

Claim No. SCAM 243123

Date:20051205

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Bristol v. Ferguson, 2005 NSSM 26

BETWEEN:

NORMA J. BRISTOL

Claimant

- and -

DR. GORDON BRIAN FERGUSON and DR. CELINA DARLENE WHITE

Defendant

Adjudicator

David T.R. Parker

Heard: May 17 & May 30, 2005

Decision: December 5, 2005

Counsel: Wanda M. Severns represented the Claimant

Jim O'Neil represented the Defendants

Wrongful dismissal-A domestic or housekeeper is afforded the protection of the law.

DECISION

Parker: This claim came before the Small Claims Court on the 17th and 30th days of May, A.D. 2005. Following the completion of the hearings Counsel for the parties were requesting that briefs be submitted and a brief was received from the Claimant's Counsel and delivered to the Court on July 20, 2005. The Defendant's brief was received on November 8, 2005.

Prior to commencing the proceedings in this matter Counsel were there any preliminary motions or any objections why this matter should not proceed. There being none the matter preceded accordingly.

ISSUE

The issue before this Court is was there wrongful dismissal of the Claimant by the Defendants and if there was an unjust dismissal then what damages flow therefrom.

FACTS

- The Claimant at the time of this action was 57 years of age and a long-time resident of the community. She had a grade eight education and before returning to her home community she worked for 20 years as a hairdresser. She returned to her community to take care of her mother.
- The Claimant worked for the Defendants during the years of 1993 to 2000 on an irregular basis and from 2001 to 2004 on a regular basis. The Claimant was terminated from the Defendants' employ on June 13, 2004. In the year 1993 to the end of June 1994 she had a taxable income of \$13,380.00. In the year 1994, she had earned \$7,080.00.
- In 1994 the parties clashed over an incident arising out of the pressures of trying to maintain their respective schedules. In that particular instance there was a verbal clash between the Defendant, Dr. Ferguson and the Claimant; this resulted in the Claimant leaving the workplace and refusing to return until Dr. Ferguson apologized. Some six months later and around Christmas time in 1994, Dr. Ferguson sent the Claimant some flowers and

welcomed her back to the workplace.

- Between 1995 and 1998 the Claimant worked from time to time for the Defendants. In 1998 the Claimant earned \$1,000.00.
- The Claimant was contacted by the Defendants to return to her housekeeping duties in June of 2000. During the year 2000 the Claimant had taxable income of \$9,120.00. For the year 2001 she earned \$15,600.00. In 2002 the Claimant earned \$17,420.00 and the same amount was earned in the year 2003. In the year 2004 the Claimant earned \$6,850.00.
- During the time the Claimant worked for the Defendant she was well received by the Defendants for the work she did. She did the housecleaning, took care of the children and from her perspective she was treated as one of the family.
- In April 2004 the Claimant experienced some back problems and had to take time off work. Her back condition did not improve and the Defendant, Dr. Ferguson, suggested a colleague see her in order to ensure there would be no conflict of interest or any problem that might arise in the event she had to receive government assistance.
- On May 6, 2004, the Claimant and Defendants discussed her job being secure and she was told, yes, when your back is better, your job will be here.
- The Claimant had to apply for employment benefits. The Claimant in order to apply for sick leave benefits from the Government was required to obtain information from the Defendants. The Claimant attempted to contact the Defendants with respect to making an application for sick leave and was having difficulty getting in touch with Dr. Ferguson.
- On May 13, 2004, the Claimant went to Dr. Ferguson's office and became very agitated when Dr. Ferguson would not meet with her as he was

attending to patients. She became loud in entering discussions with Dr. Ferguson and threatened to release confidential information. All of this happened in front of Dr. Ferguson's patients and staff.

- On June 14, 2004, the Claimant contacted Dr. Ferguson's office and through Dr. Ferguson's secretary used some earthy language.
- The Claimant admitted that occasionally she would call Dr. Ferguson a "cock sucker" but in a friendly and joking manner.
- As a result of the phone calls on June 14, 2004, to Dr. Ferguson's office when the Claimant was obviously very upset, Dr. Ferguson wrote to the Claimant and terminated her employment because of her actions in the office of Dr. Ferguson and what she said about Dr. Ferguson.

I have reviewed Counsel's brief for the Claimant and I agree with Counsel's analysis of the law. A domestic or housekeeper is afforded the protection of the law. That is the situation in this case. One could envisage there may arise acrimonious periods where the Claimant and Defendant would have difficulty communicating, however, in this case, a great deal of communication certainly between Dr. Ferguson and the Claimant would not be necessary as Dr. Ferguson was working most of the time that the Claimant would be taking care of the home. As well, the Defendant Dr. White seemed to be the one that was communicating with and paying the Claimant.

Over the years the Claimant and Defendant had maintained a fairly consistent relationship of employer/employee. The Claimant took care of the house, took care of the children and while Dr. Ferguson tried to explain to the Claimant in his office on May 13th that she was an employee and not part of the family, she was in

fact, very closely connected with the Defendants and their family.

In this particular case the Claimant employee is not guilty of serious misconduct, neglect of duty, incompetence and conduct incompatible with her duties. She has not been guilty of willfulness, disobedience to the employer's orders in a matter of substance as the case law requires for dismissal of an employee.

It appears from the evidence that the only reason the Claimant was terminated from her employment with the Defendants was because of what happened in Dr. Ferguson's office, her use of abusive language and threatening to release some sort of confidentiality that existed with respect to Dr. Ferguson's patients. What occurred in the doctor's office was outside of the place of employment and really had nothing to do with how the employee performed her job. No doubt it was very upsetting to Dr. Ferguson to have to listen to the employee come into his workplace and disrupt what was happening in his workplace by her aggressive and abusive language and nature. The Defendant could have taken the appropriate remedy of having her removed from his office and served her with appropriate notice to stay away if it became necessary. There is no evidence before me that she had any confidential information which she could divulge. I can only assume from the patient/doctor information was not discussed at home in front of his employee. That information is to remain between the doctor and his client. Therefore the doctor should have realized that it was an idle threat, if indeed it was a threat. With respect to the rude, earthy language of the Claimant towards the doctor, I would agree with the doctor that this is not acceptable and unbecoming in normal circumstances. However it seemed to be going on in the home and this came to light during the trial when a grad picture of one of the children they gave to the

Claimant with writings on the back made reference to the term cock sucker.

This sort of language apparently came from the television show Trailer Park Boys which the children and the Claimant watch at the home.

There should have been a series of warnings given to this particular Claimant to see that her behavior was changed in the way she talked and the use of her earthy language directed towards the doctor. This did not happen and it would seem that such language was even condoned or at least acquiesced to in some respect.

While what happened may appear to be work related it was really outside the workplace and should have not resulted in summarily dismissing the Claimant at least without some sort of clear warning that it would not be tolerated and if it continued to take place then dismissal would follow.

The question then is one of damages, what would be the appropriate amount of notice in this particular case. I have considered several factors:

- The age of the Claimant
- The ability of the Claimant to obtain work
- The educational background of the Claimant
- The type of work the Claimant was doing or was capable of doing
- The fact that it was domestic type work that the Claimant did at the home
- The amount of time she was an employee on a full time basis of the Defendants

While the Claimant worked on a part-time basis with the Defendant it wasn't until 2001 that she became a regular full-time employee with the Defendants with the understanding she would continue to be a full-time employee. I would consider four months notice to be a reasonable period. At the time of her dismissal she was earning \$1,440.00 per month which would amount to \$5,760.00 less any statutory deductions and less any employment insurance payments made to the Claimant. The Claimant shall also have her costs of \$160.00.

In the event the parties cannot come to a consensus on what this final amount is, Counsel may make an application to this Court to be heard on that particular issue as well if a formal Order is necessary with a specific amount as determined by Counsel I shall be glad to receive same.

Dated at Amherst, on the 5 day of December, 2005.

David T.R. Parker
Small Claims Court Adjudicator