



Court of Appeal Holds Employers Must Prove Failure to Mitigate Contributed to Loss

By Alex Nogalo, Lawyer

In its recent decision in *Pateman v. Koolatron Corporation*, the Ontario Court of Appeal increased a terminated employee's wrongful dismissal damages by nearly \$18,000.00 from the amount awarded at trial.¹ The decision provides key insights into an employee's duty to mitigate and the employer's burden of demonstrating that a failure to mitigate contributed to the employee's loss.

Background

In 2018, Koolatron Corporation dismissed David Pateman after 29 years of service. Koolatron argued that Pateman retired voluntarily. Pateman alleged wrongful dismissal. At trial, Pateman was awarded \$70,603.08 in damages for wrongful dismissal based on a 24-month notice period, with deductions of three months for failure to mitigate and 2.5 months for actual notice provided.²

Koolatron appealed on the following points:

1. The trial judge erred in finding that Pateman was terminated rather than retired;
2. The three-month deduction for failure to mitigate was insufficient; and
3. The trial judge should have further reduced damages due to Pateman's failure to accept part-time employment with Koolatron.³

Pateman cross-appealed on the following points:

1. The trial judge's deduction of three months for failure to mitigate was unwarranted; and
2. A mathematical error in the damages calculation resulted in an under-award.⁴

The Appeal Decision

The court rejected all three of Koolatron's arguments on appeal. On the first issue, it

found ample evidence supporting a conclusion that Pateman was wrongfully dismissed and agreed with the trial judge's finding that Koolatron's position that a retirement lunch and a gift suggested voluntary retirement was "wishful thinking."⁵

On the issue of mitigation, the court held that the trial judge's deduction of three months notice for failure to mitigate his damages was an error. It affirmed that the employer bears the burden of proving that (1) the employee failed to take reasonable steps to mitigate; and (2) that if reasonable steps were taken, the employee would have been expected to secure a comparable position. "In other words, not only was Koolatron required to show a failure to take reasonable steps, but also that the failure caused part of the loss."⁶

Regarding Koolatron's third ground of appeal, the court rejected that Pateman was obliged to accept a part-time role with Koolatron as part of his duty to mitigate. The terms of that employment were not concrete and not well-communicated.⁷

The court allowed Pateman's cross-appeal on both grounds. It concluded that there was no basis for any reduction in the notice period for failure to mitigate.⁸ Although the trial judge found that Pateman took no reasonable steps to look for alternate employment, the absence of a finding that such steps would have resulted in Pateman securing new employment was fatal to Koolatron's mitigation argument.

As a result, the removal of the three-month mitigation deduction and the correction of a mathematical error led to a \$17,905.97 increase in Pateman's damages award, bringing the total to \$88,509.05.

Takeaways

The Court of Appeal's decision reinforces a key principle in wrongful dismissal cases: the burden of proving a failure to mitigate lies squarely with the employer. Employers are not only required demonstrate that the employee failed to take reasonable steps at reemployment. They must also establish that, had such steps been taken, the employee would have secured comparable employment. Merely pointing at a lack of job search efforts is insufficient – there must be evidence that mitigation would have been successful.

In practice, employers must be prepared for the difficult task of demonstrating that an employee's failure to mitigate directly caused a portion of their damages. This means that employers should gather evidence to show that reasonable efforts would have likely led to reemployment. This includes documenting comparable reemployment

opportunities, offering clearly defined reasonable alternative roles, and gathering industry evidence pointing to trends suggesting that the employee could have reemployed in the relevant time period.

For further information about this case and the principles involved, please contact a member of Beard Winter's Employment Law Group at the contact information available in our website directory.

- 1 *Pateman v. Koolatron Corporation*, [2025 ONCA 224](#).
- 2 Ibid, at para. 2.
- 3 Ibid, at para. 3.
- 4 Ibid, at paras. 12-13.
- 5 Ibid, at para. 4.
- 6 Ibid, at para. 6.
- 7 Ibid, at para. 9.
- 8 Ibid, at para. 8.

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