along with immigration to a foreign country do carry risks and uncertainties; Respondent was a serious man and should have weighed these factors and he must at least partially assume the unfavorable consequences that derive from them.

Appelant, in indemnifying Respondent for his return by the sum of 10,000$ has adequately compensated this particular circumstance.

Respondent's indemnity should be established as follows:

3 month-notice	11,250$
Fringe Benefits (3 months)	961$
Moving costs	10,000$
Total	22,211$
Notice received	4,316$
Balance	17,895$

FOR THESE REASONS:

DISMISSES Respondent's cross-appeal;

Partially MAINTAINS the appeal, with costs against Respondent;

REDUCES the amount of the indemnity to 17,895$ with interest as of the date of service, plus the indemnity of article 1078.1 of the Civil Code and the trial division costs.