

Adjudicator clarifies indefinite-term and fixed-term employment

In *Gouliquer v. Big Grassy River First Nation [2017] CLAD No. 107*, the adjudicator held that the complainant's employment contract was governed by an indefinite-term contract.

The complainant, JoAnn Gouliquer (Ms. Gouliquer), was an educator at Pegamigaabo School, operated by the respondent, Big Grassy River First Nation (BGRFN). Ms. Gouliquer worked in various positions at Pegamigaabo School over the course of 22 years, including as the Acting Principal. On June 30, 2015, her employment relationship with BGRFN came to an end. The exact details of the employment relationship and the way in which the employment relationship came to an end were at issue in this case.

According to evidence presented to the tribunal, Ms. Gouliquer's employment was governed by a series of contracts that covered the entirety of her 22-year employment relationship with BGRFN. Although the tribunal did not make a determination regarding the exact number of fixed-term contracts entered into between Ms. Gouliquer and BGRFN, it was estimated that Ms. Gouliquer had entered into some 16 contracts over the course of her employment.

In 2010, Ms. Gouliquer entered into a 5-year contract, ending on June 30, 2015, the day in which her employment relationship with BGRFN came to an end. The contract was a standard-form employment agreement that all employees of BGRFN were required to enter into. In 2012, approximately 2 years after entering into the 5-year contract with BGRFN, Ms. Gouliquer received a letter from BGRFN clarifying a number of

provisions within her employment contract, including clarification of the terms relating to 'just cause' for dismissal. Specifically, the letter stated that no employee could be let go without just cause. The facts of the letter were not disputed by BGRFN.

Ms. Gouliquer argued that her employment relationship with BGRFN was governed by an indefinite-term contract, and that pursuant to the letter that she received in 2012, she could only be dismissed for just cause. Ms. Gouliquer submitted that BGRFN terminated her employment without cause and, as a result, requested that the Tribunal order BGRFN to pay her damages for wrongful dismissal.

BGRFN took the position that Ms. Gouliquer was not dismissed, but rather that Ms. Gouliquer was employed under a fixed-term contract that had expired and was not renewed. Accordingly, BGRFN submitted that there was no "dismissal" and that Ms. Gouliquer could not claim damages for having been dismissed, whether unjustly or otherwise.

The adjudicator ultimately had to make a determination as to whether Ms. Gouliquer was employed by BGRFN as an indefinite-term employee who could only be dismissed for just cause, or as a fixed-term contract employee pursuant to a contract that expired on June 30, 2015. The adjudicator noted that BGRFN had conceded that it did not have just cause to dismiss Ms. Gouliquer, and therefore, if Ms. Gouliquer's employment contract was governed by an indefinite-term contract, her dismissal would have been "unjust", and she would be entitled to damages.

The adjudicator held that Ms. Gouliquer was an indefinite-term employee who could only be dismissed for just cause. The adjudicator's decision was premised on two factors. First, the adjudicator held that whatever status Ms. Gouliquer may have had under previous

contracts, as a consequence of the 2012 letter, Ms. Gouquier became an indefinite-term employee. Secondly, the adjudicator relied on principles confirmed by the Ontario Court of Appeal in the *Ceccol v. Ontario Gymnastic Federation* decision, and held that BGRFN failed to present “unequivocal and explicit” language that was necessary to establish that Ms. Gouquier was employed under a fixed-term contract. Accordingly, the adjudicator held that Ms. Gouquier had been wrongfully dismissed.

In determining remedies, the adjudicator held that, pursuant to the HR Policy established by

BGRFN, Ms. Gouquier was entitled to 100% of her annual salary. Accordingly, the adjudicator ordered BGRFN to pay Ms. Gouquier \$41,438.00 in damages in addition to any outstanding employer amount owing to Ms. Gouquier’s pension.

The issue of indefinite-term employment and fixed-term employment has significant implications with respect to possible damages for wrongful dismissal. First Nations employers should carefully consider which arrangement should apply and include “unequivocal and explicit” language in any applicable contract. ■



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