G+ Education

INFO

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Follow-up:

The arbitrator handed down an unreasonable ruling in concluding that a year's experience was the equivalent of a calendar year for the purposes of pay progression for a temporary employee (See ruling n° 2, Fall 2012): 2014 QCCS 440

The arbitrator made no mistake in concluding that he could order a member of a school board's executive committee to testify regarding the substance of the in-camera session that led to the adoption of a resolution to dismiss a teacher (See ruling n° 2, Spring 2012): 2014 QCCS 591

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RECENT **DECISIONS**

1 An unexpected and sudden event: it's all a matter of context

A special education technician challenged the rejection of her claim for post-traumatic stress disorder and adjustment disorder. She claimed she was the victim of assaults and intimidation by high school students under her care over the preceding three months. They would become unruly, kick lockers, make noise and utter verbal threats, and assault other students. The claim was rejected. The technician had a long history of general anxiety causing agitation, fatigue, irritation, sleep disruption and anticipation of catastrophic scenarios. The CLP must take into account the normal and predictable nature of the environment in which the employee is working. Despite the fact that what she was referring to was stressful, it cannot be considered an unexpected and sudden event. She has chosen to work with secondary students with behaviour issues and requiring special attention, and she was trained for this line of work. It also could not be deemed an aggravation of a personal condition since there was no unexpected and sudden event. The claim was rejected.

M.L. v. *Commission scolaire A.*
2014 QCCLP 1597, M[e] Line Vallières

2 Cost sharing: the effects of obesity on the consolidation period

The school board challenged the CSST's refusal to grant cost sharing. A child care worker suffered a back sprain when she turned around. She was examined six weeks after the accident and the employer's physician noted the employee had a waistline measuring 122 cm and weighed 210 pounds, while being 5 feet 3 inches tall. The physician referred to this as a high level of obesity, along with physical deconditioning of the abdominal muscles. The claim was upheld. As the employee's body mass index was 37.2 very shortly after the accident, this should be treated as a handicap. The employee would have been injured with or without this handicap, but the injury would normally have taken six weeks to become consolidated. The 32-week consolidation period was due to the handicap. The heightened stress affecting the lumbar disks, associated with the employee's muscular weakness and general physical deconditioning, contributed to the increased consequences of the accident. Seventy-five percent of the costs were removed from the employer's file.

Commission scolaire Région-de-Sherbrooke
2014 QCCLP 1837, M[e] Jacques Degré

3 A change of assignment turns out to be difficult

A teacher challenged the rejection of her claim for a state of reactive depression and anxiety. After 24 years of teaching at the high school level, she obtained a transfer to another school board. Some of her students then had behaviour or learning issues, while at her former school, such students were not integrated in regular classes. She quickly became the brunt of stinging comments regarding her subject and her appearance. Students used rude language to address her and gave her a nickname. Several students refused to work, reported late to class or without required materials. They heckled and argued amongst themselves. The day she decided to see a doctor, she was confronted with a female student having a meltdown and witnessed a fight in her classroom. Her claim was upheld. Though such situations may seem commonplace for high school teachers, they are objectively traumatising. The teacher tried to restore discipline, but the students persisted in taunting her, using her nickname in the hallways and elsewhere in the school. It is not normal to make derogatory comments regarding an individual's physical appearance or to label her with a nickname designed to upset her.

Lachance v. *Commission scolaire du Lac-Saint-Jean*
2014 QCCLP 3193, M[e] Valérie Lajoie

4 Return to work: the school board was entitled to appoint a third physician

Having received a medical certificate to the effect that a teacher was fit to return to work after an absence of two and a half years, the school board had the employee examined. Following a recommendation by its physician, the school board asked the employee to undergo a psychiatric assessment before authorising her to return to work. According to the union, as prescribed in the collective agreement, the third physician had to be chosen by both parties, since the attending physician and the school board's physician disagreed on the employee's fitness to return to work. According to the arbitrator, the opinion of the school board's physician did not run counter to that of the attending physician. The school board's physician conducted an assessment of the employee's state of health, but was not able to determine whether she had sufficiently recovered to return to work. He therefore recommended that she be assessed by a psychiatrist. The school board was entitled to suspend the employee's return to work and to have her assessed in order to be properly reassured regarding her state of health. The grievance was rejected.

Commission scolaire des Grandes-Seigneuries v. *Association des professeurs de Lignery*
2014EXPT-978, DTE 2014T-363 (T.A.) M[e] Robert Choquette
(Application for judicial review, 2014-04-23 (C.S.) 505-17-00716 144)

5 Even when it is declared impulsively, resignation remains a voluntary act

A student supervisor challenged her dismissal. She had allegedly squeezed a female student's arm with such force that it left an imprint of her hand. Colleagues who had witnessed the scene reported it to the school administration. Whereupon the principal met with the employee, who denied the facts. She abruptly left the meeting saying she was resigning, when the principal asked her to stay. The employer contacted the employee the following day to have her report to work, but she reiterated that she was resigning. According to the arbitrator, it was legitimate for the employer to meet with the employee following the incident in order to hear her version of the facts. The employer made no threats and the employee resigned of her own free will. Though she may have resigned impulsively, the fact remains that she resigned voluntarily. Since she was not dismissed, the grievance was rejected.

Commission scolaire Marie-Victorin v. *SEEPB, Local 578,*
2014EXPT-567, DTE 2014-204 (T.A.) M[e] Alain Corriveau

6 Plagiarism does not justify automatic dismissal

A teacher challenged his dismissal for having plagiarised two authors, appropriating excerpts from works written by these authors, without naming his sources, in the process of writing a book for educational purposes. The employee initially denied having read the two books, then acknowledged having "skimmed through" them. Upon analysis of the book written by the employee and the books by the authors in question, the arbitrator concluded that the employee had indeed plagiarised them. Plagiarism is a serious offence for a teacher who must act as a role model for students. Though such an offence could justify immediate dismissal without progressive sanctions, the employer had, in the past, been less severe in punishing other teachers for plagiarism. Dismissal was replaced with a six-month suspension.

Syndicat des professeures et professeurs de l'Université du Québec à Montréal (CSN) v. *Université du Québec à Montréal*
2014EXPT-1222, DTE 2014T-453 (T.A.) M[e] Jean Denis Gagnon
(Applications for judicial review, 2014-05-09 (C.S.), 500-17-082313-142 and 500-17-082347-140)

7 A teacher "beyond redemption": dismissal is upheld

A teacher challenged a reprimand and his dismissal for major misconduct, which took place five weeks later. The employer notably pointed to the inappropriate and threatening language he used with students, his sudden expulsion of students from his classroom, his failure to follow safety procedures, his inability to maintain discipline, his being the object of several complaints from parents as well as his general insubordination. According to the arbitrator, the disciplinary reasons invoked were not sufficient to justify dismissal, as the school board had not given the teacher enough time to make amends, and the latter had not been warned that his employment was at stake if he didn't. However, considering the mindset of the teacher, who was not able to integrate and who maintained a negative attitude towards the school's pedagogical approach, the arbitrator was of the opinion that the employee would not have been able to adjust even if he had had more time to do so. Therefore, the dismissal was upheld.

English Montreal School Board v. *Montreal Teachers' Association*
2014EXPT-1558, DTE 2014T-597 (T.A.) Mr. André Dubois

8 An incompetent teacher: dismissal is upheld

A teacher with 22 years' seniority challenged her dismissal for incompetence and unsatisfactory performance. This measure followed her assignment to a school where teachers are evaluated on an annual basis. During her first year of teaching, the employee's evaluations were unsatisfactory. The second year, when she was teaching at another level, her performance was inferior to that of the previous year. The evidence showed that the employee's teaching practices were unsatisfactory (e.g. absence of any link between the subject taught and the curriculum, little ability to stimulate students and promote learning). In addition, her professional practices and talents as an organiser were inadequate (e.g. poorly managed groups, disciplinary problems, children left unsupervised). Also, the teacher constantly made sure to avoid any form of evaluation and was reticent to accept help and support, showing lack of collaboration. Since the employee was incapable of providing satisfactory performance, her dismissal was justified.

English Montreal School Board v. *Montreal Teachers' Association*
2014EXPT-1343, DTE 2014T-504 (T.A.) M[e] Harvey Frumkin

9 Altered medical certificates: the addictions were deemed extenuating circumstances

An office agent challenged her dismissal for having altered medical certificates on several occasions. In the course of a disciplinary meeting, the employee stated that she had a problem with drinking and cocaine use, and indicated that she had taken steps towards admission in a rehabilitation clinic. According to the arbitrator, eleven days before dismissing the employee, the employer was aware that she had issues with addiction and that she had taken steps to address her condition. Though no direct link has been established between the offences and her addictions, the employee's state of health at the time of the incidents is nevertheless likely to be considered an extenuating circumstance that diminishes the objective seriousness of the offence. While acknowledging that the employee's addictions could not justify the offence she committed, and that a sanction was justified, the arbitrator concluded that the school board, which was aware of the employee's situation, should have taken it into account and allowed her the opportunity to pull herself together. The efforts made by the employee since her dismissal show that the prognosis for rehabilitation is good. She was reinstated without compensation.

Commission scolaire Marie-Victorin v. *Syndicat des employées et employés professionnels et de bureau, Local 578*
2014EXPT-1220, DTE 2014T-451 (T.A.) Mr. Gilles Ferland

Comments

As you know, any employer has the obligation to accommodate an employee suffering from an addiction, whether to alcohol or drugs. Obviously, an employer cannot be blamed for not accommodating an employee if he is unaware of the fact that the latter is suffering from addiction. However, several arbitrators share the opinion that deliberate blindness is not permissible on the part of the employer. Alcohol or drug addiction can be a factor taken into account by an arbitrator in order to reduce the sanction, even if this disease cannot constitute a legitimate excuse for an offence such as fraud, as is the case here. On the other hand, it must also be noted that several arbitrators have refused to reduce the sanction, even though the evidence showed that the employee being disciplined had successfully undergone addiction treatment, especially when the bond of trust has been severed, considering the nature of the offence. Thus, when faced with an offence of a disciplinary nature, you need to exercise caution in your approach to case management when the employee invokes an addiction to justify his behaviour or, at least, to diminish its seriousness.

10 Allegations of asthma as a consequence of water damage

A teacher challenged the rejection of her claim for an aggravated asthma diagnosis. While she had been assigned to a new school for a year and a half, she was absent following an asthma attack that had required her to be hospitalised. Her condition was stabilised through medication, the installation of a pump to address a crawl-space issue, and a major clean-up at the school. According to the CLP, it takes more than the possibility of a work-related problem: the probability of the link must be established. The special presidents' committee rejected the possibility of an occupational pulmonary disease. Though the Committee accepted the possibility that exposure to dust and mould resulting from water damage could exacerbate a personal condition, this possibility was hypothetical and was not confirmed by the facts. The rates of dust and humidity were below allowable standards. A CSST inspector also did not observe any presence of mould. The claim was rejected.

Dufour v. *Commission scolaire du Lac-Saint-Jean*
2014 QCCLP 3259, M[e] Jean-Marc Hamel

Comments

In this case, the CLP rejected the hypotheses. Even if maintenance of the premises were to be found defective, objective examinations did not show any real problem related to the presence of mould or dust to an extent that could be deemed a health hazard. We urge you to pay special attention to school maintenance at this time, when some schools may appear run down. For many employees, the building's age and lack of cleanliness in the premises may appear to be potential causes for several ailments (headaches, asthma, ENT problems, nausea, etc.). The bad publicity that comes with such allegations may lead to claims by other employees as well as questions among the school's clientele. Under such circumstances, it is important to rely on a solid analysis. An environmental assessment may allow you not only to ensure there are no health and safety hazards, but also to counter any allegations regarding the presence of non-existent mould.

The courts reaffirm that a teacher is a role model in our society

By Me Danilo Di Vincenzo, CIRC, *Le Corre & Associates Law Firm*

On August 29, the Quebec Court sentenced teacher Tania Pontbriand to a 20-month prison term. Earlier this year, the Court had found the teacher guilty of sexual assault, over a period of approximately 2 years, on one of her underage students[1]. This criminal case was widely publicised and caused a number of reactions all over Quebec. It is worth emphasizing that, when handing down the sentence, the judge took into account, as aggravating factors, the relationship of trust that must necessarily exist between a student and a teacher, as well as any teacher's responsibility as a role model in our society. In this respect, Honourable Justice Valmont Beaulieu expressed his views as follows:

> "[99] As demonstrated in case law, the courts also have a duty, through the sentences they hand down, to reiterate the existing social consensus in the Canadian community: i.e. the teachers of our adolescents, who are entrusted to them by their parents, are expected to instruct, educate and pass on good values, and are not mandated to introduce them to sexuality and to exploit their lack of maturity. [Translation]
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> […]
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> [233] Students, parents, the authorities and society have the right rather the privilege to place their entire trust in their teachers whose role is to educate and instruct children and adolescents. During the day, while performing their duties, teachers are an extension of parental authority. In fact, section 43 of the *Criminal Code* even gives them the right to chastise a student using any reasonable measure. The same right is granted to the parents." [Translation]

Again in the course of last summer, a grievance arbitrator upheld the dismissal of a teacher on grounds of misconduct, as the latter had offered an underage student to give her a lenient mark in exchange for a sexual favour[2]. In his award, the arbitrator described the teacher's indecent conduct notably as follows:

> "[104] […] That is to say that this is a form of conduct that violates the fundamental values of Canadian society." [Translation]

The rulings handed down in both of these recent cases are in logical alignment with principles set forth, some 20 years ago, by the Supreme Court of Canada, which at that time had published a trilogy defining the role of the teacher acting as a role model in society. In practical terms, the highest court in the country held that, acting as a conveyor of the knowledge and values of a society, a teacher could not or should not place himself or herself in a situation, in school or in his/her private life, that might have the effect of compromising the role and the trust conferred on them by the public. In far more eloquent terms, the Supreme Court stated:

> 41 – In my view, no evidence is required to prove that teachers play a key role in our society that places them in a direct position of trust and authority towards their students. Parents delegate their parental authority to teachers and entrust them with the responsibility of instilling in their children a large part of the store of learning they will acquire during their development. In the recent case of Ross […], this Court had occasion to discuss the role and social status of teachers. The following comments are relevant as an illustration and explanation of why teachers will, apart from exceptional circumstances, be in a position of trust and authority towards their students. I there wrote, at paras. 43-44:
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> > "Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions. The conduct of a teacher bears directly upon the community's perception of the ability of the teacher to fulfil such a position of trust and influence, and upon the community's confidence in the public school system as a whole…"[3]

From time to time, litigators who practice in the education sector are called upon to revisit these classic rulings in order to illustrate how certain forms of misconduct are incompatible with the duty of a teacher. It must be said that some of the principles set forth by the Supreme Court, such as the ones mentioned above, have the benefit of ageing gracefully and remaining relevant and timely, even 20 years later!

1. *R.* v. *Pontbriand*, 2014 QCCQ 443 and 2014 QCCQ 7928.
2. *Montreal Teachers' Association* v. *English Montreal School Board*, D.T.E. 2014T-596, Me Louise Viau, Arbitrator.
3. *R.* v. *Audet*, [1996] 2 S.C.R. 171. See also: *Ross* v. *New Brunswick School District No. 15*, [1996] 1 S.C.R. 827; *Toronto (City) Board of Education* v. *F.E.E.E.S.O., District 15*, [1997] 1 S.C.R. 487.

Knowing how to nurture commitment, satisfaction and energy in the education sector

By Ms. Marie-Pier Bélanger, M. A., c. o., Organizational Psychology Consultant,
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Based on a Gallup poll conducted in 2013, only 30% of American employees experience a sense of commitment to their work. Globally, among the 142 countries polled, the proportion of committed employees boils down to a mere 13%.

The good news is that the businesses ranking among the first quarter in terms of commitment are 22% more profitable than the others, with 10% more satisfied customers, 28% less theft and 48% less safety-related incidents among their employees.

Consequently, the unavoidable question arising for educational institutions is what are the needs to be met in order to foster a sense of commitment on the part of an employee? Do these needs vary depending on the individual? And, as popular belief would have it, are these needs different from one generation to another?

The levers of commitment

Commitment requires the simultaneous combination of three interdependent elements: the motivation to get involved in one's work, satisfaction with said work, and identification with the organisation. In other words, commitment requires an alignment between the individual's professional role and his or her needs, values, interests and talents.

There are practical factors that encourage commitment. The objectives, expected outcomes, roles and responsibilities must be cleared stated. Support is also essential in order to foster autonomy and accountability, i.e. it is necessary to provide employees with opportunities to update their knowledge, either through ongoing training or co-development meetings. Finally, recognition from peers, supervisors and administration is, unsurprisingly, indispensable in order to give meaning to one's work.

Beyond the calling

Why is it so important for educational institutions to be concerned with their employees' level of commitment? The very mission of education is a noble and motivating cause that continues to attract young professionals and to keep the fire burning among the more experienced individuals. Is this not enough? One needs only to spend a few minutes talking with teachers and professionals of all ages in the education sector to note that the passion they put into their work and the multitude of educational and extracurricular activities they conduct knows no bounds.

The truth is that the world of education is changing: its resources are being more and more exposed to the concept of pedagogical supervision, which is synonymous with evaluation, measurement and expected outcomes. This notably comes in the form of budget cutbacks, the imperative for students to graduate, the growing number of registrations or the offer of new and attractive programs by schools that want to carve their place in a market that is booming for some, but in decline for others. Like any organisation, schools must meet constantly updated performance requirements and standards.

This new reality cannot but affect teachers and professionals who, until now, were hardly exposed to concepts such as pedagogical supervision and performance evaluation. They need to update their skills and stretch their limits in order to keep pace, which requires a high level of energy that even the most talented and motivated individuals have trouble maintaining.

Nurturing commitment leads to high performance among employees. Schools therefore have everything to gain by supporting their employees through these changes and setting up the means to keep them motivated. However, beyond the organisation's efforts to stimulate commitment and satisfaction at work, employees must be able to manage their personal energy levels, starting with physical energy.