No return to work in the foreseeable future: an undue hardship for employers

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Reversing a decision of the Tribunal administratif du travail ("TAT"), the Superior Court of Québec confirmed that the employer will meet the burden of demonstrating undue hardship, thus justifying a non-discriminatory administrative dismissal, where there is no evidence that the employee will be able to return to work in the foreseeable future.[1]

The facts

On June 19th, the Superior Court[2] quashed a decision rendered by Administrative Judge Bernard Marceau of the TAT on November 22, 2016.[3]

In that decision, the TAT struck down a municipal resolution dismissing the City of Forestville's director of public works due to poor health which had prevented him from working for over 21 months.

The decision

The Superior Court applied the standard of reasonableness and concluded that the administrative judge's decision was unreasonable.

The Court noted that the administrative judge had correctly identified the applicable legal principle when he wrote that [TRANSLATION] "with respect to the right to administratively dismiss the complainant due to a prolonged absence, the case law requires evidence of an inability to perform one's work in the near or foreseeable future."[4]

That being said, the administrative judge committed two errors.

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First, the Court held that the City did not have to introduce medical evidence establishing that the employee was unfit to return to work. The undisputed evidence before the administrative judge was sufficient. Even the employee's attending physician concluded that the employee was incapable of returning to work in the near future.[5]

The second error in law identified by the Court involved the application of the notions of "accommodation" and "undue hardship". It has been established in the case law that there are limits to the employer's duty to accommodate where an employee is unable to return to work in the foreseeable future and is incapacitated for an indeterminate period of time.[6] It is also recognized that the employer will have established undue hardship where an employee cannot return to work in the foreseeable future.[7]

Conclusion

The Superior Court held that the fact that the employee could not provide evidence that he would be able to return to work in the foreseeable future constituted undue hardship for the City. The Court therefore held that the dismissal was not discriminatory and that the only reasonable conclusion was to uphold the decision of the municipal council terminating the employment.[8]

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1. *Ville de Forestville c. Tribunal administratif du travail*, 2017 QCCS 3999, at para 55.
2. *Ville de Forestville c. Tribunal administratif du travail*, 2017 QCCS 3999.
3. *Gravel c. Forestville (Ville de)*, 2016 QCTAT 6666.
4. *Ville de Forestville c. Tribunal administratif du travail, 2017 QCCS 3999*, at paras 35 and 40.
5. *Ibid.* at paras 43-46.
6. *Ibid.* at para 49.
7. *Ibid.* at para 50.
8. *Ibid.* at para 57.

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