Citation: *Fireweed Helicopters Ltd. v. Varga,* 2013 YKSM 9

Date: 20131007
Docket: 11-S0132
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON
Before: His Honour Judge Luther

FIREWEED HELICOPTERS LTD.

Plaintiff

v.

KEITH VARGA

Defendant

Appearances:
Bhreagh Dabbs — Counsel for Plaintiff
Keith Varga — Appearing on his own behalf

REASONS FOR JUDGMENT

[1] The defendant, a helicopter pilot with over 35 years' experience, is being sued by Fireweed Helicopters Ltd, the plaintiff, for the amount of $3,554.47 for breach of contract, specifically the cost of training the defendant to be qualified as a helicopter pilot on a MD520N helicopter.

[2] The defendant had worked for Oceanview Helicopters in 2010. There was a special relationship between Oceanview and the plaintiff for some time. James Mode, Operations Manager and part owner with Oceanview testified that Oceanview works under the plaintiff, something like a sub-contractor, but the customers were always the plaintiff's. Bruno Meili, owner of the plaintiff

company, put it another way saying that Oceanview lent them pilots.

[3] With this background in mind, Oceanview had no further work for the defendant after October 2010, but one of the plaintiff's customers, Golden Predator, liked the defendant and wanted him back to work for them. As an Oceanview pilot, he did work for Golden Predator in 2010. After various discussions at a Christmas party and a mining convention, it was decided that the defendant would work for the plaintiff in 2011.

[4] The amount sought by the plaintiff in the action, $3,554.47 is the amount on the invoice dated 15 March 2011, to the plaintiff from Oceanview. The defendant testified that he thought Oceanview had provided this training and wasn't aware that Fireweed had in fact paid for the MD520N qualification until after the civil case commenced.

[5] This extra training on the MD520N was of no benefit to the defendant and he in no way consented to pay for it in any way, including working a minimum period for the plaintiff thereafter.

[6] There was no contract in writing between the plaintiff and defendant and any assertion of an oral contract is muddied by much of the above and further details to follow.

[7] By early March 2011, the defendant clearly understood he was working for the plaintiff. There were no written contracts provided to seasonal pilots by the plaintiff. Apparently that's the way it has always been "up north". As to the

defendant now working for the plaintiff and any terms associated with that understanding, the defendant was told that the only thing that would change was the company name on the cheque.

[8] Another vaguery to this arrangement, such as it was, was the idea that a seasonal pilot could be dismissed without notice if the president of the plaintiff company didn't like him/her or felt that he/she was not doing a decent job.

[9] The defendant worked for the plaintiff in March and April 2011. Very quickly issues arose as to the manner in which minimum hours were calculated and applied.

[10] There seemed to be an overall understanding that the defendant would receive 80 hours per month at his rate of $175.00 per hour, for the first five months for a total minimum of 400 hours. This was never fully discussed nor reduced to writing by the parties.

[11] The defendant was told that the subject of three-hour-per-day minimums would be the same as it had been for Oceanview. But there were differences between monthly minimums and their calculation as had been paid to the defendant by Oceanview in 2010 and as what might have been paid to the defendant by the plaintiff in 2011. Oceanview guaranteed a minimum 90 paid hours per month and a seasonal 360 hours over 4 months. Oceanview's pilots could count on a monthly cheque based on 90 hours pay. The plaintiff's pilots could count on 400 hours pay over five months but no minimum amount per month.

[12] The plaintiff explained that business picked up in the summer and that the defendant would easily exceed the 400 hour minimum.

[13] In March 2011, the defendant flew 26.5 hours but was paid an extra 24 hours for a total of 50.5 hours. The following month the defendant worked for approximately 60 hours and was paid on that basis.

[14] When the defendant left this Territory on 20 April 2011, there was no recall date and he felt that there was really no legal obligation for the plaintiff to bring him back. Mr. Meili had never specifically sat down with the defendant and explained directly to him that Golden Predator specifically asked for him and that he would be called back with ample hours throughout the summer.

[15] The defendant had some concerns about the manner in which the minimums were being calculated.

[16] In April 2011 the defendant, in seeking a more secure contractual footing, initiated discussions with another company, Trans North. These discussions proved fruitful and on 2 May 2011, the contract in writing with Trans North was finalized. Bruno Meili was upset upon learning that the defendant was about to be hired by Trans North who had telephoned the plaintiff a few days before the deal was done, about the defendant.

[17] The plaintiff, in early March, had expended over $3,500.00 in training the defendant to fly an MD520N helicopter. This training did not in any significant way improve the defendant's marketability or prospects for more income.

Evidence revealed that there are ten or fewer MD520N's in all of Canada.

[18] There were several issues raised by the defendant which have no bearing on this case whatsoever:

1) Pay for travel days to and from the Yukon;
2) Alleged smoking at the office;
3) The Base manager allegedly working 200 hours in a month, with the implication that others could or would do the same (150 is the legal maximum per month);
4) Alleged maintenance deficiencies; and
5) Alleged irregularities in the qualification process and licensing endorsements.

There were others.

[19] The truth is that the defendant wanted some secure employment for about five years, if he could get it and if not, some certainty for the year 2011. Further complicating the situation were concerns that Bruno Meili was about to sell his business.

[20] The defendant had a short-form written contract with Oceanview in 2010. There seemed to be no misunderstanding as to its basic terms. No such document existed between the plaintiff and defendant. In fact the terms under which the defendant worked for Oceanview were somewhat different than what the plaintiff was prepared to pay.

[21] Needless to say, all of this could easily have been ironed out by a brief written contract or a serious face-to-face meeting with notes being taken. The

suggestion that this is the way things are done in the north is no longer acceptable.

[22] There was never any discussion or writing to indicate a notice period for the conclusion of the work by either side, nor any meeting of the minds on reimbursement in terms of money or time for the cost of the training on the MD520N.

[23] This case is easily distinguishable from *171817 Canada Inc. v. Foris* 1998 CanLII 6955 (N.W.T.S.C.). While there was no written contract, there was a clear understanding of a two year commitment because the costs of relocation and training were high.

[24] Similarly, in *Alkan Air Ltd. v. Hatley*, 2000 YTSM 507, the judge concluded that "there was a contract between the plaintiff and the defendant whereby the defendant agreed to repay the cost of upgrading to Captain". While there was no written contract, the judge was able to make that conclusion. I am unable to do so here.

[25] Unlike the above cases and others put forward by the plaintiff, there was no aspect of enrichment to the defendant. The costs of the training, the expected period of work, the application of minimum hours, appropriate notice periods, travel days to and from the Yukon grievance procedures, etc. – all of these should have been in writing or at the very least subject to a meeting with the defendant and either Bruno Meili or an authorized representative of the plaintiff. As stated above, James Mode of Oceanview, was not so authorized. James

Mode was himself, not fully aware of how the plaintiff would pay his independent contract pilots.

[26] Angela Swan, in *Canadian Contract Law*, 2nd ed. (Markham: LexisNexis Canada Inc., 2009) at page 218, the author stated:

> An offer may be defined as a complete statement of the terms on which one party is prepared to deal, made with the intention that it be open for acceptance by the person to whom it is addressed.

[27] The plaintiff made an unclearly defined offer lacking some essential details to the defendant. The defendant worked for the plaintiff for only two months before he left for more secure employment. There was no written or oral contract. The terms of the arrangement were not "sufficiently certain to enforce"; Innis M. Christie, *Employment law in Canada,* 3rd ed. (Toronto: Butterworths, 1998).

[28] The plaintiff's claim is dismissed. The defendant's counter-claim is dismissed. There is no order as to costs.

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LUTHER T.C.J.