“Senior managerial personnel” status under the *Act respecting labour standards*

October 24, 2017

In *Delgadillo c. Blinds To Go inc.* and the *Tribunal administratif du travail*,[1] the Court of Appeal of Québec rendered a very important decision regarding the concept of “senior managerial personnel” under the *Act respecting labour standards* (“ALS” or the “Act”). In the future, this decision should guide the administrative judges of the Administrative Labour Tribunal (“ALT”) when they are required to determine if a manager who has been dismissed constitutes “senior managerial personnel” for the purposes of the Act.

The interest of the decision

As a general rule, and subject only to certain exceptions regarding specific benefits (such as family, pregnancy or maternity leave) or the recourses related to psychological harassment, senior managers are excluded from the application of the ALS.

Consequently, much has been written on the issue of whether a manager constitutes senior managerial personnel, especially in the context of complaints contesting dismissals under section 124 of the ALS, where employers usually argues that the manager who was dismissed was a member of the senior managerial personnel and is therefore not entitled to file such a complaint.

Since the enactment of the ALS, the predecessors of the Administrative Labour Tribunal[2] have had ample opportunity to decide on this issue. However, case law on the subject is by no means unanimous. According to some administrative judges, a manager who has a high degree of autonomy, a generous salary and some discretion in discharging his or her duties, will not be categorized as a senior managerial personnel where he or she does not have the authority to make decisions regarding the company’s strategies and policies. Other administrative judges are less exacting.

Despite having on several occasions considered the issued, the Court of Appeal has not developed clear principles regarding the relevant criteria applicable for determining “senior managerial personnel” status within the meaning of the ALS. In *Delgadillo,* the Court of Appeal decided on a flexible approach for analyzing the concept of “senior managerial personnel”.

The facts in the *Delgadillo* case

In this case, the manager of one of two plants owned and operated by Blinds To Go, a company which manufactures blinds made to measure within a short period of time and operates hundreds of

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retail stores. As soon as a customer places an order with one of the stores, the order is sent to one of the two plants to be manufactured and delivered to the customer within 48 hours. As such, the two manufacturing plants are the keystone of the company's business model.

In its decision, the Court of Appeal noted that the plant manager had an important role within the company, had broad discretion in the performance of his duties and had a close relationship with the company's owners, who placed a lot of trust in him.

The proceedings filed

The plant manager filed a complaint for dismissal without good and sufficient cause with the Commission des relations du travail (**"CRT"**). The administrative judge who heard the case decided that he did not constitute "senior managerial personnel" pursuant to the ALS and therefore his complaint was valid. The CRT ultimately decided in favour of the plant manager.

The specific issue of senior managerial status was raised before the Superior Court of Québec. The Superior Court reversed the CRT's decision and held that the plant manager met the definition of senior managerial personnel and he, therefore, could not file a complaint for dismissal without good and sufficient cause.

The Court of Appeal agreed with the CRT that the concept of "senior managerial personnel" under the ALS should be interpreted narrowly, but not so narrowly as to render it meaningless or restrict it solely to presidents of companies, or those occupying similar positions.

Some details from the Court of Appeal's decision

In its judgment, the Court of Appeal noted that the CRT made two errors:

> The first is that it ignored the particular nature of the business and, specifically, the uniqueness of its business model. The manufacturing plant operations were the "nerve centre" of the business. Regarding this first error, the Court held that by omitting the context in favour of a partial image of the evidence, in light of the applicable legal principles, the CRT rendered a decision that was not within the range of possible outcomes and which ignored a great deal of evidence, resulting in a decision that was unacceptable on the facts of the case.
> The second error is that it interpreted the concept of "senior managerial personnel" so narrowly that it, for all intents and purposes, neutralized the provision or made it applicable solely to presidents of companies, or those occupying similar positions.

At the initial trial, the CRT administrative judge held that the complainant plant manager's authority and autonomy was limited to that division. On this view, a true senior manager would not only have authority over the plant, but would also have a say over other divisions, human resources, financial affairs, the IT network, marketing and the manufacturing division in the U.S. Thus, according to the ALT, unlike the complainant, a true senior manager is an employee who has a right to scrutinize [translation:] *all of the company's operations, not just one division, as important as that division may be.*

According to the Court of Appeal, such an analysis cannot be accepted. While a **senior manager may be vested with general authority over the company, a person may also be found to be a senior manager despite the fact that he or she only has departmental, functional, divisional, regional or "consulting" authority**. It is also possible that an individual with such authority will not constitute senior managerial personnel within the meaning of the ALS; everything will depend on the context and the facts. But it cannot be ruled out summarily without due consideration to context and facts, which is essentially what the CRT did in this case.

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What the decision stands for

The *Delgadillo* decision broadens significantly the concept of “senior managerial” personnel by concluding that it is possible for **a senior manager to have only departmental, functional, divisional, regional or “consulting” authority**.

Therefore, the qualification of a complainant **as senior managerial personnel will no longer be limited to employees who oversee all of the company’s operations, but may also extend to those who have that authority in a much more restricted sphere, such as a single department, division or region. Similarly, individuals who exercise functional or “consulting” authority could also be found by adjudicators to constitute senior managerial personnel**.

This broadening of the analytical framework means that ALT judges will have to consider the specific nature of the company and its organization, in addition to the role of the individual employee, his or her importance in the hierarchy and the contribution he or she makes to the company’s success. That contribution need not be related to all of the company’s operations; it may be limited to only one of its major components.

It is anticipated that ALT case law will follow the guiding principles of the Court of Appeal and will demonstrate greater flexibility in its assessment of who constitutes “senior managerial personnel” under the ALS.

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1. *Delgadillo* v. *Blinds To Go inc.*, 2017 QCCA 818.
2. The Bureau du Commissaire général du travail and, more recently, the Commission des relations du travail.

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