



Working Knowledge: The Shibley Righton Labour and Employment Law eBulletin

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Punitive Damages in Wal-Mart Harassment Case Reduced, but Still Significant

In 1999, Meredith Boucher was hired by Wal-Mart; in 2008 she was promoted to assistant manager of a store in Windsor, Ontario. In May 2009, the relationship between the store manager and Boucher's immediate supervisor, Jason Pinnock, soured; an abusive relationship ensued in which Pinnock belittled, humiliated and demeaned Boucher continuously and in front of her co-workers. Boucher complained to management; however not only were Boucher's complaints found to be unsubstantiated, she was also informed that she would be held accountable for making the complaints. Boucher quit shortly thereafter and sued Wal-Mart for constructive dismissal. At the time of the appeal, Boucher was an unemployed, 43-year-old single mother.

At the initial trial, the jury found that Boucher had been constructively dismissed and awarded her 20 weeks' notice in addition to damages against Wal-Mart of \$1.2M, consisting of \$200,000 in aggravated damages for the manner in which she was dismissed and \$1M in punitive damages. The jury further awarded Boucher damages of \$250,000 against Pinnock personally; \$100,000 for intentional infliction of mental suffering and \$150,000 in punitive damages.

Pinnock and Wal-Mart appealed the decision to the Ontario Court of Appeal. In the appeal, the Court significantly reduced the damage award made by the jury. With respect to Pinnock, the Court recognized that although the \$100,000 in damages for intentional infliction of mental suffering was high, it was not "so inordinately high to be plainly unreasonable." However, the court held that the additional \$150,000 in punitive damages, when combined with the award for mental suffering, would exceed that which was 'rationally' necessary to punish the conduct. Accordingly, the \$150,000 award was reduced to \$10,000, for a total award against Pinnock of \$110,000.

With respect to the damages awarded against Wal-Mart, the Court of Appeal did not interfere with the \$200,000 award for aggravated damages. Again, the Court held that the award, although high, was not so "plainly unreasonable" such that it should be reduced. However, the Court did adjust the \$1M punitive damages award. It's submissions, Wal-Mart argued that it was liable for aggravated damages in the amount of \$200,000, was vicariously liable for the \$100,000 award against Pinnock, and another \$140,000 in trial

costs. An additional award of \$1M, argued Wal-Mart, was not rationally required to punish it or give effect to denunciation and deterrence. The Court of Appeal reduced punitive damage award against Wal-Mart to \$100,000, based largely on the fact that Wal-Mart had already been found liable for significant compensatory damages, the conduct had lasted less than 6 months, it did not profit from its wrong and it did not set out to force Boucher's resignation.

Given the extent of damages, the reduction of the jury award is relatively unsurprising. What is somewhat curious, however, is the fact that the Court of Appeal, in reducing the punitive damage award, did not address the sufficiency of Wal-Mart's investigation into Boucher's initial complaints. Because the original trial was a jury trial, no reasons would have been issued. Although the Court's reduction in damages is understandable, in our view, a reduction (or alternatively non-reduction) in damages would also have been warranted depending on a finding of whether Wal-Mart's investigation was perfunctory or *bona fide*. Regardless, with the amount of damages in the *Boucher* case, even after the reduction by the Court of Appeal, we highly recommend that employers take seriously all harassment complaints in order to ensure, not only that employees are treated properly, but to minimize any future damages.

We welcome your comments and questions. Send them, and any updated contact information, to bryce.chandler@shibleyrighton.com. If you wish to unsubscribe to this eBulletin, please send a blank e-mail to christen.crosswhite@shibleyrighton.com

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