

Citation: Cho v. Telus Communications (B.C.) Inc.
2001 BCSC 1434

Date: 20011016
Docket: S000169
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DAVID CHO

PLAINTIFF

AND:

TELUS COMMUNICATIONS (B.C.) INC.

DEFENDANT

**REASONS FOR JUDGMENT
OF THE
HONOURABLE MR. JUSTICE LOWRY**

Counsel for the Plaintiff:

R.H. Hamilton, Q.C.

Counsel for the Defendant:

T.A. Sigurdson

Date and Place of Hearing:

September 4, 2001
Vancouver, BC

[1] David Cho was employed by what is now Telus Communications (B.C.) Inc. ("Telus") from January 1977 until February 2000 during which time he was a member of one of the company's pension plans (the "Plan"). As a result of some reorganization, his employment was terminated and he commenced this action alleging that he was wrongfully dismissed. The parties seek a summary determination of one issue that has arisen: To what pension benefits is Mr. Cho entitled now given that he has just turned 55 years of age and has more than 20 years service?

[2] The Plan is contained in a comprehensive document that is divided into various sections. The material provisions for present purposes are contained in Section VII:

1. The normal retirement date for a Member or Former Member is his sixty-fifth birthday. A Member may retire upon or after the normal retirement date and receive a pension regardless of

the length of his Term of Employment. A Former Member who has not retired and who is not an Employee will be retired upon his normal retirement date and his pension will commence. ...

5. A Member or Former Member who has attained the age of fifty-five years and whose Term of Employment is twenty years or more, may, with the consent of the Company, retire and be granted a pension. ...

7. A Member who is vested, or a Former Member who has not retired under the Plan, may, without the consent of the Company, elect to retire on a special early retirement date which is not more than ten years before the dates upon which the Member or Former Member, on the basis of his Term of Employment at such special early retirement date, would otherwise become eligible to retire under subsection 1, 3, or 4, above. The earliest dates are as follows:

<u>Terms of Employment</u>	<u>Earliest Date</u>
Twenty-five or more years	Forty-fifth birthday
Twenty but not twenty-five years	Fiftieth birthday
Less than twenty years	Fifty-fifth birthday

[3] The significant difference between subsection five and subsection seven is that under the first a Member or Former Member receives a full pension while under the second he or she receives reduced pension benefits as provide by Section VIII of the Plan.

[4] When he was terminated, Mr. Cho became a Former Member under the Plan who retains a present or future entitlement to receive benefits. He contends that, because he is now 55, subsection five is applicable to him. He says that, with the consent of the Company (that may not be unreasonably withheld), he is entitled to commence receiving his full pension. Telus maintains that Mr. Cho's entitlement is governed by subsection seven. It says that, subsection five is only applicable where the requirements of age and service have been met prior to the termination of employment such that, if Mr. Cho elects to commence drawing his pension benefits now, his entitlement is limited to reduced benefits.

[5] The difference in the two competing positions turns on the meaning to be ascribed to the word "retire" as used in Section VII and in subsections five and seven in particular. It is not defined in the Plan. Mr. Cho's contention is that to retire is simply to begin receiving benefits under the Plan. Telus says that "retire" may have different meanings, but for the purposes of subsection seven it means to leave its employment. Telus must, for example, accept that, as used in the last sentence of subsection one, retirement cannot mean ceasing to be an employee.

[6] Simply as a matter of construction, I do not consider that the word "retire" can be taken to mean different things when used in the various subsections of Section VII. The interpretation for which Mr. Cho contends results in a consistent meaning and that is the meaning that must prevail. He is entitled to the full pension benefits payable to a Former Member who is 55 years of age and has more than 20 years service in accordance with subsection five. It appears to me that subsection seven would have enabled him to elect to obtain a reduced pension before he reached age 55 had he wished to do so.

[7] It follows that, subject to the company's consent, Mr. Cho is entitled to the pension benefits he seeks. He applies for production of any documentation in the care, custody, or control of Telus that bears on whether it can withhold its consent in his case. In particular he seeks production of any documentation relating to the consent afforded to other employees in circumstances similar to his. I consider that Mr. Cho should have the production he seeks but only if Telus now maintains that it can withhold its consent.

[8] There will be an order accordingly.

"P.D. Lowry, J."
The Honourable Mr. Justice P.D. Lowry

These Reasons for Judgment were released from the Vancouver Registry on October 16, 2001 and the date stamp inadvertently reads October 15, 2001 instead of October 16, 2001.