

ONTARIO
SUPERIOR COURT OF JUSTICE

ELAINE FOSTER

Plaintiff

-and-

FIRST CANADA ULC o/a FIRST STUDENT

Defendant

PROCEEDING UNDER the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM
(NOTICE OF ACTION ISSUED JUNE 23, 2017)

CLAIM

1. The Plaintiff claims, on her own behalf, and on behalf of the members of the class, from the defendant:
 - a) An order certifying this action as a class proceeding and appointing her the representative plaintiff of the class;
 - b) A declaration that the Plaintiffs and all class members were wrongfully dismissed by the Defendant and entitled to reasonable pay in lieu of notice, including payment of all outstanding pay, vacation pay, benefits and severance pursuant to the *Canada Labour Code*, R.S.C.; 1985, c. L-2;
 - c) General damages in the currently estimated amount of \$10,000,000.00 on its behalf and on behalf of all class members for wrongful dismissal (reasonable pay in lieu of notice), vacation pay, benefits and severance pursuant to the *Canada Labour Code*;
 - d) Punitive damages in the amount of \$5,000,000.00;
 - e) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*;
 - f) Costs on a substantial indemnity basis;
 - g) Such further and other relief as this Honourable Court deems just.

The Parties

2. The plaintiff, Elaine Foster (“**Elaine**”), was, at all material times, an employee of the defendant. Elaine was born on April 5, 1944 and at the time of her termination by First Canada ULC was 71 years old.
3. The defendant, First Canada ULC (the “**Defendant**”), is a corporation formed under the laws of Alberta that carries on business as an operator of a fleet of school buses in Ontario. First Canada ULC is the corporate successor, via amalgamation, of First Canada ULC (Ontario Corporation Number 1796062) and Cardinal Coach Lines ULC (Ontario Corporation Number 1763789).
4. At all material times, the Defendant, or the Defendant’s pre-amalgamation corporations, First Canada ULC (Ontario Corporation Number 1796062) and Cardinal Coach Lines ULC (Ontario Corporation Number 1763789) was Elaine’s employer and that of the class members. The Defendant and its pre-amalgamation corporations are collectively referred to herein as the “Defendant”.
5. At all materials times, the Defendant was the largest school bus operator in the Ottawa region, also providing school bus services in parts of Western Quebec. As a result, the Defendant is deemed to be a federal undertaking, such that Elaine and class members’ employment is regulated by the *Canada Labour Code*.

Class Definition

6. Elaine brings this action pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 on behalf of the following class members: All persons who were non-unionized employees of the Defendant whose employment in Ontario was terminated on June 25, 2015 or shortly thereafter, excluding the Defendant’s directors or officers, and who were employed by the Defendant at its following Ottawa area branches (the “**Defendant Locations**”):
 - a) the Nepean Branch, located at 1027 Moodie Drive, K2R 1H4;
 - b) the West Carleton Branch, located at 100 Cardevco Road, K0A 1L0; and
 - c) the Cumberland Branch, with operations at 2015 Bantree Street, K1B 4X3; 1830 Trim Road, K4A 3P8; and 18 Jamie Street, K2E 6T6.

Facts Giving Rise to this Claim

7. On or about June 5, 2015, the Defendant notified Elaine and class members via letter that their employment with the Defendant at the Defendant Locations was to be terminated, effective as of June 25, 2015, or soon thereafter (the “**Termination Date**”).
8. No just cause for these terminations was cited by the Defendant, nor did the Defendant have just cause to terminate Elaine or any of the class members.
9. At the time of their termination, Elaine and class members were notified by the Defendant that the Defendant would be paying to them ONLY their minimum entitlements at law as set out in the *Canada Labour Code*. No other payments would be made to them upon their termination.
10. As a result of this unexpected mass termination of their employment, the Plaintiff and the approximately 400 class members found themselves suddenly unemployed, having not received reasonable notice or pay in lieu of notice.
11. Those class members who were fortunate enough to find work following their termination did so at much lower hourly wage than they had previously been paid by the Defendant, due to their loss of seniority within their new employers’ companies.

Plaintiff’s Individual Circumstances

12. Elaine, began working for the Defendant in approximately 1975, as a school bus driver, and as with the other class members, worked from between 4 to 6 hours per day on driving bus routes for Ottawa region school boards.
13. Many of the class members are over 50 years of age, with high school educations.
14. Based on her last full year of employment (2014), the Plaintiff earned approximately \$19,000 per year.
15. Elaine, as with the other class members, was employed by the Defendant from approximately September through to June each year, and seasonally laid off after the end of the school year (generally, for the months of July and August). Elaine and other class members could also be laid-off over the school winter break (which begins in late December); returning to work in early January as school would resume.

16. At no time would Elaine's or other class members' seasonal lay-offs by the Defendant exceed three (3) months.
17. Elaine, as with other class members, were paid hourly at a rate which increased annually based on their seniority within the Defendant company. Therefore, at the Termination Date, Elaine - with 42 years of service to the Defendant- was one of the most senior (and thus most highly paid) of the Defendants' school bus drivers.
18. As a result of the termination of her employment, Elaine suffered damages due to her wrongful dismissal, including the refusal of the Defendant to pay her in lieu of notice, or to provide her with severance in accordance with the *Canada Labour Code*.

Wrongful Dismissal

19. The termination of Elaine and class members, without cause, and without reasonable notice or pay in lieu of notice which should properly take into account Elaine's class members' age, training and education, length of employment (42 years in Elaine's case), the nature of their employment, type of employment, and the availability of similar employment, constitutes wrongful dismissal at common law.
20. Elaine and each member of the class have suffered damages and loss as a result of the Defendant's wrongful dismissal.
21. Elaine and each member of the class are entitled to recover from the Defendant pay in lieu of the reasonable notice they were entitled to at common law, all unpaid severance pursuant to the *Canada Labour Code*, together with interest.
22. Elaine and the class members plead and rely on the provisions of the *Canada Labour Code*, R.S.C., 1985, c. L-2, and its associated regulations.
23. In particular, Elaine and the class members plead and rely on subsection 30(1) of the *Canada Labour Standards Regulations (C.R.C., c. 986)*, which provides that a lay-off of less than three (3) months is not considered termination for the purposes of individual termination of employment.

Punitive Damages

24. Elaine on her own behalf, and on behalf of the class members, also claims punitive damages from the Defendant for the high handed and reprehensible manner in which they were terminated by the Defendant, the particulars of which include:

- a) the Defendant's outright refusal to provide reasonable notice of termination (or pay in lieu thereof) even when approached by class members seeking this compensation;
- b) the Defendant, a large corporation, was in the financial position to provide pay in lieu of notice and severance pay to Elaine and the class members, but refused to do so;
- c) the Defendant, a sophisticated corporation with operations in multiple jurisdictions, knew, or ought to have known of Elaine's and the class members' legal right to reasonable notice of termination or pay in lieu thereof, but wilfully and maliciously violated that right;
- d) the Defendant carried out the mass termination in the expectation that a majority of class members would have neither the economic resources nor the knowledge to individually pursue claims for wrongful dismissal, thereby resulting in an economic windfall for the Defendant.

Service Outside Ontario Without Leave

25. The Plaintiffs plead and rely on rule 17.02 of the *Rules of Civil Procedure* which allows for service of this claim outside of Ontario, without leave of this Honourable Court, because both the cause of action, and the resulting damages for breach of contract and tort, occurred in Ontario, and the Defendant carried on business in Ontario.

26. The Plaintiffs request that the trial in this matter take place in Ottawa.

Date: July 21, 2017

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