

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Brannan v. Exxon Mobil Corporation, 2007 NSSC 281

Date: 2007/10/01
Docket: S. H. No. 192170
Registry: Halifax

Between:

John K. Brannan

Plaintiff

v.

Exxon Mobile Corporation

Defendant

LIBRARY HEADING

Judge: The Honourable Justice A. David MacAdam

Heard: April 10, 11, 12, and 13, 2007 in Halifax, Nova Scotia

**Final Written
Submissions:** May 28, 2007

Subject: Employment Law - Constructive Dismissal, diminution of duties.

Summary: The Plaintiff was employed by the Defendant and seconded to a related Canadian corporation, who in turn seconded him to a corporation established by it and other companies involved in the exploration, development and production of offshore energy resources. The Canadian corporation, although only entitled to appoint one representative to the Committee of Management held along with other related corporations, the majority interest in the properties being developed. The Plaintiff, as President and General Manager of the offshore development corporation, was responsible for managing the development of the offshore sites. He reported to a Committee of Management and to the Board of Directors. In due course the Defendant and/or its related Canadian corporation, decided to effect a change in how the offshore corporation operated and negotiated with the other shareholders for many of the services to be performed by itself through one of its divisions or related companies. The Plaintiff viewed these changes as a diminution in his duties and responsibilities, such that, in effect, his position had become redundant. He expressed his

concerns with the diminution of responsibilities and in due course submitted his resignation to the Defendant and the offshore development corporation.

Issue: Whether any diminution in the Plaintiff's duties and responsibilities, initiated and effected by the Defendant, resulted in his constructive dismissal as President and General Manager of the offshore development corporation and/or his position with the Defendant?

Result: Notwithstanding that the diminution of his duties and responsibilities had been done by another corporation, in view of the control exercised by the Defendant in effecting the change in his duties and responsibilities, the Plaintiff was constructively dismissed from his position as President and General Manager of the offshore development corporation. However, as a seconded employee, although he was entitled to treat the secondment as terminated, he was not entitled to treat his employment with the Defendant as having been terminated constructively by the Defendant, since there had been no change in the position he occupied with the Defendant immediately preceding the secondment. As a seconded employee, he was not entitled, upon the termination of the secondment, to a position equivalent to that to which he had been seconded. Rather, he was entitled to the position he had occupied, immediately preceding the secondment.

With respect to mitigation, the Plaintiff was not required to continue in the reduced role with the seconded company, since, in effect, this would mean that he could not be constructively dismissed from that position. At the time of his resignation as President and General Manager, as well as his resignation as an employee with the Defendant, he had already obtained alternative employment. The circumstances in which employees are required to accept reduced positions as part of mitigation relate to circumstances where the employee is looking for alternative employment, and therefore has an opportunity to minimize any loss arising from the dismissal. In the circumstances, the Plaintiff had already obtained alternative employment, and therefore had mitigated his loss. There was no obligation on him to accept the reduced position with the Defendant, notwithstanding it did not involve any reduction in his compensation.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***