

Reasonable Notice of Resignation Given by an Employee to His Employer: Where Do We Stand Today?

Monday, December 3, 2018

On September 24, 2018, Éric Lévesque, a grievance arbitrator, rendered a decision on an issue requiring the application to a unionized workplace of the principles flowing from the judgment in *Commission des normes du travail v. Asphalte Desjardins*¹, where employers terminate their contractual relationships with employees before the actual announced resignation date² (the "Arbitral Award").

Facts

Mr. Chad Sherrer, the complainant, had accumulated almost 17 years of uninterrupted service with his employers as of April 13, 2015, on which date he notified his employer that he was going to resign. At the same time, he indicated that his resignation would be effective on April 24, slightly less than two weeks later. Then, the following day, after having obtained written confirmation from the employee of his intention of resigning on that date, the employer requested the complainant leave the workplace immediately.

In the following days, a grievance was filed for: (1) breach of the provisions of the *Act respecting labour standards* (the "ALS") concerning notices of termination of employment, (2) the violation of Article 2091 of the *Civil Code of Québec* on reasonable notice of termination, as well as (3) breach of the provisions of the collective agreement providing for the payment of a compensatory indemnity of eight weeks of salary, to which Sherrer believed himself entitled owing to the fact that he had more than 10 years of continuous service.

After studying the case, arbitrator Lévesque found that Mr. Sherrer was entitled not only to the full payment of the indemnity up to his announced date of resignation (April 24), but also to an overall indemnity of eight weeks' wages, as provided for by the collective agreement. In so deciding, arbitrator Lévesque went beyond the holdings of the Supreme Court in *Asphalte Desjardins*.

We should remember that Mr. Daniel Guay, the employee on whose behalf the former *Commission des normes du travail* (the "CNT") acted before the Supreme Court in 2014, had given his employer, Asphalte Desjardins Inc., only a three-week notice. Accordingly, the CNT claimed only the equivalent of three weeks of salary, although sections 82 and 83 of the ALS allowed Mr. Guay to obtain a severance indemnity of eight (8) weeks, in view of his 14 years of uninterrupted service. In that regard, Justice Wagner, writing for the court, and after having expressed certain doubts about the very possibility of limiting the award to the period then identified by the parties, stressed at the time that the CNT's claim was quite circumscribed and that it would be improper to rule on the directive or protective public order nature of sections 82 and 83 of the ALS³.

Arbitrator Lévesque, without discussing whether the public order character of these provisions was directive or protective, concluded that by dismissing the employee during the notice period that he had given, the employer had put itself in the position of having given the notice provided for by the collective agreement⁴. In so doing, the employer had severed

the contractual bond between them, from that point onwards, right up to the date of April 24 originally identified by Mr. Sherrer. The arbitrator drew a clear distinction between dismissing an employee during the notice period and dispensing him from having to work during that period.

In the light of these findings, the opportunity was unfortunately missed to properly address the issue of the public order nature of the ALS's provisions on notices of termination of employment. We hope that this issue will soon be taken up at a higher level of the judicial system, in order to determine whether an employee may lawfully waive those provisions.

Takeaway for Employers

While awaiting such a ruling, employers will be well advised to act prudently after receiving a notice of resignation from any of their employees. On the one hand, where the period of the notice of resignation given is less than that for notices of termination of employment specified by the ALS, there is no issue: that period of notice must necessarily be "with pay." On the other hand, where an employer does not want to allow an employee to continue working right up until the resignation date he has announced, it will be important to "dispense the employee from performing his work" during that period, and not to "terminate the employee's employment" prior to the announced date. In that regard, we recommend confirming any such dispensation from working in writing.

¹ 2014 SCC 51.

² *L'Union des employés des industries diverses et connexes à la construction, Teamsters local 1791 (FTQ) c. Vinyle Kaytec inc.* (2018) (Arbitrator : Éric Lévesque).

³ *Commission des normes du travail v. Asphalte Desjardins Inc.*, *supra*, note 1, paras. 70 and 71.

⁴ Paragraph 26 of the Arbitral Award.

AUTHOR

Maude Galarneau

T 514.954.3189

MGalarneau@blg.com

BLG OFFICES

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T +1.403.232.9500
F +1.403.266.1395

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T +1.514.954.2555
F +1.514.879.9015

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T +1.613.237.5160
F +1.613.230.8842

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

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