The award of moral damages following a collective dismissal

July 25, 2017

A recent Superior Court decision in *Peintures Industrielles Évotech*[1] ruled that the grievance arbitrator had acted within his jurisdiction in awarding moral damages to employees dismissed abruptly when the Company moved its operations to Ontario.

Context of the Évotech case

Évotech, which manufactures, distributes and sells industrial paint, was negotiating the renewal of a collective agreement that had expired several months before.

When the lease of one of its two premises located in Québec was about to expire, Évotech moved its inventory and equipment to Cornwall in the neighbouring province of Ontario. The move made perfect sense for Évotech. Its Québec facilities had fallen into disrepair and had become unsafe. In addition, the relocation to Cornwall allowed the Company to benefit from significant subsidies.

The plant director thus summoned all the employees to the cafeteria to announce the closure of the plant. Employees were told that they would receive a compensatory payment in lieu of notice equal to eight weeks of work in addition to the termination pay provided by the collective agreement. Several security guards were present when the director read a brief statement confirming the immediate dismissal and notifying the employees that they had to make an appointment to collect their belongings. According to the evidence, the employees were in shock.

The union filed two grievances to contest the employer's decision, alleging that the move resulted in giving work to persons excluded from the bargaining certificate, contrary to the provisions of the collective agreement.

Seized with the grievances, arbitrator Charles Turmel concluded in his award that the move of operations and the collective dismissal contravened the clause of the collective agreement limiting the right to allocate work[2]. The arbitrator ordered the employer to pay to each dismissed employee $1,000 as moral damages, in addition to the equivalent of three weeks of salary per year of service. It is to be noted that these amounts were in addition to the 8 week indemnity for collective dismissal and the supplemental indemnity under the collective agreement.

According to the arbitrator, awarding moral damages to the employees was justified by the [TRANSLATION] "suddenness of their dismissal"[3].

Furthermore, the arbitrator ordered Évotech to pay to the union $10,000 in damages for having failed to negotiate in good faith the renewal of the collective agreement, thus blaming the company

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for having undertaken the negotiations for the renewal of the collective agreement while planning the move of its operations.

The decision in judicial review

On April 10 on this year, the Superior Court allowed in part the application for judicial review and modified some of the conclusions of the arbitration award, which it deemed to be unreasonable.

Madam Justice Chantal Tremblay confirmed that the arbitrator's conclusion that the cessation of the employer's operations in Québec constituted a relocation rather than a closure, fell within a range of reasonable outcomes. Moreover, the judge confirmed that the employer had failed to comply with the clause of the collective agreement prohibiting the Company from giving work to employees excluded from the bargaining unit.

The Court considered that awarding $1,000 in moral damages to each of the employees also fell within a range of reasonable outcomes, in view of the circumstances surrounding the collective dismissal.

However, the Court intervened to modify the conclusion of the arbitrator concerning the indemnity equal to three (3) weeks of salary per year of service on the ground that it failed to take into account the employees' duty to mitigate their damages and the indemnities already paid by the employer.

Lastly, the Court set aside the arbitrator's conclusion ordering the employer to pay $10,000 in damages to the union on the ground that a complaint alleging bad faith negotiations must be brought before the *Tribunal administratif du travail* (the Québec equivalent to a Labour Board).

Comments

In the context of the judicial review, Justice Tremblay considered that awarding moral damages fell within a range of reasonable outcomes and that there was no reason for the Superior Court to intervene. However, one must consider that a refusal of the arbitrator to award such damages could have also fell within that range of reasonable outcomes.

The Évotech case involves the discretionary power of the grievance arbitrator to award moral damages to employees to remedy harm which may not be compensated in nature[4]. Although such damages have recently been awarded in the context of abusive dismissal[5], the implementation of unfair and unreasonable working conditions for some employees[6] or within the context of a breach of a collective agreement, as the time provided for notifying the union of any subcontracts[7], awarding moral damages as a result of a sudden collective dismissal is a first.

On June 12, the Court of Appeal allowed the motion for leave to appeal of the employer on the basis of two issues, namely, the interpretation of a section of the collective agreement and the power of the Superior Court to modify the conclusions of an arbitration award instead of setting the award aside[8]. Until the Court of Appeal issues its decision, employers will have to keep in mind that they could be liable for damages in case of closures without prior notice.

We are carefully monitoring this case and will keep you informed of any developments.

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1. *Peintures Industrielles Évotech c. Turmel*, 2017 QCCS 1375, statement of appeal and motion for leave to appeal, 2017-05-05 (C.A.), 500-09-026780-171.
2. *Peintures Industrielles Évotech inc. c. Syndicat des employés de Sico inc., section Évotech (CSN) (union grievance | Hgjf8576)*, 2015 QCTA 809.

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3. *Id.*, para 152.
4. Droit de l'arbitrage de grief, 6e édition, Éditions Yvon Blais, 2012, para IX-34.
5. *Kugler c. IBM Canada Limited*, 2016 QCCS 6576.
6. *Centre intégré universitaire de santé et de services sociaux du Nord-de-l'Île-de-Montréal c. Jobin*, 2017 QCCS 1583.
7. *Syndicat canadien de la fonction publique, section locale 2881 et Centre intégré universitaire de santé et de services sociaux de l'Ouest-de-l'Île-de-Montréal (Centre de santé et de services sociaux de Dorval-Lachine-LaSalle) (griefs syndicaux)*, 2016 QCTA 893.
8. *Peintures industrielles Évotech c. Syndicat des employés de Sico inc. (CSN), section Évotech*, 2017 QCCA 932.

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