



No. L021149
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PETER GREGG

PLAINTIFF

AND:

FREIGHTLINER LTD., DOING BUSINESS AS WESTERN
STAR TRUCKS, TRUST COMPANY A, THE CANADA
TRUST COMPANY AND CIBC MELLON TRUST COMPANY

DEFENDANTS

BROUGHT PURSUANT TO THE *CLASS PROCEEDINGS ACT*

STATEMENT OF DEFENCE

1. The Defendant, Freightliner Ltd., doing business as Western Star Trucks, ("Freightliner") denies each and every allegation or statement of fact in the Statement of Claim, unless expressly admitted in this Statement of Defence.
2. Freightliner admits that it employs the Plaintiff.
3. In answer to paragraph 2 of the Statement of Claim, Freightliner admits that it is a corporation with a registered and records office in British Columbia at 800 - 1070 Douglas Street, Victoria.

Claims Under the Employment Agreement

4. Freightliner employees both unionized and non-unionized employees. Amongst the non-unionized employees a portion have written contracts of employment and a portion do not. The Plaintiff is amongst those non-unionized employees without a written employment contract.

5. It was an express, or alternatively an implied, term of the Plaintiff's employment with Freightliner that Freightliner could terminate the Plaintiff's employment upon provision of reasonable notice or payment in lieu thereof.

6. In October of 2001, Freightliner announced that the Kelowna operations and plant of its Western Star Division would be shut down. On or about December 3, 2001 a letter was sent to Freightliner employees in Kelowna, including the Plaintiff, which gave notice of the termination of their employment with Freightliner effective September 30, 2002 (the "Severance Letter"). The Severance Letter provided working notice of the termination of employment. In addition to the working notice of the termination of employment, the Severance Letter also told the employee that he would receive a lump sum amount on September 30, 2002 as a payment in lieu of additional notice. The lump sum payment will be calculated to include:

- (a) a period of months of salary in lieu of additional notice;
- (b) an additional amount that includes:
 - (i) an amount equivalent to the 5% that the employee's salary was reduced in the period from January 6, 2002 to September 30, 2002;

- (ii) an amount that provides an additional 5% payment on the payment of a period of months of salary in lieu of additional notice, so that this amount is calculated as though salaries were not reduced on January 6, 2002; and
- (iii) an amount for other benefits.

7. In the case of the Plaintiff, the amount he will be paid on September 30, 2002 will be calculated on the basis of 11 months of salary in lieu of additional notice.

8. Since receiving the Severance Letter the Plaintiff and other employees who received a similar letter have known with certainty that their employment would be terminated on September 30, 2002. The working notice provided in the Severance Letter is valid.

9. The Plaintiff and other non-unionized employees whose employment is being terminated as a result of the shut down of the Kelowna plant have all received or will receive fair and reasonable notice and or payment in lieu of notice consistent with the terms and conditions applicable to their employment. Indeed, those non-unionized employees with written employment contracts will receive the payment of amounts in lieu of notice as expressly provided in their written employment contracts without deduction of the additional working notice gratuitously given to them by the Severance Letter.

10. In answer to paragraphs 19, 20 and 21 of the Statement of Claim, on February 12, 2001 Freightliner implemented a new Salaried Compensation Program following a compensation study, which created new salary grades for employees working in Kelowna. One purpose of the new salary grades was to integrate salaries in Kelowna with salaries at other Freightliner units in Canada. Under this reclassification, the Plaintiff acquired a new job title and a salary increase

from \$2008.32 to \$2048.49, but lost his eligibility to receive paid overtime (as the Plaintiff was exempt from the mandatory overtime provisions of the *Employment Standards Act*). The Plaintiff also was advised that he would be eligible for bonuses, on a strictly discretionary basis, which when awarded would be based upon performance. The Plaintiff accepted these changes to his terms and conditions of employment. Other employees were also reclassified under this program and similarly accepted the changes made to their terms and conditions of employment.

Pension Plan

11. The Plaintiff is a member of the Western Star Trucks Inc. Pension Plan for Non-Bargaining Employees (the “Western Star Plan”).

12. Western Star Trucks Inc. (“WSTI”) was created as a corporation in 1981. In that same year, WSTI purchased a portion of the assets of the White Motor Corporation, specifically the assets comprising the White Motor Corporation’s Western Star truck business (the “Asset Purchase”).

13. Prior to the Asset Purchase the White Motor Corporation had sponsored a pension plan known as the White Motor Corporation of Canada Limited Pension Plan for Salaried and Hourly Non-Bargaining Employees (the “White Motor Plan”).

14. The White Motor Plan was not assumed by WSTI as part of the Asset Purchase or its related transactions. Instead, WSTI created the Western Star Plan as its own plan and received from the White Motor Plan a transfer of part of the assets of the White Motor Plan in relation to employees who had formerly worked for the White Motor Corporation but who were then commencing employment with WSTI (the “Transfer of Assets”).

15. After the Transfer of Assets, the White Motor Plan continued as a separate pension plan. Freightliner had no obligations with respect to the administration or conduct of the White Motor Plan either before or after the Transfer of Assets. Freightliner played no role and received no benefit from any steps taken in the administration of the White Motor Plan, other than to receive the Transfer of Assets.

16. The Western Star Plan was restated and amended in 1985 and again in 1998. In addition there have been further amendments in 1998 and 1999. All amendments and restatements of the plan were validly made and received all required regulatory approvals.

17. Freightliner denies that any inappropriate or unauthorized payments have been made from the Western Star Pension Plan as alleged or at all. Any withdrawals of surplus from the Western Star Plan were made with the approval of all relevant regulatory bodies and with the approval of the members of the Western Star Plan.

18. Further, the Western Star Plan expressly and validly provides, in article 12.05, that the employer may apply any surplus of assets of the Trust Fund against any funding required of the employer; withdraw any excess assets upon obtaining any necessary regulatory approval of applicable regulatory authorities; or utilize any excess assets for any purpose as the employer may direct and as is permitted under Income Tax Rules.

19. Moreover, the Western Star Plan also expressly and validly provides, in article 16.03, that upon termination of the Western Star Plan any surplus shall be paid to the employer.

20. Further, the payment of expenses related to the administration of the Western Star Plan is expressly permitted by Section 15.03 of the Plan, a provision included in the Plan by a valid

amendment to the Plan that did not operate to reduce the amount or value of the benefits that accrued to members.

21. As the termination of the Western Star Plan has not yet occurred, any complaint concerning the manner in which the termination will be effected, including the payment of termination expenses, is premature, academic and does not constitute the subject matter of a *lis* properly before the court.

22. The Plaintiff complains that Freightliner failed to establish a pension advisory committee. However, both the plan text and the applicable legislation require a pension advisory committee only where requested by a majority of the members of the Plan and no request for a pension advisory committee was ever received from a majority of members of the Western Star Plan.


23. The Plaintiff complains that Freightliner failed to establish a Statement of Investment Policies and Procedures for the Western Star Plan, however at all material times there was a Statement of Investment Policies and Procedures for the Western Star Plan and the Western Star Plan was administered in accordance with that Statement.

WHEREFORE the Defendant Freightliner Ltd., doing business as Western Star Trucks submits that the Plaintiff's claims should be dismissed with costs to the Defendant.

Dated at Vancouver, British Columbia, on June 10, 2002.

Fasken Martineau DuMoulin LLP

Per:



Solicitors for the Defendant Freightliner
Ltd., doing business as Western Star Trucks

The Solicitors for the Defendant Freightliner Ltd., doing business as Western Star Trucks are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2100 - 1075 West Georgia Street, Vancouver, B.C. V6E 3G2 Telephone: 604 631 3131 Facsimile: 604 631 3232. (Reference: Allan P. Seckel/FRE00040)