

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

BRENDA AUSTIN, MATTHEW BELTRANO, GABRIEL LEVESQUE

Plaintiffs

- and -

FORD MOTOR COMPANY OF CANADA LIMITED

Defendant

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF DEFENCE

1. The defendant admits the allegations contained in paragraphs 24, 34, 43, 58 and 59 of the statement of claim.
2. Except as may be expressly admitted herein, the defendant denies the allegations contained in paragraphs 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 25, 26, 27, 29, 32, 33, 35, 36, 37, 39, 41, 42, 44, 45, 46, 48 and 50 through 57 of the statement of claim. The defendant denies that the plaintiffs are entitled to any of the relief claimed in paragraph 1 of the statement of claim.
3. The defendant has no knowledge in respect of and does not admit the allegations contained in paragraphs 6, 7, 8, 16, 17, 28, 30, 31, 38, 40, 47 and 49 of the statement of claim.

Introduction

4. Ford Motor Company of Canada Limited ("Ford" or the "Company") assembles and distributes motor vehicles and has operations in Oakville, Ontario and elsewhere in Canada. In or about April 2008, the Company announced its plan to add a third shift for production at its Oakville Assembly Complex (the "OAC"). The OAC produces the Ford Edge, Flex and

Lincoln MKX vehicles. Market data and other information available at that time supported the plan to increase production at the OAC.

5. The proposed representative plaintiffs, Brenda Austin, Matthew Beltrano and Gabriel Levesque (collectively the "plaintiffs"), were among the 355 individuals who were contacted and received conditional offers of employment from the Company during the week of July 14, 2008 in connection with the anticipated implementation of the OAC third shift. Specifically, the plaintiffs and other proposed class members were offered employment with the Company to commence on July 28, 2008, in the bargaining unit position of General Assembler. The terms and conditions of employment for such bargaining unit positions at the OAC are governed by the collective bargaining agreement between the National Automobile, Aerospace, Transportation and General Workers Union of Canada (the "CAW") and Ford.

6. The offers of employment made by the Company to the plaintiffs and other proposed class members were conditional on the acceptance by the individuals of certain terms and conditions of employment, including that they must become members of the CAW and would be bound by the lay off and termination provisions contained in the collective bargaining agreement. These conditional offers of employment were accepted by the plaintiffs and other proposed class members.

7. During the week of July 21, 2008, Ford advised the plaintiffs and other proposed class members that the plan to implement the OAC third shift was postponed due to a general softening of sales in the North American automotive industry. Starting on or about August 8, 2008, the Company advised affected individuals that the OAC third shift would not be implemented. The decision not to proceed with the implementation of the third shift was necessary because of rapid negative changes in economic conditions and was based on market projections that became available at that time. Because of the significant softening of vehicle sales in the United States and elsewhere, increasing production at the OAC could no longer be justified.

8. Further deterioration in the market conditions that had necessitated the decision not to proceed with the third shift led to additional significant changes regarding production and personnel at the OAC. On October 20, 2008, the Company laid off 100 CAW bargaining unit staff employed as General Assemblers. It also offered retirement incentive packages to approximately 310 senior workers and commenced a volunteer termination program. The

Company reduced other OAC operations (the body and paint divisions) from three shifts to two shifts. As a result of these actions, approximately 450 individuals working at the OAC at the time that the decision was made not to proceed with the third shift are no longer employed by the Company. Further, a significant number of "down weeks" were imposed and are planned to continue in 2009 in order to curtail production.

Third Shift Application Process

9. Had Ford proceeded with the implementation of the proposed third shift at the OAC, approximately 500 employees would have been required to staff the operation. Of those positions, approximately 160 were to be filled by individuals who had been laid off from the Company's Windsor, Ontario operations.

10. In order to fill the remaining positions, Ford solicited applications in three ways. First, it advised all current employees at the OAC of the openings. Secondly, it made application forms for the positions available at local Service Canada offices and on the Service Canada website. Thirdly, it contacted representatives of the CAW and provided them with an opportunity to contact a number of former CAW members that had previously worked at the OAC who might have an interest in applying for the positions. The employment of those individuals with the Company had terminated in 2004 and they no longer had recall rights under the terms of the collective bargaining agreement.

11. Applications for the third shift positions were due on May 1, 2008, and each of the plaintiffs and other proposed class members completed and submitted an application form as required by the Company. The application form contained a section entitled Conditions of Employment that made clear that any offer of employment made by Ford as a result of the application was conditional on the individual accepting certain terms and conditions of employment. Specifically, it was a condition of any offer of employment that each individual agree that:

- (a) entitlements in the event of his or her lay off or termination of employment would be governed by the terms of the collective bargaining agreement and employment standards legislation, and no further amounts would be payable by Ford in such circumstances;
- (b) he or she would abide by the Company's Rules of Conduct;

- (c) he or she would become a member of the CAW and pay associated dues;
- (d) he or she would submit to a medical examination and be capable of performing the essential duties of the position;
- (e) he or she would be legally able to work in Canada and undergo satisfactory reference checks and verification of information provided on the application;
- (f) he or she would participate in orientation and comply with all laws, rules regulations, personnel practices, directives and policies of the Company; and
- (g) he or she would maintain the confidentiality of all Company information and return all Company property and materials following the termination of employment.

12. Individuals selected for advancement in the hiring process following the Company's review of the application forms were required to participate in aptitude testing, an interview process and medical functional abilities testing with respect to the essential duties of the General Assembler position. The procedures were the same for all applicants, except that former Ford bargaining unit employees were not required to participate in the aptitude testing portion of the application process.

13. Starting on July 14, 2008, Ford contacted individuals who were successful applicants to offer them employment, training for which would commence on July 28, 2008. The Company confirmed that employment would be in the General Assembler position and that the starting rate for that position was \$22.87 per hour. These calls were completed by July 18, 2008. The offers of employment that were made to the individuals were conditional on their acceptance of the conditions of employment described in paragraph 11 above. If they had commenced orientation on July 28, 2008, the individuals would have been required to sign the Conditions of Employment section on the application form. If they declined or could not satisfy any of those conditions they would not have been employed. If they accepted and satisfied all of the conditions they would have been employed strictly in accordance with the collective bargaining agreement and as bargaining unit employees.

14. Each of the plaintiffs went through the application process essentially as described above.

Decision Not to Proceed With the Third Shift

15. The Company is a wholly-owned subsidiary of Ford Motor Company, which is based in the United States ("Ford US"). Ford US makes the decisions regarding which of its facilities and those of its subsidiary produce which vehicles and in what quantity. Given that most of the vehicles produced by the Company are assembled for sale in the United States, Ford US monitors and assesses sales and other pertinent market data to make decisions regarding production by the Company in Canada.

16. Ford US considered the implementation of a third shift of production at the OAC for a long period of time before the Company began planning to do so in or about April 2008. During recent times, the North American automotive market, and economic conditions more generally, have been extremely volatile. Ford US diligently monitored sales and other projections to determine whether the increased production that would be added by the OAC third shift was warranted in light of market conditions. Prior to and during the week of July 14, 2008, when the Company contacted the plaintiffs and other proposed class members, the information available to Ford US demonstrated only a slight reduction in market demand, such that the planned implementation of the third shift was not reconsidered by Ford US or the Company at that time.

17. Data received by Ford US on or about July 17 through July 21, 2008 demonstrated a more significant deterioration of market conditions. This information called into question the viability of a third shift, and therefore the ability of the Company to employ the plaintiffs and other proposed class members following the completion of their training. At the same time, Ford US was obliged to require "down weeks" at the OAC in the remainder of 2008 and in 2009 to reduce production and deal with excess capacity.

18. Following an analysis of the data referred to above, on July 22, 2008, Ford US came to the conclusion that a delay in the timing of the implementation of the OAC third shift was required and advised the Company of that decision. As a result, the Company contacted the plaintiffs and other proposed class members to advise them that the third shift was being delayed indefinitely due to the softening of the North American automotive industry. Those calls commenced on July 22, 2008 and were completed on July 24, 2008.

19. After the OAC third shift was delayed, Ford US undertook a more detailed review of market conditions and projections, and ultimately made the decision not to proceed with the

third shift at the OAC. That review was performed (in a thorough, but expedited manner), to ensure that the Company could advise the plaintiffs and other proposed class members of the status of the proposed third shift as soon as possible. The Company advised individuals of the decision not to proceed with the third shift starting on August 8, 2008.

20. Ford also advised the proposed class members that they would remain as active candidates in the Company's hiring pool. As such, if similar positions at Ford subsequently became available, they would be considered for employment without having to repeat the entire application process. The Company also coordinated with the Ontario Ministry of Training, Colleges and Universities to provide an information session for the proposed class members to assist any of them who were seeking employment.

21. Each of the plaintiffs received communications from the Company essentially as described above.

Employment Situation of Proposed Class Members

22. The Company has limited information regarding the employment situations of the plaintiffs and other proposed class members, both prior to their application for employment with Ford and following the time that they were advised of the Company's decision not to proceed with the third shift.

23. Based on the information provided to the Company during the application process, it appears that a significant number of the proposed class members were unemployed prior to making an application for employment with the Company. Further, based on information provided by the proposed class members when they were advised of the Company's decision not to proceed with the third shift, the vast majority of the individuals who were employed when they applied to Ford were able to obtain employment with their former employer or another employer.

24. With respect to the specific allegations of fact in paragraph 40 of the statement of claim, Mr. Beltrano advised the Company that he chose not to attempt to withdraw the notice of resignation he had provided to his employer.

25. With respect to the specific allegations of fact contained in paragraph 49 of the statement of claim, Mr. Levesque advised the Company that he had obtained temporary work following the time that he was advised of the delay of the third shift.

Breach of Contract and Negligence Claims

26. The Company denies that it breached or repudiated any employment contract or wrongfully dismissed any individual as alleged in the statement of claim. The Company states that any employment agreement between it and the individual plaintiffs or proposed class members was frustrated as a result of the cancellation of the third shift and by factors entirely beyond the control of Ford. The decision of the Company not to implement the third shift as originally planned was necessary in light of the direction from Ford US, which was in turn based on the economic conditions faced by the automotive industry during the relevant time period.

27. In the alternative, if there is an employment agreement between Ford and any of the proposed class members that has not been frustrated, the terms and conditions of such employment are established by the collective bargaining agreement between the Company and the CAW, the application of which was an express condition of the offers of employment made to the proposed class members. All disputes with respect to such employment, including any alleged wrongful dismissal, are subject to the exclusive jurisdiction of the grievance arbitration process set out in the collective agreement.

28. The Company similarly denies that it acted negligently. In fact, Ford acted at all times responsibly in responding to volatile market conditions and the reasonable directions of Ford US and in communicating rapidly changing circumstances to the plaintiffs and all other proposed class members. Ford carefully considered the situation of the plaintiffs and all other proposed class members and made every effort to give them an opportunity to continue their current or prior employment, if any.

29. In any event, the Company specifically denies that any proposed class member relied on any offer of employment by Ford to his or her detriment, and puts each individual to the strict proof of any contrary allegation.

Claim for Punitive Damages

30. The Company denies that its actions in relation to this matter justify an award of punitive damages and pleads that the facts asserted by the plaintiffs do not support any claim for such damages. The plans to implement and the decision not to proceed with the

OAC third shift were both reasonable and legitimate based on the information available at the relevant times.

31. In fact, the manner in which Ford communicated with the plaintiffs and proposed class members in light of rapidly changing economic circumstances demonstrates its good faith behaviour. If the Company had permitted proposed class members to commence employment and then subsequently had terminated or laid them off as it would have been entitled to pursuant to the collective bargaining agreement, it would have been more difficult for the proposed class members to retain or obtain employment with their existing or former employers.

Damages

32. As specifically required by the Conditions of Employment pleaded in paragraph 11, if the proposed class members had commenced employment in the General Assembler position, they would have been employed in the bargaining unit for which the CAW is the exclusive bargaining agent. As such, the terms and conditions of their employment, including those with respect to lay off and termination, would have been established by the collective bargaining agreement between Ford and the CAW with the grievance arbitration process set out in the collective bargaining agreement as the sole recourse. As a result, any damages flowing from the alleged dismissal of the proposed class members must be limited as provided for by the Conditions of Employment and in that agreement, and cannot be based on concepts relating to individual contracts of employment as pleaded in the statement of claim.

33. The employment offered to the plaintiffs and the other proposed class members was probationary employment under the collective bargaining agreement. Each of the plaintiffs and the other proposed class members knew that their employment with Ford would be subject to lay off (without notice or compensation in lieu of notice) as soon and as often as market conditions and demand for the products assembled at the OAC required such actions by the Company. Given that their employment at the OAC would be subject to the establishment and maintenance of sufficient demand for the Company's products, each of the plaintiffs and proposed class members knew that there was no security assured them.

34. The Company denies that the plaintiffs and other proposed class members have suffered damages as alleged in the statement of claim or any other damages for which it is

responsible or liable, and puts each proposed class member to the strict proof thereof. In any event, the Company asserts that the damages claimed are excessive, not foreseeable, too remote and not recoverable at law.

35. The Company states that the plaintiffs and other proposed class members have not taken adequate steps to mitigate their alleged damages. In the alternative, the Company states that the plaintiffs and other proposed class members have mitigated all or part of the damages that might otherwise be recoverable. Ford puts each proposed class member to the strict proof of his or her mitigation and mitigation efforts.

36. The Company denies that the plaintiffs and proposed class members are entitled to the relief claimed or to any relief, and requests that this action be dismissed with costs payable to the Company.

April 1, 2009

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SUPERIOR COURT OF JUSTICE

Proceeding commenced at MILTON

STATEMENT OF DEFENCE

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