

SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT

5 B E T W E E N :

AMRIKA RAMOTAR

Plaintiff

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- and -

TRADER CORPORATION

Defendant

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R E A S O N S F O R J U D G M E N T

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BEFORE DEPUTY JUDGE K. QURESHI  
on January 15, 2025, at TORONTO, Ontario

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APPEARANCES:

C. Cuttress

Counsel for the Plaintiff

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S. Crawford

Counsel for the Defendant

(i)  
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SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT

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Transcript Ordered: January 30, 2025

Transcript Completed: February 13, 2025

Notified Ordering Party: February 26, 2025

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Reasons for Judgment - Qureshi, DJ  
Ramotar v. Trader Corporation

WEDNESDAY, JANUARY 15, 2025

R E A S O N S F O R J U D G M E N T

5 QURESHI, DJ. (Orally):

This is an oral decision from the bench.

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Aside from mentioning that the parties agree that the plaintiff was terminated without cause, I will not recite the rest of the facts in this case, many of which are not disputed per the agreed statement of facts.

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The issues in this case are whether the termination provision in the plaintiff's employment contract is enforceable; whether there's a savings provision that's applicable; whether the termination provision is unenforceable; what are the plaintiff's damages at common law; whether the plaintiff mitigated her damages; and whether the plaintiff is entitled to general damages, punitive damages, and damages for inconvenience due to inaccurate reporting.

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Termination Provision

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So on the issue of the termination provision. The plaintiff makes numerous arguments for why the termination provision is unenforceable. I will focus on the arguments that I find are determinative of this issue.

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Having reviewed the evidence, factum, case law, and submissions, for the following reasons I find the termination provision is vague and therefore unenforceable.

Specifically, when interpreting an employment agreement, all termination provisions must be read together, and the invalidity of one termination provision renders all termination provisions void and unenforceable.

The first paragraph of the termination provision says, "In the event that it becomes necessary to terminate your employment without cause, either before, during or after the probationary period, the Company will provide you with such notice (or payment in lieu of notice), severance pay, if owing, accrued vacation pay and any other compensation or benefits that may be required to meet the requirements of the *Employment Standards Act, 2000*."

Specifically, the first paragraph explicitly and specifically tells employees that upon termination they will get their notice or payment in lieu, severance, and vacation. However with respect to anything else, the paragraph just uses a generic phrase, "any other compensation or benefits", without explaining what these are, even though vacation and severance are specifically mentioned.

The first paragraph is then followed by a second

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paragraph which now specifically talks about  
benefits saying, "If your employment is terminated  
without cause, the Company will continue your  
group insurance benefit coverage for such period as  
the *Employment Standards Act, 2000* shall require,  
provided such coverage is available from the  
insurer."

The way these two paragraphs work together sounds  
as though in order to understand what any other  
compensation and benefits in the first paragraph  
means, you have to look to the second paragraph for  
an explanation or details. However, as indicated,  
the second paragraph only refers to group insurance  
benefits.

I find the two paragraphs in conjunction would  
reasonably convey to an employee that the words,  
"any other compensation or benefits", in the first  
paragraph are circumscribed by the second paragraph  
to just mean group insurance benefits. In turn  
this would convey to an employee that they would  
not be entitled to other types of compensation  
benefits on termination. For example, pension,  
life insurance, retirement savings benefits, even  
though they are.

Furthermore, I agree with the plaintiff that the  
words, "provided such coverage is available from  
the insurer", in the second paragraph sounds like  
another further limitation on the words in the  
first paragraph, "and any other compensation or

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benefits.”

I find the way the second paragraph reads, is that such group insurance benefits would only be available if there is coverage notwithstanding that an employee would still be entitled to payment in lieu thereof.

While I acknowledge *Alarashi v. Big Brothers Big Sisters of Toronto*, 2019 ONSC 4510 did not find anything wrong with this statement, that case was from 2019. I find in opposed *Waksdale v. Swegon North America Inc.*, 2020 ONCA 391, the termination provision phrase creates ambiguity in the employment contract and it's unlikely that the provision in *Alarashi* would still be upheld today.

*Waksdale* requires that employees understand what their entitlements will be at the end of their employment, from the beginning of their employment.

I find that termination provisions contain confusion and ambiguity, and do not contain a level of clarity required for employees in opposed *Waksdale* and therefore the entire termination is unenforceable.

With respect to the statement in the termination provision that “Any future amendments to the *Employment Standards Act, 2000* shall be deemed to be incorporated into this Agreement You understand and agree that the Company has no obligation to

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make any additional payments to you or to provide you with any additional notice upon termination other than those required to satisfy your entitlements under the *Employment Standards Act, 2000*, and you hereby waive any entitlement or claim to any payments other than provided for in this paragraph." I do not find this addresses or is responsive to the concerns I have with the termination provision. And overall, I find the plaintiff is entitled to damages for notice at common law which I will now speak to.

Reasonable Notice

The plaintiff seeks four months, the defendant submits two months is reasonable.

The plaintiff argues for a higher notice period because of a non-compete provision in the employment agreement.

The defendant raises that the non-compete was in the employment contract before the *ESA* changed.

I note that in paragraph 48 of the plaintiff's factum, they refer to *Munoz v. Sierra Systems Group Inc.*, 2015 BCSC 269 that says, "that an employee need not prove the restrictive covenants actually affected his or her ability to work (para. 42), but rather could have the effect of making it "reasonable for the plaintiff to have regarded clients of [Sierra] as off-limits in terms of a job

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search”.

But now in submission, plaintiff’s counsel  
indicates that Dilawri is Trader’s competitor.

I find the plaintiff not considering Dilawri as a  
competitor did not mean that she did not find  
competitors as off limits when she was looking for  
a job, and therefore the non-compete does not  
extend the limitations period in conjunction with  
the defendant’s argument.

#### Mitigation

The plaintiff received a job offer which she  
refused to accept. She explained that she  
preferred employment that had a remote or hybrid  
option so she could take her mom to physio.  
However she did not provide any proof and very  
little explanation of why there is zero other  
options for her mom to be able to attend physio.

#### Case Law

The plaintiff provided two cases that granted three  
and four months notice respectively. Notably,  
these cases are from the 1980s and outdated  
compared to the cases provided by the defendant,  
which are at least from this millennium and better  
reflect more recent trends on reasonable notice.  
In addition, both the defendant’s cases are from  
Ontario.



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The defendant's cases I find to be more comparable to the situation at hand. And in those cases, the plaintiffs were awarded 2 and 10 weeks notice.

Overall, I find the plaintiff is entitled to 10 weeks notice at common law. After deducting the 2 weeks already paid, this would leave 8 weeks of notice outstanding.

Bonus

The plaintiff's counsel seeks a bonus at 4 per cent of the plaintiff's salary prorated from January 1st to March 27, 2023, in the amount of \$586 dollars. And then a pro-rated bonus over the notice period which I determined to be 10 weeks total.

Plaintiff's counsel argues this bonus was an integral part of the plaintiff's compensation. And defence counsel argues there is no evidence that the bonus was an integral part of the plaintiff's compensation.

I will not be awarding the plaintiff the bonus. The plaintiff did not give evidence that this was an integral part of her compensation. And while her counsel referred to the cost of living in rents, at the end of the day the plaintiff did not give such evidence and in fact, no testimony as to the bonus being an integral part of her compensation. For context, a 4 per cent bonus

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amounts \$48 dollars a week.

I therefore find it is not established that there  
is any entitlement to damages for a bonus.

#### Pension and Benefits

The agreed statement of fact values pension and  
benefits at 10 per cent of the plaintiff's salary.  
Of this 10 per cent, 3 per cent is the plaintiff's  
contribution that she would be making towards the  
pension. Therefore I deduct this 3 per cent, along  
with 2 weeks that were already paid, and calculate  
entitlement to damages for pension and benefits at  
7 per cent for the additional 8 weeks.

#### Parking

I reject that the plaintiff is entitled to  
compensation for parking expenses, they were never  
incurred. This was never a benefit that increased  
your compensation, it was merely reimbursement.

#### Gym Benefit and Health and Wellness Benefit

Same with the gym benefit or the health and  
wellness benefit, these were never incurred and  
never intended to increase her overall  
compensation.

And therefore I do not award this either.

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Out-of-Pocket Expenses

Regarding out-of-pocket expenses, they were already paid out. The plaintiff has asked for pre-judgment interest on this but has not quantified it. Notably it has been less than two years since the termination and therefore pre-judgment interest would likely be negligible.

General Damages, Inconvenience, Punitive Damages  
Related to Errors of the Record of Employment and  
Breaches of the ESA

I accept that there is likely some inconvenience to the plaintiff of having to run around to try to get her EI given that she had an inaccurate record of employment.

Also, Trader should not have issued an inaccurate record of employment and at least should have corrected it on a timely basis.

Nevertheless, the plaintiff's evidence on damages on these heads is incredibly sparse.

Therefore, I award a total of \$750 dollars for these heads of damages.

Summary

In sum, I award the plaintiff an additional 8 weeks notice, which brings the total to 10 weeks, plus

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the pension and benefits, which is calculated at 7  
per cent for the additional 8 weeks. Plus \$750  
dollars for general damages, punitive damages,  
damages for inconvenience

In addition, I award pre-judgment interest from the  
date of termination, which was March 27th, 2023.

\* \* \* \* \*

11.  
Certification

FORM 3


ELECTRONIC CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

***Evidence Act***

5 I, Patricia MacLeod, certify that this document is a true and accurate transcript of the recording of *Ramotar v. Trader Corporation*, in the Superior Court of Justice, Small Claims Court, held at TORONTO, Ontario, on January 15, 2025, taken from Recording No. 4816\_302\_20250115\_095003\_\_2\_SCC.dcr, which has been certified in Form 3.

10 February 26, 2025

Date

  
\_\_\_\_\_  
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(Authorized court transcriptionist's  
identification number)

Ontario, Canada

\_\_\_\_\_  
(Province of signing)

20 A certificate in Form 3 is admissible in evidence and is proof, in the absence of evidence to the contrary, that the transcript is a transcript of the certified recording of evidence and proceedings in the proceeding that is identified in the certificate.

Form 3 - Electronic Certificate of Transcript - September 1, 2022

25 Legend

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled phonetically.

30 [indiscernible] - Replaces an inaudible or impossible to understand spoken word/phrase.



**ONTARIO SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT**

**Toronto**

**ORDER OF THE COURT**

Claim No. SC-23-00002856-0000

**B E T W E E N**

AMRIKA RAMOTAR

Plaintiff(s)

and

TRADER CORPORATION

Defendants(s)

**BEFORE:** Deputy Judge QURESHI

**HELD BY:** ☒ In person ☐ Videoconference ☐ Teleconference ☐ In writing ☐ Hybrid

**DATE:** ~~October 24, 2024 at 10:00am~~ **January 27, 2025**

**EVENT TYPE:** Trial appealable

**APPEARING:** (Names, emails, and phone numbers)

Plaintiff(s): AMRIKA RAMOTAR

Present ☐

Representative: COLIN CUTTRESS (647-643-2065)

Present ☐

Defendant(s): TRADER CORPORATION

Present ☐

Representative: SUSAN L CRAWFORD (905-874-9343)

Present ☐

Claim No. SC-23-00002856-0000


**ORDER OF THE COURT**

On ~~October 24, 2024~~ a hearing was held in the above matter and the following order was made:

Further to the oral judgment rendered after trial and the submissions filed thereafter, this Court orders the Defendant is liable to the Plaintiff for:

- 8 weeks' salary in the amount of \$9,692.31
- 8 weeks' benefits in the amount of \$969.20
- 8 weeks' pension reflecting employer's contribution in the amount of \$290.80
- General/inconvenience/punitive damages in the amount of \$750.00
- Plus pre-judgment interest from March 27, 2023 and post-judgment interest running from today's date, both per the Courts of Justice Act
- Costs, inclusive of disbursements, fixed in the amount of \$4,000.00.

January 27, 2025  
Date

  
Signature of Judicial Official