

I was fired!

Your employer dismisses you after many years of service. Does he have to pay you an indemnity in lieu of reasonable notice? If yes, how is the amount to which you are entitled determined?

THE FACTS

An employee is fired on January 3, 1996 after working 17 years for his employer as a sales rep. Due to significant financial losses, the employer had to abolish 16 sales rep positions in Québec. The employer offered the employee an indemnity equal to 17 weeks' salary in lieu of termination notice. The employee, considering this amount to be unreasonable and inadequate, claimed an indemnity in lieu of notice equal to two years' salary, or a little over one month for every year of service. In support of his claim, the employee based his argument on his age, (50 years old), his years of service and the difficulty he would have in finding a comparable job. The employer's position was that 17 weeks' salary was reasonable and anyways, that was what he had paid as an indemnity to the other sales reps that were dismissed.

THE ISSUE IN DISPUTE

Is 17 weeks' indemnity in lieu of termination notice reasonable in the circumstances?

THE JUDGMENT

The employee's action was allowed in part.

THE REASONS

Firstly, the Labour Standards Act provides that a minimum of 8 weeks' notice must be given to an employee with at

least 10 years of uninterrupted service, and in lieu of notice, the employee is entitled to an indemnity equal to the same number of weeks' salary. The Civil Code of Québec also provides protection by stipulating that each party to an employment contract must give termination notice to the other party if one of them wishes to terminate the contract. It also states that the notice period must be reasonable. In deciding what is reasonable, the employer must take into account the nature of the position, the specific circumstances in which it was carried out and the employee's length of service. Also, case law has established that to determine the amount of the indemnity, the following things must also be taken into account: the nature and importance of the employee's duties, if he or she had left a job to take up this particular one, the employee's age, experience, ease or difficulty in finding another job, and whether or not there is a serious reason for the dismissal.

In his judgment, Justice Jacques attempted to determine what indemnity in lieu of notice would be reasonable in the circumstances. He based his reasoning on various criteria. Firstly, because the company had sustained major financial losses, it was entitled to terminate the employee's job, but it was still obliged to pay him a reasonable indemnity in lieu of notice. Secondly, the employee had given his employer 17 of his most produc-

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The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

Contact us

Commission
des services juridiques
2, Complexe Desjardins
Tour de l'Est, bureau 1404
C.P. 123, Succursale Desjardins
Montréal (Québec) H5B 1B3

514 873-3562
514 873-8762 (fax)
www.csj.qc.ca

*The information
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I was fired! (cont'd)

tive years. He now finds himself unemployed at the age of 50 at a time when his area of expertise is undergoing reorganization, and it is very difficult to find another comparable job. Thirdly, the evidence indicated that despite all his efforts, the person was actually having a hard time finding a job. Lastly, it was established that although he was not a manager or a senior level employee, he nevertheless had mid-level responsibilities in the company.

In light of that information, the judge held that the minimum indemnity provided under the Labour Standards Act and the employer's offer were both inadequate. In his view the employee should have been given notice equal to 34 weeks of salary, namely two weeks' salary for every year of service, which in that case amounted to \$18,681.

The Labour Standards Act provides that a minimum of 8 weeks' notice must be given to an employee with at least 10 years of uninterrupted service, and in lieu of notice, the employee is entitled to an indemnity equal to the same number of weeks' salary.

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References

Gagné v. Aliments Culinar Inc. (January 11, 2005), Québec 200-17-002779-023, J.E. 2005-323.
Civil Code of Québec, S.Q. 1991, c. 64, art. 2091.
Labour Standards Act, R.S.Q., chapter N-1.1, sections 82 and 83.

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