Court File No. CV-25-00749324-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROBERT HUNT

Plaintiff

and

UNITED PARCEL SERVICE CANADA LTD.

Defendant

STATEMENT OF DEFENCE

1. The Defendant, United Parcel Service Canada LTD. ("**UPS**"), admits the allegations contained in paragraphs 22, 23, 26, 27, and 28 of the statement of claim.

2. Except as expressly admitted in this statement of defence, UPS denies all other allegations set out in the statement of claim. UPS specifically denies that the Plaintiff, Robert Hunt ("**Hunt**"), and the members of the putative class he seeks to represent, are entitled to any of the relief requested in the statement of claim.

3. Except as expressly provided, UPS does not adopt the defined terms as used in the statement of claim.

Overview

4. This proposed class proceeding relates to UPS' payments to a wide ranging and diverse group of employees under two incentive compensation plans, the Sales Incentive Plan ("**SIP**") and the Management Investment Plan ("**MIP**"), which respectively govern performance-based compensation for non-unionized sales and managerial level employees.

5. The statement of claim specifically alleges that the payments made by UPS to sales and managerial employees respectively under the SIP and MIP programs fail to include vacation pay and holiday pay and that such inclusion is required by the *Canada Labour Code,* R.S.C., 1985, c. L-2 ("***CLC***"). It is also alleged that these actions have diminished class members' pension entitlements.

6. Contrary to these allegations, UPS has complied with its statutory obligations regarding vacation pay and holiday pay entitlements as earned on SIP and MIP compensation.

7. Since January 2024, UPS amended its policies such that SIP awards are factored into vacation pay and holiday pay calculations for non-unionized sales employees in accordance with the *CLC* and any participants in the SIP have received this benefit. In respect of the MIP awards, such amounts are discretionary lump sum payments and therefore do not constitute "wages" under the CLC and are properly excluded from vacation pay and holiday pay calculations as well as pension entitlements.

8. In any event, given the enhanced vacation entitlements provided to each class member, UPS maintains that proposed class members receive a "greater right or benefit" from UPS than that provided for under the minimum standards of the *CLC*. Any analysis of whether a class member received a greater right or benefit is necessarily individual.

9. The pension benefits of eligible class members are governed by the terms of the United Parcel Service Canada Ltd. Retirement Plan, Canada Revenue Agency registration number 0989848 (the "**Plan**").

10. SIP and MIP compensation, including the mechanism by which they were calculated, were disclosed to applicable employees in UPS policies, their respective employment contracts and their pay stubs. To the extent that issue is taken with UPS' approach to making SIP and MIP

payments, which issues are not admitted but expressly denied, such claims were clearly discoverable as soon as the employee was hired and are statute-barred by the Limitations Acts applicable in each Canadian jurisdiction.

11. UPS denies that the Plaintiff or any proposed class members have suffered any damages. UPS has paid each class member their vacation and holiday pay entitlements in accordance with its obligations and denies that any class member has suffered any reduction in pension benefits as a result of SIP and MIP awards, or at all.

12. UPS denies all of the Plaintiff's claims as advanced on their own behalf and on behalf of the class.

The Parties

United Parcel Service Canada LTD.

13. UPS is a global shipping and logistics services business operating in Canada pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 ("***CBCA***"). The UPS Canadian head office is located at 1930 Derry Road East, Mississauga, Ontario, L5S 1E2.

The Proposed Representative Plaintiff

14. Robert Hunt was hired by UPS on November 17, 1997. Mr. Hunt is currently employed as an Enterprise Account Manager. Mr. Hunt resides in Hamilton, Ontario.

The Proposed Class Members

15. Mr. Hunt seeks to represent a proposed class described as "all individuals who (a) were and/or are employees of UPS, (b) were and/or are not members of a bargaining agent, and (c)

received amounts under the UPS Sales Incentive Plan and/or the UPS Management Incentive Plan." No period delineating the temporal scope of the class is defined in the statement of claim.

16. Non-unionized employees who receive compensation pursuant to the SIP include Inside Sales Coordinators, Inside Sales Representatives, Sales Supervisors, Account Executives, Senior Account Executives, Area Sales Managers, Segment Managers, Directors of Sales, Enterprise Account Managers and Enterprise Segment Managers.

17. Non-unionized employees who receive compensation pursuant to the MIP include Supervisors, Mid Managers, District Staff Managers, Region Staff Managers, District Managers, Region Managers, the Executive Leadership team and the CEO.

18. All proposed class members are current and former employees of UPS whose employment was governed by the *CLC.*

UPS Vacation and Statutory Holiday Policies

19. Under UPS's Vacation Policy, vacation time is calculated on a calendar year basis (from January 1 to December 31 or the "**Vacation Year**") and increases progressively with each employee's years of service, ranging from two weeks for employees with zero to four years of service, and up to six weeks for employees with 25 or more years of service. Employees are advanced pay when taking their vacation time, and any vacation pay advanced must be earned by the employee during the Vacation Year.

20. In addition, class members are entitled to five personal paid holidays per calendar year subject to the terms of the UPS' Personal Paid Holidays Policy.

21. Collectively, the UPS Personal Paid Holidays Policy and the UPS Vacation Policy shall be referred to as the "**PTO Policies**".

22. With respect to statutory holidays, those individuals who participate in the SIP and the MIP are paid by way of salary and are not required to work on these days. As such, such proposed class members are paid their salaries on these days.

23. Additionally, the paid time off policies of UPS far exceed the minimum entitlements under the CLC.

UPS Incentive-Based Compensation Programs

Sales Incentive Plan

24. Non-unionized employees working at UPS in a wide variety of sales positions are entitled to participate in the Sales Incentive Plan (SIP).

25. Sales employees participating in the SIP are assigned a “target pay” which represents the amount that will be paid to that particular employee if all sales targets are achieved. Failure to meet such predetermined sales targets may result in lower compensation, while exceeding sales targets may result in higher compensation.

26. Since January 2024, SIP payments have been included in the definition of “earnings” in the applicable policy and factored into vacation pay and holiday pay calculations. The Vacation Policy provides that “for each week of Vacation Time taken” salaried employees eligible for a SIP “will also receive the average weekly SIP paid in the prior Vacation Year.”

27. In or about, UPS provided amounts for vacation pay and holiday pay earned since 2022 to eligible SIP recipients ensuring that any employees who received a SIP award have been paid any possible outstanding vacation pay and holiday pay earned in the two years prior to implementation of the policy change. The SIP participants received such payments in full and final satisfaction of any amounts owing to them in respect of vacation and holiday pay.

28. Any claims made for vacation pay and holiday pay on SIP payments pre-2022, the validity of which is expressly denied, are, in any event, statute-barred by the Limitations Acts applicable in each Canadian jurisdiction.

Management Incentive Plan

29. The MIP is a discretionary performance-based compensation program that incentivizes Supervisors, Mid Managers, District Staff Managers, Region Staff Managers, District Managers, Region Managers, the Executive Leadership team and the CEO to meet annual performance targets.

30. The goal of the MIP is to connect discretionary incentive pay to annual performance and align the interests of certain managerial employees with company shareowners. MIP Award targets vary by position and are determined for each Plan Year by the Management Compensation Committee taking into account a number of discretionary factors.

31. Eligible Employees and Executive personnel who are awarded a MIP incentive award are paid (a) in cash, shares, or any combination thereof or (b) into a UPS tax-qualified defined contribution plan.

32. The current MIP dated March 20, 2024, provides as follows:

(a) the objectives of the MIP are to align incentive pay with annual performance, and further align the interests of Eligible Employees [1] and shareowners by

[1] Where an "**Eligible Employee(s)**" is for each Plan Year, (i) an Employee (other than an Executive Leadership Team Eligible Employee) who (a) is classified at the supervisor level or above on the MIP Record Date, (b) is continuously employed with the Company or an affiliate through the MIP Eligibility Date, (c) satisfies such other eligibility criteria as may be developed from time to time by the Committee, (d) is recommended by his or her manager and (e) approved by the Committee and (ii) an Executive Leadership Team Eligible Employees.

strengthening the link between the achievement of key business objectives and incentive compensation;

(b) only an Eligible Employee shall be considered for a MIP Award, and the Committee shall have broad discretion to determine the eligibility criteria for Eligible Employees;

(c) a MIP Award vests on the MIP eligibility Date for the Plan Year for which the MIP Award is made, provided the Eligible Employee is employed by the Company or an affiliate on such date, however, the Committee may establish rules that provide for vesting of a MIP Award at other dates or under other circumstances; and

(d) the grant of a MIP Award to an Eligible Employee is a voluntary, discretionary award being made on a one-time basis and it does not constitute a commitment to make any future awards. Nothing contained in the MIP shall confer upon an Eligible Employee any right to be employed or remain employed by UPS or any of its subsidiaries, nor limit or affect in any manner the right of UPS or any of its subsidiaries to terminate an Eligible Employee’s employment or adjust an Eligible Employee’s compensation.

33. Prior to the 2024 plan year, the MIP participants were subject to the UPS International Management Incentive Program dated January 1, 2023.

34. Any awards granted pursuant to the MIP are discretionary for Eligible Employees. As such, not everyone who is eligible for a MIP award in a particular year receives a MIP award.

35. Including for the above reasons, an award granted under the MIP is not “wages” as defined in the CLC.

36. In the alternative, it is an implied term that these lump sum discretionary awards are inclusive of any statutory vacation or holiday pay.

37. Section 168(1) of the *CLC* states “this Part and all regulations made under this Part apply notwithstanding any other law or any custom, contract or arrangement, but nothing in this Part shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to the employee than his rights or benefits under this Part”.

38. As noted above, pursuant to the UPS Vacation Policy, employees are entitled to vacation that exceeds the minimum standards provided under the CLC.

39. In the further alternative, in the event that the MIP award constitutes “wages” under the CLC, which UPS denies, the amounts provided pursuant to the PTO Policies constitute a “greater right or benefit”. Any assessment of whether there is a greater right or benefit can only be conducted on an individual class member basis.

40. In any event, any claims made for vacation pay and holiday pay on MIP payments, the validity of which is expressly denied, are statute-barred by the Limitations Acts applicable in each Canadian jurisdiction.

The UPS Retirement Plan

41. Certain employees at UPS are entitled to participate in the Plan in accordance with the terms of the filed Plan text. The Plan text was most recently amended and restated as of April 1, 2022, with amendments up to and including January 1, 2024.

42. Eligibility to participate in the Plan is dependent on an employee’s role and date of hire with UPS. The Plan contains a defined benefit (the “**DB**”) component, participation in which is

limited to eligible UPS employees last hired prior to 2013 (the "**Pre-2013 Employees**"), and a defined contribution (the "**DC**") component for eligible UPS employees hired after 2012, and for Pre-2013 Employees on an optional basis.

43. Benefits under the Plan are determined in part by a Plan participant's pensionable earnings, which for purposes of the DB component are limited to an eligible participant's "Compensation" (as defined in the Plan), and for purposes of the DC component are limited to an eligible participant's "Earnings" (as defined in the Plan). The Plan definitions of "Compensation" and "Earnings" have been amended from time to time, including with respect to amounts payable or received in respect of SIP and MIP awards.

44. UPS denies that any proposed class members have a claim for additional Plan benefits based on any vacation pay or holiday pay in respect of SIP and/or MIP awards.

No Breach of Contract

45. UPS denies that it has breached the terms of any of the proposed class members' employment contracts, which contracts have varied by class member and over time. At all material times, UPS paid the class members the vacation pay and holiday pay to which they were entitled pursuant to the *CLC* and their respective employment contracts. On this basis, UPS denies that any proposed class member has suffered any damages for breach of contract. In any event, assessment of any alleged individual class member damage can only be determined by individual analysis.

No Negligence

46. UPS denies that it owed the proposed class members a duty of care in connection with the payment of their vacation pay and holiday pay entitlements.

47. To the extent UPS did owe class members a duty of care in connection with payment of vacation pay and holiday pay entitlements, which is not admitted but expressly denied, UPS met any requisite standard of care imposed upon it.

48. UPS denies that any class member has suffered harm or loss and that such alleged harm or loss was caused by any alleged breach of duty of care by UPS.

No Breach of Trust

49. UPS denies that it owed any member of the proposed class any general trust duty or fiduciary duty in connection with their vacation pay or holiday pay entitlements.

50. To the extent there is a general trust duty or fiduciary duty owing to the proposed class, which is not admitted but expressly denied, UPS has not breached those duties.

51. The proposed class members therefore have no claim for breach of trust.

No Unjust Enrichment

52. UPS denies that it has been unjustly enriched, or that the class members have suffered any deprivation in connection with their vacation pay and holiday pay entitlements.

53. The proposed class members accordingly have no basis for a claim in unjust enrichment.

The Claims are Statute-Barred

54. The claims advanced by the Plaintiff are statute-barred.

55. At all material times Mr. Hunt was made aware of amounts being paid to him in respect of statutory vacation pay and holiday pay through:

(a) UPS employment policies;

(b) his respective employment contract, and

(c) bi-weekly pay stubs.

56. Mr. Hunt ought accordingly to have discovered any claim which may have existed, the existence of which is expressly denied, when he was hired, and in any event by August 12, 2023 and his failure to do so renders his claim statute-barred pursuant to s. 4 of the *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B.

57. For the same reasons, the claims of the proposed class members are also statute-barred.

58. At all material times, each class member was made aware of vacation pay and holiday pay entitlements owing to them in several capacities including through UPS employment policies, their employment contracts, and their bi-weekly pay stubs.

59. UPS therefore submits that any claims advanced by the Plaintiff and proposed class members which may exist are statute-barred and cannot be pursued.

No Entitlement to Damages or Other Relief

60. UPS denies that the Plaintiff or any of the proposed class members are entitled to any of the relief sought in the statement of claim, or any relief at all.

61. UPS further denies that the Plaintiff or proposed class members have suffered the alleged injuries, loss, or damages and puts them to the strict proof thereof. Any damages that are sought are excessive, were not reasonably foreseeable, are too remote, and were not adequately mitigated.

62. UPS further denies that it has unlawfully withheld and/or benefitted from any funds owed to the Plaintiff or proposed class members.

63. UPS finally denies that the Plaintiff or proposed class members are entitled to punitive damages or any other damages.

Remedy Sought

64. UPS respectfully requests that this action be dismissed with costs.

Class Proceedings

65. UPS denies that the criteria for certification of a class proceedings are met in this case.

66. UPS reserves the right to further defend the claims of this proposed class and to amend this statement of defence in the event, which is strictly rejected, this action is certified as a class proceeding.

April 17, 2026

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Plaintiff Defendant

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Proceeding Commenced at Toronto

STATEMENT OF DEFENCE

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