

3 IN THE COUNTY COURT OF CARIBOO

4 PRINCE GEORGE, B.C.

5 December 22, 1983
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7
8 BETWEEN: DONNA LARSON)
9 PLAINTIFF) REASONS FOR
10 AND: PRINCE GEORGE GOLF) JUDGMENT OF
11 & CURLING CLUB) HARDINGE, J.
12 DEFENDANT)

13 D. BYL, Esq. appearing for the Plaintiff
14 P. ROGERS, Esq. appearing for the Defendant
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17 THE COURT: (Oral) The plaintiff's action is for damages for
18 wrongful dismissal against her former employer, Prince
19 George Golf & Curling Club. Prior to her dismissal on
20 the 17th of December, 1982 the plaintiff had been employed
21 in various capacities by the defendant for approximately
22 five and a half years.

23 At the outset she was employed as a waitress. In
24 April, 1981 she was promoted to the position of bar manager.
25 She also performed the duties of food and beverage super-
26 visor for a relatively short time. I do not know the
27 date, but it is in evidence that the plaintiff was on

1 maternity leave for several months during the first half
2 of 1982. She returned to her employment before the expir-
3 ation of her period of entitlement to maternity leave at
4 the express request of Mr. Grant Hamilton, the manager
5 for the plaintiff. He made the request, he said, because
6 the club was shorthanded.

7 When the plaintiff returned to work on the 17th of
8 July, 1982 she did not resume her previous position as
9 food and beverage supervisor. At her request she was
10 assigned the slightly more junior position of lounge
11 manageress. She said that she asked for that position
12 because it was a position of lesser responsibility.
13 Whether she actually said so or not, I got the impression
14 from her evidence that it was because of her family re-
15 sponsibilities that she did not wish to continue, at that
16 time at least, with the added burdens of being food and
17 beverage supervisor.

18 In mid-September, 1982 Mr. Hamilton became aware that
19 there was a serious shortfall in revenues that should have
20 been received from liquor sales during the months of July
21 and August. He stated that the amount appeared to be
22 between twenty-five and thirty-five hundred dollars.
23 Accounting and other checks that were conducted led
24 Hamilton to believe that the shortfall was not an arith-
25 metic error. He came to the conclusion that there had
26 been a pilferage of either product or cash from the club.

27 Mr. Hamilton called a meeting of the assistant

1 manager, Mr. McLeod, himself, and the plaintiff on the
2 14th of September, 1982 to discuss the problem of the
3 shortages in the bar receipts. During this meeting the
4 plaintiff volunteered to check the bar inventory. She did
5 so following the meeting. The task took her about one and
6 a half hours to complete.

7 On the following day, the 15th of September, 1982,
8 there was a further meeting between the same people. At
9 this meeting the subject of checking liquor inventory on
10 a daily basis was discussed at length. Both the plaintiff
11 and Mr. Hamilton agreed that during the course of the
12 meeting it was made clear to the plaintiff that she would
13 be the person responsible for conducting the daily in-
14 ventory. Where they do not agree is when the daily in-
15 ventory taking was to commence. Mr. Hamilton testified
16 that during the course of the meeting on the 15th of
17 September he instructed the plaintiff to conduct the
18 first inventory taking and to have the results available
19 for inspection on the morning of the 16th of September.
20 Mr. McLeod said that he was present when the plaintiff
21 was asked to do daily inventories. However, he could not
22 recall the particular dates. He did, however, say that
23 Hamilton told the plaintiff at one meeting that -- and I
24 quote from my notes: "He wanted it (that is, the daily
25 inventory taking) to start the next day." This evidence
26 would tend to confirm Hamilton's evidence.

27 The plaintiff's recollection of her instructions is

1 that at the meeting on the 15th of September there was
2 considerable discussion of the preliminary steps that
3 would have to be taken prior to commencing daily inventory
4 checks. This included, a) removal of the surplus inven-
5 tories from the bar to a storage cabinet; b) metering the
6 quantities of liquor in the bar; c) reprogramming the
7 cash register; and d) instituting a requisitioning system
8 for bringing additional quantities of liquor from the
9 storage cabinet to the bar as required.

10 The plaintiff stated once these preliminary steps
11 had been taken the daily inventory check could be conducted
12 in about ten minutes. It was her understanding that she
13 would have to start the wheels in motion to enable daily
14 inventory checks the next day, but would not have to
15 actually conduct such a check until the following day;
16 namely, the 17th of September, 1982.

17 It is obvious that at the meeting on the 15th of
18 September the plaintiff made it known that she did not
19 wish to bear the burden or responsibility for inventory
20 checks. She also made it clear that she did not wish to
21 be held responsible for any irregularities in the oper-
22 ation of the club liquor distribution. To that end she
23 asked if she could be relieved of her bar management re-
24 sponsibilities and revert to being a waitress or bartender
25 only. That request was denied. I think it is also clear
26 that at this meeting there was talk of the bar manager
27 being responsible for any irregularities in this operation.

1 This talk caused the plaintiff considerable distress for,
2 as she testified, she did not wish to lose her job. No
3 one suggests that at that meeting of the 15th of September,
4 1982 the plaintiff refused to carry out Hamilton's in-
5 structions.

6 The next day the plaintiff testified that she arrived
7 at work at about her usual hour of 10:30 in the morning.
8 She said that she took some preliminary steps to reorgan-
9 ize the bar so that the inventory could be readily checked
10 daily. This included getting surplus liquor ready to be
11 removed from the bar to the storage area downstairs.
12 However, she said she could not start taking the extra
13 liquor downstairs until Mr. McLeod arrived to assist her.
14 The reason for this was first that McLeod had said that
15 he would help her, and second, although she did not say
16 so, I gathered from McLeod's evidence that she had in-
17 jured a foot and was having to get around with the aid of
18 crutches.

19 Mr. McLeod did not, as was his practice, arrive at
20 work until about 11:30 in the morning. By then the plain-
21 tiff was busy doing other things because of the normal
22 lunch hour business. When the lunchtime rush ended about
23 2:00 in the afternoon the plaintiff started to move the
24 excess liquor downstairs, assisted by McLeod. Just before
25 that she had seen Hamilton and had repeated to him her
26 request to be relieved of her responsibilities as bar
27 manageress. She testified that Hamilton told her he would

1 discuss the matter with McLeod and that she should see him
2 again the next morning.

3 According to Hamilton, when he saw the plaintiff on
4 the 16th he asked her why an inventory had not been done
5 that day. She replied that she had no intention of doing
6 it. Then she repeated, he said, her request to be re-
7 lieved from her position of bar manageress and to revert
8 to the position of bartender. Hamilton, however, acknow-
9 ledged that he did not give the plaintiff any sort of an
10 ultimatum to the effect that if she did not do the in-
11 ventory check she would be terminated.

12 McLeod testified that the plaintiff also told him in
13 the storage room on what I would infer must have been the
14 16th of September that she wasn't going to do the daily
15 inventory checks. However, McLeod could remember no
16 other conversation between himself and the plaintiff at
17 that time and I can attach little weight to his evidence.
18 That is not to say that I think that he was not telling
19 the truth as far as he recalled it. It is more a matter
20 of his being unable to recall additional parts of the con-
21 versation which might have placed an entirely different
22 meaning on that which he said the plaintiff told him.
23 By way of example only, it would, I think, have been an
24 entirely different matter if the plaintiff had said that
25 she wasn't going to do it or could not do an inventory
26 check that day, but would start doing it at some other day
27 or the following day. McLeod, as I have indicated, was

1 unable to enlighten us as to whether she added anything to
2 the words he did remember.

3 In any event, the plaintiff was clearly very con-
4 cerned about keeping her job. I cannot conceive that an
5 employee who wished to continue her employment with the
6 defendant as much as the plaintiff obviously did would
7 flatly refuse to do that which she said, and no one dis-
8 agreed, would take about ten minutes a day once the
9 proper procedures were put in place. That the plaintiff
10 was concerned to keep her employment is evidenced by the
11 fact that she telephoned Hamilton on the night of the
12 16th. Oddly enough, although Hamilton admitted that he
13 had received the call from the plaintiff and that he had
14 already made the decision in consultation with a director
15 of the club to terminate the plaintiff the next day, he
16 said that he had no recollection of what he said to the
17 plaintiff.

18 Without dealing with all the variations in the evi-
19 dence of the three witnesses separately, I am satisfied
20 that the plaintiff did not willfully refuse to obey a
21 lawful and reasonable direction from her superiors. It
22 seems to me that the club's management, having found a
23 considerable shortfall in bar receipts, very quickly con-
24 cluded that some head would have to roll and that the
25 plaintiff was the best person to choose for that purpose.
26 I say this partly because, although both Hamilton and
27 McLeod claim to have quite clear recollections of anything

1 that could tell against the plaintiff, their evidence
2 becomes vague and uncertain in areas that might have been
3 inconsistent with the picture that they attempted to paint
4 of the plaintiff as a disobedient servant. If I am in
5 error and this was not a deliberate attempt to saddle the
6 plaintiff with other persons defalcations, I think that
7 there was a breakdown in communications and the club, as
8 represented by Hamilton, was not prepared to give the
9 plaintiff the benefit of any possible doubt. If he did
10 in fact expect the first daily inventory to be conducted
11 with the result on his desk on the morning of the 16th of
12 September, then he did not make his requirement adequately
13 clear to the plaintiff. She was, I find, justified in
14 believing that she could get the matters organized on
15 the 16th and conduct the first daily inventory check on
16 the 17th.

17 In summary, I find that the plaintiff was not guilty
18 of any willful disobedience of a reasonable direction of
19 her employer. Indeed, even if she had been, the fact
20 that the idea of daily inventory checks was abandoned as
21 soon as the plaintiff was terminated indicates to me that
22 the whole idea had an ulterior motive. Failure to comply
23 could not in such circumstances be considered grave.

24 On the issue of damages, the plaintiff was employed
25 by the defendant for five and a half years. At the time
26 of her termination she held a relatively minor supervisory
27 position. She certainly had done everything that could

1 reasonably be expected of her to mitigate her loss, but
2 has been unable to obtain alternate employment. This may
3 be due in part to the current state of the economy in
4 this region. It may also be partly due to the fact that
5 in a relatively small community such as this the fact that
6 a person is dismissed from a job, allegedly for cause,
7 may make other potential employers more reluctant than they
8 would otherwise be to hire that person.

9 In his very recent decision in Hunter v. Northwood
10 Pulp & Timber (Unreported) Mr. Justice Locke in a case
11 where an employer alleged cause for dismissal that later
12 it was unable to prove, awarded damages equal to eight
13 months pay for a man with less service, but in a somewhat
14 more responsible position than the plaintiff.

15 In the present case Hamilton admitted that, apart
16 from the one alleged lapse, the plaintiff had been a
17 loyal and competent employee. I realize there can be no
18 precise measurement by which the quantum of damages can
19 be determined in cases such as the present. I do, how-
20 ever, think that I am entitled to take into consideration
21 the length of service, the degree of seniority, and the
22 difficulty in obtaining alternate equivalent employment,
23 and also the prejudicial effect which the defendant's
24 actions would be likely to have on the plaintiff's ability
25 to obtain alternate employment, among other considerations.
26 Considering those matters, it is my opinion that the
27 plaintiff in the present case should be entitled to

1 damages equal to six months pay. She has already received
2 the equivalent of six weeks pay. She is therefore entitled
3 to the equivalent of an additional four and a half months.
4 According to my calculations that works out to a sum of
5 \$7,020. The defendant calculates the value of the dis-
6 count on meal prices offered to its employees as being
7 worth \$100 per month. I think it is only reasonable
8 therefore that an additional \$600 be added to the damages.

9 General damages are therefore assessed at \$7,620.
10 Prejudgment interest on that amount at the rate of twelve
11 percent per annum from the 17th of September, 1982 to this
12 date will be added to that amount.

13 The defendant alleges a criminal act on the part of
14 the plaintiff in its statement of defence. No evidence
15 of any conduct of any such nature was led at the trial.
16 Indeed, I am told that counsel for the plaintiff was
17 specifically advised a few days before the trial that no
18 attempt would be made to prove the allegation. However,
19 the allegation was made and was never formally abandoned
20 by amending the statement of claim to delete it or other-
21 wise. I think this sort of practice is to be discouraged.
22 Accusing people of criminal acts should not be done
23 lightly or as a matter of form. When counsel elect to
24 include such an allegation in the pleading they should be
25 sure that they have at least some evidence to support it.
26 After all, pleadings in civil actions are open to public
27 scrutiny. The fact that statements made in pleadings are

1 privileged in respect to the fact that they cannot become
2 the subject of an action for libel should make counsel
3 all the more careful not to include in pleadings defamatory
4 statements of which they have no evidence. I have no evi-
5 dence in this case as to the extent, if any, that the
6 unfounded allegations against the plaintiff may have had
7 on her ability to secure employment. Therefore I do not
8 think that I should and I have not taken the allegation
9 into consideration in assessing damages. However, I do
10 think that it justifies awarding the plaintiff costs on
11 a somewhat higher scale than normally would apply. Ac-
12 cordingly I direct that costs be taxed and allowed as
13 though the amount involved was the sum of \$15,000. There
14 will be judgment accordingly.