Watson v. Seacastle Enterprises Inc., [2007] B.C.J. No. 541

British Columbia and Yukon Judgments

British Columbia Supreme Court

Duncan, British Columbia

Metzger J.

Heard: December 12 - 15, 18 - 19 and 21, 2006.

Judgment: March 15, 2007.

Duncan Registry No. 10111

[2007] B.C.J. No. 541 | 2007 BCSC 365 | 56 C.C.E.L. (3d) 270 | 156 A.C.W.S. (3d) 372 | 2007 CarswellBC 565

Between Chelsea Watson, Plaintiff, and Seacastle Enterprises Inc., Defendant

(68 paras.)

Case Summary

Contracts — Breach of contract — Repudiation — Remedies — Damages — Action by the plaintiff for damages for wrongful dismissal allowed — Plaintiff, aged 21, was employed by the defendant for 11 months — She was not dismissed — She was, however, constructively dismissed because the defendant did not have just cause to demote her from manager to assistant manager — She did not condone her employer's breach of a fundamental term in her employment contract by working for nine days after her demotion and she had the right to treat her employment contract as terminated — She accepted defendant's repudiation of her employment contract when she did not report to work — She was entitled to four weeks of gross pay as a manager in the amount of $2,000 and unpaid wages of $67.

Damages — Wrongful dismissal — Occupation — Sales — Executive and management — Duration of employment — Less than 1 year — Age of employee — 21 to 30 — Notice period — 1 to 5 months — Damages in addition to notice period — Special damages — Aggravated damages — Punitive damages — Plaintiff, aged 21, was employed by the defendant for 11 months — She was not dismissed — She was, however, constructively dismissed because the defendant did not have just cause to demote her from manager to assistant manager — She was entitled to four weeks of gross pay as a manager in the amount of $2,000 and unpaid wages of $67 — Plaintiff was not entitled to aggravated and punitive damages as defendant's conduct did not amount to an independent actionable wrong that was separate from the failure to give reasonable notice.

Employment law — Termination of employment — Repudiation of employment contract — Wrongful dismissal — Constructive dismissal — Dismissal without cause — Reasonable notice period or wages in lieu — Age — Length of service — Damages — Aggravated or punitive — Action by the plaintiff for damages for wrongful dismissal allowed — Plaintiff, aged 21, was employed by the defendant for 11 months — She was

not dismissed — She was, however, constructively dismissed because the defendant did not have just cause to demote her from manager to assistant manager — She did not condone her employer's breach of a fundamental term in her employment contract by working for nine days after her demotion and she had the right to treat her employment contract as terminated — She accepted defendant's repudiation of her employment contract when she did not report to work — She was entitled to four weeks of gross pay as a manager in the amount of $2,000 and unpaid wages of $67 — Plaintiff was not entitled to aggravated and punitive damages as defendant's conduct did not amount to an independent actionable wrong that was separate from the failure to give reasonable notice.

Action by Watson against the defendant Seacastle Enterprises Inc. for damages for wrongful dismissal -- Watson was an employee of a Burger King restaurant since September 2001 and was the assistant manager -- Seacastle purchased the restaurant in February 2004 -- Previous owner gave a severance payout to his employees -- Seacastle hired Watson on February 20, 2004 in her former position -- She continued to receive the same annual salary of $24,000 -- Watson claimed she was terminated on January 25, 2005 -- At the time she was 21 years old and had completed grade 11 -- Seacastle claimed that Watson was not terminated but quit by failing to show up for her scheduled shifts -- It also claimed that Watson failed her probationary period as manager because of poor job performance and was reassigned to her previous position as assistant manager -- Watson successfully completed her probationary period as manager by November 2004 and her salary was raised -- However, she was demoted to her position as assistant manager on January 14, 2005.

HELD: Action allowed.

Evidence indicated that Watson was not dismissed -- She remained on work schedules after her alleged termination date -- Her superior and several staff members told her she was not fired -- However, Seacastle did not have just cause to demote Watson and she was constructively dismissed -- Even though she worked for nine days after her demotion she did not accept it -- She therefore did not condone her employer's breach of a fundamental term in her employment contract and had the right to treat her employment contract as terminated -- She accepted Seacastle's repudiation of her employment contract when she did not report to work on January 26 -- Watson worked for Seacastle for 11 months but only was a manager for two of those months -- It was unlikely, based on her age and educational level, that she would find a managerial job immediately after her dismissal -- Watson made every reasonable effort to obtain employment and to mitigate her loss -- She was entitled to four weeks of gross pay as a manager, or $2,000 -- Watson was not entitled to aggravated and punitive damages because Seacastle did not engage in an independent actionable wrong that was separate from its failure to give reasonable notice.

Counsel

Counsel for the Plaintiff: W.R. Southward.

Counsel for the Defendant: P.K. Sandhu.

METZGER J.

INTRODUCTION

1 The plaintiff was an employee of the Burger King Restaurant in Duncan, British Columbia. She submits that the defendant, Seacastle Enterprises Inc., who owns this particular Burger King Restaurant, fired her without cause. She claims:

1. damages for wrongful or constructive dismissal;
2. aggravated damages;
3. punitive damages;
4. interest and special costs.

2 The defendant says that the plaintiff was not terminated, but quit by failing to show up for her scheduled shifts. The defendant claims that the plaintiff failed her probationary period as manager because of poor job performance and was, therefore, reassigned to her previous position as assistant manager. The defendant has requested that costs be spoken to after the court's decision.

ISSUES

3 There are three main issues:

1. Did the defendant wrongfully dismiss the plaintiff?
2. Did the defendant constructively dismiss the plaintiff?
3. What damages, if any, are due to the plaintiff?

BACKGROUND

4 The plaintiff commenced work at the Duncan Burger King Restaurant in September 2001, before it was owned by the defendant. In February 2004, the defendant purchased and assumed control over the operation of the Burger King Restaurant in Duncan.

5 The previous owner gave a severance payout to his employees. The defendant rehired most of the staff. On February 20, 2004, the defendant hired the plaintiff, who had been the assistant manager, and Gladys Webber, who had been the manager for the previous owner.

6 As the assistant manager, the plaintiff continued to receive the same annual salary of approximately $24,000, and was paid every two weeks. The restaurant employed approximately 20 staff, about half of whom were part-time employees.

7 Bill Dhillon is the president and major shareholder of the defendant and the originator of the idea to purchase and manage Burger King Restaurants. He continues to manage the Richmond Burger King which was the first one purchased. He is the father of Rick, Shawn and Jason Dhillon.

8 Rick Dhillon, the oldest son, is a shareholder of the defendant and the Director of Operations for the Duncan and Victoria Burger King Restaurants. He spent the majority of his time at the Victoria operation. Shawn Dhillon manages the Nanaimo Burger King Restaurant and was also involved in supervising the Duncan operation. Jason Dhillon is the youngest brother and was a crew member at the Nanaimo Burger King with no managerial responsibilities.

9 The defendant installed eight cameras in the Duncan Burger King so that Bill Dhillon could watch the inside of the restaurant on his home computer in Richmond, British Columbia. Rick and Shawn Dhillon reported to Bill Dhillon. All three admitted that they gave instructions to the plaintiff at various times.

10 The plaintiff claims that she was terminated on January 25, 2005. She did not work any further shifts for the defendant after this date.

1. Did the defendant wrongfully terminate the plaintiff?

11 Before the court can consider whether the plaintiff was wrongfully dismissed, she must prove, on a balance of probabilities, that she was dismissed from her employment. The court is required to consider all the surrounding circumstances to determine if a reasonable person would have understood the plaintiff to have been dismissed (see ***Almack v. Dr. Michael E. Pezim Inc.***, *2004 BCSC 647* at paras. 16, 17). The dismissal must be "clear and unequivocal" (see ***Almack, supra*** at para. 18).

12 On July 20, 2004, the manager, Gladys Webber, left for Courtenay, British Columbia to manage another of the defendant's Burger King Restaurants. She recommended the plaintiff for her job as manager of the Duncan restaurant.

13 Rick Dhillon promoted the plaintiff to manager, subject to satisfactory completion of a three month probationary period. I am satisfied the probationary period was to be from August 1, 2004 to October 31, 2004. There was discussion about salary and the figure $30,000 was mentioned as either the top of the range or the amount she would receive if successful in her probation.

14 I am satisfied that the plaintiff successfully completed her probation. She did so no later than November 13, 2004 as Bill Dhillon increased her salary to $26,000 effective that date. In addition, her demotion letter, set out below, confirms that she was the restaurant manager.

15 In the presence of Bill and Shawn Dhillon, Gladys Webber handed the plaintiff a letter dated January 14, 2005, composed, written and signed by Shawn Dhillon as Managing Director of Seacastle Enterprises Ltd. Bill Dhillon had instructed Shawn Dhillon to return the plaintiff to her old job. The January 14 letter was the plaintiff's notice that she was demoted to assistant manager. It states:

> After seriously reviewing your performance as a Restaurant Manager in the Duncan Burger King Restaurant, your status is being changed from Restaurant Manager to Assistant Manager.
>
> Your new wages will be shown as $9.00 per hour on the next payroll period.

> Gladys Webber will be overlooking all operational facets of this restaurant as the Restaurant Manager as of today's date.

16 On the evening of January 25, 2005, the plaintiff went to the Burger King Restaurant, on her day off, to console an upset employee and to obtain a copy of the Burger King Employee handbook. There were no handbooks available.

17 While Tanya Oderich, another assistant manager, was photocopying the handbook, Bill Dhillon, telephoned the office and asked the plaintiff why she was there. He had seen her on his home computer. It was during this conversation that the plaintiff claims that Bill Dhillon fired her.

18 Before leaving the restaurant after the telephone call, the plaintiff phoned Shawn Dhillon, asked where her file was, and told him that Bill Dhillon had fired her. He replied, "Oh, I don't think so."

19 The plaintiff went back to the restaurant the next day with her mother where she met Shawn Dhillon and informed him she was there to turn in her keys and swipe card. On the way to the office at the rear of the restaurant, a couple of the employees told her that she had not been fired.

20 In the office, Shawn Dhillon told the plaintiff and her mother that Bill Dhillon had not fired her. The plaintiff's mother then asked why the plaintiff had been demoted. She testified that Shawn Dhillon said that the plaintiff had not cleaned the playroom windows. Shawn Dhillon denied that statement.

21 Shawn Dhillon then brought in Tanya Oderich to witness the continuing conversation between the plaintiff and her mother. Tanya Oderich told the plaintiff that Shawn Dhillon had told her and the other staff that the plaintiff had not been fired. She admitted to the plaintiff that she had only heard the plaintiff's end of the telephone conversation on the evening of the alleged termination.

22 The plaintiff turned in her keys and swipe card to Shawn Dhillon on January 26. She was required to turn in only her keys as a result of her demotion. Shawn Dhillon told her that she was not fired and that she should keep her swipe card. As the plaintiff continued to insist that she had been terminated, she turned in her swipe card.

23 On January 26, 2005, the plaintiff received a telephone call from Gladys Webber asking why she had not come into work that day for her scheduled shift. The plaintiff told Gladys Webber that she had been fired. Bill Dhillon instructed Gladys Webber that same day to discipline the plaintiff by suspending her for a period of time without pay.

24 On or about February 14, 2005, the plaintiff picked up a registered letter at the restaurant. It contained a write-up dated November 1, and signed by Gladys Webber. It was the disciplinary notice suspending her from work for two weeks, without pay. The date was obviously an error as the letter mentioned the incident of January 25, 2005 and the plaintiff s failure to attend for her scheduled shift on January 26, 2005.

25 There was another disciplinary letter dated February 14, 2005 and signed by Gladys Webber. It explained that the plaintiff had again failed to appear for her shifts commencing February 11, 2005. Consequently, the plaintiff was suspended from work for a further one month

without pay. The plaintiff did not see this second disciplinary letter prior to the commencement of these proceedings. However, the plaintiff does recall that, on or about February 6, 2005, Gladys Webber had telephoned her about coming in for the February 11 shift. The plaintiff reminded Gladys Webber that she had been fired.

26 The plaintiff's testimony is the only evidence of her alleged dismissal. She testified that, during an emotional conversation with Bill Dhillon, she believed he said that she was fired.

27 The following evidence suggests that the plaintiff was not dismissed:

1. On January 25, 2005, Shawn Dhillon told the plaintiff that he did not think Bill Dhillon would do that.
2. On January 26, 2005, Bill Dhillon told Gladys Webber to suspend the plaintiff which he would not have done if he had fired her.
3. Tanya Oderich, the witness to the plaintiff's side of the January 25 telephone call, states, and the plaintiff does not deny, that the plaintiff asked Bill Dhillon repeatedly, if she had been fired.
4. On January 26, Shawn Dhillon told the staff and the plaintiff and her mother that the plaintiff had not been fired.
5. On January 26, Tanya Oderich told the plaintiff that Shawn Dhillon had told the staff that she was not fired.
6. On January 26, at least two staff told the plaintiff that she was not fired.
7. Bill Dhillon denies that he ever told the plaintiff that she was fired.
8. The plaintiff remained on the future work schedules.
9. Gladys Webber told the plaintiff that she was not fired when she called her on January 26 and on February 6 about missing her shifts.

28 I am satisfied that a reasonable person would have concluded that, in all the circumstances, the plaintiff was not dismissed from her employment. I find that there was no dismissal, and therefore, no wrongful dismissal.

2. Did the defendant constructively dismiss the plaintiff?

29 According to ***Farber v. Royal Trust Co.***, *[1997] 1 S.C.R. 846* at 864, constructive dismissal of a regular employee occurs when:

> an employer unilaterally makes a fundamental or substantial change to an employee's contract of employment - a change that violates the contract's terms - the employer is committing a fundamental breach of the contract that results in its termination and entitles the employee to consider himself or herself constructively dismissed.

30 Demotion often, although not always, amounts to constructive dismissal. According to Esson J.A. in ***Reber v. Lloyds Bank International Canada*** *(1984), 61 B.C.L.R. 361* (B.C.C.A.):

> In each case, it is a question of what are the terms of the contract, whether there has been a breach, and, if there has been a breach, whether it amounts to a fundamental breach.

31 Not every demotion is a breach of the employment contract but a demotion could constitute a breach going to the root of the contract. Consequently, not every alteration in status will afford grounds for constructive dismissal.

32 An employer may demote an employee on probation without it constituting constructive dismissal. For an employee on probation, the standard for dismissal is suitability (***Pathak v. Royal Bank of Canada*** *(1996), 21 B.C.L.R. (3d) 108* (B.C.C.A.); ***Jadot v. Concert Industries Ltd.*** *(1997), 44 B.C.L.R. (3d) 327* (B.C.C.A)). During a probationary period, an employer can dismiss a probationary employee without notice and without giving reasons provided that the employer acts in good faith in the assessment of the employee's suitability for the position (see ***Jadot, supra***).

33 An employer can demote a regular employee provided that it has just cause to do so (***Lowery v. Calgary (City)***, *2000 ABQB 859*, aff'd *2002 ABCA 237*). If an employer alleges incompetence as grounds for dismissal or demotion, it must prove the following (see ***Atkinson v. Boyd, Phillips & Co. Ltd.*** *(1979), 9 B.C.L.R. 255* (B.C.C.A.); ***Lowery v. Calgary (City)***, *2002 ABCA 237* at para. 3):

1. The employee was given express and clear warnings about his performance.
2. The employee was given a reasonable opportunity to improve his performance after the warning was issued.
3. Notwithstanding the foregoing, the employee failed to improve his performance.
4. The cumulative failings "would prejudice the proper conduct of the employer's business".

34 When an employer commits a present or anticipatory breach of a fundamental term of the employment contract, the employee has a right, but not an obligation, to treat the employment contract as terminated (***Farquhar v. Butler Brothers Supplies Ltd.*** *(1988), 23 B.C.L.R. (2d) 89* (B.C.C.A.); ***Reber, supra***). If an employee accepts her employer's unilateral change in the contract, the employee will be seen to have condoned the modification. According to ***Farquhar***: "The employee's decision must be made within a reasonable time. But he is entitled to a few days, or even a couple of weeks, to think it over." In ***Farquhar***, the court found that the employee accepted repudiation of the contract within a reasonable time when he was given notice of his 30% salary reduction on December 27 and left his place of employment on January 16.

35 What constitutes reasonable time for an employee to accept repudiation of the contract varies from case to case. David Harris, *Wrongful Dismissal*, looseleaf (Thomson Carswell, 2006) Vol. 1 at 3.8, identifies several factors that are relevant in the calculation of reasonable time: the employee's persistence in objecting to the unilateral change; the employee's age, education and work experience; and the employee's mitigation strategy. In ***Streight v. Dean***, *2002 BCSC 399*, Macaulay J. reviews several B.C. cases where courts have found that periods ranging from three weeks to three months constitute reasonable time.

36 The defendant claims that the plaintiff was on an extended period of probation as a manager and was returned to her previous position because she did not perform satisfactorily on probation.

37 All Burger King Restaurant managers were expected to satisfactorily complete some management courses. The plaintiff took the basic management training courses in October and November of 2005. She passed them all except for the sanitation course. Passing the sanitation course was not a requirement to becoming a manager but it had to be completed at a time convenient to the parties. The plaintiff had not retaken the course prior to leaving the defendant's employ.

38 The plaintiff submits that her probation ended on or about October 20, 2004 when she says that her supervisor, Rick Dhillon, told her that her performance was satisfactory and that her probation had ended. The plaintiff testified that her probation ended then so that she could attend the courses as a manager. Rick Dhillon denied this.

39 The plaintiff tendered a copy of a fax dated November 6, 2004 that she claims Rick Dhillon sent to her from his personal fax machine. Rick Dhillon testified that no one has access to his fax machine but him. The fax confirms that the plaintiff was employed by the defendant on a full time basis at $30,000 per annum. It is signed "Rick Dhillon, Operations Manager."

40 The plaintiff testified that she received this document at the Burger King Restaurant, and believes it to be genuine.

41 Rick Dhillon denies that he sent the fax. He claims his signature has been forged and that someone has constructed the document to make it look like it came from his machine. I note that the sheet lacks the usual line on the bottom which sets out the date and origin of the fax. I note also that Rick Dhillon's signature appears to be different than the signature attached to a prior document received by the plaintiff. The plaintiff did not call a handwriting expert and has failed to produce the original fax she received. Thus, I give this document no weight.

42 The plaintiff testified that when she received her pay cheque from Bill Dhillon on December 2 or 3, 2004, for the two week period from November 13, 2004 to November 26, 2004, it was for $1,000 which was an increase in salary that reflected her position as a manager. However, this indicated an annual salary of $26,000, not the $30,000 she expected.

43 The plaintiff told Bill Dhillon that Rick Dhillon had raised her salary to $30,000. Bill Dhillon did not believe her so he called and spoke to Rick Dhillon on his cell phone. Then the plaintiff spoke to Rick Dhillon and he apparently told her that he would straighten out matters later after he talked to Bill Dhillon again. I am satisfied that Bill Dhillon told the plaintiff, at various times, that she had the option of quitting if she was not satisfied with the pay and the working conditions.

44 According to the plaintiff, on or about December 30, 2004, Bill and Shawn Dhillon yelled at her to emphasize their displeasure with her incompetence in meeting the minimum cleanliness standards and controlling the labour costs.

45 On January 14, 2005, the plaintiff received her pay cheque for the period December 25, 2004 to January 7, 2005. The rate of pay was $11.11 per hour. She was paid for only 52 hours. The plaintiff asked why she was only being paid for 52 hours. Bill and Shawn Dhillon responded

that she was being paid for the hours she had punched in. The plaintiff maintained that she had worked more than 80 hours. Bill Dhillon told her that he required proof of the hours she claimed she worked.

46 The plaintiff testified that she sent Bill Dhillon a copy of the hours she worked and that these were verified as true by a fellow employee, Michelle Morgan. Bill Dhillon testified that he never received it. The plaintiff did not produce this document.

47 On January 14, 2005, the plaintiff was demoted to assistant manager. In addition to the decrease in hourly pay, the plaintiff states her schedule was changed from 40 hours per week to six hours a day for four days per week.

48 The plaintiff testified that no reasons were given for the demotion despite her request to know why she was being demoted. Bill Dhillon testified that she was told that her performance was below the acceptable standard. The plaintiff stated that she told Bill Dhillon that it was unfair to treat employees this way and that it was not business-like to do it in such a manner. Up to this point, there had been no written discipline or criticism of the plaintiff's work as Manager or Assistant Manager.

49 After the January 14, 2005 demotion, the plaintiff worked for nine more days at the lower rate of pay for a decreased number of hours. Her pay slip for the period January 8, 2005 to January 21, 2005 shows that the plaintiff worked 50 hours at $9.00 an hour. I note that she was paid the lower hourly rate for the week in which she was still a manager. Thus, the plaintiff is owed $67.59, which includes her four percent holiday pay.

50 I find that the plaintiff had finished her probation as manager by no later than mid November 2004, when she was given a raise to $26,000. There was not sufficient evidence to establish an extension of her probationary period into January 2005. The demotion letter referred to her as a manager, not a manager on probation. She did not receive any written warnings or criticisms about her job performance as a manager. During her three month probation, the plaintiff had been given oral warnings that her labour costs were too high, her inventory control inconsistent, that she was not meeting the cleanliness standard for the restaurant, and that she was failing to punch in and out when she commenced and finished work.

51 However, despite these apparent shortcomings, at the end of the three month probationary period, her salary was raised to that of a manager. I find that her performance must have improved to warrant the increase in salary. I do not find credible the defendant's claim that it raised her salary as an incentive for her to improve. The prospect of being a manager at a higher level of pay would have provided such incentive.

52 By January 14, 2005, when the plaintiff was demoted to her position as assistant manager, the plaintiff was no longer a probationary employee. The defendant unilaterally changed fundamental terms of the plaintiff's employment contract by decreasing her wages, hours, status and responsibilities.

53 The plaintiff was upset with the change and demanded to know the reasons for the demotion. She was not given any specific reasons. There was a general allegation of incompetence as a manager at the time of the plaintiff's demotion. During December 2004, the plaintiff was once again warned orally about labour costs, inventory control, restaurant cleanliness and punching in and out. The plaintiff was not given express and clear warnings

about her performance, nor was she given a reasonable opportunity to improve her performance. The progressive performance management chapter of the employee's handbook sets out the scheme for disciplining an employee. The defendants state that the progressive performance management procedure is just a suggestion to the employer and they may choose not to follow it. In this case, they chose not to follow the scheme of progressive discipline in the employee's handbook.

54 I am satisfied that the defendant did not have just cause to demote the plaintiff and that the plaintiff was constructively dismissed.

55 The plaintiff continued to work for the defendant for approximately nine days after her demotion. She made no further objection to her demotion until after her alleged termination. However, I find that the plaintiff did not accept her demotion to assistant manager. On January 25, she had gone into work and wanted a copy of the employee handbook. She had a heated conversation with Bill Dhillon which led her to believe that she was actually fired. Her mother asked Shawn Dhillon on January 26, 2005, the day after the termination, why the plaintiff had been demoted. Despite being told that she was not fired, the plaintiff refused to return to work after January 25, 2005.

56 I find that the plaintiff did not condone her employer's breach of a fundamental term in her employment contract and that she had a right to treat the employment contract as terminated. The plaintiff has grade 11, part of grade 12, and was 21 years of age at the time of her demotion. Nine days was a reasonable time for the plaintiff to continue working without being seen to have condoned her employer's unilateral modification of her contract. She accepted her employer's repudiation of her employment contract when she did not report to work for her scheduled shift on January 26, 2005.

3. What are the damages owed to the plaintiff?

57 Because the plaintiff was constructively dismissed, she is entitled to damages in lieu of notice. To determine the appropriate notice period in each case, Lowry J., in ***Peterson v. Wilson Logistics,*** *2003 BCSC 215* at para. 14, explains that:

> One month of service for each year of employment is a sound starting point, but is no more than a guideline. Rather, notice should be determined by considering the four Bardal factors in the context of the case.

58 The Bardal factors include: the character of the employment, the length of service of the employee, the age of the employee, and the availability of similar employment having regard to the experience and training of the employee (see ***Bardal v. Globe & Mail Ltd.***, *(1960), 24 D.L.R. (2nd) 140* (Ont. H.C.)).

59 In ***Ansari v. British Columbia Hydro and Power Authority*** *(1986), 2 B.C.L.R. (2d) 33*, McEachern C.J.S.C. (as he then was) states:

> At the end of the day the question really comes down to what is objectively reasonable in the variable circumstances of each case, but I repeat that the most important factors are

the responsibility of the employment function, age, length of service and the availability of equivalent alternative employment, but not necessarily in that order.

60 Although the plaintiff had worked for the defendant for 11 months, only two months of that had been as a manager. As a 21 year old person with only grade 11, she was unlikely to find a managerial job immediately after her dismissal.

61 I am satisfied that she made every reasonable effort to obtain employment and thereby mitigate her loss. As of April 1, 2005, she was working as a cashier at Duncan Home Hardware for $9.00 an hour.

62 I am satisfied that it is reasonable, given the brief length of service, the age of the plaintiff, and the unavailability of equivalent alternative employment as a manager, to award the plaintiff damages in the amount of $2,000. This represents four weeks of gross pay as a manager.

63 Aggravated and punitive damages are only awarded when an employer's conduct amounts to an independent actionable wrong that is separate from the failure to give reasonable notice (see ***Vorvis v. Insurance Corporation of British Columbia***, *[1989] 1 S.C.R. 1085*; ***McKinley v. B C Tel***, *2001 SCC 38*). There is no evidence that the defendant has engaged in an independent actionable wrong. Therefore, there are no grounds for aggravated or punitive damages.

64 The plaintiff has failed to prove that there are further outstanding wages owing other than the $67.59 for the week she was still a manager.

65 The test for the awarding of special costs is whether or not a party's conduct is worthy of rebuke. An attempt to contaminate evidence is conduct worthy of rebuke (see ***Coulter v. Ball***, *2003 BCSC 1186* at paras. 23 and 88). The evidence does not support the plaintiff's contention that the defendant engaged in the reprehensible conduct of influencing the testimony of a witness. There will be no special costs.

Decision

66 The defendant owes the plaintiff $2,000 in damages and $67.59 in unpaid wages for a total of $2067.59.

67 The plaintiff is entitled to court ordered interest from January 26, 2005.

68 Costs are to be argued at a time convenient to the parties.

METZGER J.