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EDITORIAL

When parents' requests constitute harassment

Me Antoine Gagnon, Le Corre Lawyers

A child's success in school is important to parents, and they will not hesitate to do whatever they can to promote the success and well-being of their children in school. Hence, parents rely heavily on teachers and other stakeholders in the school community and try to implement the advice and suggestions of these professionals. Nevertheless, some parents are not always satisfied with the answers they receive and the steps taken by the teaching staff. While a parent is entitled to do everything in his power to promote the success of his or her child, there are limits to be respected and when these limits are crossed, it is up to the employer to intervene in an appropriate manner.

In *Syndicat de l'enseignement de la région de Québec* and *Centre de services scolaires des Premières-Seigneuries*[1], the arbitrator had to determine whether a mother's actions constituted psychological harassment towards a teacher and, if so, whether the employer had taken all reasonable means to put a stop to it.

Despite the apparent cooperation between the teacher and the child's mother at the beginning of the school year, the mother became increasingly insistent, sending numerous e-mails to both the teacher and the School Service Centre's administration. In her communications, the mother became increasingly angry and vindictive towards the teacher, questioning her professional competence and professionalism. In fact, she held the teacher responsible for her son's poor academic performances when he was experiencing several known problems that included poor academic results, a need for sustained attention, learning and an intellectual disability.

The mother demanded and obtained from the School Service Centre that her son's evaluations be corrected by the teacher and another person and that those already corrected be reviewed by an independent committee. The School Service Center also permitted, or at least tolerated, that the child unknowingly records his teacher in class. The teacher was strongly shaken when she discovered these measures.

The arbitrator concluded that the mother's actions constituted psychological harassment, while the teacher's conduct was beyond reproach and faultless.

The arbitrator recalled that the employer must take all necessary steps to put an end to such a situation, even if the harassment came from a third party. In this case, not only did the employer fail to take action to stop the harassment, but it even granted some of the mother's requests. The arbitrator stated:

> [208] In disregard of the professional autonomy that the Complainant should have enjoyed and despite the fact that the Complainant's professional conduct was beyond reproach and faultless, it was agreed, among other things, to double-correct and even re-correct the evaluations corrected by the Complainant; [emphasis added, references omitted] (translation)

The arbitrator found that the managers had been lax, delayed in taking action and failed in their duty to promptly and effectively make any form of harassment stop:

> [216] There can be no doubt that the managers had all the good intentions in the world in attempting to reconcile hearts and minds, but it is not permissible to hide behind such an approach to relieve the Center of its obligations; [emphasis added] (translation)

In a society where the parents are advocating increasingly for their children, and where the skills and approaches of teachers may be challenged as a result, school service centres will need to be vigilant in dealing with such situations. As the arbitrator noted, it is in the employer's best interest to try to promote student success and good communication between parents and teachers. Nevertheless, and especially when a teacher's conduct is beyond reproach, the employer must keep in mind that it must show loyalty to its personnel, even if it means defending them in the face of inappropriate requests or actions by the parents, especially when such conduct constitutes harassment.

However, this can be a difficult balance to maintain for the employer, who must respond to parents' expectations, protect his staff and promote the ultimate goal which is the child's healthy development.

1. 2022 QCTA 361, Jean-M. Morency.

RECENT DECISIONS

1 Probation is calculated in days worked, not hours

A certified maintenance worker challenged his termination because he was unable to perform the job properly. The union amended its grievance to argue that the employee had completed his probationary period and was eligible for the grievance procedure. To reach this conclusion, the union divided the employee's total hours worked, including overtime hours, and converted them to days worked. However, the collective agreement provides that the trial period is "sixty days worked", it does not provide for the possibility of converting this period into working hours. Since the employee did not work for sixty regular days, he cannot benefit from the right to grieve. Also, the employer's decision to terminate the employment relationship was not unreasonable, since the evidence established that the evaluation of the employee's skills had been done adequately. The grievance is dismissed.

Commission scolaire Kativik et Association des employés du Nord québécois
SAE 9609, 2022-09-14, Pierre-George Roy

2 Despite the closure of schools, the strike has had its effects

The union has announced a "mystery" strike at one or more of the schools in the School Service Centre. For the safety of the students, whose many parents do not speak English or French, the employer has decided to close its schools, suspend classes, and invite its staff to use telework or distance education. The union filed a grievance. It argued that by closing the schools, the employer had abused its right of stewardship, ruined the effects of its members' legal strike, and undermined the collective bargaining process. The decision to close the schools was not motivated by anti-union animus. There was no abuse of rights by the employer. The union was able to exercise its right to strike without interference and its right to strike was not diminished or impaired by the employer's actions. The union's primary objective of publicizing the strike and causing school closures was achieved. The grievance is denied.

Centre de services scolaire de Montréal et *Syndicat des professionnelles et professionnels du milieu de l'éducation de Montréal*
SAE 9608, 2022-09-06, Jean-René Ranger

3 Covert recording and a written warning would have been sufficient

A daycare worker challenges the two-day suspension imposed on her for recording a TEAMS meeting and a telephone conversation without the knowledge of the employer's representatives who were participating. The employee admits the charges but maintains that she did not know that she was not allowed to record these conversations. In the absence of a provision in the collective agreement concerning the clandestine recording of conversations between an employee and the employer's representatives, the employer could legitimately consider that the employee had committed a fault. However, the court noted that the employee had not behaved dishonestly and had never tried to hide the fact that she had made clandestine recordings. Although the case law provides that in such circumstances, disciplinary sanctions may be imposed, the Court considers that a written notice would have been sufficient to encourage the employee not to re-offend. The grievance was allowed in part and a written warning was substituted for the suspension.

Centre de services scolaire des Affluents et *Syndicat du personnel de soutien du Centre de services scolaire des Affluents*
SAE 9610, 2022-09-19, Gilles Ferland

RECENT DECISIONS

4 Dismissal on probation: an employer is required to make its expectations known

An analyst challenged his dismissal before the end of his probationary period. The evidence showed that during the summer period, the employee's work schedule was compressed, allowing him to shape it as he saw fit. For the employee, this schedule is flexible, while for the employer, the employee cannot deviate from it once the schedule is established. The employee admitted that he had left work early on three occasions. In a context where some flexibility in scheduling is tolerated, it is clear that the employee did not know the employer's expectations. Before terminating the probationary period, the employer should have clarified its expectations, asked the employee to correct the situation, and advised him of the possible consequences for his employment relationship. The employer failed to be fair in its evaluation process. The arbitrator found that the employer's decision was unreasonable and abusive and that the employee should be reinstated.

Syndicat du personnel professionnel en milieu scolaire du Nord-Ouest et *Centre de services scolaire de l'Or-et-des-Bois*
2022EXPT-876, 2022 QCTA 145, Nancy Ménard-Cheng

5 Death threats are an unexpected and sudden event

A high school teacher challenges the denial of his claim for acute stress and depression. The evidence revealed that he was the victim of death threats when a student told him, "...you're going to see my cousins cut your throat." This event brought back traumatic memories of when his life was in danger during the war in Algeria. In this case, even if the employee works with a difficult student clientele, the making of death threats is a situation that goes far beyond the normal framework of a teacher's job. In the circumstances, it is an unforeseen and sudden event that is objectively traumatic. Moreover, the fact that the threats are difficult to carry out or that there is no immediate danger, as well as the personal fragility of the employee due to his past, does not prevent the recognition of an employment injury. The claim is accepted.

Kaouadji et *Centre de services scolaire des Portages-de-l'Outaouais*
2022EXPT-1552, 2022 QCTAT 1953 (SST), Manon Chénier

6 Personal condition of psychological fragility allows for cost-sharing

Employer challenges the denial of her cost-sharing claim. A special education technician sustained an abdominal contusion after being struck by a violent student. Following the consolidation of this injury, she was again confronted with aggressive behavior by the same student. It is in this context that the CNESST accepted a claim for a relapse, recurrence, or aggravation related to a post-traumatic stress diagnosis. In this case, the employee presents a personal condition of psychological fragility in the face of violent situations, due to trauma and abuse experienced during her childhood. This condition deviates from the biomedical norm and, had it not been for this condition, the employee would have developed a consolidated adjustment disorder in four to six weeks. Considering the impact of the impairment on the onset of the employment injury and the time required for consolidation, the TAT charged 25% of the cost of the benefits paid to the employer's file.

Centre de services scolaire de Montréal
2022EXPT-1513, 2022 QCTAT 2051 (SST), Marie-Claude Poirier