

the terms of employment, including the plaintiff's salary, benefits and years of service with Orbixa remained the same.

- [4] It is the plaintiff's position that in or about January 2015, he was promoted to the role of Quality Assurance Manager while continuing to perform his duties as Business Analyst on the understanding that a salary review would be conducted within a three month period.
- [5] The defendant maintains that in January, 2015, the plaintiff was assigned Quality Assurance duties in addition to his ongoing Business Analyst responsibilities but denies that he was made a Quality Assurance Manager. The defendant asserts that his new assumed role was that of Quality Assurance Team Leader, the team consisting of four members. Moreover, the defendant denies the existence of any agreement reached with the plaintiff with regard to a salary review.
- [6] The defendant further denies that the plaintiff's assumption of Quality Assurance duties in any way increased his work load but rather alleges that it simply changed the mix of assigned duties.
- [7] It is the defendant's contention that the plaintiff resigned from his employment when his request for a salary increase was denied.

ISSUES:

- Whether the plaintiff resigned from his employment;
- If not, did the plaintiff's conduct amount to insubordination of such a nature as to justify summary dismissal?
- If not, did the plaintiff repudiate the terms of the contract by his conduct?
- If not, was the plaintiff was terminated from his employment with the defendant without just cause?
- If not, what is the reasonable notice period?

- Is the termination clause in the plaintiff's employment contract valid and enforceable?
- Did the plaintiff mitigate his damages?

EVIDENCE AND ANALYSIS:

Evidence of the Plaintiff

- [8] The plaintiff testified that he was a daytrader who applied for and secured the position of Business analyst with Orbixa commencing October 9, 2012. As aforesaid, on March 1, 2015, the defendant company, Ralota Technologies purchased Orbixa and assumed the plaintiff's contract.
- [9] According to the testimony of the plaintiff, as a business analyst his job responsibilities included research into new markets and products, drafting of business requirement and specification documents, liaising with other departments to see projects through to completion, troubleshooting of product bugs and issues and developing software.
- [10] The plaintiff testified that at the commencement of his employment as a business analyst there were six analysts in this department. Subsequently, within a six month period of working with the defendant company, the size of the department was reduced as four business analysts were transferred to a sister company, True North Advantage and only two analysts, including himself remained with the defendant company. The plaintiff gave evidence that two employees were now handling the tasks of what used to be a six member department.

Promotion

- [11] The plaintiff described that initially he would provide his work to the Quality Assurance manager, "Serge", who would in turn review it and delegate it to his quality assurance team for testing. Towards the end of 2014 however, the plaintiff was asked to take over Serge's role because he had been transferred to another department.

- [12] In or about January, 2015, the plaintiff was promoted to the role of Quality Assurance Manager by Mr. Hamid Janhanzad, the director of Orbixa at all material times. The plaintiff testified that he had agreed to assume the position with the understanding that he would receive a salary increase to at least \$65,000.00. A verbal agreement was reached wherein he would have a salary review and raise within three months of having assumed this position. Mr. Janhanzad approved the raise in October, 2014.
- [13] According to the evidence of the plaintiff, in January 2015, he assumed the position of Quality Assurance Manager. His duties included the review of all products and their distribution to the various teams, ensuring the proper testing of the products by the team, reviewing their work and attending daily meetings. During this period, he also trained three newly recruited quality assurance members. Moreover, he also had authority to reprimand any member of his team, if necessary. In addition, he continued performing his duties as a business analyst. The plaintiff testified that his work had more than doubled from the time that he first started working with the company.
- [14] In addition to performing his job responsibilities as a business analyst and as a quality assurance manager, in or about March 2015, the plaintiff was required to assume the business development duties that included both market and software development. The plaintiff testified that he was working eight hours at the office and an additional 1.5 hours outside of working hours. He felt overwhelmed but agreed to assume the third role on the understanding that he would be receiving an increase in salary.

Salary Review

- [15] Mr. Mohammed testified that he addressed the issue of a salary review and raise with both Mr. Hamid Jahanzad and Juan Barrancos. Unfortunately, Mr. Jahanzad was terminated on or about April 12, 2015 and was replaced by Mr. Barrancos. Mr. Barrancos advised the plaintiff that he was aware of the situation and that he would wait to discuss it with Mr. Peter Beck who was at the time away from the office on holidays.
- [16] Mr. Mohammed confirmed his request for a raise by email dated May 4, 2015, addressed to Juan Barrancos that states as follows:

“ Hi Juan,

We need a raise. This was to be addressed by Hamid at the end of quarter, but he is no longer with us. Given the amount of work we are doing I'd like that Edwin, Peter and myself to be compensated fairly. And what is fair is giving us industry standard pay.

You have new QA's that are still being developed. They are giving us more work to review, and developing slowly as most QA's do given the complexity of the system. But they are still much better than any of the previous recruits we had recently.

Edwin and Peter contributed greatly to their training. And they are taking on more senior roles. I have Peter still dedicated to new market development, Edwin focused responding to urgent matters, and on ensuring that new functionality is working as expected.

I've been managing the Business side of DEV, now managing the QA team, and now as a BD bridging IDC to DEV.

The workload on us is significantly more than the average. Doing a good job has pushed more work and responsibility on us. But we've never been compensated fairly for this. So here is what I'd like:

Peter-\$56K

Edwin- 64K

Albert- 83K

Sounds crazy but these are not crazy numbers, they are standard, and we are not even on the low end of the scale. Have a look on Workopolis.

Honestly its just crazy to consider going back to the trading floor in order to make up for such low pay. And Edwin being paid close to any new employee from any department. Especially when the new trading floor manager who has never produced a graduated trader, only assigns buying power and entitlements may be getting paid more than anyone on QA is very disheartening.

Just so you aware, as a result of this you should consider replacing me as I'm looking to leave. I know you don't have much to do with this, but I have to bring this to your attention.

Let me know if you will be looking into, otherwise I will is needed.

Evidence of the Defendant

[17] Mr. Juan Marcelo Barrancos Clabijo, vice president of technology, testified on behalf of the defendant company. Mr. Barrancos Clabijo earned an engineering degree and initially

started with the defendant company as a software developer, before being promoted to VP of technology in April 2015. He met the plaintiff in 2012, while sharing the same office space and working in collaboration with him. According to Mr. Barrancos, he and the plaintiff became good friends and remained friends when he became VP of technology. The period from January to May 2015, the plaintiff reported directly to him. Prior to January, 2015, the team leader of Quality Assurance was "Serge" who was transferred to another department and the position was filled by the plaintiff. Serge's title had been that of Quality Assurance Leader.

[18] Mr. Barrancos acknowledges having received the plaintiff's request for a salary review and increase. He testified that he discussed this issue with Mr. Beck when he returned from holidays. On or about May 11, 2015, he advised the plaintiff that Mr. Beck had refused his request for a raise.

[19] It is not disputed by the parties that upon being notified of the denial of salary increase, the plaintiff informed Mr. Barrancos that he no longer wished to continue managing the Quality Assurance team and that he would be continuing to perform his duties as a Business Analyst. The plaintiff confirmed his decision in writing in an email directed to Mr. Barrancos dated May 12, 2015, that states as follows:

"Hey Juan,

I know I'm probably driving you crazy and not making your life any easier: D

But anyways, EOD I'll be transferring QA responsibilities over to Edwin since he is your most senior QA. I'll be reprising my role as BA, and everything should work as normal.

If there is a problem with that, well I'm prepared to be fired. Given that my contract is a BA position, and has nothing to do with my current additional duties (QA/BD) I won't be performing these additional tasks any longer.

Just a headsup that I'll be discussing these matters with Edwin and QA by EOD.

Evidence of Adrian Martean

[20] Mr. Adrian Martean, software developer at the defendant company at all material times, testified on behalf of the plaintiff. Mr. Martean worked was an employee of the defendant

company from February 2013 until November 2015. According to Mr. Martean he left the company on good terms because he found another job. He knows the plaintiff from working with him while employed with the defendant. Mr. Martean corroborated the plaintiff's evidence that he had been promoted to the position of Quality Assurance Manager and further gave evidence that during his employment with the company there had been two quality assurance managers namely Tamila Tosoba followed by Serge. When Serge left the company, the plaintiff assumed his role.

- [21] Mr. Martean also corroborated the plaintiff's testimony with regard to the heavy workload, testifying that at the relevant time period, there were a lot of troubleshooting issues making it a very busy time for them.

Analysis

- [22] Contrary to the testimony of the plaintiff, Mr. Barrancos testified that the company did not have managers for any one of its teams; rather it had team leaders, and the plaintiff was the team leader for one of the Quality Assurance teams. He defined a manager as someone who is accountable for his subordinates. In his view, the plaintiff is not responsible or accountable for his team. Although Mr. Barrancos does acknowledge that the plaintiff was responsible for reviewing the work of the members of his team, four in total, and for instructing his members to redo correctly any work product containing errors.
- [23] Mr. Barrancos denied the plaintiff's assertion that his workload had doubled upon assumption of the additional role and that he worked longer than an eight hour day. In fact, he testified that the plaintiff worked a regular eight hour shift. Moreover, he casted doubt on the plaintiff's assertion that he worked at home after leaving the office. However, Mr. Barrancos conceded during cross examination that the possibility of the plaintiff continuing to work from home after having left the office existed, remarking that there was no expectation for him to do so. Mr. Barrancos testified that at no time was the plaintiff assigned any quantitative targets of the amount of QA tickets that he needed to review or generate. The company's expectation was that the plaintiff produce what could "reasonably be produced during an 8 - hour day."

[24] Mr. Barrancos further testified that in 2015 in addition to the plaintiff's team, there were three other Quality Assurance teams, headed by Albert, Peter and Stewart. According to Mr. Barrancos all of these employees submitted their work to Albert approximately 90% of the time. Although Peter and Stewart remain employees of the company, neither one was called to testify as a witness, nor was any documentary evidence tendered in support of the allocation of work.

[25] The documentary evidence tendered by the plaintiff, in particular, his email addressed to Mr. Jahanzad, dated January 21, 2015, supports the plaintiff's assertion that he had been promoted to the position of manager of the QA team. The relevant portions of the email is reproduced below:

...“2) The new guys that come in. I'm going to have to rely heavily on the QA team. Especially Edwin as I'd like to clone him. But given the fact that he has the knowledge and experience on the team, and he is part of the interviewing process. I'd like him to host much of the training, and with that I'm requesting that he be made Assistant Manager and be given a bump in pay. If you feel that is acceptable, you can decide if it best to do so before of after the new guys become productive members of QA.”

[26] As noted in the email the plaintiff is requesting that a member of his QA team be made an assistant manager.

[27] Apart from the testimony of Mr. Barrancos there is no other evidence to contradict the evidence of the plaintiff that his position was that of manager of the QA team. I accept and prefer the evidence of the plaintiff in this regard for the following reasons:

- a) The above-noted email requesting that one of the members of his QA team be made an assistant manager was sent prior to the occurrence of any dispute over position or title.
- b) There is no evidence tendered by the defendant to contradict the contents of this email.
- c) The plaintiff's testimony is corroborated by his witness, Mr. Martean.

[28] In light of the foregoing, I find that the evidence establishes on a balance of probabilities that the plaintiff was promoted to manager of Quality Assurance.

Did the Defendant Commit to a Salary Review?

[29] The defendant takes the position that it did not commit to a salary review for the plaintiff nor did it promise a salary increase; however, apart from the testimony of Mr. Barroncos, there is no evidence to contradict that he was promised a salary review and pay raise. In fact, the documentary evidence as hereinbefore set out is consistent with the plaintiff's testimony.

[30] The evidence before me establishes on a balance of probabilities, that the plaintiff at one point during the course of his employment with the defendant, assumed the duties of three positions, that of Business Analyst, manager of Quality Assurance and some duties relating to Business Development.

[31] Based on the totality of the evidence before me and on the balance of probabilities, including documentary evidence, particularly, the hereinbefore noted email dated May 4, 2015, I find that the plaintiff was promised a salary review by the former director of Orbixa, Mr. Hamid Jahanzad as a condition of assuming the duties of quality assurance department in addition to those of business analyst.

Resignation or Termination

[32] It is well established jurisprudence that the plaintiff bears the onus of establishing on a balance of probabilities his claim of wrongful dismissal. In cases where the employee voluntarily resigns from his employment he is unable to advance a wrongful dismissal action. *Bishop v. Rexel Canada Electrical Inc.*, 2016 BCSC 2351 at para. 11; *Gebreselassi v. VCR Active Media Ltd.* at para. 42.

[33] As aforesaid, the plaintiff maintains that while he agreed to assume his new role in the Quality Assurance department the acceptance was conditional on a salary review and pay raise.

[34] It is the defendant's position that no such review and pay raise was agreed upon and that the assumption of QA duties was not conditional upon the same. The defendant contends that

the plaintiff resigned from his employment when he was denied the requested salary raise. In the alternative, it pleads that the plaintiff's actions on May 12, 2015, namely, his refusal to perform the essential duties of his employment, clearly constituted insubordination disentitling him to any termination pay.

[35] Mr. Barrocos testified that after receipt of the plaintiff's email, dated May 12, 2015, as hereinbefore set out, stating his refusal to continue to perform QA duties, and expressing that he was "prepared to be fired" for doing so, he met with him. According to Mr. Barrocos, at this meeting he cautioned the plaintiff that a refusal to perform his QA duties would be an act of insubordination and would constitute grounds for dismissal for cause. Mr. Barrocos gave evidence that he stressed that the *defendant did not want to see his employment record tainted by a dismissal for cause and would therefore treat the work refusal as a resignation.*

[36] The plaintiff testified that upon receipt of his email, dated May 12, 2015, Mr. Barrancos asked him to reconsider his position. He proceeded to do his job including the Quality Assurance manager duties for the rest of the day. At the end of the day, he got pulled aside by Mr. Barrancos who advised him that he was accepting his letter of resignation. According to the plaintiff's testimony, he did not end up transferring his duties that day. He was then escorted from the premises.

[37] The BC Court of Appeal in *Beggs v. Westport Foods Ltd.*, 2011 BCC 76, reviewed the authorities and the test that is required to be met for both wrongful dismissal and resignation at paragraphs 36 – 38 of the decision (reproduced below).

It is common ground that both a dismissal by an employer and a voluntary resignation by an employee require a clear and unequivocal act by the party seeking to end the employment relationship. There is a distinction, however, in the tests to be met in order to establish each of these methods for ending the employment relationship. A finding of dismissal must be based on an objective test: whether the acts of the employer, objectively viewed, amount to a dismissal. A finding of resignation requires the application of both a subjective and objective test: whether the employee intended to resign and whether the employee's words and acts, objectively viewed, support a finding that she resigned.

[37] David Harris summarizes the distinction between the two methods in his text *Wrongful Dismissal*, loose-leaf (consulted on 13 January 2011), (Toronto: Thompson Canada Ltd. 1989) at pages 3-4, 3-5 and 3-9:

§3.0 Dismissal

Summary: Dismissal is a matter of substance, not form. It is effective when it leaves no reasonable

doubt in the mind of the employee that his or her employment has already come to an end or will end on a set date

...

The crucial factor in assessing the effectiveness of a dismissal is the clarity with which it was communicated to the employee. Mr. Justice Macfarlane of the British Columbia Court of Appeal stated the law in this regard as follows in *Kalaman v. Singer Valve Co.* (1997), 1997 CanLII 4035 (BC CA), 31 C.C.E.L. (2d) 1, 93 B.C.A.C. 93, 151 W.A.C. 93, 38 B.C.L.R. (3d) 331, [1998] 2 W.W.R. 112, 97 C.L.L.C. 210-017, 1997 Carswell BC 1459, [1997] B.C.J. No. 1393:

A notice must be specific and unequivocal such that a reasonable person will be led to the clear understanding that *his or her employment is at an end at some date certain in the future*. Whether a purported notice is specific and unequivocal is a matter to be determined on an objective basis in all the circumstances of each case. (p. 11 [C.C.E.L.]; emphasis added)

...

§3.0A Dismissal versus Voluntary Resignation

Summary: The test for voluntary resignation (as opposed to dismissal) is objective, focusing on the perceptions of a "reasonable employer" of the intentions of the employee based on what the employee actually says or does or, in some cases, on what he or she fails to say or do. Among the relevant circumstances are the employee's state of mind, any ambiguities in relation to the conduct which is alleged to constitute "resignation" and, to a certain degree, the employee's timely retraction, or attempted retraction, of his or her "resignation."

[Emphasis added.]

[38] Accordingly, a finding of resignation requires the application of both the subjective and objective test. "The objective aspect of the test focuses on what a "reasonable employer" would have thought about the intentions of the employee based on what the employee says or does. The subjective aspect of the test takes into account the employee's state of mind and his or her conduct in relation to that state of mind." *Bishop v. Rexel Canada Electrical Inc.*, 2016 BCSC 2351 at para. 15.

[39] I have already made a finding that based on the evidence before me as a whole, that the plaintiff had assumed the additional roles and responsibilities on the understanding that he would be receiving a salary review and pay raise within a three month period. The evidence before me establishes on a balance of probabilities that the terms of his initial contract of employment as a Business Analyst were substantially varied by the assumption of the new additional responsibilities. Furthermore the evidence establishes that contrary to the assertion of the defendant, the additional roles was not a " simple change of the mix of his assigned duties" but rather a substantial increase of his responsibilities, requiring a dedication of further time as is consistent with the documentary evidence filed.

- [40] I prefer and accept the evidence of the plaintiff where it differs from that of the defendant in this regard, as it supported by both documentary evidence as well as by the testimony of Mr. Martean.
- [41] Based on the evidence before me as a whole and on a balance of probabilities, even if I were to accept the defendant's contention that there was no promise of a salary review made to the plaintiff, the evidence establishes on a balance of probabilities that there were unilateral changes imposed by the defendant that served to alter the essential terms of the plaintiff's employment contract.
- [42] The onus rests on the defendant to establish on a balance of probabilities that the plaintiff voluntarily resigned from his employment. As aforesaid, case law establishes that a voluntary resignation by an employee requires "a **clear and unequivocal act** by the party seeking to end the employment." *Beggs v. Westport Foods Ltd.*, 2011 BCC 76. In this case, the defendant relies on the contents of the said email received from the plaintiff, dated May 12, 2015, wherein he advises that he would be transferring his QA responsibilities to the most senior QA member and would be continuing to work as a Business analyst. It further indicates that he was prepared to be fired for so doing. In fact, the evidence of the plaintiff is that he continued to work that day performing all of his responsibilities inclusive of those of QA manager and had not yet transferred any responsibilities to any other worker. The defendant has provided no evidence whatsoever to contradict the plaintiff's testimony in this regard. The plaintiff's email does not in my view support a voluntary resignation of employment by the plaintiff.
- [43] Based on the totality of the evidence before me, I reject the defendant's contention that the plaintiff had resigned from his employment. There is no evidence before me of a "clear and unequivocal act". I accept the plaintiff's evidence that he had not in fact transferred his QA obligation to another employee and that he continued to work for the rest of the day in both capacities as required by his employer.
- [44] In my view the reasonable employer would not conclude solely based on the said email that the plaintiff had resigned from his employment. Certainly, the plaintiff's actions subsequent to the email are not consistent with having resigned from his employment. Additionally, I

accept the plaintiff's evidence that he was overwhelmed with the amount of work and his intent was not to resign but rather to continue working as a business analyst as per his initial contract. As aforesaid, the plaintiff had assumed a new role of manager of QA **only** in consideration for a salary review and pay raise. Given all of his duties and responsibilities, I find that it was unreasonable for the defendant to demand that he continue working in all capacities. The evidence establishes that the defendant acted quickly in treating the said email as a resignation even before verifying that the plaintiff had in fact transferred his duties.

[45] In the event that I am incorrect in my analysis, there is authority establishing that in the appropriate circumstances when an employee assumes a new position in another department it may be an implied term of the contract that he would have a reasonable time to determine whether or not he wished to continue in his new employment on a permanent basis. *Campell v. MacMilan Bloedel Ltd.* 1978 CarswellBC 393.

[46] In light of the foregoing, the defendant failed to establish on a balance of probabilities that the plaintiff resigned from his employment.

Insubordination

[47] As aforesaid, the defendant pleads that the plaintiff's conduct amounted to insubordination of such a nature as to warrant summary dismissal. The defendant bears the onus of establishing on a balance of probabilities just cause. The defendant submits that the plaintiff's refusal to continue performing his role as a QA leader constitutes insubordination warranting summary dismissal. Case law establishes that generally one instance of subordination will not be sufficient to summarily dismiss an employee. However, one instance can be sufficient depending on the gravity of the conduct. The court must assess all relevant circumstances to determine if the insubordination justifies dismissal. *Amos v. Alberta*, 1995 CarswellAlta 67.

[48] I have already made a finding that in the circumstances of this case, the evidence establishes on the balance of probabilities that the plaintiff was overwhelmed by the amount of work

required by the assumed additional roles. Further, the evidence establishes on a balance of probabilities that the defendant's failure to fulfill the agreed upon pay raise essentially resulted in a unilateral change of the fundamental terms of the employment contract with the plaintiff.

- [49] In light of the foregoing, the defendant has failed to establish insubordination by the plaintiff sufficient to warrant a dismissal for just cause.

Termination for Repudiation

- [50] The defendant further submits that the plaintiff's refusal to perform duties of QA leader resulted in a repudiation of the employment contract. The defendant relies on a decision of the Ontario Court of Appeal, *Roden v. Toronto Humane Society*, 2005 CanLII 33578 (ON CA), at paras 45-46:Whi

In my view, a similar approach is warranted in cases of repudiation. Whether an employer is justified in terminating the employment relationship based on repudiation requires an assessment of the context of the employee's refusal, in order to determine whether the employee refused to perform an essential condition of the employment contract or whether the refusal to perform job responsibilities was directly incompatible with his or her obligations to the employer.

[46] However, there is a crucial distinction between dismissal for misconduct and termination for repudiation. When an employer claims to have dismissed an employee for cause based on serious misconduct, the employer must point to conduct that took place prior to dismissal. It is then for the courts to determine whether the conduct was sufficiently serious so as to constitute cause. Repudiation, on the other hand, takes place when an employee refuses to perform an essential part of his or her job duties in the future. In such a situation, the employer is entitled to accept the repudiation and treat the employment relationship as terminated because the parties no longer agree on the fundamental terms of the contract.

- [51] In light of my findings as hereinbefore set out, I find that the defendant's conduct essentially amounted to a unilateral change of the fundamental terms of the plaintiff's contract of such a nature as to have amounted to a constructive dismissal. In my view, it was unreasonable for the defendant to demand the additional assumption of responsibilities and duties without adequate compensation for the same.

[52] As aforesaid, the documentary evidence is consistent with the plaintiff's testimony that he was overwhelmed by the amount of additional responsibilities and repeatedly sought assistance. On such example, is his email addressed to Mr. Jahanzad, dated January 21, 2015, wherein he requested that "Edwin" become his assistant manager.

[53] I accept and prefer the evidence of the plaintiff where it differs from that of the defendant and find that he could not reasonably perform all of the expected duties and responsibilities of the various roles, as hereinbefore set out. Accordingly, I do not find that the plaintiff repudiated his contract of employment.

[54] Based on the evidence before me I find that on a balance of probabilities the plaintiff has established that he was dismissed from his employment without just cause.

Is the termination clause in the employment contract valid and enforceable?

[55] The plaintiff's contract contains a termination clause that states as follows:

"The employment of the employee may be terminated by the Employer upon prior written notice or pay in lieu of notice according to the statutory minimums specified under the *Employment Standards Act* (Ontario), plus accrued and unpaid salary and vacation pay accrued to the last day of employment. There shall be no further obligation or liability attaching to the Employer upon termination of the employment of the Employee."

[56] There is no dispute that pursuant to his contract of employment the plaintiff had in addition to compensation, standard benefits. The plaintiff submits that the above-noted termination clause is not enforceable as it does not contemplate the continuation of benefit coverage throughout the notice period. As a result, the plaintiff submits that it attempts to limit his entitlement upon termination to the minimum requirements set out in the *Employment Standards Act*, S.O. 2000, c 41.

[57] I agree with the submissions of the plaintiff. As part of his compensation, he was provided with standard benefits coverage. The termination clause violates section 60 of the ESA, requiring the employer to continue to make whatever benefit plan contributions would be required to be made in order to maintain the employee's benefits under the plan until the end of the notice period. This clause is therefore unenforceable.

Summary of Findings

[58] In summary, I have preferred and accepted the evidence of the plaintiff where it differed from that of the defendant and have made findings as follows:

- a) The plaintiff was promoted to Quality Assurance Manager in consideration for a salary review and pay increase;
- b) The defendant failed to uphold the agreement in relation promised salary increase;
- c) The defendant failed to establish on a balance of probabilities that the plaintiff resigned from his employment;
- d) The defendant failed to establish on a balance of probabilities that the plaintiff's insubordination amounted to just cause.
- e) The plaintiff has established based on a balance of probabilities that he was terminated from his employment without just cause.

What Is the Reasonable Notice Period?

[59] The plaintiff submits that a period of 4 months constitutes reasonable notice period.

[60] The defendant submits that the plaintiff was not a manager but rather a task coordinator and as such a shorter notice period would be applicable.

[61] The plaintiff was employed by the defendant for a period of 2.7 years. At termination, the plaintiff was 38 years of age, employed in a management capacity position, earning a base salary \$43,500.00, plus insurance benefits coverage.

[62] There are many factors that may be taken into consideration when determining reasonable notice period. The leading case setting out four guiding principles to be considered is *Bardal v Globe and Mail Ltd. [1960] O.J. No. 149 (Ont. H.C.)*. These factors include age of the employee, length of service, character of employment and availability of other similar employment.

[63] In consideration of all of the evidence before me inclusive of the plaintiff's age, positions, testimony and documentary evidence pertaining to efforts expended to secure comparable employment, I find reasonable notice period to be three months based on an annual salary of \$45,000.00.

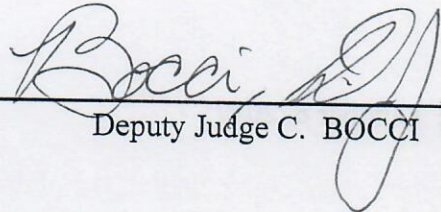
[64] With regard to the plaintiff's claim for punitive damages and breach of the duty of honesty, I find that the plaintiff has failed to establish this claim on a balance of probabilities. As such this claim is hereby dismissed.

[65] Based on the totality of the evidence before me, the defendant has not established on a balance of probabilities that the plaintiff has failed to mitigate his damages.

Disposition

[66] Judgement in favour of the plaintiff as against the defendant in the amount of \$11,250.00, representing 3 months reasonable notice period. Benefits shall be extended for the duration of the notice period.

[67] If the parties are unable to agree on the issue of costs, written submissions may be forwarded to my attention within 20 days hereof.


Deputy Judge C. BOCCI

Released: October 6, 2017

SC-15-11737-00

ONTARIO
SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

ALBERT MOHAMMED

Plaintiff(s)

- and -

RALOTA TECHNOLOGIES LTD.

Defendant(s)

Released: October 6, 2017