

IN THE SUPREME COURT OF BRITISH COLUMBIA

COPY

Date: 20060912
Docket: S031838
Registry: Vancouver

Between:

Peter Gregg

Plaintiff

And:

Freightliner Ltd., doing business as Western Star Trucks

Defendant

Before: The Honourable Madam Justice Bennett

Oral Reasons for Judgment

In Chambers
September 12, 2006

Counsel for Plaintiff

D.B. Gleadle

Counsel for Defendant

M.D. Andrews, Q.C.
G. Marshall

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** Here is what I am proposing that we do. With respect to Mr. Gleadle's proposition that he bring forward two representative plaintiffs to deal with the issues outstanding, which are wage rollback, payment of overtime and payment of bonus, what he proposes to do is to have two representative plaintiffs come forward, but to determine their individual issues rather than common issues. It is his hope that the determination of the individual issues will then lay a foundation or background within which the remainder of the issues can be resolved.

[2] Although that may be a practical solution, it does not appear to be in accordance with the ***Class Proceedings Act***, and I think at the end of the day we are left with the potential of solving two cases only. I appreciate the complications we have, and my solution at this point is only a partial solution in order to try and move some of this along.

[3] With respect to the wage rollback, the first thing to be done is that the subclass needs to be defined, and I think that can be done fairly easily. It depends on who was employed as of January 6, 2002, when the wages were rolled back.

[4] Secondly, the issue of whether this was a breach of their employment contract I think can be tackled, or at least an attempt should be made to tackle it, by way of a Rule 18A application, with one representative being put forward, and that will be for the purpose of determining a common issue.

[5] I leave open the possibility that, at the end of the day, the evidence shows that we cannot deal with this as a common issue on by way of a Rule 18A

application, but from the information I have to this point, it suggests that we probably can.

[6] Parallel to that proceeding going forward, I would also ask that Mr. Andrews do as he indicated, and that would be to ask Freightliner for an analysis of whose wages were rolled back, and what was paid as part of the severance package. If, in fact, the rollback was paid back to the employees as part of the severance package, then that may resolve the matter. I would ask that those inquiries parallel the preparation of a Rule 18A application. If that can be solved then obviously the Rule 18A does not need to proceed.

[7] Next, with respect to the overtime issue, this class also needs to be defined. There is apparently a subclass because some people did not receive overtime, and some did. More evidence needs to be gathered to determine what overtime schemes were in place.

[8] If the plaintiffs have contracts, their contracts need to be reviewed to determine whether they actually had a written contract with respect to overtime or whether the overtime was being paid on the basis of statutory provisions.

[9] If there is evidence that there was a general scheme to pay those in the subclass the same, then it may be appropriate for that to come forward as a rule 18A application, with a representative plaintiff, but again, it would be to decide a common issue.

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[10] Finally, with respect to the bonus issue, I think everyone is in agreement that that can proceed as a common issue and can proceed by way of Rule 18A application.

E. Bennett