Abuse of the grievance arbitration process: Arbitrators rule in favour of employers

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An employer grievance is a means that employers can use to obtain compensation for material damages caused by pressure tactics or to recover overpayments resulting from a union's wrongdoing.

Such a recourse can also be filed to claim damages and legal fees from a union that has abused the grievance arbitration process, in particular by raising grounds that are unfounded or filing applications that are dilatory, or doing either in bad faith.

Although not very common, abuse of process does exist and can be sanctioned. However, an employer can successfully raise abuse of rights when a union's actions are reckless, manifestly ill-founded, done in bad faith or dilatory.

Two recent cases

The decision in *Régie intermunicipale de police Richelieu Saint-Laurent et Fraternité des policiers et policières Richelieu Saint-Laurent*[1] is an interesting example: The arbitrator ordered the union to reimburse the employer part of the legal costs that it had incurred, as well as the sums paid to three of its witnesses.

The case can be summarized as follows. As a result of pressure tactics, three police were summoned to a disciplinary hearing before the discipline committee. The parties agreed in writing to reschedule the hearings before the committee. The officers were finally met in 2014, after which they filed grievances to contest the disciplinary measures taken against them. Arbitration was set for May 2018 and a pre-trial conference was held prior to the hearing.

At the hearing, the union raised a preliminary exception on the grounds that the disciplinary measures had been imposed outside the time limit set out in the collective agreement. The employer invited the union to make verifications, maintaining that the parties had agreed to postpone the hearing before the discipline committee. The union upheld its preliminary exception. The employer

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then filed a grievance, claiming damages arising from the union's time-barred and unfounded preliminary exception.

In January 2019, the parties presented their arguments on the preliminary exception and the employer grievance. On February 14, the union withdrew its preliminary exception during deliberations.

The arbitrator allowed the employer grievance in part. He concluded that the exception filed by the union was unfounded and that the latter's conduct was a clear example of an abuse of legal process. The employer was compensated for the costs incurred in defending itself against the abuse of rights.

In *Syndicat des professeures(eurs) de l'UQAM (SPUQ) et Université du Québec à Montréal (UQAM)*,[2] the parties had recently renewed their collective agreement and agreed to a clause providing for a reduction in the salary of professors over 70. Shortly after the collective agreement came into force, grievances were filed challenging the discriminatory nature of the clause.

UQAM filed an employer grievance alleging abuse of the grievance process by the union. The evidence showed that the union had agreed to the clause even though it knew that it was discriminatory, with the intention of challenging it in arbitration. The union had even asked that the age of the professors be added to the clause, which made its discriminatory nature even more obvious, thereby maximizing its chances of success at arbitration.

The arbitrator allowed the employer grievance and ordered the union to reimburse the arbitrator's fees and disbursements, as well as the professional fees charged by the employer's lawyer to represent it during arbitration of the union grievance. He concluded that the union's actions violated the duty to bargain in good faith and constituted an abuse of rights on the union's part.

Key takeaway and helpful tips

Abuse of process can take many forms: the use of an unfounded declinatory exception, for example, or the filing of an abusive grievance arising from collective bargaining in bad faith.

When confronted with situations not seen in the ordinary course of labour relations, an employer must determine whether there has been abuse of rights. Should abuse of rights be found, the employer could exceptionally claim the professional fees of its lawyers, the cost of summoning witnesses and possibly other damages resulting from the union's wrongful conduct by filing an employer grievance.

However, employers must bear in mind that an ill-founded union grievance, dismissed on the basis that the union's interpretation of the facts or collective agreement differs from that of the employer, will not necessarily be deemed abusive. In order to win the case, the employer will have to prove that the union's actions were reckless, manifestly ill-founded, in bad faith or dilatory.

It goes without saying that an abuse of procedure by an employer could also be sanctioned by damages.

The members of our Labour and Employment Law team are available to advise you and answer your questions.

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1. 2021 QCTA 319.
2. 2021 QCTA 296.

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