Is the duty of loyalty a limit to freedom of expression?

January 22, 2019

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The right to freedom of expression is not absolute. It does not permit employees to comment on political events unrelated to their workplace at all times and an employer can intervene if an employee expresses his opinions at work and on social networks. An employer has the right to request that his employees adopt a neutral position in these matters in the workplace and on the social networks.

This principle remains effective even when the employee is a union representative if the positions expressed do not concern a dispute related to working conditions within the organization or when such positions explicitly denigrate or criticize the employer.

In July 2018, the Superior Court upheld an arbitration award[1] in a case involving Renaud Bray[2] and, in doing so, upheld the disciplinary suspension and dismissal of an employee and union representative who asserted that he had the right to wear the red square symbol at work. The employee also made defamatory statements about the employer on the internet. In the opinion of the Court, the importance of freedom of expression must be recognized, but so must the right of the employer to remain neutral in situations in which it is not involved.

Context

The employee wore a red square, a symbol of support for students in their dispute with the government over tuition fees at the time while he worked at a Renaud Bray bookstore.

The employer also accused him of posting, while he was on paternity leave, comments on social networks that supported a boycott movement with regard to the employer, following a controversy that opposed the principal shareholder of the bookstore and an author.He was contesting two disciplinary measures (a three-day suspension and a dismissal), which had been imposed after he published comments that criticized and denigrated the employer on Facebook and on his blog. In particular, the employee encouraged citizens, customers, former employees, and artists to criticize

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Renaud Bray and file complaints because the company banned its employees from wearing red squares.

The employer also filed two management grievances demanding compensation for the damage suffered as a result of these negative posts.

Freedom of expression or neutrality?

The Court recognized that freedom of expression is an essential component of labour relations, and that it is often as a result of this freedom of expression that vulnerable workers are able to gain public support in their pursuit of better working conditions.

The judge noted, however, that the red square movement did not relate to the working conditions at Renaud Bray, and the bookstore could validly maintain neutrality on this issue and require its employees to respect such neutrality. In this context, the right of freedom of expression is not absolute.

Immunity that can apply to a union representative does not allow the employee to evade penalties:

> By posting such texts on his blog and his personal Facebook page, the employee was not acting as a union representative, but rather as an individual;
> He signed his articles and made requests to the readers in his own name;
> Moreover, some of the comments were made while he was on paternity leave and not working;
> His most recent posts were not about subjects that related to working conditions at Renaud Bray, but rather about a dispute between Renaud Bray and an author.

Since some of the comments were false, the employee was also at fault with regard to his employer, and the employer was therefore entitled to compensation.

According to the arbitrator and the Court, it was abundantly clear that the trust between employer and employee had been broken and that the dismissal was justified: how could the employer trust an employee who encouraged the readers of his Facebook page to demonstrate in front of the store and even boycott it?

What employers should aim to do

Given that an employer can legitimately maintain its neutrality in current debates and require that its employees respect such neutrality in the workplace, it is important to ensure that management is consistent and fair: for example, the employer could, in the workplace, prohibit the expression of political or other opinions in front of customers in general and refuse to tolerate messages on some matters.

Given that the right to freedom of expression is not absolute, the employees' duty of loyalty means that employees should not denigrate their employer, but instead should show restraint in their comments about the employer.

In addition, the immunity from which union officials benefit is not unlimited; it does not protect an employee who clearly breaches said duty of loyalty.

An interesting element in this case was that the employer became aware of the employee's comments through an automated alert system used to find media articles and publications, regardless of the author. The arbitrator concluded that this was not illegal surveillance on the part of the employer, and this conclusion was not challenged before the Superior Court.

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1. *Syndicat des employées et employés professionnels-les et de bureau, section locale 574 (SEPB-CTC-FTQ)* et *Librairie Renaud-Bray inc. (Julien Beauregard, griefs patronaux et syndicaux)*, 2017 QCTA 26.
2. *Syndicat des employées et employés professionnels-les et de bureau, section locale 574 (SEPB-CTC-FTQ)* c. *Sylvestre*, 2018 QCCS 2987 (discontinuance filed in September 2018 in regard to the application for leave to appeal).

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