COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Mercer Celgar Limited Partnership v. Ferweda,* 2025 BCCA 120

Date: 20250415
Docket: CA49947

Between:

Mercer Celgar Limited Partnership

Appellant
(Defendant)

And

Gerald Ferweda

Respondent
(Plaintiff)

Before: The Honourable Justice Griffin
The Honourable Madam Justice Horsman
The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated May 16, 2024 (*Ferweda v. Mercer Celgar Limited Partnership*, 2024 BCSC 844, Vancouver Docket S214506).

Counsel for the Appellant:	N. Mitha, K.C. E.S. White
Counsel for the Respondent:	C.R. Forguson
Place and Date of Hearing:	Vancouver, British Columbia March 10, 2025
Place and Date of Judgment, with Written Reasons to Follow:	Vancouver, British Columbia March 10, 2025
Place and Date of Written Reasons	Vancouver, British Columbia April 15, 2025

Written Reasons of the Court

Summary:

The employer, Celgar, appeals an award of damages in a wrongful dismissal action. The trial judge found the employee was induced to leave his previous long-term employment and this warranted an increased notice period of 12-months pay in lieu of notice. Celgar alleges the judge erred in finding an inducement and by then relying on that finding to increase the notice period.

Held: Appeal dismissed. There is no basis to justify appellate interference in this case. Celgar, in effect, invites this Court to reweigh and reinterpret the evidence, and to draw different inferences. It was for the trial judge to assess the strength of the evidence in assessing where, along the spectrum, this claim of inducement fell. There is no reversible error in his conclusion in this case that there was some degree of inducement to justify an increase in the notice period. There is no formula by which an inducement will increase the notice period. An award of damages equivalent to 12 months' salary in lieu of notice was not inordinately high in circumstances of this case.

Reasons for Judgment of the Court:

[1] The appellant Mercer Celgar Limited Partnership ("Celgar") appeals an award of damages in a wrongful dismissal action. Specifically, Celgar says that the trial judge erred on two fronts: 1) finding that it had induced the respondent, Mr. Ferweda, to leave his previous long-term employment; and 2) relying on this finding to increase the appropriate notice period to 12 months.

[2] Mr. Ferweda is a chemical engineer. For approximately 27 years, he worked as an operations specialist at a pulp and paper mill on Vancouver Island for his previous employer, Catalyst Paper ("Catalyst"). In March 2018, Mr. Ferweda accepted an offer of employment at a pulp mill owned and operated by Celgar in Castlegar, B.C. He resigned from his employment with Catalyst, and moved to Castlegar.

[3] Mr. Ferweda worked for Celgar from April 2018 to September 2020, at which time his employment was terminated without cause. The parties could not agree on an appropriate notice period. By the time of trial, Celgar had paid Mr. Ferweda the equivalent of five months' salary in lieu of notice. Celgar argued that five months was

a sufficient notice period, while Mr. Ferweda maintained that the notice period should be 12–18 months.

[4] The key issue at trial was whether Mr. Ferweda was induced to leave his previous employment in order to accept the job with Celgar. If so, it was common ground that this could justify an increase in the notice period. On the evidence before him, the trial judge was satisfied that there was an inducement by Celgar on which Mr. Ferweda reasonably relied. Namely, he found that Celgar created an expectation on Mr. Ferweda's part that the opportunity at Celgar was advantageous enough for him to leave his secure and long-standing employment at Catalyst and to take a job that was expected to be long-term. The judge determined the inducement warranted Mr. Ferweda receiving an increase to the notice period to 12 months' pay in lieu of notice.

[5] On appeal, Celgar alleges that the trial judge erred in his finding of inducement by ignoring or overlooking material evidence, and making palpable and overriding errors of fact. Alternatively, Celgar argues that any inducement was modest, and should not have increased the notice period to 12 months.

[6] At the conclusion of the hearing, the Court advised the parties that the appeal was dismissed with reasons to follow.

Factual background

[7] In July 1992, Mr. Ferweda started working for Catalyst at the Crofton Mill on Vancouver Island as a junior engineer. Over time, he was promoted to the position of operations specialist.

[8] In January 2018, Vern Phillips, a recruiter working for Celgar, contacted Mr. Ferweda via email through LinkedIn and advised that he was recruiting for the position of "Area Manager, Fibreline" for the Celgar Mill in Castlegar. In the email, Mr. Phillips described the job as an "opportunity to lead a world class team and mill". He stated that: "If you can think of anyone we should be speaking with who would be suitable and interested, please let me know."

[9] Mr. Ferweda responded to Mr. Phillips stating:

> Yes I am very interested in the Area Manager Position.
>
> I've always seen Celgar as a company that invests in its people and reinvests in the mill. The Castlegar area is…perfect for my outdoor lifestyle.

[10] At the time of this exchange of emails, Mr. Ferweda was 53 years old. His plan was to remain at the Crofton Mill until he retired at age 61. Mr. Ferweda was not particularly happy in his employment at Catalyst, but he was not actively looking for a new job. Mr. Ferweda felt secure in his job with Catalyst, although he worried that the Crofton Mill might shut down prior to his planned retirement.

[11] Following a further exchange of email communication between Mr. Ferweda and Mr. Phillips, Mr. Ferweda travelled to Castlegar on February 1, 2018 to tour the Celgar mill and to meet senior management staff. The staff included the mill's manager (Rick Percy), production manager (Josh Bellamy), and manager of human resources (John Belland). Mr. Ferweda's spouse accompanied him on this visit, and they both attended a dinner arranged by Celgar. Celgar covered their travel expenses. Following the visit, Celgar requested Mr. Ferweda to complete a series of aptitude tests online.

[12] On March 13, 2018, Mr. Belland communicated Celgar's formal offer of employment to Mr. Ferweda. At the time, he was the only candidate who had attended the Celgar mill for a site visit and interview. There were no other candidates for the position. The position offered was for operations specialist rather than fibreline manager as set out in the recruiter's original message. This was the same or similar to the position Mr. Ferweda had at Catalyst. The base salary of $130,000 was also nearly the same as what he was earning at Catalyst.

[13] Given that the pay and vacation time was comparable, there was not sufficient incentive for Mr. Ferweda to leave his employment. He spoke with Mr. Percy and Mr. Bellamy to advise them that he would be declining the offer. Mr. Bellamy indicated that there might be some flexibility on salary. Celgar then

made a second offer, which increased the salary to $140,000. Mr. Ferweda accepted this offer and resigned from Catalyst.

[14] Mr. Ferweda worked at Celgar for over two years (from April 23, 2018 to September 22, 2020). During that time, he was on leave for several months after falling from the roof of his house in September 2019 and fracturing vertebrae in his back and neck. He returned to work gradually, beginning in February 2020. Celgar terminated Mr. Ferweda's employment without cause in September 2020, and he was paid eight weeks' wages as severance. The reason for his termination was downsizing. About 15 employees, including Mr. Ferweda, were let go.

[15] Celgar later paid Mr. Ferweda additional severance. By the time of trial, he had been paid the equivalent of five months' salary in lieu of notice.

The trial judgment (2024 BCSC 844 – "Reasons")

[16] The main issue before the trial judge was the appropriate notice period to which Mr. Ferweda was entitled. As part of that determination, the key issue was whether Mr. Ferweda was induced to leave his previous employment for Celgar.

[17] The judge set out the law on inducement from the leading case of *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, 1997 CanLII 332, including the factors to consider when an inducement may lengthen the amount of notice required. The judge noted that the cases put forth by the parties had a disparity of results, which he found highlighted the "inherently fact-specific nature of the legal exercise": Reasons at para. 27. He further noted that even if an inducement is found to have occurred, there was "no set formula" by which it would then increase the notice period. Rather, the length would vary based on the nature of the evidence and the strength of the representation: Reasons at para. 30.

[18] In finding that there was an inducement in this case, the trial judge reasoned as follows:

> [31] In this case, I am satisfied that there was an inducement made by the employer on which Mr. Ferweda reasonably relied. Based on all the circumstances surrounding the creation of the employment contract, Celgar

> created an expectation on the part of Mr. Ferweda that the opportunity at Celgar was such that it would be advantageous to him to leave his secure long-standing employment and take a job which was expected to be long-term.
>
> [32] I do not accept the position of Celgar that there was equal interest on the part of both parties, nor that Mr. Ferweda was so unhappy at Catalyst that he was actively looking for alternate employment.
>
> [33] In reaching this conclusion, I find the following facts to be important considerations:
>
> a) Celgar recruited Mr. Ferweda. Mr. Ferweda was not actively looking for a different job, nor did he respond to a newspaper advertisement. Rather, he responded to an email sent directly to him by a recruiter retained by the employer;
>
> b) Celgar attempted to make the job attractive to Mr. Ferweda during the visit to the Celgar Mill, which was paid for by the Celgar;
>
> c) During the Celgar Mill visit, Mr. Percy, who had previously worked for Catalyst, made statements which pointed out the aspects of employment with Celgar that were superior to Catalyst, including paid overtime, better benefits and a stable fibre supply;
>
> d) Mr. Percy expressly told Mr. Ferweda that Celgar hired for the "long term";
>
> e) Mr. Belland specifically asked Mr. Ferweda how long he was prepared to commit to Celgar for, implying that the position was meant to be comparatively long-term; and
>
> f) Mr. Ferweda did not accept the first offer, but only took the job after Celgar offered an increased salary.
>
> [34] Based on the totality of things said and done by Celgar at the time the employment contract was formed, Mr. Ferweda reasonably believed that he was being offered an opportunity to potentially end his career with Celgar, in a position which although identical to the one he was leaving, offered greater job satisfaction, and considerably better remuneration and benefits.

[19] The trial judge then turned to the question of the notice period. He stated that but for the inducement, he would be inclined to agree with Celgar that the amount already paid (the equivalent of five months' notice) was appropriate. However, he found that the inducement should result in an increase to the notice period. The judge also expressed agreement with Mr. Ferweda's submission that: "the unique character of the employment and circumstances of Mr. Ferweda, including his age, lead to an increase to the appropriate notice period": Reasons at para. 41. The judge

found that there were “very few comparable positions” available to Mr. Ferweda in light of the reality that there were a finite number of operating pulp mills in B.C., and the number was decreasing. He stated:

> [43] Thus, Mr. Ferweda’s options for new comparable employment were extremely limited. He had spent the vast majority of his adult working life in the pulp mill sector. Although there may have been numerous job opportunities for similarly qualified engineers in that field, all such jobs would have been a significant step down from the positions he had occupied for several years, with an attendant decrease in remuneration.

[20] The trial judge referred to this Court’s decision in *Kussmann v. AT & T Capital Canada, Inc.*, 2002 BCCA 281, where, based on inducement, a 12-month period was upheld for an employee terminated after 16 months. The judge observed that Mr. Ferweda had been employed by Celgar for a longer period. However, he reasoned that because the inducement to Mr. Ferweda was “not in the nature of a promise of promotion or other advancement”, a “more modest increase” in the notice period was appropriate: Reasons at para. 44. Accordingly, the trial judge fixed the notice period at 12 months.

On appeal

[21] Celgar contends that the judge erred in his finding of inducement in:

a) ignoring or overlooking material evidence; and

b) making erroneous factual findings that Mr. Ferweda did not believe his job at Catalyst was in jeopardy and that there was not “equal interest” on the part of Mr. Ferweda and Celgar in forming a new employment relationship.

[22] Alternatively, Celgar alleges that the trial judge erred in increasing the notice period to 12 months based on a modest inducement.

Standard of review

[23] The standard of review for findings of fact is deferential. Absent palpable and overriding error affecting the assessment of facts, findings of fact cannot be overturned on appeal: *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 10, 21–25. A

judge's failure to address material evidence on a disputed issue may constitute palpable and overriding error, but only if it gives rise to "the reasoned belief that the [judge] must have forgotten, ignored or misconceived the evidence in a way that affected his or her conclusion": *Altria Group, Inc. v. Stephens*, 2024 BCCA 99 at para. 44, leave to appeal to SCC ref'd, 41265 (31 Oct 2024), citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 125.

[24] The standard of review of an award of damages in wrongful dismissal cases is reasonableness: *Lau v. Royal Bank of Canada*, 2017 BCCA 253 at para. 36; *Pakozdi v. B & B Heavy Civil Construction Ltd.*, 2018 BCCA 23 at para. 21. The standard of review mandates deference. An appellate court may interfere only if the judge committed an error of law or principle, or awarded an amount that is inordinately high or low: *Lau* at para. 37.

Analysis

The first ground of appeal: the finding of inducement

Legal Framework

[25] What constitutes reasonable notice will vary with the circumstances of the particular case: *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986 at 998–99, 1992 CanLII 102, citing *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 at 145, 1960 CanLII 294 (Ont. H.C.J.); *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paras. 28–29. Courts generally determine the appropriate notice period by applying the factors set out in *Bardal*: the nature or character of the plaintiff's employment; the length of time or service of the employee; the age of the employee; and the availability of similar employment, having regard to the experience, training and qualifications of the employee.

[26] The factors enumerated in *Bardal* are not meant to be exhaustive. Canadian courts have added additional factors to the *Bardal* list: *Wallace* at para. 82. In *Wallace*, the Supreme Court of Canada recognized the additional factor of whether the employee was induced to leave their previous secure employment. The plaintiff/employee in *Wallace* had stated during pre-employment discussions with the

prospective employer that as he was 45 years of age, he would require a guarantee of job security in order to leave his current job. The employer assured him that if he performed as expected, he could continue to work for the new employer until his retirement. However, his employment was terminated after 14 years.

[27] In restoring the trial judge's award of damages equivalent to 24 months' notice, the Supreme Court of Canada commented on the relevance of inducement to the determination of an appropriate notice period:

> 83 …According to one authority, many courts have sought to compensate the reliance and expectation interests of terminated employees by increasing the period of reasonable notice where the employer has induced the employee to "quit a secure, well-paying job…on the strength of promises of career advancement and greater responsibility, security and compensation with the new organization" (I. Christie et al., *supra*, at p. 623).
>
> […]
>
> 85 In my opinion, such inducements are properly included among the considerations which tend to lengthen the amount of notice required. I concur with the comments of Christie et al., *supra*, and recognize that there is a need to safeguard the employee's reliance and expectation interests in inducement situations. I note, however, that not all inducements will carry equal weight when determining the appropriate period of notice. The significance of the inducement in question will vary with the circumstances of the particular case and its effect, if any, on the notice period is a matter best left to the discretion of the trial judge.
>
> […]
>
> 87 …Although the trial judge did not make specific reference to the inducement factor in his analysis of reasonable notice, I believe that, in the circumstances of this case, these inducements, in particular the guarantee of job security, are factors which support his decision to award damages at the high end of the scale.
>
> [Emphasis added.]

[28] Inducement does not necessarily need to involve a form of aggressive "luring"; tacit persuasion and implicit assurances of job security and increased compensation may suffice: Geoffrey England et al., *Employment Law in Canada*, 4th ed. (LexisNexis), at §14.162; Knight et al., *Employment Litigation Manual*, 2nd ed. (LexisNexis Canada Inc., current to March 2025) at §3.48. Accordingly, inducement can be engaged on a range of facts with most cases falling somewhere along a spectrum: *Toole v. Northern Blizzard Resources Inc*, 2017 ABQB 760 at para. 21.

Did the trial judge ignore or overlook material evidence, or make palpable and overriding errors of fact?

[29] In addressing the first prong of Celgar's first ground of appeal, it is important to observe at the outset that a trial judge is not required to refer to every item of evidence considered or to detail the way each item of evidence was assessed. It is open to a trial judge to prefer the testimony of certain witnesses over others and to place more weight on some parts of the evidence than others. The mere fact that the trial judge did not discuss certain evidence in depth is not a proper basis for appellate intervention: *Housen* at para. 72; *R. v. J.M.H.*, 2011 SCC 45 at para. 32.

[30] In the present case, Celgar in its factum provides a long list (spanning two pages) of "material evidence" the trial judge is said to have ignored or overlooked. However, much of this evidence is, in fact, referenced by the trial judge in his Reasons. Celgar's essential complaint in relation to this evidence appears to be that the trial judge placed insufficient weight on evidence it considers favourable to its case. However, this is not a proper basis for appellate intervention.

[31] To the extent that the items of evidence listed by Celgar are not expressly referred to in the Reasons, the evidence is either inconsequential or is implicit in the judge's analysis. For example, Celgar complains that that the judge did not reference the evidence that it did not provide a guarantee of long-term employment to Mr. Ferweda and there was no severance clause in his employment contract. This complaint might be legitimate if the judge had concluded, without addressing the evidence, that Celgar did guarantee long-term employment to Mr. Ferweda or had contractually committed to provide it. However, the judge's analysis assumes an absence of such guarantees. Instead, he looked to the surrounding circumstances to determine whether there was some inducement to Mr. Ferweda that created a reasonable expectation on his part that it would be advantageous for him to leave his secure employment at Catalyst and to take a new job that was expected to be long-term. He determined that the notice period should be increased to account for Mr. Ferweda's expectation interest.

[32] Celgar places particular weight on the judge's failure to reference the evidence of Mr. Ferweda from his direct examination that there was "a courting both ways", and this evidence from his cross-examination:

> Q. …And so from your observation, you were mutually and equally interested in each other?
>
> A. Yeah, we were doing the dance together.

[33] Celgar argues that this evidence is practically conclusive on the issue of inducement because there can be no inducement if there is an equal interest in forming a new employment relationship. This argument overlaps with the second prong of Celgar's first ground of appeal; that is, the alleged palpable and overriding error in the trial judge's factual finding that the parties did not have an equal interest in creating a new employment relationship: Reasons at para. 32.

[34] We reject Celgar's arguments for two reasons.

[35] First, we do not agree with the underlying assumption of Celgar's argument that equal interest—however that might be measured—provides a bright line test for whether there is an inducement. Undoubtedly the plaintiff's level of interest in securing new employment may be relevant to the determination of whether there has been inducement, and if so whether, and how, that should affect the notice period. However, as explained in *Wallace*, the role of inducement in determining the relevant notice period is to protect the employee's reliance and expectation interests. It is certainly conceivable that there may be circumstances in which there is equal interest on the part of the employee and employer, yet resistance on the part of the employee to give up their existing secure employment. Where an employee is induced to enter the new employment relationship on the basis of a reasonable expectation of long-term employment, then this may constitute inducement regardless of whether one could characterize the parties' interest as "equal".

[36] Second, and in any event, Celgar has not demonstrated that the judge made a palpable and overriding error in concluding that there was not equal interest in this case. His finding must be taken to be based on his review of the entire trial record.

At para. 33 of his Reasons, the judge listed the facts that he found to be of particular significance: Mr. Ferweda was not actively looking for alternative employment at the time he was contacted by Celgar's recruiter; Celgar attempted to make the job attractive to Mr. Ferweda during his site visit, and paid for his expenses; Celgar managers pointed out the advantages of employment with the company and they told Mr. Ferweda that Celgar hired for the "long term"; and Mr. Ferweda only took the job after Celgar increased the initial salary offer. In light of the record, it cannot be said that the trial judge was somehow compelled to find that the parties had equal interest because Mr. Ferweda gave evidence that the parties were "courting", and that "we were both doing the dance". It was for the trial judge to determine the meaning and significance of this portion of Mr. Ferweda's testimony in light of the evidence as a whole.

[37] Celgar also argues that the judge's finding that Mr. Ferweda did not believe his job at Catalyst was in jeopardy is not grounded in the evidence. Celgar says that while it is correct that Mr. Ferweda did not express concern that he had performance-based job concerns, he did express concern about the long-term viability of the Crofton Mill. However, Celgar's submission ignores the context for the trial judge's finding on this point, as reflected in the following passage from his Reasons:

> [14] On balance, Mr. Ferweda was not persuaded that he should leave his job at Catalyst based on the offer from Celgar. Mr. Ferweda had many years of continuous employment at Catalyst, and did not believe his job was in any jeopardy. He was somewhat worried that the Crofton Mill might shut down and all employees would then be terminated, but he was not concerned about being fired or laid off.
>
> [Emphasis added.]

[38] Although Celgar argues that the trial judge failed to draw a distinction between Mr. Ferweda's individual job security and the security of the Crofton Mill as an ongoing operation, it is evident from the above passage than he in fact did so. There was evidence to support the trial judge's findings that while Mr. Ferweda may have had some concern that the Crofton Mill might shut down, he was not actively looking for alternative employment. Furthermore, as found by the trial judge, Celgar

targeted Mr. Ferweda's insecurity about the viability of the Crofton Mill by emphasizing that Celgar had a secure and stable fibre supply: Reasons at para. 33. Again, there was evidence to support this finding. No palpable and overriding error has been demonstrated.

[39] For the reasons above, we are not persuaded that appellate interference is justified in this case on the basis that the judge overlooked or ignored material evidence, or made palpable and overriding errors of fact. Celgar's first ground of appeal, in effect, invites this Court to reweigh and reinterpret the evidence, and to draw different inferences from the evidence. The evidence in this case that was relevant to inducement may not, as Celgar stresses, be as strong as the evidence in *Wallace*. However, it was for the trial judge to assess the strength of the evidence in assessing where, along the spectrum, this claim of inducement fell. There is no reversible error in his conclusion in this case that there was some degree of inducement to justify an increase in the notice period.

The second ground of appeal: the notice period

[40] The trial judge's determination of the length of the notice period attracts considerable deference on appeal.

[41] The trial judge determined the appropriate notice period by assessing the effect of the inducement in combination with the *Bardal* factors. In other words, the judge did not consider inducement in isolation but rather looked at its effect on an employee who was 56 years of age at the time of his termination and had limited options for securing comparable employment given that his work experience was largely restricted to the pulp mill sector.

[42] As the case law suggests, there is no formula by which an inducement will increase the notice period. At the hearing of this appeal, Celgar argued that if the Court found the judge did not err in his finding of inducement, 10 months would be an appropriate notice period. However, on the facts as found by the trial judge, it cannot be said that 10 months is within a range of reasonable notice, while 12 months is wholly unreasonable. Put another way, an award of damages equivalent

to 12 months' salary in lieu of notice is not inordinately high in circumstances of this case.

Disposition

[43] It is for these reasons that the appeal was dismissed.

"The Honourable Justice Griffin"

"The Honourable Madam Justice Horsman"

"The Honourable Justice Edelmann"