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Supreme Court of Canada: Pension Benefits Not Deductible From Wrongful Dismissal Awards

By Karin Pagé

Canada's highest court released an important decision last December (*IBM Canada Limited v. Waterman*, 2013 SCC 70) on whether pension benefits should be deducted from a damages award for wrongful dismissal. In a majority decision by Cromwell J., the Court determined that they should not be deducted, upholding the decisions of the trial judge and B.C. Court of Appeal.

IBM had dismissed Mr. Waterman without cause after 42 years of service, on two months' notice. Mr. Waterman was 65 years of age, and had a vested interest in IBM's defined benefit pension plan. On the termination of his employment, Mr. Waterman was required to begin receiving monthly pension payments which would continue for the rest of his life.

Mr. Waterman sued to enforce his right to reasonable notice, and was awarded 20 months' notice by the trial judge, with no deduction made for the pension benefits paid to him during the notice period.

The issue on appeal was whether the pension benefits paid to Mr. Waterman during this 20 month notice period should be deducted from the damages award as a collateral benefit.

IBM argued that based on the compensation principle, a defendant should only be required to compensate the plaintiff for his or her actual loss. Indeed, if the pension benefits are not deducted, Mr. Waterman would be overly compensated, and in a better economic position than he would have been in had IBM given him adequate working notice of his termination.

Mr. Waterman, on the other hand, argued that his pension was earned over his many years of service and was his property, much like any savings plan, not an indemnity for loss of wages resulting from a wrongful dismissal.

In certain circumstances, a collateral benefit (a gain or advantage that flows to the plaintiff and is connected to the defendant's breach) will be deducted from a damages award. For instance, if an employee is in receipt of disability benefits when he or she is wrongfully dismissed, those benefits will be deducted from a damages award as they were intended to be an indemnity for lost wages. However, benefits received through private insurance are generally not deductible from damages awards.

The Court summarized the following general propositions from the case law:

- Benefits have *not* been deducted if (a) they *are not* intended to be an indemnity for the sort of loss caused by the breach *and* (b) the plaintiff has contributed to the entitlement to the benefit;



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- Benefits have *not* been deducted where the plaintiff has contributed to an indemnity benefits;
- Benefits *have* been deducted when they *are* intended to be an indemnity for the sort of loss caused by the breach but the plaintiff has not contributed in order to obtain entitlement to the benefit.

From the above, the Court found that the most significant factor is the nature and purpose of the benefit. In particular, is the benefit an indemnity for the loss caused by the defendant's breach, and did the plaintiff contribute directly or indirectly for the benefit? The more closely the benefit is, in nature and purpose, an indemnity against the type of loss caused by the defendant's breach, the stronger the case for deduction.

Applying these principles to the case at hand, the Court held that Mr. Waterman's retirement pension was not an indemnity for wage loss, but rather a form of retirement savings, and although IBM made all of the contributions to fund the plan, the employee earned his entitlement to benefits through his years of service.

The Court appreciated that because Mr. Waterman was between the ages of 65 and 71 at the time of his dismissal and qualified for his full pension, he could not, pursuant to his contract, receive both employment income from IBM and pension benefits. However, it was not satisfied that this meant that the employment contract allowed pension entitlements to be deducted from wrongful dismissal damages.

Rather, the Court noted that Mr. Waterman could have transferred the value of his pension to another vehicle if he had left employment with IBM before reaching the age of 65. Also, a retired employee was not precluded from receiving employment income from another employer while keeping his pension income, and in fact, after age 71, the employee could receive both employment income from IBM and his or her pension benefits in full.

From a policy perspective, the Court noted that if pension benefits may be deducted from an employer's obligations following a wrongful dismissal, there may be an incentive to dismiss pensionable employees.

As such, while this decision may have resulted in a windfall to Mr. Waterman equal to the pension benefits he received over the duration of his 20 month notice period; such was outweighed by policy considerations, including equal treatment of employees and better incentives for the just treatment of all employees.

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