



CLAIM NO.: SC-17-2311-00  
SC-17-2311-D1

ONTARIO  
SMALL CLAIMS COURT  
BRAMPTON, ONTARIO

**BETWEEN:**

INGRID COX )  
Plaintiff/Defendant by Defendant's Claim ) Melanie Henriques, Paralegal for the Plaintiff )  
-and- )  
GLOBAL COURIER AND )  
LOGISTICS INC. ) Nelson Hernandez, Paralegal for the Defendant )  
Defendant/Plaintiff by Defendant's Claim )  
)  
) **HEARD: March 9 and May 7, 2019**

**REASONS FOR JUDGMENT**

**M. S. MALICKI, DEPUTY JUDGE**

**OVERVIEW**

[1] Ingrid Cox ("Ingrid") was employed by Global Courier and Logistics Inc. ("Global") and worked from May 24, 2016 to February 14, 2017. Illias Auckbaraullee ("Illias") was the principal of Global.

[2] Ingrid claims damages for wrongful dismissal of \$ 8,320.00 and aggravated and punitive damages of \$ 10,000.00 and damages for lost benefits and accrued vacation pay. The vacation pay has been paid and that is no longer an issue.

[3] Global denies that Ingrid was wrongfully terminated and makes its own claim against Ingrid for \$25,000.00 for various losses including her overstating her hours, misprinting way bills, causing loss of sales and other losses.

[4] Ingrid denies any losses claimed by Global.

## FACTS

[5] Ingrid was referred to Global by an employee, Herman Pintos ("Herman"). Global is a specialty courier company serving realtors, banks, lawyers and others who require immediate, timely and secure deliveries. The dispatcher position is crucial to ensure timely and accurate deliveries.

[6] Illias was looking for a dispatcher and understood that Ingrid would be able to fill that position. Ingrid was hired. There was no written employment contract.

[7] On June 13, 2016, Ingrid did not come to work because of an accident that her partner suffered. She was dismissed. However, upon discussions between the parties, Illias agreed to take her back on June 17, 2016, 4 days later. Ingrid's salary was increased. She believed that she was required to fill an administrative position.

[8] Ingrid states that Illias put her at the front desk and assigned her to administrative duties included briefing clients, paying bills, collections, answering the phone, invoicing and postal work. Illias states that the increase was a natural progression from the probationary position that Ingrid had held and that she was to continue as a dispatcher.

[9] On February 14, 2017, Ingrid's employment was terminated. Illias stated that she had not properly fulfilled her duties as a dispatcher.

[10] Her pay at the time that her employment was terminated was \$ 16.00 per hour.

[11] Ingrid, who was 58 at the time, ultimately found employment but in the meantime was treated for cancer in July and August 2017.

## INGRID COX'S EVIDENCE

[12] Ingrid had worked at bookkeeping and accounting for about 5 years and had done some dispatch work. Herman told her of a position at Global. Her salary at Global was \$15.00 per hour with no benefits. Vacation was not discussed. She was not given any handbook. She was given a key and expected to work 40 hours per week. She often worked more. No overtime was asked or paid.

[13] At first Ingrid found the work a bit difficult as it was a fast-paced company.

[14] She quit on June 14, 2016 because of her partner's accident. She called Illias and offered to return. He called back and asked her to return and she did so on June 17, 2016.

[15] Ingrid states that Illias put her at the front desk as an administrator. She believed her duties to be, among others, to brief clients, pay bills, look after collections, answer the phone, invoice clients and do postal work.

[16] On Monday February 13, 2017 she did not go in. They had had difficulty with a major client. She could not find her keys. She called Illias that she would not come in. Illias said ok. The next day she was at work He did not respond in the usual way to her greeting. He called her in on February 15, 2017 when he gave her her employment record, but no severance.

[17] In reply to the allegations in the Defendants' claim, Ingrid denies misprinting way bills. She says that she logged her hours, often worked more than expected and was a faithful employee who did what she was asked to do.

### ILLIAS AUCKBARAULLEE'S EVIDENCE

[18] Illias is the owner and operator of Global and has been in business for 23 years. It is a small courier business dealing with emergency and same day deliveries. He has about 300 clients. His wife Linda Auckbaraullee ("Linda") works with him.

[19] Illias had need of an experienced dispatcher and that is why he hired Ingrid. He believed that she had experience as a dispatcher both based on what Herman had told him and his interview with Ingrid.

[20] The waybills are all coded with specific numbers identifying clients. It is the job of the dispatcher to ensure that proper way bills are assigned to deliveries. Illias states that Ingrid was never able to master the fast pace and complexity of the job.

[21] When Ingrid quit the first time, she showed up at his house uninvited asking for her job back. He agreed and gave her an additional \$ 1.00 per hour as her probationary period had ended. Her performance did not improve.

[22] When he let her go for the second time he gave her her last pay cheque and her vacation pay.

[23] Though Illias did not give Ingrid any notices during the time that she worked, regarding his concerns about her employment, he pleads that he would make notes explaining tasks but that this did not improve Ingrid's productivity. He says that she was simply unable to keep up with the work and clients complained about incorrect deliveries and threatened to go elsewhere.

[24] For several days he had to hire an additional employee, Shane, to assist with the dispatching because Ingrid was unable to handle the work.

[25] It was after she terminated her employment and the claim was issued that he discovered discarded way bills in the back of the office. They had been misprinted as each waybill is specific to a customer and an incorrect number on the way bill attributed to the wrong client results in confusion and losses. It was then that he also discovered that Ingrid had misreported her hours.

### LINDA AUCKBARAULLEE'S EVIDENCE

[26] Linda is the spouse of Illias. She has worked with him for 17 years and states that she was primarily responsible for the administrative work in the business. She corroborates Illias' testimony as to Ingrid's work as a dispatcher.

### HERMAN PINTOS' EVIDENCE

[27] Herman introduced Ingrid to Illias. Because he was a driver he was generally not present in the area where Ingrid worked and has little to add to what role she filled in the office and how well she did her work.

### DEFENDANT'S CLAIM

[28] Global claims \$ 2,000.00 to \$3,000.00 for misprinted way bills by Ingrid, the costs of a contractor during a short period at Christmas in the sum of \$ 1,044.12 and reimbursement for excess hours claimed by Ingrid, of \$2,389.07. None of the defendants' claims were communicated in any way to Ingrid during or after termination of her employment and were raised only as Defendant's claims.

### ANALYSIS

[29] Although Ingrid did some administrative work after June 17, 2016, her primary job continued to be dispatch. That is what the company needed. I find that the increase in salary by \$ 1.00 per hour was not in recognition of additional duties that Ingrid took on but rather the increase that followed her probationary period. Linda was able to look after administration, even though Ingrid may have done some, but the real need was in dispatch and that is why Illias hired Ingrid and later agreed to have her return.

[30] Ingrid was not given notice or payment in lieu of notice. How much is she entitled to?

[31] She worked for about 9 months. I find that Ingrid is entitled to 2 month's pay in lieu of notice. This falls within the range of amounts allowed in similar circumstances.

[32] Ingrid is not entitled to punitive or aggravated damages. There was nothing in the conduct of Illias or Linda that was demeaning or insulting or intended to cause her pain. Most partings from an employer are unhappy but to attract punitive or aggravated damages the conduct must be out of the ordinary. There was no public criticism or scolding of Ingrid. No medical evidence was tendered by Ingrid that showed psychological damage to her, but even if it was it must have been caused by the employer or its agents.

[33] As for the Defendants' claim, Global did not raise issues with respect to Ingrid's employment until after the claim was served. Illias' explanation is that they only found out about the losses after Ingrid left. I am not convinced that Ingrid misprinted way bills nor am I satisfied as to the costs that may have been incurred by Global. Global gave no warnings to Ingrid

regarding her performance so she had no opportunity of addressing any complaints that Global had about her work.

**DISPOSITION**

[34] For the reasons given, the Plaintiff is entitled to 2 months' salary in lieu of notice. Based on an annual salary of \$33,2809.00, 2 months' notice is \$ 5,546.67 plus prejudgment interest from February 14, 2017 and post judgment interest both at the statutory rate.

[35] The defendants' claim is dismissed

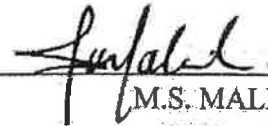
[36] There is no award for aggravated or punitive damages.

**COSTS**

[37] If the parties cannot agree on costs, the Plaintiff shall make submissions in writing served and filed not later than July 11, 2019 and the defendant may respond no later than July 20, 2019. All submissions on costs not to exceed 3 pages double spaced 12 font excluding authorities and a bill of costs.

13<sup>th</sup>

Dated at the City of Brampton this ~~12<sup>th</sup>~~ day of June, 2019



M.S. MALICKI  
DEPUTY JUDGE