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COURT OF APPEAL FOR ONTARIO

RE: MARY BLACK (Plaintiff/Respondent) v. ROBINSON GROUP LIMITED and THE UNIQUE KITCHEN STUDIO LIMITED (Defendants/Appellants)

BEFORE: LASKIN, FELDMAN and BLAIR JJ.A.

COUNSEL: Edward M. Hyer and
Christine M. Kish
for the defendants/appellants

Thomas A. Stefanik
for the plaintiff/respondent

HEARD: May 11, 2004

ORALLY

RELEASED: May 11, 2004

On appeal from the judgment of Justice Romain W.M. Pitt of the Superior Court of Justice, dated October 18, 2002.

ENDORSEMENT

[1] The Robinson Group Limited appeals from the judgment of Pitt J. allowing Ms. Black's claim for wrongful dismissal and awarding damages in the amount of \$19,653.40 plus pre-judgment interest and costs. The appellants' position is that Ms. Black was dismissed for just cause because she had given herself and another employee unauthorized increases in salary and vacation pay. The trial judge rejected this argument. He found that although "in the literal sense the plaintiff did not have authorization for the increases", Ms. Black's conduct amounted to an indiscretion rather than dishonesty and, moreover, that it was not the cause for her dismissal, but rather a pretext to justify an earlier determined plan to dismiss the plaintiff as part of an overall financial reorganization. Applying the contextual analysis called for and the principles enunciated by the Supreme Court of Canada in *McKinley v. BC Tel* (2001), 9 C.C.L. (3d) 167, the trial judge found that the defendants had not met the onus of satisfying him that the

dismissal was for cause. This finding was justified on the evidence and we see no reason for interfering with it.

[2] Ms. Black cross-appealed on damages arguing that the trial judge erred in basing his award on her salary as it was in 1996 before the “unauthorized” increases. The Robinson Group argued on the other hand that the trial judge erred in dismissing its counterclaim for the return of the allegedly overpaid amounts. We would not interfere with either of these dispositions. While there may be some inconsistencies in some of the trial judge’s remarks in this regard, we are satisfied that on the whole he reached a fair and proper result having regard to his view of the employment relationship and the circumstances surrounding the pay increases.

[3] The appeal and cross-appeal are, therefore, dismissed.

[4] The respondent is entitled to her costs of the appeal, fixed at \$8,000.00 inclusive of GST and disbursements.

“J.I. Laskin J.A.”
“K.N. Feldman J.A.”
“R.A. Blair J.A.”