Conclusion of the Supervac 2000 saga: Dismissal is part of the inherent risks of a workplace

August 13, 2019

The *Administrative Labour Tribunal* ("ALT") has ruled on the merits of the *Supervac 2000*[1] case, putting an end to the saga dealing with interpreting the part of section 326 of the *Act respecting Industrial Accidents and Occupational Diseases* ("AIAOD") that concerns applications for transfer of costs by reason of undue burden.

With its decision, the ALT establishes that dismissal, like resignation or retirement, constitutes a risk inherent to an employer's activities. Consequently, dismissal cannot create an unjust situation and the employer cannot claim to be "unduly burdened" by a dismissal resulting from the exercise of its management rights, even if it has the effect of terminating an authorized and available temporary assignment.

Details of the decision

In this case, the employer had filed an application for the transfer of costs of benefits for an employment injury under paragraph 2 of section 326 of the AIAOD. It alleged that the resumption of income replacement benefits, after the worker's temporary assignment ended as a result of his dismissal for insubordination, constituted a situation beyond its control that unduly burdened it.

The ALT's interpretations of the term "unduly" and the notion of "inherent risk" were inspired by the landmark decision in *Ministère des Transports*[2], although it relates to applications for transfer of costs following an industrial accident attributable to a third party.

After analysis, the ALT concluded that even if an employer does not control a worker's actions and cannot foresee them all, dismissing an employee because of behaviour issues is a management decision that does not possess the [translation] "extraordinary, unusual, rare or exceptional" character required by jurisprudence. Dismissal, like resignation or retirement, is part of labour relations and therefore an "inherent risk" to an enterprise. The interruption of the temporary assignment ultimately results from the employer's decision to dismiss the worker. Although it had serious financial consequences for the employer, the decision to dismiss the worker cannot be considered to be an injustice.

The ALT points out that the temporary assignment resulted from the injured worker's right to rehabilitation. Even though the employer may financially benefit from the temporary assignment, it is not one of its rights. The ALT therefore concluded that the employer was not unduly burdened within the meaning of section 326 of the AIAOD, and its application for transfer of costs was dismissed.

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What it means

In the past, many employers had successfully obtained cost transfers in connection with temporary assignments terminated as a result of dismissal for disciplinary reasons. These decisions were based in particular on the unpredictability of a worker's behaviour, which is beyond the employer's control.

The ALT's decision on the merits of the *Supervac 2000* case will certainly put an end to the granting of cost transfers based on this argument. This decision will in particular need to be taken into account when dismissing or considering dismissing a worker on temporary assignment.

However, it is still possible for an employer to allege other grounds of undue burden, such as intercurrent diseases.

Our Labour and Employment Law team is available to provide you with advice and solutions in your analysis of cost sharing files.

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1. 2019 QCTAT 2540.
2. 2008 QCCLP 1795.

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