

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Rodgers v. West Fraser Mills Ltd. dba Eurocan Pulp and Paper Company***,
2006 BCSC 467

Date: 20060323
Docket: S054696
Registry: Vancouver

Between:

David Rodgers

Plaintiff

And

West Fraser Mills Ltd. dba Eurocan Pulp and Paper Company

Defendant

Before: The Honourable Mr. Justice Pitfield

Reasons for Judgment

Counsel for the Plaintiff: Murray Tevlin

Counsel for the Defendant: Dean A. Crawford

Date and Place of Trial: January 30 to February 3, 2006
Terrace, B.C.

[1] On June 17, 2005, Mr. David Rodgers was dismissed without notice from his employment with the Eurocan Pulp and Paper Company, a division of West Fraser Mills Ltd. operating in Kitimat, British Columbia, by which he had been employed since August 6, 1976. He says the dismissal was wrongful and claims general and punitive damages.

[2] West Fraser says that Rodgers was dismissed for just cause because he attempted to steal eight litres of gear oil from the company for use in a friend's motor boat and did not admit to the attempted theft. Rodgers denies that he intended to take any company property.

[3] The principles that apply in this case are settled. In the ordinary course, a contract of employment must be terminated on reasonable notice to the employee, or immediately on payment in lieu of reasonable notice. Employment may be terminated for just cause without notice or payment in lieu of reasonable notice. Dishonesty or deceitful conduct may provide just cause. An employer that alleges just cause for that reason bears the onus of proving the employee's dishonest or deceitful conduct on the balance of probabilities, and the onus of proving that the nature and degree of the dishonesty warranted dismissal: *McKinley v. BC Tel et al.*, [2001] 2 S.C.R. 161, 2001 SCC 38 at ¶ 49.

Whether the degree of dishonesty warrants dismissal is a question of fact that requires an assessment of the context of the alleged misconduct: *McKinley* at ¶ 48.

[4] The general circumstances and specific facts relating to the dismissal are the following.

[5] In 2005, Eurocan operated a pulp mill and a paper mill in Kitimat under the direction of a general manager. Each mill was operated by a mill manager who reported to the general manager. The paper mill contained two manufacturing lines each of which was managed by a superintendent. A shift supervisor managed and supervised the hourly shift workers.

[6] Rodgers began working with Eurocan as an hourly-paid clean-up worker after completing Grade 10 at school. He worked his way up the company ladder to the position of day-shift supervisor. In 2002, he was demoted to the position of regular shift worker when another individual was hired to replace him as shift supervisor. The demotion caused Rodgers emotional stress that resulted in his absence work for two months on medical leave.

[7] At the time of his dismissal in 2005, Rodgers worked in the paper mill in three capacities. He was the paper mill training coordinator responsible for producing training manuals documenting the safety requirements of each job in the paper mill and for providing safety training for employees. In that position, Rodgers was one of 11 union-exempt staff who reported to the paper mill manager, Mr. Mike Rekedal.

[8] In another capacity, Rodgers was responsible for day-shift clean-up and responsible for the management of an inventory of products called additives used in the manufacture of some paper products. In those capacities, he reported to the paper mill superintendents. Two employees in the additives area and four employees on day-shift clean-up reported to Rodgers. Two forklift machines and a Bobcat tractor were assigned for use by those employees.

[9] Finally, in early June, Rodgers was working as an acting superintendent on one of the paper lines while the superintendent was away. His day-shift clean-up responsibilities had been temporarily assigned to another employee.

[10] While taking a tour of the paper mill on June 2, 2005, Rodgers encountered Mr. Paul Amado, an individual employed as a mechanic responsible for ensuring that the paper manufacturing machinery was properly lubricated, and Ms. Renee Lalonde, who reported to Rodgers as a worker in the additives area. The encounter occurred adjacent to the additives storage area. I accept the evidence of Rodgers and Amado that the three engaged in a brief discussion about the correct engine oil to be used when topping up the mobile equipment assigned for use in the additives storage area. Rodgers testified that the topic was of concern to him because of an incident involving a fire on a forklift that caused the death of an employee during a recent maintenance closure. He testified he was re-writing a procedure manual, which prompted his inquiry about whether things could or should be done differently.

[11] Although Amado was not responsible for vehicle maintenance, he suggested they should probably be using 15W40 oil rather than the 10W. A barrel of 10W oil was on hand in the additives area. I accept Amado's evidence that he told Rodgers to check with vehicle maintenance personnel regarding the appropriate oil. I find as a fact that there was no discussion of 80-90 gear oil in the course of the discussion in which Rodgers, Amado, and Lalonde engaged on June 2.

[12] Later that day, Rodgers telephoned Mr. Tom Blake, Eurocan's vehicle maintenance supervisor, to say someone would be coming to get some 15W40 oil for the forklifts. Rodgers did not ask Blake whether it was a good idea to use that grade of oil. Blake suggested they could use the 10W oil that was already in the additives area. Rodgers replied that it was the wrong oil.

[13] Rodgers testified that in the course of his conversation he said, "by the way, we need some 80-90 gear oil". When Blake asked why, Rodgers said that it was for Dave Moloney's boat. Moloney was Blake's predecessor as Eurocan's vehicle maintenance supervisor. Rodgers testified that he answered as he did to "yank [Blake's] chain" because he knew Blake did not like Maloney, and he was trying to brush him off. He testified that Blake, who had been employed at the mill for approximately two years, tended to be a know-it-all who annoyed him. He testified that Blake then started talking about Merc and

Volvo oil, saying that Rodgers should get it from a boat store. Rodgers testified that the call ended with Blake saying, "I didn't see you" or words to similar effect.

[14] Blake's recollection of the conversation differs from that of Rodgers in certain respects. His evidence was that Rodgers called to ask for a twenty-litre pail of 15W40 oil and when asked why it was needed, said it was for the forklifts. Blake told Rodgers that there was a barrel of 10W oil in the additives area that was good for that purpose. Blake testified that Rodgers then said he "got it all wrong", and he needed some 80-90 oil. When Blake asked why, Rodgers responded that he and Dave Moloney were changing the oil in the leg on Moloney's boat. Blake testified that he did not think Rodgers was joking. He testified that he told Rodgers that they should buy some Volvo or Merc oil, it was cheap, and they should use that. Blake denies saying to Rodgers, "I didn't see you", or words to similar effect in that conversation.

[15] Blake testified that he had another call from Rodgers a few minutes after the first, during which he asked where the oil was kept. Blake responded that it was in the dispensing area in the vehicle maintenance shop. He said he told Rodgers that he wouldn't do that if he were him, by which he meant company oil should not be used for personal purposes.

[16] Blake testified to a third call from Rodgers on June 2, which he received on his cell phone. He admitted that his cell phone billing record for the period contained no record of such a call. For that reason, I find that there was no call to Blake's cell phone.

[17] I do not accept Blake's evidence that Rodgers called a second time. In his evidence, Blake acknowledged that the location of the oil in the dispensing area was discussed in the first call. One would expect that to be a topic of conversation if an employee from one area of the mill were going to another department to get oil. I do not accept Blake's version of the manner in which Rodgers introduced the topic of 80-90 oil, and prefer Rodgers's evidence in that regard. Blake's version leaves one with the impression that Rodgers only wanted 80-90 oil and no 15W40 oil. Both kinds of oil were obtained from the dispensing area. I find that Blake's inability to accurately recall this part of the conversation was attributable to the fact that there was considerable noise at Rodgers's end of the phone.

[18] I accept Blake's evidence that he did not say to Rodgers, "I didn't see you", or words to like effect, but did say he would not do what Rodgers proposed if he were him, a reference to the suggested use of the 80-90 oil for the leg of Moloney's boat.

[19] The next day, Rodgers again discussed engine oil requirements with Amado and Lalonde in the additives area. I accept the evidence of Rodgers and Amado that they talked of the advisability of using 15W40 oil because the forklifts would be used in winter and summer, inside and outside, in a wide range of temperature conditions. I find as a fact that there was no discussion about 80-90 oil during the second conversation with Amado and Lalonde.

[20] After the second conversation, Lalonde asked Rodgers whether she should get some pails that could be used to pick up the 15W40 oil. He said she should. They went into the additives storage area to look for suitable new containers or empty chemical pails that could be washed out and used for the oil. Rodgers saw two four-litre containers marked "Gear Oil – 80-90". He picked up the containers and determined that there was an inch or two of oil in each. He testified that he thought the gear oil was in the additives storage area because it was needed for the gear boxes of pumps used by mill employees working with additives and for equipment used by independent contractors on site during the annual shutdown for mill maintenance. Rodgers testified that the containers had been in the storage area for a year or more. He could not recall if Lalonde asked him whether he wanted her to fill the four-litre containers, or whether it was he who suggested that she should fill them.

[21] Rodgers's evidence regarding the containers was corroborated by Mr. Mike Larke, an individual who worked with a mill supplier. A written statement of his evidence was admitted by agreement at trial. Larke described seeing two small, blue containers in 2004 and 2005 in a storage compound near the additives area. He could not recall if he saw one container or two when he last serviced the mill in May 2005.

[22] Some time in the morning on Friday, June 3, Lalonde drove a forklift to the vehicle maintenance

area with two twenty-litre pails and the two four-litre gear oil containers on a pallet. She returned to the additives area with four full containers of oil. Lalonde did not testify at the trial. There is no admissible evidence about what she did with the gear oil containers. Rodgers did not see what she did with them and could not provide admissible evidence about what, if anything, she did with them on her return to the additives area.

[23] On Friday morning, Blake called his supervisor, Mr. Rick Reinert, to report his conversation with Rodgers on June 2. Reinert spoke to Mr. Mike Rekedal, the paper mill manager. I accept Rekedal's evidence that after receiving the report, he walked through the additives area where he saw two red pails and two blue containers on a pallet. The blue containers were labelled two-cycle engine oil. The words "80-90 gear oil" appeared in handwriting on the containers. The fact that two-cycle oil containers had been used for 80-90 gear oil made Rekedal suspicious. He spoke to Mr. Doug Peterson, Eurocan's human relations manager, and asked him to investigate. Peterson asked Mr. Wayne Merkley, a Eurocan employee involved with safety training with whom Peterson had worked on other occasions, to make inquiries.

[24] Rekedal called Rodgers at about 1:30 p.m. to say that someone wanted to talk to him. Rodgers returned to his office, where he found Merkley, who said he had come to interview him. Rodgers responded, "I didn't apply for a job". I accept Merkley's evidence that Rodgers asked whether he was inquiring about a safety issue, to which Merkley responded that he was not sure at that point. Merkley had previously spoken to Blake about the transfer of oil. Merkley asked Rodgers about the oil and said he wanted to find out what it was for. He did not specify a grade. I accept Rodgers's evidence that Merkley asked about oil for vehicle maintenance.

[25] Rodgers asked Merkley if would like to see the oil. Rodgers took Merkley to the additives area and showed him the red twenty-litre pails on the pallet. The blue containers were not on the pallet. There was no discussion about gear oil or blue containers. Merkley asked about the intended use of the oil on the pallet. Rodgers told him it would be used for the forklifts and Bobcat because those vehicles would be used in winter and in temperatures ranging from hot to cold. Merkley took pictures of the twenty-litre containers on the pallet and left the additives area. On the way out, he met Rekedal and told him the oil was on the pallet.

[26] Merkley later spoke to Lalonde on the telephone. She told him she had been asked to pick up some oil and take it back to the paper mill. She did not specify the grade. Merkley did not testify to any other part of his conversation with Lalonde.

[27] Merkley reported the results of his inquiries to Peterson. Peterson then assumed conduct of the investigation. He spoke to Blake and asked him to prepare a statement. Peterson was only aware that one type of oil, the 15W40 oil, was of concern, although he said he discussed oil for Moloney's boat leg with Blake. I find that on June 3, Peterson did not have a clear understanding of what was alleged to have happened or what oil was involved. I find he did not know that 80-90 oil had been moved from the vehicle maintenance area to the additives area of the paper mill.

[28] On Saturday, June 4, Peterson and Mr. Neil Reynolds, a plant supervisor, went to the additives area where they saw the two pails of 15W40 oil. Lalonde approached and spoke to them. They asked her what the oil was for. She reported on the conversation with Amado and said that the oil was to be used in the forklift on weekends when she did not have access to the locked cage where the oil was usually stored. Lalonde did not mention 80-90 oil. I find that Peterson did not ask her about that kind of oil because he did not know it was of any concern to the company.

[29] Lalonde called Rodgers at his home on June 4 to tell him that Peterson and another individual concerned with plant protection had been in the additives area looking at the oil that was still on the pallet.

[30] On Sunday, June 5, Peterson drove by the Kitimat Air Park where he saw Moloney's boat on the ground, a ladder up against it, and some activity going on around it.

[31] On Monday, June 6, Rodgers was asked to go to Rekedal's office to meet with him and Peterson. Peterson told Rodgers of the telephone report from Blake. I accept Peterson's evidence that he told Rodgers about Blake's allegation that Rodgers had sent an hourly-paid employee to the vehicle

maintenance area to get oil for use in Moloney's boat. As Peterson started to read from Blake's statement accusing Rodgers of taking oil, Rodgers interjected to say that Blake embellished every statement he ever made and that that is what he was doing on this occasion.

[32] Peterson and Rekedal asked about the oil that had been brought over from vehicle maintenance. Rodgers recounted his discussion with Amado and Lalonde. Rekedal then asked about the 80-90 gear oil. Rodgers told them he was "pretty sure" it was used for gears on pumps. I accept Peterson's evidence that Rekedal's question was the first occasion on which he became aware that 80-90 oil was involved. From that I infer and find as a fact that the statement Blake prepared at Peterson's request made no specific mention of 80-90 oil.

[33] Peterson asked Rodgers whether he had said anything to Blake about Moloney's boat. Rodgers said that he might have made an off-the-cuff remark but that he had no intention of taking any oil. The meeting ended. Rodgers testified that he believed Rekedal and Peterson believed him, and that was the end of the issue.

[34] On June 10, Reinert, to whom Blake had first reported the oil incident, was asked to retrieve the blue containers. He went to the oiler's cage adjacent to the additives storage area, thinking that that would be where the containers would be found. He told Rekedal that he could not find the containers. Rekedal got keys for the additives storage compound, went there, and found the two containers of gear oil.

[35] There is no admissible evidence about whether the containers were taken from the pallet and placed in the additives cage by Lalonde on June 3, nor of the whereabouts of the blue containers in the period from June 3 through June 10. The individual who could have provided some evidence in that regard is Lalonde, to whom no one except Merkley and Peterson spoke in the course of the investigation. As I have previously recounted, neither of them asked Lalonde about the blue containers when they spoke to her as neither knew that 80-90 oil was involved. Neither of them, nor anyone else, spoke to her again when it became clear that Rekedal had seen the containers on the pallet on the morning of June 3, but they were not there when Merkley took pictures of the pallet that afternoon. Neither the plaintiff nor the defendant called Lalonde to testify at the trial. She might also have been able to testify to the circumstances surrounding the transfer of the 15W40 oil from the twenty-litre pails to a larger, used chemical barrel in which the 15W40 oil was still to be found just before the commencement of the trial on January 30, 2006.

[36] Between June 6 and 13, Peterson made inquiries of others in the plant about the need for 80-90 gear oil. He was informed that there was no need for gear oil in the additives area. This evidence is hearsay and not admissible to prove the truth of the statement.

[37] On June 13, Rekedal again asked Rodgers to return to Rekedal's office. Rodgers asked Rekedal if they were to meet alone. Rekedal replied affirmatively. Rodgers testified that he intended to tell Rekedal about the pressure he was under as a result of his wife undergoing tests for suspected thyroid cancer.

[38] When Rodgers got to Rekedal's office, Peterson was also there. Rodgers was upset because Rekedal had told him that they would meet alone.

[39] Peterson recounted the history of the investigation up to that point. He read summaries of findings and observations and asked Rodgers to comment on any inaccuracies. Rodgers reported none. Peterson asked Rodgers if he intended to take the 15W40 oil for use in Moloney's boat. Rodgers said he did not. Peterson testified that he asked again about the intended use for the 80-90 oil, in answer to which Rodgers said he did not know and, according to Peterson, said he did not know why the containers had been filled.

[40] Rodgers testified that he told Peterson and Rekedal that the oil issue was "chicken shit" and that he hadn't done anything wrong. Rodgers testified that when he was asked at that meeting about the use for the 80-90 oil and about what those who Rodgers suggested might use it for pump gears would say, he responded, "I wouldn't fucking know". In the course of the meeting, Rodgers alleged that another employee had engaged in serious, unrelated misconduct that should be investigated. He told Rekedal and Peterson that their questions were really affecting him and making it hard for him to do his

job.

[41] Rodgers was asked again if he intended to take the 15W40 oil for use on Moloney's boat. He said no, commented that the company was involved in a witch-hunt, and said the company had already concluded that he was guilty. The meeting ended.

[42] As Rodgers was leaving the mill at the end of the day on Monday, June 13, Rekedal told him he was suspended. Rekedal said that he would be in touch with Rodgers on Thursday.

[43] Rekedal, Peterson, and Mr. Maksymetz, the Eurocan general manager, met on June 17 to discuss the situation. Rekedal testified that the information they had collected at that point satisfied them that Rodgers had the clear intent to remove company property for personal use and had directed an hourly-paid employee to obtain it from an unauthorized location. They chose to terminate him.

[44] Rodgers and his wife went to Terrace on June 16. When they returned to Kitimat on June 17, Rodgers found a message from Rekedal on his answering machine. Rodgers called Rekedal, who asked if Rodgers could come to the mill. Rodgers said no, it was not convenient. When Rekedal asked if he could come in on the weekend, Rodgers said that he could. When they met at 10 a.m. on Saturday, June 18, Rekedal gave Rodgers a letter advising him of his immediate termination. The letter read, in part, as follows:

With this letter, I confirm that your employment with Eurocan Pulp & Paper Company (the "Company") has been terminated for cause effective immediately.

This decision follows our investigation into your recent actions involving the removal of certain oil products from the vehicle maintenance shop.

This investigation has determined that you intended to obtain Company oil from the vehicle maintenance shop for private use. Upon being instructed not to do so by the vehicle maintenance supervisor, you directed an employee under your supervision to obtain the oil and remove it from the vehicle maintenance shop.

[45] Rodgers testified that he could not believe what he had been told. He asked Rekedal if he could appeal. Rekedal said he could not.

[46] No company official ever attempted to interview Moloney. The plaintiff called him as a witness at the trial. I accept his evidence that before his retirement from the position of vehicle maintenance supervisor in 2003, he had purchased two-cycle oil for use in chainsaws at the plant. The oil came in a box of four, four-litre blue containers. There was no evidence to suggest that one or more chainsaws would not have been equipment to be found at a pulp and paper mill. The containers he described match the description of those in which the 80-90 gear oil was found. Moloney testified that he had not spoken to Rodgers about oil for his boat. There is no evidence to contradict that testimony.

[47] Moloney also testified that the leg on his boat required two to three litres of oil, and the engine, eight litres of 15W40 oil. He testified that the oil in the leg had been changed in 2004 and that he had drained and replaced the engine oil just before the boat was sold in early June 2005.

[48] While the company was free to choose whom it would interview in the course of the investigation, no explanation was offered for not interviewing Moloney, a retired employee on a pension. The explanation may be that company officials doubted Moloney would be forthcoming. On May 26, 2005, approximately two weeks before the oil incident, Moloney went to the Eurocan plant where he asked his brother-in-law, who was a Eurocan employee, to find him a piece of angle iron, a piece of pipe, and a small piece of plate steel for use on his boat hoist. The materials were located, and Moloney took them from the site.

[49] Moloney's brother-in-law was disciplined, but not dismissed, for the incident because he had failed to follow a company policy that required employees to obtain authorization before removing any material from the plant site. The policy was designed to ensure the removal of waste at no cost, but the removal of other materials at a cost to the employee. Peterson explained that Moloney's brother-in-law had not been dismissed because he had readily admitted that he had not followed company policy.

[50] Rodgers was not examined or cross-examined about the removal policy. No company officer

was asked whether Moloney's recent conduct was a factor in deciding whether or not to interview him, or a factor in the company's conclusion that Rodgers had intended to take the oil for personal use. It was likely a factor in both decisions.

[51] Blake testified that it was not good practice to store oil in containers that had contained chemicals because of the risk of contamination and the potential to cause corrosion in engines. Despite this opinion, the company allowed the 15W40 oil to remain in a chemical barrel in the additives area, where it remained some eight months later at the commencement of the trial.

[52] Blake also testified that he knew mixing different grades of oil in machinery was not good practice. That being the case, it is difficult to understand why he would suggest that Rodgers should use the 10W oil on hand in the additives area in forklifts that he knew used 15W40 oil.

[53] The circumstances surrounding the procurement of the 15W40 oil and the 80-90 oil are suspicious. That said, just cause cannot be founded on suspicion, and the onus of proving it by means of admissible evidence rests with the employer alleging it.

[54] The lack of evidence from Lalonde is inexplicable. Her boss had been fired. There is no suggestion that she was getting any oil for her own use. There is no reason why, if asked by company officials after Rodgers's termination, she would not have been forthcoming regarding the question of what she did, if anything, with the 80-90 oil containers when she brought them back to the additives area. Evidence that she placed the containers back on the shelves from which they came and where they were ultimately found would tend to negate any indication of theft or intent by anyone to steal. Evidence that she had not done anything with them, but someone else had, would provide an additional piece of circumstantial evidence relevant to Rodgers's intent when he directed her to get the 15W40 and 80-90 oil.

[55] In the face of Rodgers's denial that he intended to take any company property for personal use, it was incumbent on Eurocan to discharge its onus of proving the contrary by admissible evidence. Having regard for the evidence overall, the omission to call Lalonde as a witness is fatal to the proof of cause.

[56] I am not persuaded that the direction to get 15W40 oil for use in the mobile equipment used in the additives area was wrongful, although it was not good practice. Having made the decision that some 15W40 oil should be obtained, it is plausible that Rodgers would also have used the opportunity to fill up the nearly empty 80-90 gear oil containers he found on the shelf when he accompanied Lalonde to the storage cage for the purpose of finding suitable containers for the 15W40 oil.

[57] On all of the evidence, particularly the lack of evidence regarding the removal of the 80-90 gear oil containers from the pallet and their whereabouts in the period from June 3 through 10, I find that Eurocan has failed to prove on a balance of probabilities that Rodgers attempted to steal from the company. There was no actual theft of company property. On the evidence that was adduced, the circumstances are equally consistent with Rodgers's explanation that he wanted both kinds of oil in the additives area to be available for appropriate use in company equipment.

[58] Because an attempt to steal is the only basis of just cause asserted by the company, and the attempt has not been proved, dismissal without notice was wrongful, and Rodgers is entitled to damages.

[59] Counsel for Rodgers argued that the notice period required to terminate his contract of employment was 24 months. He also argued that the period should be extended because Eurocan dealt with Rodgers unfairly and in bad faith. He claimed that the conduct of Eurocan officials in relation to the dismissal warrants the assessment of punitive damages.

[60] Counsel for Eurocan submitted that the notice period should have been 18 or 19 months. Counsel argued that none of its employees' conduct in relation to the dismissal warrants an extension of the notice period or punitive damages.

[61] At the time of his dismissal, Rodgers had been employed by Eurocan for 29 years. He was 49 years of age. His regular duties involved supervision of six day-shift clean-up and additives employees. He also served as the paper mill training coordinator, a role in which he appears to have

worked alone or with independent contractors. When serving as an acting superintendent during a superintendent's absence from the mill, as he did from time to time and as he was doing on the day of the incident that ultimately resulted in his termination, Rodgers supervised a staff of approximately 96 individuals.

[62] Rodgers's annual base salary was \$107,280. He also earned an annual bonus, the amount of which was \$4,048, \$4,230, and \$3,164.53 in 2002, 2003, and 2004, respectively. Rodgers also participated in benefit plans, all or a portion of the cost of which was paid by Eurocan. The benefits package included accidental death and dismemberment, extended health, life, long-term disability, dental, and provincial medical insurance, and out-of-city travel and medical referral travel coverage.

[63] Rodgers has incurred expense to ensure the continuation of his Medical Services Plan coverage. He has not incurred expense to provide any of the other benefits that were discontinued on termination of his employment. There is no evidence that he has suffered any loss attributable to the loss of the employment benefits. In that regard, the words of McLachlin J., as she then was, in *Wilks v. Moore Dry Kiln Co. of Canada Ltd.* (1981), 32 B.C.L.R. 149 at p. 152, [1981] B.C.J. No. 1873 (QL) (S.C.) are apt:

The question is not what the defendant has gained by the dismissal, but what the plaintiff has lost. This loss must be established on the evidence. If the plaintiff fails to show that he has paid out or lost money or has otherwise suffered by reason of the absence of fringe benefits, his claim cannot succeed.

[64] Rodgers applied for ten positions from the time of his dismissal to the date of trial. He has also registered with an employment placement or "head-hunting" agency. Most of his applications were made in the British Columbia lower mainland, where Rodgers regards his employment prospects as more favourable than in Kitimat.

[65] The notice period required on dismissal must be objectively reasonable. The determination is a question of fact that will vary with the circumstances of each case. The relevant factors include length of service, level of responsibility, age, and the availability of similar employment having regard to the experience, training, and qualification of the employee: *Ansari v. B.C. Hydro and Power Authority* (1986), 2 B.C.L.R. (2d) 33 at p. 43, [1986] 4 W.W.R. 123, aff'd 55 B.C.L.R. (2d) xxxiii, [1986] B.C.J. No. 3006 (C.A.).

[66] Counsel for plaintiff and defendant each cited several authorities in support of their respective positions. I have reviewed those authorities. They are helpful to the extent that they describe the manner in which the courts have considered the relevant factors in other cases.

[67] The claimants in all of the authorities cited by the plaintiff were older than Rodgers, and in most instances, the degree of responsibility attached to the claimants' jobs was greater than that assumed by Rodgers.

[68] The claimants in the authorities cited by counsel for the defendant were also older than Rodgers. In some instances, the degree of responsibility was greater, and in other instances, somewhat less than that which would describe the responsibilities Rodgers assumed.

[69] The general rule is that the notice period for a long-time employee with management responsibilities should range from 18 to 24 months. In my opinion, taking into account Rodgers's age, his years of service, and the level of responsibility associated with the duties he ordinarily performed and the added duties he assumed on a periodic basis, the appropriate notice period is 18 months. In reaching that conclusion, I have been mindful of the fact that the paper industry is in a state of turmoil and adjustment, but that is not a factor that should be given undue weight. Rodgers's experience as a training co-ordinator and as a facility maintenance and inventory supervisor should enable him to find suitable employment in another capacity and perhaps in another industry.

[70] Counsel for Eurocan claimed that I should reduce the notice period to reflect the contingency that Rodgers will find reasonable alternative employment before the notice period expires. In deciding whether or not an adjustment is appropriate, I must take into account all reasonably possible positive and negative contingencies.

[71] In this case, the positive contingencies are that Rodgers is an experienced mill worker with a range of experience that should be valuable to other employers engaged in industry in the Province of British Columbia. The negative contingencies are that the number of prospective employers in Kitimat is limited and employment prospects in the paper industry are likely to be limited. The result is that Rodgers will have to look to other parts of the Province and possibly other industries for employment. In all of the circumstances, I am persuaded that the positive contingencies for re-employment do not outnumber the negative contingencies. As a result, I do not consider any reduction to the 18-month notice period to be reasonable.

[72] From the evidence adduced at trial, I conclude that an annual bonus was part of the compensation package. No evidence was adduced by the plaintiff or the defendant regarding the precise mechanism employed by Eurocan for the determination of the bonus. I find that the bonus due in the notice period would likely have been the average of the bonuses for 2002 through 2004, or \$3,814 annually.

[73] I decline to award any amount for the loss of the employment benefits package except what would have been the employer's share of the provincial medical insurance premiums on the coverage Rodgers obtained or continued. As I previously stated, none of the other components of the package have been replaced.

[74] I also decline to reduce the award of damages by any amount on account of a failure to mitigate the loss arising from the termination of employment. Eurocan bears the onus of proving that Rodgers has failed to make reasonable efforts to find alternative employment. It has failed to discharge this onus.

[75] Rodgers claimed that the conduct of Eurocan's officials in relation to his termination warrants punitive damages and an extension of the notice period.

[76] As stated by the Supreme Court of Canada in *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 S.C.R. 1085, 58 D.L.R. (4th) 193, and *Wallace v. United Grain Growers*, [1997] 3 S.C.R. 701, 152 D.L.R. (4th) 1, punitive damages are designed to punish an employer for conduct that merits denunciation. Such conduct has been described as harsh, vindictive, reprehensible, and malicious: *Wallace* at para. 79.

[77] In *Wallace*, the claimant endeavoured to create a cause of action for "bad faith discharge". The Court declined to imply a requirement of "good faith" reasons for dismissal in an employment contract. Instead, the Court authorized an alternative to a cause of action founded on "bad faith discharge" and determined that "bad faith" dealing in the course of dismissal or an "unduly insensitive" manner of termination would justify an extension of the notice period.

[78] In my opinion, none of the circumstances surrounding Rodgers's dismissal warrants punitive damages or an extension of the notice period because of bad faith or insensitive dealing.

[79] The problem in this case arose when Rodgers told the vehicle maintenance supervisor that he wanted gear oil for Moloney's boat engine leg. The employer acted with care and caution when investigating whether or not there was substance to the claim that he was attempting to obtain any kind of oil for personal use. Rodgers was afforded opportunities on June 3, 6, and 13, 2005, to explain to Eurocan officials why he sent an hourly-paid employee to the vehicle maintenance area to get two kinds of oil for transfer to the additives area where it was to be stored for use in the plant, and not for personal purposes.

[80] Rodgers did not take the company's concerns with the seriousness they deserved. In the course of the interviews, Rodgers was very critical of the vehicle maintenance supervisor and critical of the company's investigation generally. He did not respond appropriately to the employer's inquiries. While no questions were originally asked about gear oil, Rodgers could have readily explained his overall purpose in relation to the oil. He did not, and the company pressed on with its investigation. Rodgers also made inappropriate and improper comments in relation to the personality and abilities of the vehicle maintenance supervisor and spoke critically of conduct attributed to another employee, a topic which bore no relation whatever to the employer's concerns or the subject matter of the investigation.

[81] The manner in which Rodgers responded to the investigation and surrounding circumstances caused Eurocan to conclude that he intended to take company property for personal use. Although Eurocan has not proved an attempt to steal, and therefore just cause, on the balance of probabilities, their conduct in pursuing an investigation of the allegation does not demonstrate bad faith or undue insensitivity.

[82] The plaintiff's claims for punitive damages and an extension to the notice period are dismissed.

[83] The parties reserved the right to speak to the value of Rodgers's lost pension entitlement. In the absence of agreement on that issue or on the issue of costs, counsel may address the matters by written submissions through the registry.

"I.H. Pitfield, J."

The Honourable Mr. Justice I.H. Pitfield