

COURT FILE NUMBER 2201-10397
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF BRADLEY MILES
DEFENDANT CANADIAN NATURAL RESOURCES LIMITED
DOCUMENT **STATEMENT OF DEFENCE**

ADDRESS FOR SERVICE OSLER, HOSKIN & HARCOURT LLP
AND CONTACT 2700, 225 – 6th Avenue S.W.
INFORMATION OF THE Calgary, AB T2P 1N2
PARTY FILING THIS
DOCUMENT

Attention: Catherine Hamill / Heather Maxted
Telephone: 403-355-7452 / 403-260-7087
Facsimile: 403-260-7024
Email: chamill@osler.com / hmaxted@osler.com

File Ref.: 1233224



STATEMENT OF FACTS RELIED ON:

1. Except as expressly admitted herein, the Defendant, Canadian Natural Resources Limited, (“**Canadian Natural**”), denies each and every allegation in the Statement of Claim, except where expressly admitted in this Statement of Defence.
2. Canadian Natural is an oil and gas exploration and production company based in Calgary and operates various locations throughout Alberta and elsewhere in Canada.

The Plaintiff's Employment

3. Bradley Miles (the “**Plaintiff**”) commenced employment with Canadian Natural on January 13, 2021. The Plaintiff's most recent position with Canadian Natural was Apprentice 3, HET for Canadian Natural's Albion Oil Sands Project mine site near Fort McMurray, Alberta.
4. As a Canadian Natural employee, the Plaintiff was required to review and acknowledge several policies, including the Code of Integrity, Business Ethics and Conduct (the “**Code of Conduct**”). The Code of Conduct states that compliance with the Company's policies and procedures is a condition of employment, and that Canadian Natural may, from time

to time, adopt more detailed policies and procedures in areas covered or not covered by the Code of Conduct.

Canadian Natural's Vaccination Policy

5. Throughout the COVID-19 pandemic, Canadian Natural took proactive steps to ensure the health and safety of its workers, in accordance with the guidance of provincial and federal health authorities, and various legal mandates with which Canadian Natural was required to comply. Canadian Natural implemented rules and expectations associated with managing COVID-19 risks in the workplace, all with a view to minimizing risk to workers and operations. These rules were typically communicated to Canadian Natural employees and contractors by email, and included measures such as masking, working from home (where possible) and physical distancing.
6. Despite Canadian Natural's various COVID-19 protocols, Canadian Natural experienced a large number of outbreaks at its worksites, and an abundance of positive cases among its employees and contractors.
7. In Fall 2021, in response to rising COVID-19 case numbers reported in a number of jurisdictions in Canada and elsewhere and concerns in relation to the increased transmissibility of the Omicron variant of COVID-19, Canadian Natural reversed a previously communicated direction that remote work would end in early September, and instead advised staff that remote work would be reinstated. Canadian Natural then implemented a COVID-19 Policy which included its existing COVID-19 rules and restrictions, and added a mandatory vaccination requirement that applied to all employees, contractors, and site visitors (the "**Vaccination Policy**"). On September 23, 2021, Canadian Natural notified all Canadian-based employees and contractors that it would be implementing the Vaccination Policy, effective December 1, 2021 (the "**Notice**"). The Notice notified employees and contractors of the following details of the Vaccination Policy, among other things:
 - (a) effective December 1, 2021, all employees, contractor operators and individuals working under Professional Services Agreements (collectively referred to as "**Workers**") had to be fully immunized against COVID-19. "Fully immunized"

was defined as having two doses of a Health Canada approved vaccine, plus 14 days after the second dose;

- (b) the only exception would be for individuals who cannot be vaccinated based on verified medical or religious reasons; and
 - (c) Workers were encouraged to provide their proof of vaccination record as soon as possible, and no later than December 1, 2021.
8. A copy of the Vaccination Policy was also provided to the Workers, including the Plaintiff. The Vaccination Policy provided that those individuals who chose not to comply would face progressive disciplinary measures, up to and including termination.

The Plaintiff's Non-Compliance with the Vaccination Policy

9. On October 22, 2021, Canadian Natural sent the Plaintiff a reminder regarding the Vaccination Policy, as the Plaintiff had not yet submitted any record of COVID-19 immunization. The Plaintiff was reminded that he was required to be fully immunized against COVID-19 by December 1, 2021, and that to do so, the last day to receive a second dose would be November 17, 2021.
10. The Plaintiff submitted an exemption request based on personal beliefs. Because the only exceptions to the Vaccination Policy were for individuals who qualified through verified medical or religious reasons, the Plaintiff's request was denied by Canadian Natural on October 23, 2021.
11. On November 23, 2021, Canadian Natural sent the Plaintiff another reminder letter regarding the Vaccination Policy, as the Plaintiff had not yet submitted any record of COVID-19 immunization.
12. On December 2, 2021, Canadian Natural sent the Plaintiff a letter warning him that he was non-compliant with the Vaccination Policy and that, effective December 1, 2021, his site access was suspended with pay. The Plaintiff was warned that if he failed to provide proof that he had received a second dose of an approved COVID-19 vaccine by December 21, 2021, he would continue to be non-compliant with the Vaccination Policy and would be suspended without pay.

13. On December 22, 2021, the Plaintiff was suspended without pay due to his continued non-compliance with the Vaccination Policy.
14. On or around March 15, 2022, in response to the reduced number of COVID-19 cases in Alberta, and the Alberta government's easing or removing public health protocols in respect of COVID-19, Canadian Natural sent a letter to employees on unpaid suspension for non-compliance with the Vaccination Policy, including the Plaintiff, advising that Canadian Natural was ending certain COVID-19 measures effective April 4, 2022, including the requirement that Workers be fully vaccinated. The Plaintiff was notified that his unpaid suspension would end effective April 4, 2022, and that he was required to return to his work location and role at Canadian Natural on that date.
15. In that letter, Canadian Natural asked employees to indicate whether they intended to return to work at Canadian Natural. Canadian Natural did not receive a response from the Plaintiff regarding his intention, or lack thereof, to return to work. Rather than return to work, the Plaintiff commenced his claim against Canadian Natural.
16. As of April 4, 2022, employees previously suspended without pay for non-compliance with the Vaccination Policy were returned to work by Canadian Natural to their same position.

MATTERS THAT DEFEAT THE PLAINTIFF'S CLAIMS

The Vaccination Policy was Reasonable

17. Canadian Natural's Vaccination Policy was reasonable in the circumstances of the global COVID-19 pandemic.
18. Canadian Natural followed government and public health guidance in establishing the Vaccination Policy. Canadian Natural denies that it made false or erroneous statements in its Vaccination Policy or related communications regarding the safety and efficacy of vaccines, which came directly from government and public health guidance.
19. The Plaintiff's assertions of the unsafety of COVID-19 vaccines are not supported by government or public health guidance, but rather, are baseless conspiracy theories that purport to undermine the authority and expertise of scientists, doctors, and public health authorities.

20. Moreover, the Plaintiff's allegations at paragraphs 44-45 of the Statement of Claim are baseless, absurd and inflammatory. Canadian Natural wholly and vehemently denies these allegations.
21. Canadian Natural denies there is any basis for the Court to issue a declaration that the Vaccination Policy in its entirety or any one provision is inoperative or unconstitutional.

No Wrongful Dismissal

22. Canadian Natural did not make any unilateral and material changes to the terms of the Plaintiff's employment. It was always an express and implied term of the Plaintiff's employment that he would comply with all of Canadian Natural's policies. The Plaintiff also had a duty pursuant to occupational health and safety legislation to take all reasonable steps to ensure the health and safety of his co-workers, including by complying with all of Canadian Natural's workplace health and safety policies. Accordingly, Canadian Natural did not terminate the Plaintiff's employment, constructively or otherwise.
23. Canadian Natural denies the allegation that it terminated the Plaintiff's employment on December 21, 2021.

Claimed Damages are Excessive

24. As the Plaintiff's employment was not terminated by Canadian Natural, he is not entitled to any damages or other amounts from Canadian Natural in respect of an alleged repudiation or breach of contract, as alleged or at all, including notice or pay in lieu of notice.
25. In the alternative, if the Plaintiff was constructively or wrongfully dismissed, which is denied, the Plaintiff's claimed reasonable notice period is excessive, as are his claimed damages over his alleged notice period.
26. Canadian Natural treated the Plaintiff appropriately at all times throughout the course of his employment. Canadian Natural denies that the Plaintiff is entitled to aggravated, punitive or any other damages in respect of any purported breach of a duty of good faith that Canadian Natural may owe the Plaintiff.

The Plaintiff has Failed to Mitigate his Alleged Damages

27. In the further alternative, if the Plaintiff was constructively or wrongfully dismissed, and has any damages as a result, both of which are denied, those damages are entirely a result of the Plaintiff failing in his duty to mitigate.
28. The Plaintiff has a duty to take all reasonable steps to mitigate his damages. The Plaintiff was told that Canadian Natural wished to continue his employment on his existing terms and conditions, subject to compliance with the Vaccination Policy. Canadian Natural submits that following the recommendation of public health officials by taking a safe and effective vaccine is an objectively reasonable step that the Plaintiff could and should have taken to bring himself into compliance with the Vaccination Policy, thus avoiding any of the alleged damages.
29. The Plaintiff's failure to accept Canadian Natural's offers of continued employment subject to compliance with the Vaccination Policy amounts to a failure to mitigate at common law, and/or a failure to accept reasonable alternative employment.
30. Further, Canadian Natural proposed to the Plaintiff to bring him back to his same role on April 4, 2022. The Plaintiff failed to accept that offer, which also amounts to a failure to mitigate at common law and/or a failure to accept reasonable alternative employment. Accordingly, if the Plaintiff has incurred any damages (which is expressly denied) those damages are limited to the period from December 22, 2021 until April 4, 2022, on which date the Plaintiff could have returned to work and fully mitigated any further damages.
31. In the further alternative, if the Plaintiff's employment was constructively or wrongfully dismissed, which is denied, his duty to mitigate also included making reasonable efforts to find new employment or consulting work after his employment with Canadian Natural ended. To the extent that the Plaintiff has any damages, those damages are entirely or in part a result of the Plaintiff failing in his duty to mitigate.

REMEDIES SOUGHT

32. Canadian Natural asks that the Plaintiff's Statement of Claim and each and every cause of action contained therein be dismissed, with solicitor-client costs to Canadian Natural.