G+ Education

INFO

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RECENT **DECISIONS**

1 The legal certification of teachers is personal information

The plaintiff petitioned a school board in order to obtain the list of teachers it provided to the union, in accordance with a provision of the collective agreement. The school board sent the plaintiff a document in which certain items of personal information that were not of public in nature were deleted, i.e. information concerning legal teaching certificates not included in the document sent to the plaintiff. At issue was the legal certification of teachers. The plaintiff alleged that he wished to obtain this information in order to find out whether certain people were legally qualified to teach. The Commission d'accès à l'information ruled that this was personal information and that the people concerned did not consent to its disclosure. Consequently, the school board is not obliged to release information to the plaintiff concerning teachers' legal certification.

M.B. v. *Commission scolaire des Portages-de-l'Outaouais*
2016 QCCAI 105, M[e] Lina Desbiens

2 Requirements of the position: language skills are essential

The employee complained that the school board did not grant her an interview for a position as "Recreational Activities Technician", and did not consider her application when the same position was posted one year later. The collective agreement stipulates that an employee must first meet the requirements of the position as determined by the employer. The evidence showed that the tasks and responsibilities related to the position required an understanding of French and the ability to communicate in that language, and that the employee did not meet these two requirements. The arbitrator dismissed the union's argument that the employee met that criterion because she had already held a position requiring fluency in French. He deemed that the tasks and responsibilities related to the position determine the relevance and necessity of meeting the established requirements. The grievance was rejected.

Syndicat des employées et employés professionnels-les et de bureau v. *Riverside School Board*
SAE 9062, 2016-06-10, M[e] André G. Lavoie

3 Excess numbers of students: a school board does not have to prove absolute impossibility

The union challenged the excess number of students beyond the maximum allowed for two preschool classes of 5-year-old students. The school board argued the limited number of classes in the school concerned to justify these numbers. Among the options considered, the board could have created an additional group, which would not have been funded, allowing each group to have less than the established average of 18 students. The school board could also have relocated some 5 year-old students to another school, which would have required school bus changes and difficult hours for the children. Back in May, it had attempted to reach an agreement with the union. It had then called upon the parents to indicate their willingness to volunteer for having their child transferred to another school. As far as the union was concerned, the only solution was to open a third group. According to the arbitrator, the school board was not obliged to prove that it was absolutely impossible to avoid such excess numbers. Considering the circumstances, he concluded that the school board's decision to maintain the excess student numbers by invoking the limited number of available classes was reasonable. The grievance was rejected.

Syndicat de l'enseignement de la région de la Métis (CSQ) v. *Commission scolaire des Phares*
SAE 9065, 2016-06-23, M[e] Huguette April

4 Probation: only the hours worked in the obtained position are considered

An early childhood educator who had obtained a regular full-time position in a daycare service challenged her dismissal. The employer alleged that the grievance was inadmissible since the employee was on probation when she was dismissed. The collective agreement states that, in order to avail oneself of the grievance and arbitration procedure, the employee must have completed 180 actual hours of work. The union argued that the employer should have taken into account the work done substituting for another employee, as was the case with this employee. The arbitrator ruled in favour of the employer, i.e. that only the hours associated with the position held by the employee should be taken into consideration. The arbitrator based this conclusion on another provision of the collective agreement stating that, in cases where an employee obtains a new position in the same employment category, the employee must again go through the same probation period. According to the arbitrator, this provision indicates that each position is a distinct entity and that one cannot combine work hours in order to get through the probation period faster. Furthermore, the arbitrator has always used this calculation method, as was known to the union. The grievance was rejected.

Commission scolaire Kamouraska-Rivière-du-Loup v. *Syndicat du soutien scolaire de Kamouraska-Rivière-du-Loup*
SAE 9032, 2016 QCTA 188, M[e] Pierre-Georges Roy

5 Chronic misconduct can justify an administrative dismissal

In the context of a grievance challenging a teacher's dismissal, the parties disagreed on the nature of the imposed measure. They asked the arbitrator to rule on this as a preliminary issue. The employer held that the employee's dismissal was administrative in nature. He explained that he terminated the latter's employment due to her chronic misconduct associated with her inability to maintain harmonious relations with other staff members. As this chronicity was the manifestation of the employee's personality, it was deemed involuntary. The union alleged that this was actually a disciplinary measure, since the employer had already issued written warnings to the employee. The arbitrator concluded that this was an administrative measure, as the employer invoked the employee's inability to comply with expected norms, and the facts invoked by the employer were related to this alleged incapacity. The employer thus proved that the stated reasons for dismissal could justify an administrative dismissal.

Alliance des professeures et professeurs de Montréal v. *Commission scolaire de Montréal*
DTE 2016T-438, 2016 QCTA 301, M[e] Jean-Pierre Villagi

6 Mandatory submission of a medical report

As a preliminary measure, the CNESST petitioned the Tribunal administratif du travail to order the submission of the medical assessment report obtained by the employee following a medical examination by a psychiatrist. The medical assessment had been requested by the employee's representative. The latter objected to the submission of the report, alleging that this was a matter of professional secrecy. According to the administrative judge, it was clear that an assessment having a direct bearing on the subjects under litigation was illustrative and relevant. A party who invokes her medical condition in the context of litigation waives the confidentiality of her medical file. Also, the employee had previously requested the postponement of the hearing as she had to complete her evidence with a medical assessment report, and her request had been granted on this basis. By referring to the report in support of her legal action, the employee had waived the confidentiality of this report, which was indeed covered under professional secrecy. The preliminary measure was granted and the submission of the report was ordered.

Laroche v. *Commission scolaire des Affluents*
2016 QCTAT 3020 (SST), M[e] Isabelle Piché

7 Unhealthy work environment: was the teacher's behaviour at issue?

A special education teacher challenged the denial of his claim by the CNESST regarding an adjustment disorder with depressed mood. He alleged boycotting by fellow teachers and educators, as well as a lack of support from the principal who discredited him by making work-related requests. The challenge was rejected. It is normal for an employer to monitor an employee's work and practices, and to give specific instructions. Furthermore, one must ponder whether the employer's actions and the work climate might be attributable to the employee's behaviour. The teacher felt isolated, but the evidence on that issue was contradictory. Some witnesses reported his often inappropriate tone of voice, his lack of adjustment to students' difficulties and his all-too-frequent requests for intervention by other educators, often at inconvenient times. The teacher himself acknowledged that his union views might be the source of his conflicts. In the absence of evidence of repeated and hostile behaviour on the part of the employer and/or fellow teachers, the claim was denied.

M.D. v. *Commission scolaire A*
2016 QCTAT 3889 (SST), M[e] Jean-Claude Danis

8 Student struck teacher in the face: her claim for psychological injury was denied

A teacher challenged a decision by the CNESST rejecting her claim. She alleged that she suffered a psychological work injury when she was struck in the face by a student who had been diagnosed with pervasive development disorder. According to the administrative judge, the alleged event was of an unpredictable nature and sudden since, at the time of the assault, the music lesson was about to end and the student concerned had been well behaved. The latter struck the employee on the nose without warning. However, the alleged facts do not point to a causal relationship between the incident that occurred on October 22, 2010 and the major depression suffered by the employee, who continued to perform her work duties until May 19, 2011. During that period, she had various problems related to her personal, conjugal and family life. Furthermore, at the time of the incident, she had recently returned to work following a medical leave due to a psychological condition. Finally, a medical note dated May 19, 2011, made no reference to the incident of October 22, 2010. The challenge was rejected.

J.M. v. *Commission scolaire A.*
2016 QCTAT 3492 (SST), M[e] Michèle Gagnon Grégoire

9 A fall in the tenant's icy parking lot: cost transfer denied

A daycare service challenged a decision by the CNESST refusing to grant a cost transfer for benefits related to an educator's work injury. It alleged that the work accident was attributable to a third party, i.e. the municipality, and that it was unjust to be forced to bear the related costs. It argued that, as a tenant of the premises inside a building belonging to the municipality, the employee's fall in this building's ice-covered parking lot, before the opening of the daycare service, should be the municipality's responsibility due to its failure to maintain the parking lot. According to the administrative judge, the evidence showed that the parking lot maintenance, outside normal operating hours, was the responsibility of the daycare service. In addition, the employee took risks in order to get to the building's entrance after realizing the poor condition of the parking lot. In this context, the responsibility for the work accident was shared by all stakeholders, and it was impossible to assign a major share of this responsibility to any one party. The challenge was rejected.

Services de garde Gribouillis v. *Saint-Paulin (Municipalité de)*
2016 QCTAT 3214 (SST), M[e] Valérie Lizotte

Comments

In this case, the responsibility for the work accident was shared between the municipality, the employer and the employee. It was impossible for the judge to distribute the proportion of responsibility attributable to each of the stakeholders, and by that very fact, to assign the majority share of responsibility to be borne by the third party, i.e. the municipality. In order to be able to grant a cost transfer by virtue of a third party's fault, the major portion of responsibility of this third party must be proven as a requirement for the applicability of this cost transfer. Thus, considering the conclusion reached by the judge regarding this requirement, it was not necessary for her to address the other requirement for applicability, i.e. the issue of determining whether it would be unjust to assign the costs to the employer's file.

10 The salary insurance plan does not discriminate against partially disabled teachers

The union challenged a school board's decision to stop payment of salary-insurance benefits to a teacher suffering from a partial permanent disability for the three days a week when she did not work. According to the union, the employer defaulted on his duty to accommodate by ceasing to pay benefits for the days when the teacher was unable to work. On the other hand, the school board deemed that the teacher no longer met the eligibility requirements for salary-insurance benefits, since she was no longer totally incapable of performing her duties. The arbitrator confirmed that the teacher no longer met the eligibility requirements for the salary insurance plan, and that the school board was justified in ceasing to pay such benefits. He concluded that the distinction made by the salary insurance plan between totally disabled and partially disabled teachers does not have the effect of undermining the right to equality and cannot be deemed discriminatory. The employer, therefore, had no duty to accommodate.

Alliance des professeures et professeurs de Montréal v. *Commission scolaire de Montréal*
DTE 2016T-477, 2016 QCTA 308, M[e] Jean-Guy Roy

Comments

This decision is important not only for school boards, but also for all employers who provide self-insured salary insurance plans. Indeed, this decision confirms that, in a context involving disability insurance, it is possible to make a distinction between employees who are totally disabled and those who are partially disabled, and thus to limit the insured risk.

The interest of the child: a forgotten consideration?

By Me Francis Hinse and Me Shwan Shaker
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We would like to draw your attention to a ruling by arbitrator Denis Provençal that underscores how important it is to consider the interest of the child.[1]

This case involved an educator in a youth centre dealing with troubled youths, who challenged his dismissal following an inappropriate intervention in which he allegedly and needlessly asked an agitated adolescent to take off his clothes in order to humiliate him. The employer dismissed the employee, taking into account his aggressive attitude, his lack of transparency during the investigation and his disciplinary record, which contained a six-month suspension for having struck a youth.

The union alleged that the arbitrator could not take this suspension into account in view of the amnesty clause contained in the collective agreement. The arbitrator rejected this argument, deeming that an amnesty clause, or any other clause in a collective agreement, could not have the effect of limiting the protection of young people under public policy laws and prohibiting an employer from considering a prior offense that directly affected the safety of young people. Children's right to safety is protected under the *Charter of Rights and Freedoms*, the *Civil Code of Quebec* and the *Youth Protection Act*. According to the arbitrator, to do otherwise would result in ignoring the legal obligations of the employer, who must see to the protection and development of young people. The arbitrator also indicated that the arbitrator's decision upholding the suspension was not affected by the amnesty clause.

As for the substance of the case, the arbitrator deemed that the dismissal was founded and that the employer's decision had been made in consideration of the interests of the young people under his care. Indeed, an educator is expected to set an example for these young people, who are influenced by his behaviour, and he must foster their social reintegration at all times showing respect, patience and understanding towards them, regardless of whether or not they are difficult.

This arbitrator's ruling is very interesting, given the similarities between the role of an educator in a youth centre and the role of a teacher in a school. In this respect, we should remember that, in case law, it is a well established principle that teachers are important role models for students.[2] Furthermore, a cursory look at the *Education Act*[3] will tell us that the interest of the child is of major concern to legislators.

First of all, the *Education Act* is intended to grant any individual of eligible age the right to preschool, elementary and secondary education.[4] A teacher, on the other hand, has a duty to "contribute to the intellectual and overall personal development of each student entrusted to his care"[5], while the school board must oversee the organisation and distribution of the educational services to which the individuals under its authority are entitled.[6]

In doing so, in order to fulfil its mission, a school board must sometimes make the decision to dismiss a teacher who has committed a serious offense while performing his duties. One must hope that, in the future, when the time comes to deal with such offenses, arbitrators will address the interests of the child as a top priority by using the same kind of reasoning as arbitrator Provençal did in the abovementioned case.

Finally, let us remember that the E.A. provides an additional tool to human resource managers in educational institutions. Indeed, one provision of the Act allows any physical person to lodge a complaint to the Minister of Education, Recreation and Sports against any teacher who has committed a serious offense while performing his duties or has acted in a way that is detrimental to the honour or the dignity of the teaching profession.[7] A school administrator could therefore lodge a complaint against a teacher, and if it proved to be founded, the Minister would have the authority to revoke the teaching certificate of the teacher concerned.

In short, in any decision concerning them, the overriding interest of children should be taken into consideration.

1. *Fédération des professionnèles* (CSN) v. *Centre jeunesse de l'Outaouais*, DTE 2016T-386, 2015 QCTA 766.
2. See *R.* v. *Audet*, [1996] 2 RCS 171; *Ross* v. *Conseil scolaire du district No 15*, [1996] 1 RCS 825; *Conseil de l'éducation* v. *F.E.E.E.S.O.*, [1997] 1 RCS 487.
3. RLRQ c I-13.3.
4. Art. 1 E.A.
5. Art. 22 (1°) E.A.
6. Art. 207.1 and 208 E.A.
7. Art. 26 E.A.

Well-being at work: the four behaviours of leaders that achieve great impact

by Myriam Plamondon, MSc, MA, GC, Organizational Psychology Consultant
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Do happy employees perform better? In the United States, one fund that invests only in organizations that take tangible actions to promote the well-being of their employees achieved a much higher return than the market indexes.[1] Investing in the well-being of human resources therefore holds the promise of better performance, so modern organizations are striving to take specific actions to promote happiness at work and help achieve their business objectives. We therefore have decided to present four specific effective management practices that have a marked impact on employee well-being.

Workload — To be happy at work, people need to feel they are accomplishing something and overcoming challenges. Employees who are not busy enough will tend to become bored. But when they feel they are not up to the task or when they are continually interrupted, stress can gain the upper hand. As a manager, ensure that you have enough employees to do the work required for smooth operations.

Independence — Employees' sense of power over their work and their organization is an important lever for motivation and well-being. Workers who have a sense of flexibility in how they perform their duties can handle a heavier workload and greater pressure without a significant rise in stress. As a manager, what can you do to promote your team's independence? Although some choices must be made by leaders, many decisions can be made jointly with employees. Know how to detect these opportunities and show an open mind and attentiveness in these instances to other people's concerns and ideas. Focus on outcomes, WHAT rather than HOW. Leave room for your employees to take the approach they prefer for achieving their objectives and performing their work. However, you must ensure that your expectations for quality, professionalism and respect of deadlines are met.

Support — An effective manager supports employees in the pursuit of their work objectives and assists them in overcoming difficulties. Workers who feel left on their own and who lack the resources and information they need to complete a task correctly will tend to suffer greater stress. Throughout a project or task, ensure that your employees have access to all the resources and knowledge they need to perform effective, quality work. Do not hesitate to be proactive, because some employees will not always seize opportunities to voice their needs and report the obstacles they face. When you are informed of a problem, take fast, concrete steps to limit the obstacles to attaining objectives. Be sure to indicate practical, realistic approaches for solving the problems reported and make a personal investment in the search for solutions.

Recognition — Recognition has a major impact not only on stress and well-being, but also on employee engagement and enjoyment at work. People can be recognized for their skill or talent, their enthusiasm for a specific project or for an especially impressive result or accomplishment. Challenge yourself to provide recognition each day for a job well done or an employee's strength. Keep in mind that your compliments should always be sincere and accurately reflect the talent, effort or result you want to recognize. Also, be sensitive to the styles of recognition your employees prefer.

Creating meaning through our management practices — A balanced workload, independence, support and recognition have a tangible impact on employees' well-being because this makes work meaningful. An employee who tackles stimulating challenges and feels part of the decision-making process will feel empowered to contribute to the organization's success. Sensing support from one's manager and colleagues generates a feeling that success and meeting objectives are within reach. In addition, receiving recognition suggests that our contribution to the organization is important and tangible. This meaning given to work is invaluable because it inspires people while limiting the negative impact of sources of irritation on well-being. You must discover which of these gestures fits your style and will have the greatest impact on your employees.

1. http://www.fastcompany.com/3006150/proof-profits-americas-happiest-companies-also-fare-best-financially