

HUMAN RIGHTS PANELS OF ALBERTA

BETWEEN:

Dave Grindlay

Complainant

-and-

Calgary Telus Convention Centre

Respondent

Preliminary Matters Decision Severance Agreement

Panel Chair: Beth Bryant

Date: October 6, 2009

File Number: S2008/12/0291

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APPEARANCES

Dave Grindlay)
Complainant)

Calgary Telus Convention Centre)
Respondent) Ms. Tina Giesbrecht, Legal Counsel

Introduction

[1] This matter came before the Panel convened under the *Human Rights, Citizenship and Multiculturalism* (the Act) for a hearing as a preliminary matter.

[2] The hearing was preceded by a telephone conference on June 19, 2009 to determine the date and format of the proceedings. As a result, the hearing took place on September 21, 2009 in Calgary, Alberta.

[3] The complainant, Mr. Dave Grindlay, was not represented by counsel.

[4] The respondent, Calgary Telus Convention Centre (the Convention Centre), was represented by Ms. Tina Giesbrecht of McCarthy Tétrault LLP.

[5] No witnesses were called by Mr. Grindlay. The Convention Centre called Ms. Christina Rolle, director of client services and Ms. Delores Neufeldt, director of human resources.

[6] The matter proceeded with written submissions, testimony under oath, and oral argument.

Issue

[7] The issue before the Panel is to determine whether the Release signed by Mr. Grindlay is valid and enforceable.

Relevant Evidence

[8] Mr. Grindlay began to work for the Convention Centre on June 23, 2008 as one of two event services supervisors. The other supervisor was Mr. Calvin Burke. Ms. Rolle was the supervisor of both Mr. Grindlay and Mr. Burke.

[9] Mr. Grindlay stated that on November 27, 2008, he and Mr. Burke attended a meeting with Ms. Rolle where they were severely reprimanded for their performance on the job. Mr. Grindlay stated that he believed a number of the issues raised should have been addressed to Mr. Burke individually. Mr. Grindlay testified that there was no written information on his file indicating that his work was unsatisfactory. However, in response to counsel, Mr. Grindlay stated that Ms. Rolle had spoken to him and Mr. Burke about performance problems since September 2008.

[10] Mr. Grindlay stated that he was recovering from a drug and alcohol addiction. However, after the meeting he suffered a relapse. As a result, the next day he called in to say he would be late for work. He testified that he told Ms. Rolle that he was coming from Banff and was held up because of an accident on the road. However, this was not the truth. Mr. Grindlay stated that he called Ms. Rolle again to tell her that he was struggling with an addiction, and needed to take a personal day.

[11] On Saturday, November 29, 2008, Mr. Grindlay sent an e-mail to Ms. Rolle, giving a brief history of where he was at in his recovery from his drug and alcohol addiction.

[12] On Sunday, November 30, 2008. Mr. Grindlay worked his assigned shift at the Convention Centre.

[13] On Monday, December 1, 2008, Mr. Grindlay was asked to meet with Ms. Rolle and Ms. Neufeldt. Ms. Rolle informed him that he had failed to pass the probationary period and that his employment was being terminated. Ms. Rolle then left the room and Ms. Neufeldt reviewed the termination letter and Release with him.

[14] Mr. Grindlay stated that he signed the letter and attached Release on December 1, 2008, under duress and due to coercion. He testified that Ms. Rolle had told him that he or their staff could be fired from their jobs for any reason during the probation period. Therefore, he believed that he had no choice but to sign. In addition, he was still recovering from his relapse and was fearful that he would be fired because of his disclosure of his ongoing recovery from addiction. He also stated that the section entitled "Severance Pay" led him to believe that if he did not sign the Release, he would not receive the four-week severance package.

[15] Ms. Rolle testified that on a number of occasions, she advised Mr. Grindlay that he needed to improve his attention to detail, and that there had to be better coordination between him and Mr. Burke. She also noted her concern to her supervisor, Ms. Marsha Lyons, stating that Mr. Burke and Mr. Grindlay were not working well together.

[16] On Thursday, November 27, 2008, Ms. Rolle met with Mr. Burke and Mr. Grindlay. She raised a number of issues with them and told them that they must do the job they were hired to do. Mr. Grindlay remained after the meeting and they agreed to meet the next day at 2:00 p.m. to complete the orientation sheet.

[17] The next day, Ms. Rolle informed her supervisor of the meeting with Mr. Burke and Mr. Grindlay. Ms. Lyons suggested that Ms. Rolle "stop beating a dead horse."

[18] Ms. Rolle testified that she heard from Mr. Grindlay the next day about 2:30 p.m. She stated that he had forgotten about the 2:00 p.m. meeting, and advised her that he would be late, as he was returning from Banff. Ms. Rolle stated she was very disappointed. She spoke to Ms. Lyons and they made the decision to terminate Mr. Grindlay.

[19] Ms. Rolle testified that approximately 45 minutes later, she received a phone call from Mr. Grindlay stating that he had an addiction and that he was sorry. She informed Ms. Lyons who said that the decision to terminate had already been made.

[20] On November 29, 2008, Ms. Rolle received the e-mail from Mr. Grindlay which outlined his addiction and where he was at in his recovery. On December 1, 2008 she met with Mr. Grindlay and Ms. Neufeldt to inform him that he was being terminated. Ms.

Rolle testified that Mr. Grindlay was terminated during the probation period because he did not do the job. She had no indication of his addiction until after the decision to terminate had been made. She also testified that she had not told Mr. Grindlay that he could be terminated for no reason.

[21] Ms. Neufeldt testified that she attended the meeting with Ms. Rolle and Mr. Grindlay on December 1, 2008. After Ms. Rolle informed Mr. Grindlay that he was being terminated, she left the meeting. Ms. Neufeldt proceeded to go through the termination documents with Mr. Grindlay on a paragraph by paragraph basis. She explained that he would receive one weeks' pay in lieu of notice of termination plus an additional four weeks' salary if he signed the attached Release and returned it no later than December 8, 2008.

[22] Ms. Neufeldt testified that she encouraged him to take the Release home, to have it reviewed by a lawyer or an accountant, and to return it within a week. She stated that she usually does not want people sign a Release immediately upon learning of their termination as they are under stress. Mr. Grindlay did not ask any questions, but stated that he wished to sign the Release that day. Ms. Neufeldt testified that she said nothing that would have made Mr. Grindlay believe that he had to sign immediately. In fact, the opposite was true. She encouraged him to take it home. None the less, Mr. Grindlay signed the letter and Release on December 1, 2008, and Ms. Neufeldt witnessed his signature.

Decision

[23] The Panel has the jurisdiction to determine whether or not a Release is valid and enforceable. The criteria to be used by the Panel as determine by Justice Rooke in the *Chow*¹ decision should be the same as that applied by a court of competent jurisdiction. The Panel must determine, using legal and evidentiary principles, rule and concepts in relation to the specific facts, whether or not the Release is valid and enforceable. The validity of such a contract must be based on principles of law and is not an arbitrary decision by the Panel. Some of the applicable criteria include:

1. The language of the Release itself as to what is included, explicitly or implicitly

[24] In the Release signed by Mr. Grindlay, he specifically releases the Convention Centre of "any liability for past acts of discrimination and acknowledge that the execution of this Release precludes the consideration of any complaint to the Alberta Human Rights Commission pursuant to the Alberta *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 2000 H-14, as amended, or any applicable Human Rights legislation."

[25] The Release is three pages long. The sections are clearly laid out and in the opinion of the Panel, would not be difficult for Mr. Grindlay to understand.

¹ *Chow v. Mobil Oil* (1999) A.J. 949

[26] Further, the Release specifically refers to Mr. Grindlay releasing the Convention Centre from any claims under human rights legislation and the Act.

[27] Therefore, it is the opinion of this Panel that Mr. Grindlay would have understood the language of the letter and Release, and that the Release specifically releases the Convention Centre from any human rights complaint that might be made by him.

2. Unconscionable conduct

[28] This concept turns on whether or not there is an inequality of bargaining power and whether or not that inequality results in an unfair or unconscionable settlement.

[29] Counsel for the respondent argued that the severance pay received by the complainant was very generous. He had been employed by the Convention Centre for less than six months and received one week pay in lieu of notice in accordance with the Employment Standards Code, and an additional four weeks' salary plus benefits in exchange for signing the Release.

[30] The Panel agrees with counsel for the respondent that the settlement was very fair considering the length of time the complainant was employed by the Convention Centre. Further, the letter and Release were thoroughly reviewed by the director of human resources with Mr. Grindlay.

[31] It is the finding of this Panel that there was no abuse of power or influence on the part of the Convention Centre, and that they did not act in an unconscionable manner.

3. Undue Influence

[32] The doctrine of undue influence reaches beyond the boundaries of physical duress and deals with the more subtle effects of non-physical pressure upon the mind and ultimate consent of the party being influenced. It requires one party to use power or coercion to make the other party consent.

[33] While Mr. Grindlay felt that he was coerced to sign the Release because he believed he had been told that he could be fired for any reason during his probation period and that he had no choice but to sign, this is not substantiated by Ms. Neufeldt's testimony.

[34] The Panel notes that it was Ms. Neufeldt who encouraged Mr. Grindlay to take the documents home, to review them with an accountant or lawyer, and to take the week being allowed to consider his actions. However, Mr. Grindlay chose to sign them on December 1, 2008, in part, because he understood that if he did not sign, he would not be getting any severance monies.

[35] It is the finding of this Panel that there was no improper use of pressure or coercion on the part of the Convention Centre to make Mr. Grindlay consent to the signing of the

Release.

4. Existence of Independent Legal Advice

[36] The Release specifically states that “I have had the opportunity to seek independent legal advice with respect to the matters addressed in this Release and the terms of settlement which have been agreed to by myself.”

[37] Further, the testimony of Ms. Neufeldt, which the Panel accepts, is that she encouraged Mr. Grindlay to seek legal advice. Ms. Grindlay chose not to follow this advice.

[38] The Panel finds that the lack of legal advice does not overturn this Release.

5. Duress

[39] Issues of timing, financial need and the like, but not mere stress or unhappiness, may upset a Release. In the *Universal*² decision, two components of the concept of duress were discussed. The first referred to the fact that there must be pressure, “the practical effect of which is compulsion or absence of choice.” The second consideration was that “the pressure must be one of a kind which the law does not regard as legitimate.”

[40] Mr. Grindlay stated that he was in a state of sleep deprivation and duress when he signed the Release. He had no sleep the previous night because he was under stress from his relapse and was in fear of being fired for revealing his struggles with his addiction.

[41] While the Panel acknowledges that Mr. Grindlay may have been under stress as a result of his relapse, the concept of legal duress has an element of threat or compulsion in which the “victim” cannot reasonably resist and therefore would not act voluntarily at the time the Release was signed.

[42] In this case, the Panel does not find that any illegitimate pressure was exerted by the Convention Centre to compel Mr. Grindlay to sign the Release or that he involuntarily entered into this agreement against his will.

6. The knowledge of the party executing the Release as to their rights under the Act and the knowledge on the part of the party receiving the Release that a potential claim under the Act is being contemplated.

[43] Counsel for the respondent stated that the Convention Centre did not contemplate that the complainant might bring a complaint to the Alberta Human Rights Commission regarding his termination.

² *Universal v. Tankships Inc. v. International Transport Workers’ Federation* JC PC(1982)2 R.E.R.67 at 88(H.L.)

7. Any other consideration, including lack of capacity, timing, mutual mistake, forgery or fraud.

[44] It is the finding of the Panel that there are no other considerations that could invalidate the Release.

[45] Having considered all the evidence and case law, it is the decision of the Panel that Mr. Grindlay has failed to meet the onus as required in the *Chow* decision. The Panel finds the Release signed by Mr. Grindlay to be valid and enforceable.

[46] When a Release is found to be valid, the Alberta Human Rights and Citizenship Commission has no jurisdiction to consider the merits of the complaint.

October 6, 2009

Beth Bryant
Panel Chair