G+ Education INFO

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Follow up:

The arbitrator rendered a reasonable decision when he confirmed a school board's refusal to offer a new hiring contract to a teacher whose absence from work due to depression had started 43 months earlier, considering the fact that she was permanently unable to work full time. (Refer to Decision # 3, winter 2014): 2015 QCCS 896

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RECENT **DECISIONS**

1 Ethics and Religious Culture in denominational schools

A roman catholic school turned to the Supreme Court to challenge the refusal of its request for exemption regarding the "Ethics and Religious Culture" course, which was turned down by the Minister on the grounds that the proposed replacement program was not equivalent. According to the Supreme Court, the Minister's decision whereby all aspects of the program must be taught from a neutral perspective violates the freedom of religion under which no one can be forced to adhere or to abstain from adhering to religious beliefs. However, the Supreme Court specified that being required to teach the doctrine and ethics of other religions in a neutral and respectful manner does not constitute a violation of the freedom of religion. Now, forcing a roman catholic denominational school to teach religion, which is central to its identity, from a neutral perspective seriously undermines its freedom of religion while contributing little in terms of fulfilling the objectives of the "Ethics and Religious Culture" program. Since the Minister's decision, as a whole, infringes on the freedom of religion, it must be rescinded.

Loyola High School v. *Quebec (Attorney General)*
2015 CSC 12

2 Non re-engagement: providing the causes is less demanding than stating the facts

Following a complaint for psychological harassment and after investigation, a teacher was suspended and received a notice of non re-engagement. The union requested copies of the investigation report and the complaint, as well as specific details on the events that allegedly occurred during the past school years, and which the employer's letters referred to. The arbitrator refused to order the remittance of the investigation report and the complaint, since the employer had undertaken to provide these documents after examination of the employee. The collective agreement states that, in cases of non re-engagement, the employer must provide the causes justifying its decision, while in cases of dismissal, he must state the essential facts and reasons behind it. Stating the causes of a decision requires less specific details than providing essential facts. In this case, the notice meets the requirements of the collective agreement, since it refers to the employee's misconduct and to his inability to maintain good relationships, and it respects the employee's right to a full answer and defence.

Syndicat de l'enseignement des Deux Rives v. *Commission scolaire des Découvreurs*
DTE 2015-230, 2015 QCTA 21, Daniel Charbonneau

3 Even in the absence of supervision, she was expected to work rather than attend to personal matters

A night-shift housekeeping worker challenged her dismissal. The employer contended that she accessed premises that were not part of her rounds without authorization. Namely, she used the physical education teachers' dressing room to take showers during working hours without authorization. Some months earlier, the employee had been suspended for 10 days for having made unauthorized use of a computer for personal purposes during her working hours. According to the arbitrator, despite the guidelines and expectations that were clearly conveyed to her at the time of the suspension, the employee did not understand that the absence of close supervision as she performs her work does not amount to an authorization to take it upon herself to manage her activities and to use her work schedule for personal purposes, without permission. Her insubordination and disregard for authority make her unreliable in her work context. As he could not see how the employer could trust her under these circumstances, the arbitrator upheld the dismissal.

Cégep de Chicoutimi v. *Syndicat des employées et employés de soutien de Chicoutimi*
SAE 8872, 2015-02-25, Charles Turmel

4 A discriminatory decision: $7,500 in damages awarded to an employee

An arbitrator upheld the grievance of an Academic Advisor who had challenged the school board's decision to refuse to terminate her leave without pay extending her maternity leave ahead of term, contending that she was not able to work as she had leukemia. This decision relates to the quantum. The parties agreed on the reimbursement of salary insurance benefits that the employee should have received. However, the union claimed $25,000 for moral damages. The arbitrator awarded $7,500 to the employee for the non-material damage suffered, highlighting that the prospect of being deprived of salary insurance benefits and the effect of the employer's discriminatory decision had an impact on the stress and insecurity she experienced. However, the arbitrator turned down the claim for $10,000 as punitive damages, as the evidence did not show that the employer had acted deliberately to infringe on the employee's rights.

Commission scolaire de la Rivière du Nord v. *Syndicat des professionnelles et professionnels de l'éducation de Laurentides-Lanaudière*
DTE 2015-240, 2014 QCTA 1095, Claude Fabien

5 The teacher had a valid reason for not showing up for an assessment

The union challenged the fact that the school board asked a teacher to reimburse the cancellation fees for a medical assessment at which she failed to show up. The arbitrator held that the employer could, under certain circumstances, claim reimbursement of cancellation fees when an employee had no valid reason not to show up and did not notify either the employer or the clinic. However, in the case at hand, the medical evidence confirmed that the employee had a panic attack the day she was expected to report to the clinic for assessment, and that this was a valid reason not to show up. In addition, the arbitrator faulted the employer for having made a payment agreement with the employee, when the grievance had been submitted and he knew why she hadn't shown up. This individual payment agreement made directly with the employee without notifying the union was illegal. The grievance was upheld.

Syndicat de l'enseignement de Champlain v. *Commission scolaire Marie-Victorin*
DTE 2015-164, 2014 QCTA 1100, Jean Gauvin

6 Third-party participation is assessed on the basis of the employee's behaviour

An employer challenged the CSST's refusal to grant him a cost transfer. He alleged that the accident involving it's employee, a client care attendant, was attributable to a third party, i.e. a school board. The attendant went to one of the school board's schools to attend a training in cardio-pulmonary resuscitation. As she left the training, she fell in a dark staircase at the school, after missing the last steps, and suffered an injured knee. The employer contends that there was no light in the staircase, hence the accident, for which the school board was mainly responsible. According to the CLP, the involvement of a third party in the occurrence of an accident is assessed on basis of the behaviour the employee should have adopted. Despite the darkness, the latter took the staircase, without attempting to lean on the railing or the wall, and without trying to find the light switch. Yet one of her colleagues easily found the switch. The employee was equally responsible for the accident and the cost transfer was denied.

Coopérative de solidarité de services à domicile du Royaume du Saguenay
2015 QCCLP 2145, Jean-Marc Hamel

7 The Special Education Technician does not remember her accident but submits a claim to the CSST

A Special Education Technician challenged the refusal of her claim for a concussion. She explained that she had developed the habit of having lunch at her desk and taking that opportunity to use the computer. She remembers going to her desk to have lunch, but cannot explain what followed. She regained consciousness in the ambulance taking her to the hospital. A colleague had found her lying face down on the floor near her desk. She noticed that the computer keyboard was displaced and surmised that the employee had tripped on the wire connecting it to the computer. None of the examinations conducted at the hospital could explain her loss of consciousness. According to the CLP, the employee has failed to prove that she suffered an accident related to her work. No one could prove what she was doing before her loss of consciousness, nor whether it was work related. It was somewhat rash to presume that she got up to answer a call to the Special Education Technicians rather than to go to the bathroom. The claim was denied.

Lambert v. Commission scolaire de la Région-de-Sherbrooke,
2015 QCCLP 88, François Ranger

8 Does the presence of a Special Education Technician eliminate any danger for a pregnant teacher?

A school board challenged the CSST's decision to compensate a pregnant teacher. While she was teaching in grade 2, she stated that she was pregnant at the start of the school year. The CSSS recommended that she avoid any risk of being hit, using staircases and hallways in the presence of students, standing for prolonged periods, and intervening with unpredictable students. Management then relieved her of supervision during recess and entering/exiting the classroom, and the teacher remained at work. In October, she challenged her reassignment, considering that she was in the presence of unpredictable and aggressive students. The administration then had a Special Education Technician permanently assigned to her class. The attending physician deemed this measure to be insufficient and ordered that she be withdrawn from work. The CLP noted that the reassignment seemed to work at the start of the year, but that the situation had evolved. The fact that the teacher might be assaulted or hit remained a real possibility. Though the permanent presence of a Special Education Technician reduced that risk, it did not eliminate the hazard. The teacher had to be withdrawn from work.

Commission scolaire des Seigneuries v. *Geneviève Chassé,*
2015 QCCLP 2191, René Napert

9 Impoliteness and aggressiveness: two different worlds!

A secondary 4 teacher challenged the CSST's refusal of her claim for post-traumatic stress disorder. In addition to teaching French, the teacher provided educational support. She then found herself in another class, with two 15-year-old students she did not know. As soon as she arrived, one of them took his desk out in the hallway and slammed it against the wall. A Special Education Technician came to calm the student down. The other student became nervous and proposed to go out and hit the student. The teacher asked him to concentrate on his work, went out in the hallway and noted the absence of the Special Education Technician. When questioned, the student answered her coarsely that he didn't know where the Special Education Technician was, and pointed a finger to the classroom two feet away from the teacher, telling her to get back in it. The teacher went to the principal's office, who relieved her of her duties for the day, as she was crying and refusing to go back to the classroom. A post-traumatic stress disorder was diagnosed three weeks later and a leave of absence was recommended. According to the CLP, a distinction must be made between an impolite and a violent student. In this case, one cannot trivialise the intimidating gesture. The claim was accepted.

St-Amand v. *Commission scolaire de Sorel-Tracy,*
2015 QCCLP 456, Christian Genest

Comments

The two boys were not in a regular class with learning difficulties, as was usually the case with students assigned to this teacher. They had Individualized Educational Plans for behavioral difficulties. The one who had a threatening attitude was as tall as the teacher. The classroom was out of the way in relation to the others, and the Special Education Technician had left the premises. Even though she was not subjected to physical violence, the teacher found herself isolated with two out-of-control students. According to the CLP, the circumstances were objectively traumatizing and it deemed this to be a case of intimidation, rather than impoliteness. A distinction must be made between the two when choosing a management strategy. If the circumstances seem objectively traumatizing, in view of the student's gesture and of the teacher's usual clientele, it seems possible to lean more towards an application for a cost transfer alleging that the accident was attributable to a third party, i.e. the student. The circumstances surrounding the accident could be considered exceptional in this context, and allow such a cost transfer, since charging the costs to the employer would be unjust.

10 The psychiatric assessment before authorizing his return to work was justified

A teacher challenged a school board's decision to force him to submit to a psychiatric assessment before authorizing his return to work following a month-long sick leave. The school board demanded that the employee undergo a psychiatric assessment, in view of complaints regarding violent behaviour on his part, of his refusal to submit to the usual disciplinary process and to cooperate with any medical assessment, of the restrictions required by the employee, the nature of which seemed incompatible with the ability to teach, and of the board's duty to provide a safe work environment that is free of any violence or harassment. According to the arbitrator, the school board could have reasonable doubts regarding the employee's state of health. The collective agreement, which states that the school board could require a medical assessment in order to determine whether a teacher has recovered enough to go back to work, allowed the employer to demand that the teacher undergo such an assessment. Consequently, the grievance was dismissed.

Association des employés du Nord québécois v. *Cree School Board, 2015*
QCTA 228, Maureen Flynn

Comments

In this case, the evidence showed that between October 2011 and February 2012, seven complaints had been lodged by teachers, some students and one parent regarding the employee, notably regarding aggressive and intimidating behaviours, demeaning remarks, and an altercation where the employee had verbally and physically abused a student. Following these complaints, the employee refused to attend two disciplinary meetings, then was absent due to a situational disorder with anxiety. During his absence, he did not show up for a psychiatric assessment requested by the school board, and, on the same day, submitted a medical certificate calling for a limited return to work, i.e. "try [sic] return to work, avoid stress". In light of these facts, the school board had a duty to ensure that the employee was able to resume his teaching duties, since it is legally bound to protect the health, safety and dignity of all employees, and to take reasonable measures to prevent psychological harassment, all the more so since the employee is a role model for the students.

The six key steps in managing the "compensation" component of a CSST file

By Emilia Nyitrai, LL.B., *Le Corre & Associates Law Firm*

In the context of your day-to-day management of employees' claim files with the CSST, there are different determining actions to be taken in order to control the compensation-related costs charged to your employer's file.

1) The investigation

The investigation stage is essential to managing your file. It should be conducted in a detailed manner and as soon as possible following the occurrence of an incident. Try to obtain written versions from the employee, his or her immediate supervisor and all potential witnesses. Check to see whether the incident/accident register was completed. It is also recommended that you go to the location of the alleged incident, meet the people involved and take pictures. This stage should allow you to determine the cause of the accident.

2) Analyze and challenge of the admissibility

Once the investigation has been completed, proceed with a thorough analysis of the information collected and the circumstances of the alleged event in order to determine whether inconsistencies remain. Following are a few elements to consider: continuing with regular work, timeframe for reporting, time elapsed before medical consultation, contradictions between the different versions collected, pre-existing personal medical condition at the same injury location, employee's rate of absenteeism and disciplinary file, labour relations climate, vacations turned down, etc. Remember that, in doubt, it is always better to challenge the claim's admissibility. You can always reassess your strategy later depending on the evolution of the file. Finally, have an agreement with the CSST agent regarding the timeframe in which to send him your written observations before he renders his decision on the admissibility. As for injuries of a psychological nature, ask for a copy of the employee's written statement before making any comments.

3) Temporary assignment

Temporary assignment is an employer's right that allows you to diminish the costs charged to your employer's file. If possible, it should be implemented whether or not the claim is accepted or denied by the CSST. Temporary assignment must be authorized by the employee's attending physician and, in order to maximize your chances in this respect, make sure the latter goes to his first medical appointment with a completed form containing a suggested list of specific tasks to be performed. In the event the physician objects, be aware that it not possible to dispute the attending physician's decision. You can, however, change the proposed tasks and submit them again, or request additional details by correspondence.

4) Receiving a new medical certificate

When you receive a new medical certificate, pay attention, among other things, to the identity of the physician who has completed it (is this the attending physician or a specialist?), to the diagnosis (is there a new diagnosis that justifies asking the CSST to render a decision?), to the prescribed tests and treatments (ask the CSST to obtain the results), to whether or not the temporary assignment should be pursued, to any reference to a specialist and to the date of the next medical appointment.

5) The medical assessment

Four situations should lead you to send the employee for a medical assessment: 1) at the occurrence of the injury when the claim is dubious; 2) when a new diagnosis turns up; 3) at the time when consolidation should be declared; and; 4) to assess the permanent impairment and functional disability. Your choice of medical expert should be guided by the nature of the diagnosis, the quality of his reports as well as his availability, both to examine the employee and to testify before the Commission des lésions professionnelles. The assessment mandate to your expert must outline a clear and detailed context and history of events. The tone of the mandate should remain neutral and objective and contain the necessary medical information so that your expert can come to an informed opinion. Carefully review the report you will receive and talk to your expert if there are any remaining questions.

6) Application to the BEM

If there are contradictions between the conclusions of your medical expert and those of the attending physician on one of the five medical questions, i.e.: 1) diagnosis; 2) date of consolidation; 3) adequacy of care and treatments; 4) permanent impairment; and 5) functional limitations, you can initiate a challenge procedure at the Bureau d'évaluation médicale within 30 days of receiving the medical certificate in question.

Finally, once the admissibility of the claim has been challenged, be sure to challenge every subsequent decision rendered by the CSST, in order to remain constant in your contestations and to protect your rights.

Interview techniques: tips from the pros

By Marjorie Simard, PhD, organizational psychologist, and Jacinthe Ouellet, MPs, ACC, organizational psychologist, professional coach and trainer
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There are countless approaches when it comes to interview techniques, but the question remains: which are the proven methods and what do experts in the field do differently?

In this article, we share with you our expertise and a few tips from the professionals, acquired over years of practice and thousands of interviews that we have conducted with managers and professionals from various sectors, including education.

This text has been inspired by the numerous people from the education sector, especially school principals, who have come to us for advice on how to conduct their selection interviews. The current context of budget cuts is forcing school boards throughout the system to review their approaches and procedures. Given the circumstances, we consider sharing of leading expertise on interview methods and techniques a key factor in addressing the concerns of our partners in education.

Tip 1: A Structured Approach Is the Key

A structured interview approach helps increase predictive validity and reliability of the process, avoid many assessment biases and maximize candidate equity.

The framework for a structured interview includes essentially the same questions for all candidates being assessed for a single position, especially behavioural questions and, if the context lends itself, situational questions.

- ✓ Behavioural questions help assess tangible experience and some personality traits (e.g. *what the candidate does when…*).
- ✓ Situational questions help assess knowledge and cognitive abilities (e.g. *what would the candidate do if…*).

Tip 2: A Question of Fit

Hiring yields positive results for everyone involved when a candidate is the right fit in three areas:

- ✓ Role and responsibilities;
- ✓ Immediate superior;
- ✓ Organizational culture and team.

In addition to assessing competencies, the ultimate goal is to achieve a perfect marriage between the candidate's "DNA" and the nature of the work to be performed, the management style of the immediate superior and the values conveyed and encouraged within the organization and within the team.

Like a bad marriage between spouses, maintaining an unsatisfactory employee-employer relationship risks leading to its share of negative consequences, such as problems with motivation, performance or effectiveness.

Tip 3: Know your Perceptual Biases

A good interview relies on the impartiality of the interviewer. To this end, interviewers benefit from knowing themselves well and being able to identify their own perceptual biases, as these can alter the quality of their judgment. There are various types of bias. Let's look at one example, the halo effect, to help you think about this in greater depth.

The halo effect is when positive or negative information alters the judgment of the interviewer, who uses this single piece of information to draw an overall conclusion about the level of the candidate's competency. For example, from a negative viewpoint, a candidate who arrives late for his interview risks having his entire interview coloured by this lateness.

The best way to counter your perceptual bias is to seek evidence to the contrary, in other words to ask questions and fish out pieces of information to ensure that preconceived ideas and stereotypes do not colour the process or alter your judgment.

In brief, we hope this article will further your consideration of these issues and help you assess your candidates' talent and development potential as accurately as possible. In summary, three key points to keep in mind for your interviews: structure the process, have a good perspective on your own assessment skills, and always look for evidence to the contrary.