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Serious breaches of the duty of loyalty by a human resources employee – Dismissal upheld by the C.R.T.

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The Commission des relations du travail, both in its initial decision and on review, dismissed the complaints challenging the dismissal of an employee despite the absence of prior disciplinary measures.

The complainant, who was hired in April 2011, held a position as an administration technician for the Human Resources Department of a CHSLD. In 2004, the complainant sought a position as staff management officer. This position was not offered to her the first time it became vacant due to the fact that she did not possess the necessary qualifications. After obtaining her Master's Degree in 2007, the complainant resumed her attempts to secure the position she sought. However, since the vacancy had already filled, her reclassification request was once again denied.

This refusal resulted in the complainant taking a series of actions and behaving in a way that created an unhealthy work environment in the Human Resources Department. The complainant said that she felt that she was being unnecessarily monitored by her superior while the latter took the position that she had only taken action in response to complaints made by the complainant's colleagues that she was engaging in improper behaviour. The investigation culminated in the employee being dismissed. The complainant went on to file a complaint under section 124 of the *Act respecting Labour Standards* (hereinafter the "**ARLS**").

In the meantime however, the complainant had begun to record conversations she was having with her superiors. The employer was only made aware of these recordings at the hearing before the Commission des relations du travail (hereinafter, the "**CRT**"). The complainant had also filed a complaint under the ARLS against one of her colleagues for psychological harassment. However, this complaint was withdrawn before making it to a hearing.

The CRT dismissed the complaint contesting the termination, particularly for the following reasons:

> The clandestine recordings made by the complainant without a valid reason broke the trust between her and her employer and constituted a serious breach of her duty of loyalty.
> The psychological harassment complaint was unfounded and by falsely accusing her managers of such behaviour, the complainant had also committed a serious breach of her duty of loyalty.

Dissatisfied with this decision, the complainant filed for review with the administrative review division of the CRT.

THE DECISION BY THE CRT ON ADMINISTRATIVE REVIEW

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On administrative review, the CRT confirmed that the complainant's decision to file a psychological harassment complaint against her colleagues that she knew was unfounded constituted a serious breach of her duty of loyalty. This was a clear case of the abusive exercise of the right to file a complaint. The CRT dismissed the complainant's submissions to the effect that her complaint had to be founded given that the Commission des normes du travail had reviewed it and accepted to transfer it to the CRT for hearing, on the grounds that nothing could be inferred from that simple fact.

Furthermore, the CRT also agreed with the initial panel with respect to the legal qualification of the complainant's actions when recording several conversations she had with her superiors. Even if the employer had not taken this fact into consideration when dismissing the complainant given that it was unaware of the very existence of these recordings until the initial hearing, the CRT was of the view that this constituted evidence of facts which occurred subsequent to the dismissal and which was admissible in the case under review.

In fact, this evidence confirmed that the employer's conclusions that the complainant's bad faith and disloyalty constituted a basis for her dismissal were justified and it was not unreasonable for the tribunal to take such evidence into account. By acting in such a way, without a valid reason and for the sole purpose of supporting her harassment allegations after the fact, the complainant broke the trust which is necessary in any employment relationship. This again constituted a serious breach of her duty of loyalty.

Finally, the CRT confirmed the reasoning of the initial panel with respect to its conclusion that the principle of progressive discipline did not apply in this situation. It noted that this principle cannot apply in the case of a serious fault, such as a breach of the duty of loyalty, or in the case of irreversible conduct on the part of an employee. Holding that the complainant's behaviour met both these criteria, her employer was justified in dismissing her despite an unblemished disciplinary record.

This decision is currently the subject of judicial review proceedings before the Superior Court.

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