



No. S152506
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SUSAN SERVICE

PLAINTIFF

AND:

UNIVERSITY OF VICTORIA

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, s. 50

Response to Amended Civil Claim

FILED BY: University of Victoria (the "University")

Part 1: RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 2, 3, 14, 15, 16, 18, and 19 of Part 1 of the Amended Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 4-13, 15A, 15B, 17, 20-23 of Part 1 of the Amended Notice of Civil Claim are denied.

3. The facts alleged in paragraph 1 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 – Defendant's Version of Facts

1. The University is a public research university located in Victoria, British Columbia.
2. The University is a public sector employer subject to the *Public Sector Employers' Act* ("PSEA").
3. Pursuant to the provisions of the PSEA, and particularly section 14.3, the University receives directions from the responsible Minister ("Minister") regarding compensation plans for employees who are excluded from membership in a bargaining unit ("Excluded Employees").
4. The Excluded Employees are employed by the University pursuant the terms of a contract of employment between the University and each of the Excluded Employees ("Contract").
5. In 2012 the Contract contained the following material terms:
 - a. The University reserves the right to make additions, deletions or changes to the terms of the Contract;
 - b. On an annual basis the job performance of each individual Excluded Employee will be assessed to determine whether they have achieved certain performance levels.
 - c. Excluded Employees who did not achieve their performance level will receive no increase in pay.

- d. Excluded Employees who partially achieve their performance level and are either in the developmental or competitive categories of employment will receive a discretionary increase of up to 3% and 2.5%, respectively.
 - e. Excluded Employees in the performance category who partially achieve their performance level will receive no increase in pay.
 - f. Excluded Employees who fully achieve their performance level and are either in the developmental and competitive categories will receive a 3% and 2.5% increase in pay, respectively.
 - g. Excluded Employees in the performance category who fully achieved their performance level will receive a discretionary increase of up to 2%.
 - h. Excluded Employees who exceed their performance level and who are in the developmental category are eligible for a discretionary increase of up to 5%; in the competitive category a 3% increase; and in the performance category a discretionary increase of up to 2.5%.
 - i. the adjustment date for any applicable salary increase was July 1 of the applicable year in which the review was conducted.
6. On or about September 17, 2012, the Minister directed all public sector employers, including the University, that compensation for all managers and executives in the public sector be frozen effective September 13. The freeze applied to any movement within existing compensation ranges on the basis of service, merit or other progression, or changes to existing ranges and to position reclassifications without substantive changes to responsibilities ("Ministerial Direction").
7. After receiving the Ministerial Direction the University, pursuant to its contractual right to make the changes to the Contract, gave notice to all Excluded Employees affected by the

Ministerial Direction ("Affected Employees") that the terms of their Contract would be changed.

8. Between November 15 and November 23, 2012 the University gave oral notice to all Affected Employees that their compensation would be frozen at the level in effect as of September 13, 2012 ("Oral Notice").
9. In addition to the Oral Notice, on December 12, 2012, the University provided written notice to all Affected Employees that their compensation would be frozen at the level in effect as of September 13, 2012 ("Written Notice").
10. Further, consistent with the Oral Notice and Written Notice the University provided a further written notice on June 27, 2013 to all Affected Employees confirming that no annual salary adjustment would be made and that their compensation was frozen at the level in effect as of September 13, 2012 ("Further Written Notice").
11. At all material times the University continued to communicate with all Affected Employees to advise them that their compensation would be frozen at the level in effect as of September 13, 2012 and that they would receive no increase in compensation.
12. All Excluded Employees who were impacted by the Ministerial Direction who were hired by the University into those positions after November 2012 had Contracts which contained the express term that they were not entitled to any compensation increases.
13. At no material time did any Excluded Employee object to the Oral Notice, the Written Notice or the Further Written Notice, with the exception of the Plaintiff Service.
14. The Oral Notice, the Written Notice, the Further Written Notice, or any of them, provided reasonable notice to each of the Affected Employees that the terms of their Contract were being changed and that they would receive no increases in compensation.

15. In the alternative, if reasonable notice of the change to the terms of the Contract was not given to one or more of the Affected Employees, which is not admitted but expressly denied, then those Affected Employees condoned the change, with the exception of the Plaintiff Service.
16. After November 2012 the University was able to obtain exemptions from the compensation freeze for certain Affected Employees, from time to time. Those employees then received compensation increases.
17. For those Affected Employees who did not receive compensation increases, the University provided additional payments and benefits from time to time.

Division 3 – Additional Facts

1. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant consents the granting of the relief sought in none of the paragraphs of Part 2 of the Amended Notice of Civil Claim.
2. The Defendant opposes the granting of the relief sought in all of the paragraphs of Part 2 of the Amended Notice of Civil Claim.
3. The Defendant takes no position on the granting of the relief sought in none of the paragraphs of Part 2 of the Amended Notice of Civil Claim.

Part 3: LEGAL BASIS

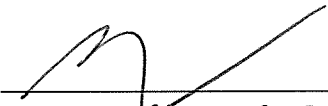
1. The University denies that it breached its Contract with any of its Excluded Employees as alleged in the Amended Notice of Civil Claim, or at all.

2. All Affected Employees were given reasonable notice that their Contract was being amended to remove the potential that their compensation might be increased.
3. In the alternative, if reasonable notice of the contractual change was not given to one or more of the Affected Employees, which is not admitted but expressly denied, then each of those employees, with the exception of the Plaintiff Service, condoned the change to the terms of their contract.
4. Excluded Employees hired after November 2012 were not contractually entitled to any increases in compensation.
5. In the further alternative, if there was a breach of any of the Contracts, as alleged in the Amended Notice of Civil Claim, which is not admitted but expressly denied, then damages caused by the breach were offset by additional payments and benefits of employment provided to those impacted employees, from time to time.

Defendant's address for service: Harris & Company LLP
Barristers and Solicitors
1400 - 550 Burrard Street
Vancouver, BC V6C 2B5
Attention: Rodney W. Sieg

Fax number address for service: N/A

Dated: 30 January 2020



Signature of lawyer for Defendant
Rodney W. Sieg

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.