

2016 CarswellNat 6708  
Canada Adjudication (Canada Labour Code Part III)

Parker and Trans North Turbo Air Ltd., Re

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**An adjudication under Division XIV - Part III of the  
Canada Labour Code (R.S.C. 1985 c. L-2, as amended)**

Dion Shane Parker (the Employee) and Trans North Turbo Air Ltd. ("Trans North") (the Employer)

C.L. Roberts Member

Heard: November 7, 2016  
Judgment: December 14, 2016  
Docket: YM2707-10561

Counsel: Employee, for himself  
Clint Walker, Arden Meyer, for Employer

Subject: Employment; Public

**Headnote**

**Labour and employment law**

*C.L. Roberts Member:*

**INTRODUCTION**

1 On August 3, 2016, I was appointed by the Minister of Labour to hear this complaint of unjust dismissal brought by Dion Parker, pursuant to s. 240 of the *Canada Labour Code* (the "*Code*").

2 Trans North Tubo Air Ltd. ("Trans North") provides helicopter charter services through the Yukon and Northwestern Canada. Mr. Parker began working as a helicopter pilot for Trans North on April 15, 2010. On September 11, 2015, Mr. Parker filed a complaint under Part III of the *Code* alleging that he had been constructively dismissed.

3 Mr. Parker represented himself at the hearing. Trans North was represented by its Operations Manager, Clint Walker, and its General Manager, Arden Meyer. I also heard evidence from Stephen Soubliere, Trans North's Chief Pilot, and Diane Pachiorcka, who is responsible for Trans North's accounting and payroll.

**FACTS AND EVIDENCE**

***Background***

4 Born in New Zealand, Mr. Parker immigrated to Canada in 2008 and is a dual citizen. He is a helicopter instructor/training pilot as well as a mountain pilot.

5 Headquartered in Whitehorse, Trans North has six bases throughout the Yukon. Of those six, three operate year round: Haines Junction, Carmacks and Dawson City. Trans North employs full-time Base Managers at those locations. In addition to their flying responsibilities, Base Managers are responsible for scheduling and assigning pilot duties;

liaising with the base engineer on maintenance matters; as well as administrative matters such as invoicing, accounts payable and marketing. They receive an additional \$500 per month for these responsibilities. Base Managers are provided with a vehicle and fuel card, company housing, and a phone for company use. They typically return to the base each night and are not away from home for extended periods of time.

6 In excess of 70% of Trans North's flying from each base takes place between April and September with little work occurring between October and April. During the months of October to April, Base Managers perform occasional rescue work, arrange contracts for the busy season and respond to any customer inquiries that may arise during that time.

7 Trans North also employs a number of other pilots including line/pool pilots and contract pilots. Line pilots work out of Whitehorse according to Trans North's needs. Trans North's chief pilot and operations manager co-ordinate the work of the line pilots. Line pilots often work away from home for several weeks at a time and have no control over the work they do. Contract pilots are typically employed seasonally. They reside outside of the Yukon and travel to Whitehorse for employment on an approximately three week on, one week off schedule.

8 Trans North does not have a formal contract of employment; rather, the terms of employment are set out in "Payroll Memos."

9 Mr. Parker was hired by Trans North in April 2010 as the Base Manager for Dawson City, a position he held for approximately one year. In 2012, Mr. Parker worked for a period of time as the Base Manager in Carmacks. In October 2012, Mr. Parker informed Trans North that he and his wife had purchased a home in Mendenhall, which is located between Whitehorse and Haines Junction, as they did not like Carmacks. Despite Trans North's characterization of Mr. Parker's move as his "abandonment" of that position, it offered Mr. Parker a line pilot position out of Whitehorse.

10 An October 29, 2012 Payroll Memo noted that Mr. Parker sought leave to work for an out-of-province flight training company in order to maintain his instructor rating. Trans North approved the leave request on the understanding that Mr. Parker would be returning to full-time employment as Whitehorse Pool Pilot, the same position he was vacating, following the leave.

11 A December 3, 2012, Payroll Memo indicated that as of December 1, 2012, Mr. Parker had returned as a full-time Line Pilot, and that he would be utilized by Trans North on a when and where needed basis.

12 In April 2013, Mr. Parker was offered the position of Base Manager at Haines Junction for the summer season. Mr. Parker said that he accepted the position because he did not want the stress associated with being away from his family for long periods of time. Because Mr. Parker was paying a mortgage on his Mendenhall home, Mr. Soubriere agreed that Mr. Parker would not have to pay any costs associated with the Base Manager's residence.

13 In the fall of 2013, Mr. Parker informed Trans North that he wanted to rent out his house in Mendenhall and move to Haines Junction on a full time basis.

14 An October 16, 2013 Payroll Memo indicated that Mr. Parker would assume the position of Base Manager/ Pilot for the Haines Junction base on a full-time basis:

*As with all fulltime pilot staff, Dion may still be utilized by Trans North Helicopters on a when and where needed basis. ... While employed as the Haines Junction base manager, Dion Parker will be provided rent free accommodation for himself and his family at the base (house on base property) for their exclusive use. Dion's contribution to the utility costs of the house will be in accordance with Trans North Helicopter's standardized company base manager contribution policy 2012. This currently set at \$600.00 per month (subject to annual review and revision) and will be deducted from the employee's payroll as a monthly PRD.*

15 Mr. Parker did not sign this memo because he believed that he was promised free accommodation, including rent and utilities. Mr. Soubriere testified that although he agreed Mr. Parker would not initially have to pay rent, once it

became clear that Mr. Parker would be staying as the Base Manager on a full-time basis, he had an obligation to cover some of the costs.

16 One week after moving to Haines Junction, Mr. Parker requested a three-month leave to visit family in New Zealand. Although Mr. Parker was initially told that the leave was not in Trans North's interests, his leave was ultimately granted because Mr. Parker informed Trans North that the visit was to enable his family to reconnect with their New Zealand relatives, whom they had not seen for several years. Mr. Walker stated that, despite the cost and inconvenience to Trans North, Trans North believed that family came first. Mr. Parker was granted a two-month leave on the condition that he return in mid-January.

17 Shortly after Mr. Parker left the Yukon, it came to Trans North's attention that Mr. Parker was working for a New Zealand based company out of Asia. When asked to confirm that information, Mr. Parker admitted that he had accepted the work out of New Zealand and stated that it would not affect his return date to Trans North. In an email dated December 5, 2013, Mr. Walker indicated that incurring additional transportation, time, logistical and accommodation costs to accommodate Mr. Parker only to find out he was working for another company was disappointing, particularly since the only discussion they had about Mr. Parker taking on other flying work was in order to assist Mr. Parker's father's flight school.

18 Mr. Parker agreed that he had not been forthright with Trans North. He said that he did not inform Trans North of his plans because it did not affect his vacation period and did not affect Trans North's business in any way. Mr. Parker contends that after returning from his vacation Mr. Walker accused him of dishonesty and a "dereliction of duty" and that this event marked a change in their relationship. Trans North indicated that, had Mr. Parker been honest about his leave request, it would not have been granted. Despite Mr. Parker's lack of honesty, Trans North honoured its agreement to bring Mr. Parker back as the Haines Junction Base Manager.

19 In 2014, Mr. Parker was again offered work with a New Zealand based company in Antarctica but his request for time off was denied and he remained in Haines Junction.

20 Mr. Parker said that, due to the lack of winter work and the remoteness of the Haines Junction base, he routinely requested that he work only in the summer on a contract basis, and that Trans North denied these requests. Mr. Walker and Mr. Meyer both stated that Trans North has operated Haines Junction as a year round base for over 30 years and intends to continue to do so. Mr. Parker acknowledged that there was no precedent for the Haines Junction Base Manager to work on contract.

21 Mr. Meyer testified that in the summer of 2015, Mr. Parker proposed a plan whereby he would take an extended leave in New Zealand during the winter months, and return to Trans North to work as a seasonal pilot out of Haines Junction during the summer. Mr. Meyer re-iterated to Mr. Parker that the plan was not acceptable to Trans North as that it was not the way it wanted to run the Haines Junction base. Mr. Meyer's evidence was that he told Mr. Parker that when he left for New Zealand, he would be replaced as the Base Manager. Mr. Meyer also testified that Mr. Parker's proposal was not made as a request but a plan he intended to follow through with.

22 In August 2015, Mr. Parker was offered another position with the same New Zealand based company he had previously worked for to fly out of Antarctica. He informed the company that he believed that he would be able to accept but that he would have to confirm the arrangement with Trans North.

23 Mr. Parker informed Mr. Soubliere of the offer, and said that Mr. Soubliere's response was positive and encouraging.

24 Mr. Soubliere testified that although he discussed Mr. Parker's plans with him, he did not get Mr. Parker's commitment that he would be returning as Base Manager. As the Chief Pilot, Mr. Soubliere was responsible for finding and training a replacement base pilot out of Haines Junction, which he believed he was obliged to do based on Mr. Parker's indication that he would be leaving the Haines Junction base permanently.

25 On September 8, 2015, Mr. Soubliere informed Mr. Walker that Mr. Parker was going to New Zealand for the winter.

26 That day, Mr. Walker e-mailed Mr. Parker as follows:

*Dion,*

*Stephen has advised me that you were looking to go overseas for a few months this winter on an unpaid leave of absence, beginning sometime in November. That will be granted.*

*Prior to your leave, I request that the base house be left empty of your personal property and effects, cleaned and readily available for other staff members to use as of 30<sup>th</sup> November 2015, at the latest. If it helps, you may leave some personal items in the cold side of the hangar during your absence, provided you agree that it will be at your own risk and the company will assume no liability for the safe keeping of those items.*

*It is still undecided at this time if we will winterize the base this 2015/2016 winter, or install another base pilot into that base, once you have departed.*

*Please advise us, as soon as possible, when you expect to return in the spring and whether you will be looking for seasonal contract work or a fulltime pool pilot position, so that we may plan our 2016 aircrew roster accordingly.*

27 Mr. Parker responded as follows:

*I do not understand why all of my personal property needs to be emptied from the house? I can understand maybe a room or two and the bathroom and kitchen but everything? I can show you from last years bookings that there is no need to put another pilot here. My time off has put that into account...*

*I plan to be back late February, March 1<sup>st</sup> at the latest...*

*As discussed in previous years it has always been my desire to run this base as a contractor so if Trans North are open to that then I will certainly make arrangements to begin doing that next year.*

*I would never want to be a full time pool pilot for Trans North so you can scratch that idea.*

28 Mr. Walker's response was as follows:

*All of your personal effects need to be removed from the house so that we can move another pilot/family in there, if we choose to do that at any point. That is necessary and not negotiable. In the interest of helping you out with storage space, I have suggested and agreed that you can keep some stuff in the unheated portion of the hangar for the time being, as I am confident enough that we will not need this space prior to your return in the spring.*

*As discussed with you in previous years, Trans North has maintained that we wish to run the Haines junction base as a fulltime base. At this time, we do not intend to fulfill the role of Haines junction base manager with a contract pilot. Please realize that there are other factors to consider that you may not be aware of, when management makes logistical decisions on behalf of the Company.*

*From your very clear comment below, I understand that you do not wish to be considered for a fulltime pool pilot position. Therefore, please keep Stephen posted with your availability for next season and we will consider you for one of the contract pilot positions. This will mean being utilized by Trans North on an as-needed and where required basis, the same as all of our other contract pilots.*

29 Mr. Parker's reply, also dated September 8, 2015 was as follows:

*Clint, you seem to think I am relinquishing my role as base manager here. I am not.*

30 Mr. Walker then attempted to set up a meeting with Mr. Parker to discuss his intentions but was unable to reach him for several days. On September 11, 2015, Mr. Parker sought a clarification of his employment status with Mr. Walker. Mr. Walker's response was, in part, as follows:

...

*As far as your employment status right now (sic) I am not sure what your uncertainty is in that regard? Your employment status is as per your current payroll memo, attached here. It is the same memo that I emailed to you this morning immediately following your request.*

*From the Company's perspective, we consider you to be the Haines junction Base Manager/Pilot and would like you to continue working as the Haines junction Base Manager/Pilot until 30<sup>th</sup> November 2015.*

*Effective 01 December 2015, the Company will not be utilizing you in the capacity of Haines junction Base Manager/Pilot, rather, we would like to continue utilizing you in the capacity of a fulltime line pilot, from the Whitehorse Base.*

*As you previously indicated to me in an email, dated 08 September 2015, if line pilot work is not of interest to you, based on your previous requests, we would also consider you for contract pilot work during the 2016 season. As is the case with all contract pilots, the location of the contact flying work would be at the discretion of the Company. At this time, we do not intend to position a contract pilot at the Haines junction Base.*

*Dion, we value your contribution to Trans North Helicopters and our customers as a pilot and we feel that you would be better utilized in a line pilot or contract pilot position.*

31 Mr. Parker and Mr. Walker met on September 14, 2015 at which time Mr. Parker again asked to work as a contract pilot out of Haines Junction. Mr. Walker denied his request.

32 Mr. Parker asserted that, when asked for an explanation as to why he was being reassigned to a line pilot position, Mr. Walker pointed to the employment contract and stated that Trans North could utilize its employees in an as and when needed basis. Mr. Parker agreed that Trans North could and had done that, but only on a temporary basis.

33 Mr. Parker also asserted that Mr. Walker informed him that the Base Manager duties were being removed from him because he was unable to handle the stress of those additional responsibilities.

34 On September 17, 2015, Mr. Parker informed Ms. Pachiorka that he was leaving Haines Junction and asked her about getting an advance.

35 On October 16, 2015, Mr. Meyer offered Mr. Parker heated storage for six months at no cost. Mr. Parker accepted that offer, and utilized it until at least February 2016.

36 On October 20, 2015, Mr. Walker emailed Mr. Parker as follows:

*Stephen updated me on your departure date of the 15<sup>th</sup> of November, perhaps earlier to get licencing all in order.*

*As soon as you know a firm date that you are departing, can you please let Stephen or I know? In addition, we also need to know what your plans for next season. (sic)*

*What date are you planning to come back to Trans North and do you plan to return as a fulltime pilot, or as a contract pilot for the 2016 season? Once we know this information, we will be able to better plan our 2016 training season and roster.*

37 Although Mr. Parker did not respond to the email, he verbally informed Mr. Soubliere that he would be returning on March 15, 2016.

38 On November 12, 2015, Mr. Parker emailed Ms. Pachiorka to thank her for his second vacation installment and advised that he was expecting to return in March.

39 Although Mr. Parker's last day of work was November 13, 2015, his salary was paid until November 30, 2015.

40 On November 13, 2015, Ms. Pachiorka informed Mr. Parker that his life insurance benefits were paid to November 30, 2015 and asked him if he wanted them continued until March 31, 2016. She indicated that, given that he was on leave of absence from Trans North as of November 15, 2015, he was responsible for payment of the full premium amount after that time. Mr. Parker instructed Ms. Pachiorka to cancel the payment, indicating that he thought he was covered for 60 days while he was on vacation. Ms. Pachiorka indicated that, because Mr. Parker asked that the vacation and accrued time to be paid to him, he was considered on leave and therefore personally responsible for the premiums.

41 On November 20, 2015, Mr. Walker emailed Mr. Parker with a question regarding a fuel cache. Mr. Parker responded without expressing any concerns about his employment status.

42 On December 9, 2015, Mr. Parker inquired into the deductions from his November pay. Ms. Pachiorka informed him that the deductions were for tax and insurance, as well as gas and utilities.

43 Mr. Parker also received a Christmas bonus and a travel bonus, both of which were paid annually to all full-time employees.

## **ARGUMENT**

44 Mr. Parker argued that he had been constructively dismissed, as Trans North had unilaterally changed the location of his work site, altered his pay structure and removed his managerial responsibilities.

45 Mr. Parker also made a number of allegations about Mr. Walker, both personal and professional. At the hearing, Mr. Meyer indicated that Mr. Walker had the confidence of Trans North. I have not addressed any of the allegations made by Mr. Parker. Not only do they lack an evidentiary basis, they are irrelevant to the issues I am to decide. I do accept, however, that the working relationship between Mr. Parker and Mr. Walker had become strained towards the end of the employment relationship.

46 Trans North contends that Mr. Parker was not dismissed. It says that it believed Mr. Parker would be returning to work with Trans North on March 15, 2016. The first information Trans North had that Mr. Parker would not be returning was on receipt of his Canada Labour Code complaint on November 13, 2015.

47 Trans North says that it asked Mr. Parker to clean his possessions out of the Haines Junction house not because it had terminated his employment but because they needed accommodation for the replacement Base Manager. Trans North argued that it had the ability to use its pilots on an as and where needed basis, and that, in any event, Mr. Parker constantly requested seasonal or contract work.

48 Trans North argues that if Mr. Parker was constructively dismissed, he was given proper working notice.

49 Finally, Trans North also contends that it had cause to terminate Mr. Parker's employment based on evidence it discovered when preparing for the complaint hearing that demonstrated he was in breach of his duties of good faith to Trans North by actively soliciting Trans North customers to a new company.

## **ISSUES**

50 The issues before me are as follows:

- a. *Was Mr. Parker constructively dismissed?*
- b. *If so, did Mr. Parker elect to accept the dismissal or resist it?*
- c. *If Mr. Parker was dismissed, did he receive appropriate notice/compensation?*

## FINDINGS AND ANALYSIS

51 I found all the parties to be credible and reliable. Furthermore, the evidence was largely undisputed, although the parties differed in their interpretation of that evidence.

52 Section 240 (2.1) of the *Code* defines dismissal to include constructive dismissal. (see also *McCorrister v. Interlake Reserves Tribal Council Inc.* [2015] C.L.A.D. No. 145) and *Palmer v. Canadian National Railway Co.* [2001 C.L.A.D. No. 85])

53 The leading cases on constructive dismissal are *Farber v. Royal Trust Ltd.* ([1997] 1 S.C.R. 846) and *Potter v. New Brunswick Legal Aid Services Commission* ([2015] 1. S.C.R. 500).

54 In *Farber*, the Court held that:

Where an employer decides unilaterally to make substantial changes to the essential terms of the employee's contract of employment and the employee does not agree to the changes and leaves his or her job, the employee has not resigned, but has been dismissed. Since the employer has not formally dismissed the employee, this is referred to as "constructive dismissal." By unilaterally seeking to make substantial changes to the essential terms of the employment contract, the employer is ceasing to meet its obligations and is therefore terminating the contract.

The employee can then treat the contract as resiliated for breach and can leave. In such circumstances, the employee is entitled to compensation in lieu of notice and, where appropriate, damages.

On the other hand, an employer can make any changes to an employee's position that are allowed by the contract, *inter alia* as part of the employer's managerial authority. Such changes to the employee's position will not be changes to the employment contract, but rather applications thereof...

55 In essence, the test is to determine whether the employer's act evinced an intention no longer to be bound by the contract.

56 In *Potter*, the Court held that:

Given that employment contracts are dynamic in comparison with commercial contracts, courts have properly taken a flexible approach in determining whether the employer's conduct evinced an intention no longer to be bound by the contract. There are two branches of the test that have emerged. ...the court must first identify an express or implied contract term that has been breached, and then determine whether that breach was sufficiently serious to constitute constructive dismissal...Typically, the breach in question involves changes to the employee's compensation, work assignments or place of work that are both unilateral and substantial...

However, an employer's conduct will also constitute constructive dismissal if it more generally shows that the employer intended not be bound by the contract... This approach is necessarily retrospective, as it requires consideration of the cumulative effects of past acts by the employer and determination of whether those acts evinced an intention no longer to be bound by the contract.

The first branch of the test for constructive dismissal, the one that requires a review of specific terms of the contract, has two steps: first, the employer's unilateral change must be found to constitute a breach of the employment contract

and, second, if it does constitute such a breach, it must be found to substantially alter an essential term of the contract. [paras. 32-34]

***Did Trans North alter a fundamental condition of Mr. Parker's employment?***

57 The terms of Mr. Parker's employment are set out in the Payroll Memos that set out his position, salary, allowances, vacation and benefits. In his three years of employment with Trans North, Mr. Parker worked out of Carmacks, Whitehorse and Haines Junction, and as a full time Line Pilot, a Training Pilot and as a Base Manager. The changes to the location and conditions were largely driven by Mr. Parker and accommodated by Trans North.

58 Although Mr. Parker's job in November 2015 was that of Base Manager/Pilot for the Haines Junction Base, his employment was, at all times, subject to the needs of Trans North: "as with all fulltime pilot staff, Dion may still be utilized by Trans North Helicopters on a when and where needed basis. This will include being utilized on any of Trans North's operations throughout Yukon or elsewhere".

59 There is no dispute that Trans North unilaterally removed Mr. Parker from the position of Base Manager at Haines Junction. However, in my view, that unilateral change was not fundamental given the nature of Mr. Parker's employment history as well as the terms of the employment contract. Trans North did not change Mr. Parker's main job, which was that of a pilot. It also did not alter Mr. Parker's base salary, flight pay, vacation, or employee benefits. In other words, Mr. Parker was not demoted, nor did he suffer a substantial loss of status or prestige.

60 Although Mr. Parker received a \$500 differential for his base manager duties, that differential was more than offset by the \$600 contribution he was required to pay towards utility costs. In other words, Mr. Parker did not suffer a loss of income.

61 Furthermore, although Trans North changed the "base" from which Mr. Parker was to be working from Haines Junction to Whitehorse, in my view, given the terms of his employment contract, the fact that Mr. Parker owned a house near Whitehorse and had worked out of Whitehorse as a line pilot in previous years, and Mr. Parker's disaffection with his housing situation in Haines Junction, I do not find the change to be either substantial or detrimental to Mr. Parker. He was granted leave, and was returned to a full time pilot position upon his return from that leave.

62 Although Mr. Parker testified that the Base Manager position afforded him stability and enabled him to spend more time with his family, it was clear that he desired a contract pilot position, having made many requests to create one from the Haines Junction base despite being told that was not in Trans North's plans. It is difficult to appreciate Mr. Parker's argument that he was constructively dismissed when Trans North, in effect, gave him, in essence, what he had repeatedly asked for.

63 It is clear that Trans North had no intention of ending or repudiating its employment relationship with Mr. Parker. Indeed, in the September 8, 2015 email, Trans North informed Mr. Parker that, upon his return from a three-month leave, he would be working as full-time line pilot. Furthermore, in the September 11, 2015 email, Mr. Walker states ... we value your contribution to Trans North Helicopters and our customers." Trans North also provided Mr. Parker with free storage of his personal possessions, fully expecting Mr. Parker to return to full-time work in March 2016.

***Did Mr. Parker acquiesce to the changes?***

64 Even if I am incorrect in concluding that Mr. Parker was not constructively dismissed, I find that he acquiesced to the change to his base of operations.

65 Having been notified of Trans North's intention to change a condition of his employment, Mr. Parker did not quit nor did he inform Trans North that he considered its conduct to constitute a repudiation of his employment contract. Although Mr. Parker indicated in his September 8, 2015 email that he was not relinquishing his position as Base Manager, he did not respond to Mr. Walker's September 11, 2015 email clarifying his employment status. There is also no evidence

that he objected to the change in the September 14, 2015 meeting, proposing, instead, to work as a contract pilot. Mr. Parker continued to work for Trans North until November 13, 2015 without expressing any objections to Trans North's proposed change.

66 On October 16, 2015, Mr. Parker accepted Mr. Meyer's offer of six months of heated storage for his possessions until February 2016. Mr. Parker informed both Mr. Soubliere and Ms. Pachiorka that he would be returning to work March 15, 2016. In his November 13, 2015 email to Ms. Pachiorka, Mr. Parker referred to life insurance premiums being paid while on 'vacation.' He responded to emails regarding company issues while away. In short, apart from the brief statement on September 8 that he would not be relinquishing his position as Base Manager, Mr. Parker gave Trans North no indication he would not be returning to work, either at all or in the capacity of line pilot or contract pilot.

67 Even though Mr. Parker ultimately filed a complaint under the *Canada Labour Code* alleging constructive dismissal, that complaint was not filed until October 16, 2015, one month after he was notified of the change, and that complaint was not communicated to Trans North until November 13, 2015.

68 In my view, Mr. Parker's failure to promptly respond to Trans North's notice, even if it did constitute constructive dismissal, constitutes acquiescence to the proposed changes. By not resigning, Mr. Parker indicated his acceptance of new conditions of employment. (see, for example, *Swanwick v. Desautels* ([1999] M.J. No 540) the Court held that if the employee elects to continue in the employment, she or he may be held to have accepted or condoned the change).

69 In light of my conclusions above, I have not found it necessary to address Trans North's arguments that, if Mr. Parker was constructively dismissed, he received appropriate compensation, or that it had grounds to terminate his employment for cause based on after-acquired evidence.

## DECISION

70 I find that Mr. Parker has not established that he was constructively dismissed. However, even if Trans North unilaterally altered a fundamental condition of Mr. Parker's employment, I find that Mr. Parker accepted those altered terms.

71 I dismiss Mr. Parker's complaint.