

LOCK V. WORKFORCE INC. AND SOS (SUDBURY) INC.

ENDORSEMENT

Nature of Motion and Overview

[1] The plaintiff, Jordan Lock (Lock) brings this motion for an order (i) certifying this action as a class action for settlement purposes (ii) approving the settlement agreement between the parties dated January 9, 2023 (the Settlement Agreement) (iii) dismissing this action as against the defendants with prejudice and without costs (iv) approving an honorarium of \$15,000 for Lock and (v) approving Class Counsel fees and disbursements. For the reasons that follow, I grant the relief sought.

Background Facts

[2] The claim arises from alleged breach of the Employment Standards Act, 2000, S.O. 2000, c. 41 (ESA) for an alleged failure to pay wages for hours spent in training. The defendants deny any liability, with no admissions of liability in the Settlement Agreement.

[3] The class consists of all non-salaried employees of Workforce Inc (Workforce) or SOS (Sudbury) Inc (SOS) from January 1, 2011 to December 31, 2022 who received unpaid training from Workforce or SOS. There are an estimated 1,190 class members, several of whom appeared at the settlement hearing. There were no objections to the settlement from the class members and 13 class members expressed personal support for the action and settlement.

[4] A settlement was reached following mediation before the Honourable Colin Campbell, KC, on August 16 and September 27, 2022, following the exchange of detailed mediation briefs, including detailed financial information from the defendants. The plaintiff submitted an expert report which calculated a maximum of damages at \$3,355,200 while the defendants took the position that damages were de minimus. As a result of the mediation, the parties agreed on an all-inclusive settlement amount of \$650,000, which took into account several factors, including the positions of the parties, risks of collection (particularly as SOS has essentially been inactive and without assets since 2014), and limitation issues affecting a significant portion of the class.

[5] The fees sought of \$211,500 reflect 33% of the settlement amount less \$3,000, plus \$27,482.00 with HST for legal fees and \$28,500 for disbursements and HST, for a total of \$267,232, based on the retainer agreement.

[6] With respect to the honorarium of \$15,000 sought for Lock, the evidence is that he has been unable to continue his EMS career in Sudbury, despite applying for between 500-600 positions. Lock has only been called back for 5 interviews and has been required to explain his involvement in the class action to the Public Health Agency of Canada as part of his job application. He has been required to change his career path in which he intended to be a firefighter

in Sudbury, and has only been able to find work as a paramedic in Thunder Bay (from June 2021 to December 2022) but has not been employed for the past two months.

Analysis

1. Certification

[7] There is a cause of action pleaded for breach of Ontario employment standards. The class is identifiable and has a rational connection to the common issues. It includes all non-salaried employees of the defendants during the class period.

[8] The proposed common issues at Schedule A of the Settlement Agreement significantly advance the action. The issues address whether the class members are entitled to payment for any of the hours that the class members spent obtaining training or certification, including issues of whether training/certification was (i) a contractual term, (ii) required for promotion or other work (iii) required or directed by the defendants. The proposed common issues of whether the defendants are liable to pay class members for such training/certifications has a core of commonality, based on the other proposed common issues summarized above.

[9] A class action is the preferable procedure, given the small monetary amounts at issue. Access to justice and judicial resources are advanced by analysis of the systemic issue, and any behaviour modification (if required, as liability is denied) can arise if the claims of the class members are determined collectively in a class action.

[10] Finally, Lock is an “adequate” representative plaintiff who has undertaken all of the essential steps of a class action, including reviewing material, attending mediation, instructing counsel and providing evidence. He shares common interest with other class members as he was employed with the defendant in multiple positions between 2012 and 2019.

[11] For the above reasons, I certify the proposed class action.

2. Settlement Approval/Dismissal of Action

[12] The settlement brings significant benefits to the class. It avoids a realistic risk that SOS would not be able to satisfy a judgment. It avoids lengthy litigation delays if certification and a common issues trial were required. Further, it provides recovery for class members whose claims might be statute barred.

[13] The settlement is based on notional amounts used to calculate the payment to class members by category of worker. If every eligible class member were to make a claim, the average recovery would be approximately 16% of those amounts. That result reasonably reflects the risk of non-recovery both to financial constraints on the defendants (and in particular SOS) and limitation periods, as well as the significant discrepancy in the payment calculations proposed between the plaintiff and the defendants. The settlement falls within the zone of reasonableness; there are no objections to the settlement, and it is supported by both class counsel and an experienced mediator and former judge.

[14] The distribution and notice plan will enable each class member to set out their position with the defendant and to receive payment, with an appeal process. I find the distribution and notice plan to be reasonable as it is fair and efficient.

[15] For the above reasons, I approve the Settlement Agreement and the order dismissing the action with prejudice and without costs.

3. Honorarium

[16] I accept the uncontested evidence that Lock's career path has been altered as a result of his involvement in the class action, although I do not suggest in any way that the defendants contributed to that situation. I adopt the approach in *Aps v. Flight Centre Travel Group*, 2020 ONSC 6779, at para. 46 and approve the \$15,000 honorarium for Lock.

4. Fees

[17] I approve the retainer agreement under s. 33 of the Class Proceedings Act, 1992, S.O. 1992, c. 6. The agreement is in writing and (i) states the terms under which fees and disbursements shall be paid (ii) provides an estimate of the expected fee and (iii) states the method by which payment is to be made. Lock understood the agreement and supports its terms.

[18] As in *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686, at para. 13, I find the one-third contingency fee agreement to be presumptively valid. Further, the fees sought are less than the actual fees incurred. Also, class counsel undertook significant risks in the file, agreeing to indemnify the representative plaintiff against adverse costs and as such, taking on risk. Also, the factual and legal issues raised contested issues which resulted in a realistic risk that the plaintiff would not be successful. Limitations issues would also have affected any result obtained, even if successful. Consequently, class counsel obtained a strong result and demonstrated skill and competence in conducting the litigation.

[19] Through the posting of the settlement agreement and draft distribution in the notice plan, the class members were advised of the fees sought by class counsel and no objections were raised.

[20] Finally, the disbursements sought are reasonable, including the fees for an expert report which was of high importance in resolving the litigation.

[21] For the above reasons, I approve the fees and disbursements sought by class counsel.

Conclusion

[22] I grant the relief sought. Settlement approval order and Class Action Fee and Honorarium Order to go as uploaded at Tabs 5 and 6 of Caselines and attached to this endorsement.

Glustein J.

Date: March 9, 2023