



SYMPOSIUM GRH
ULAVAL 2017

LABOUR ARBITRATION CASE

HR SYMPOSIUM - UNIVERSITÉ LAVAL | 2017

EDITOR

Gilles Grenier
Lawyer

CASE STUDY DESCRIPTION

I- THE GRIEVANCE

On January 27, 2017, the union filed the following grievance:

"Nature of grievance: Dismissal of Mr. Michel Tremblay without good and sufficient cause on January 11, 2017.

"Settlement requested: That the dismissal be rescinded and that the grievor be reinstated in his position with all his rights and privileges, including full compensation with interest as provided under the Labour Code and restoration of seniority."

II- ADMISSIONS

The parties acknowledge that the grievance was filed within the required time and that the grievance is properly before the tribunal. They ask that the arbitrator reserve jurisdiction with respect to quantum.

III- EMPLOYER'S EVIDENCE

A - Yvette Ladouceur

- Ms. Ladouceur has been Assistant to the CEO for seven (7) years.
- On January 9, 2017, Mr. Tremblay was at work as scheduled from 11:00 a.m. to 2:00 p.m. On Tuesday, he was not scheduled to work. On Wednesday, January 11, 2017, he was supposed to arrive at 10:00 a.m., but instead arrived at around 11:30 a.m. As Ms. Ladouceur's office is near the punch clock, she immediately informed Mr. Tremblay that he was late and that she had to get someone to replace him. He then responded, "If that's the way it is, send me my 6% in the mail. Thanks, bye."
- She did not see Mr. Tremblay again after that, and he did not contact her at all. The CEO, Grégoire Bouchard, overheard their conversation, as his door was ajar.
- Mr. Tremblay was sometimes late. He had already been given several verbal warnings admonishing his tardiness, and he had even been given a written warning a few months earlier. Because he arrived significantly late on January 11, 2017, Ms. Ladouceur had to

get another dishwasher, who was working on a paint job at the inn, to replace him. Mr. Tremblay is the only one of the four dishwashers who is available during the day on weekdays, as the others are students who are available in the evenings and on weekends only.

- Mr. Tremblay is classified as a dishwasher, but he is paid a higher rate as a maintenance attendant. On this point, Ms. Ladouceur agrees that he occasionally assisted Luc Leblanc, but adds that he did not do so regularly and was primarily hired as a dishwasher.
- Mr. Tremblay was also supposed to be available on January 12, 2017, as indicated on the work schedule. Ms. Ladouceur called him on that date, because she “didn’t want to leave things that way.” She wanted him to work, not leave. It was 8:00 a.m. when she called, with no answer. “She was upset” that Mr. Tremblay quit. She felt like he had abandoned her. She did not call Mr. Tremblay on January 11, 2017, because he was very angry when he left. She acknowledges that no disciplinary action had been taken against Mr. Tremblay other than verbal warnings and a written reprimand he had received a few months earlier.
- Ms. Ladouceur files as evidence the work schedules for the week of January 9, 2017, which indicate that Mr. Tremblay was supposed to start work at 10:00 a.m. on Tuesday and Wednesday.

B- Grégoire Bouchard

- Mr. Bouchard is the company’s president and CEO.
- On January 11, 2017, Mr. Bouchard was in his office with the door open. His office is across from the punch clock. At around 11:30 a.m., he heard Ms. Ladouceur admonishing Mr. Tremblay for being late, in “a somewhat exasperated tone” because she was concerned. Mr. Tremblay then responded: “If that’s the way it is, I’m not working here anymore. Thanks, bye. Send me my 6%.” He has not heard from Mr. Tremblay since.
- Mr. Bouchard’s comptroller signed Mr. Tremblay’s Record of Employment and took care of sending him the vacation pay he was owed.
- Mr. Tremblay was hired as a dishwasher, but he sometimes performed other work, including, for example, in spring 2016, when there was renovation work at the inn. He assisted Luc Leblanc.

- Mr. Tremblay was late on a regular basis and, during the most recent holiday period, he said that he would not be working during that period. Unbeknownst to Mr. Bouchard, Mr. Tremblay also arranged to not be working on December 25. Mr. Bouchard subsequently informed Ms. Ladouceur that a practice favouring a particular employee in this way would not be accepted by other employees and ran the risk of provoking grievances. Ms. Ladouceur responded that she did not know how Mr. Tremblay managed to not work during the 2016 holiday period.
- Mr. Tremblay had used whiteout on his schedule to erase the times he was supposed to work on December 31, 2016, and January 1 and 2, 2017. In fact, Mr. Tremblay worked 8¾ hours during the last week of December 2016 and did not work during the first week of January 2017. Because of Mr. Tremblay's absence, Mr. Bouchard himself had to be the dishwasher the evening of December 25.
- Mr. Bouchard considers Mr. Tremblay to be a "good guy," but says he cannot manage a company when someone is always "failing to pull their weight, and it's always the same person."

IV- UNION'S EVIDENCE

A- Réjeanne Bernier

- She has worked for the employer for approximately four (4) years as a server in the dining room. At the time of the incident, she was also a union steward.
- On January 11, 2017, there were many breakfast orders, and because Mr. Tremblay was absent, Ms. Bernier asked Ms. Ladouceur to have someone assigned to dishwashing. Ms. Ladouceur told her that Mr. Tremblay had resigned from his position and that they would get an emergency replacement. The evening of January 11, 2017, she called Mr. Tremblay to ask what happened, as she thought he was a good worker who seemed to enjoy his work. He told her that he had been dismissed. She then told him that a dismissal was "grounds for a grievance." He responded that he did not want to cause trouble and that he was first waiting for his notice of termination of employment before seeing what was going to happen. He wanted something in writing before he took action. Mr. Tremblay called her on January 26, 2017, to tell her that he had not received anything from the employer and that he now was okay with filing a grievance, which was done the next day.

- As Ms. Bernier had heard two (2) versions of events—the version recounted by Ms. Ladouceur, who said Mr. Tremblay had resigned and “asked for his 6%,” and the version recounted by Mr. Tremblay himself—she therefore conducted her own investigation. In doing so, she discovered an ad in the January 12, 2017 Journal de Québec “seeking full-time dishwasher – 418-956-7325.” She found this curious, as she did not think the company needed to hire a second full-time dishwasher. Guillaume Latendresse was hired to start working as a dishwasher on January 15, 2017, and he says he was hired full time. She thus deduced that he was replacing Mr. Tremblay.
- The witness filed a document entitled “Grievances Investigation Report,” which she prepared on January 26, 2017, and which corroborates the testimony she just gave.
- Prior to January 11, 2017, she had had discussions with Mr. Tremblay as a union steward. He was reflecting on the tasks he performed and felt that he did much more than just his dishwashing duties. The witness’s personal notes indicate that these meetings took place on November 28 and December 5 and 6, 2016. Mr. Tremblay was stressed out by the situation. She specifies that in November, the mood at work was tense and Mr. Tremblay was indeed stressed.
- When she spoke to Mr. Tremblay the evening of January 26, 2017, he told her that Mr. Bouchard had called him and that he had confirmed that he “would not be returning to work here.”

B- Michel Tremblay

- He worked for the employer from February 7, 2014, to January 11, 2017, as a dishwasher.
- Apart from his dishwashing duties, he performed many other kitchen tasks, including cleaning, receiving goods and rotating stock. He also helped move crates of water and paper from the warehouse to the inn. With respect to his maintenance duties, at the request of Mr. Bouchard or the maintenance attendant Mr. Leblanc, Mr. Tremblay often helped Mr. Leblanc perform carpentry work or renovation work on inn rooms in spring 2016; he had to renovate three (3) rooms and change out the toilets and bathtubs in the rooms. He also blew in mineral wool.
- Mr. Tremblay in fact had no problem with the employer—on the contrary—prior to November and December 2016, when the employer’s conduct changed. He recounts two

(2) incidents involving Ms. Ladouceur and Mr. Bouchard that he believes may explain this change.

- It is the head chef who, upon his request, authorized him to take time off during the Christmas period, since, Mr. Tremblay pointed out, the students would be available to replace him.
- He admits that he was the one who used whiteout on his schedule and that he informed the chef by telling him it was a mistake, given that he had arranged his schedule with him. The chef responded that he did not want to be mixed up in this anymore and told him to sort it out with Mr. Bouchard or Ms. Latendresse. The chef later called him to tell him to take the rest of the week off unpaid, which he did.
- The day of Wednesday, January 11, 2017, he was convinced that he was supposed to start at 11:30 a.m. The Monday morning before, he did see that his work day started at 10:00 a.m. on Tuesday, but he was available only from Thursday on. He declined Mr. Leblanc's request to help him on Wednesday, given that he was not supposed to be working that day. However, when he left at around 2:00 p.m. on Monday afternoon, he noticed when he was punching out that his schedule had been changed and that he was supposed to be working Tuesday and Wednesday. Mr. Leblanc was walking by when this happened and told him that he could give him a hand on Wednesday after all.
- Mr. Tremblay says that in the past, he was often scheduled to start work at 11:30 a.m.
- On January 11, 2017, he left his home at around 11:00 a.m. It took him approximately 15–20 minutes to get to work. He did not get a call before he left, and his wife was at home and did not get a call either. When he walked through the front door, Mr. Groleau, whom he did not know well because he worked at the health centre, approached him to tell him "Michel, go home; you have been replaced this morning." He went to the punch clock, where he noticed that he was indeed supposed to start at 10:00 a.m. Ms. Ladouceur, using a very aggressive tone, then said to him, "You were supposed to be here at 10:00 a.m. You weren't here; we replaced you." He responded, "Send it to me by mail" and left. As he had never been suspended before, he expected to receive a suspension of one day or, at most, one week without pay. He went to get a coffee at a nearby restaurant, and that is when he noticed in the Tuesday Journal de Québec lying on the table, as in the Wednesday paper, an ad from the employer seeking a full-time dishwasher.

- He had not received anything from the employer by the time he filed his grievance on January 27, 2017. It was after that that he received his notice of termination of employment, as the postage stamp dated January 31, 2017 attests. He says that this is the only document he received from the employer after filing his grievance. A few days later, he went to Employment Insurance so he could receive Employment Insurance benefits. What Mr. Tremblay told the Employment Insurance officer is consistent with the document the employee gave him after their meeting, which he signed and was stamped on February 6, 2017, and includes the following:

“I was fired and did not quit my job at the inn on January 11, 2017, because I was informed that my work day started at 10:00 a.m., not 11:00 a.m.”

- It was Mr. Tremblay's wife who convinced him to file a grievance. He did not want to get in any trouble, and he suspected that what he is currently going through (arbitration) would happen. He loved his job and would have liked to return to work for his employer.
- He denies telling Ms. Ladouceur to “send [him his] 6%.” What he said to her was to send what she had just said to him “by mail, in writing.” He then went toward reception, said hello to the person who was working there, and left. He agrees that he was “angry” at that time.
- Questioned by the union's lawyer, Mr. Groleau confirmed that Mr. Tremblay seemed very surprised when he told him what he just testified and that it appeared from his conduct that there was indeed a “scheduling error,” but he could not remember the exact words Mr. Tremblay used.

V- EMPLOYER'S REBUTTAL

A- Yves Groleau

- Mr. Groleau explains that, on January 11, 2017, he was aware that Mr. Tremblay did not show up for work at 10:00 a.m. and that he had been replaced. He was at reception when Mr. Tremblay came in, and he told him "You were expected to be here at 10:00 a.m.; someone else is on dishwashing." Mr. Tremblay looked surprised at his remark and went to the punch clock, as he wanted to see the posted schedule. Mr. Groleau went with him and noticed that Ms. Ladouceur and Mr. Bouchard were in their offices. He witnessed Mr. Tremblay's discussion with Ms. Ladouceur about him being replaced. He clearly remembers hearing Mr. Tremblay say "Send me my 6% in the mail."

EXCERPTS FROM THE COLLECTIVE AGREEMENT

SECTION 1

The purpose of this agreement is to establish, maintain and promote good relations between the Employer and the union of inn employees (the Union) and to set fair and equitable work conditions.

SECTION 3

The Employer recognizes the Union as the sole bargaining agent for certified employees under the provisions of *Quebec's Labour Code*.

SECTION 4

The Union recognizes that the Employer is free to exercise its management rights, subject to the provisions of this Collective Agreement.

SECTION 16

If the Employer is of the opinion that an employee's conduct requires disciplinary action, the Employer can impose any of the four (4) following measures depending on the seriousness of the incident and, if applicable, the frequency of incidents:

- Verbal warning, written reprimand, suspension and dismissal

It is understood that any disciplinary action may be the subject of a grievance. In such case, the burden of proof lies with the Employer.

SECTION 17

Any employee who wishes to file a grievance must submit it in writing to management through the Union within thirty (30) days of the event giving rise to the grievance.

The Employer will send the Union the response it intends to give to the grievance within seven (7) days of receipt of the grievance.

If there is no response or the response is deemed unsatisfactory by the Union, the Union may submit the grievance to arbitration within thirty (30) days following the expiry of the period mentioned in paragraph 1.

The grievance is then referred to a single arbitrator designated jointly by the parties. Failing agreement between the parties within fifteen (15) days following the expiration of the period provided under the second paragraph, the party that wishes to submit the grievance to arbitration must, within fifteen (15) days thereafter, request that the Minister of Labour designate an arbitrator; otherwise, the grievance shall be deemed abandoned.

This section does not grant the authority to add, remove, modify or amend the Collective Agreement in any way.

The costs and fees for the arbitrator shall be shared equally between the Employer and the Union.

EXCERPT FROM QUEBEC'S LABOUR CODE

100.12. In the exercise of his duties the arbitrator may (a) interpret and apply any Act or regulation to the extent necessary to settle a grievance; (b) fix the terms and conditions of reimbursement of an overpayment by an employer to an employee; (c) order the payment of interest at the legal rate, from the filing of the grievance, on any amount due under an award he has made. There must be added to that amount an indemnity computed by applying to that amount, from the same date, a percentage equal to the amount by which the rate of interest fixed according to section 28 of the Tax Administration Act (chapter A-6.002) exceeds the legal rate of interest; (d) upon request of a party, fix the amount due under an award he has made; (e) correct at any time a decision in which there is an error in writing or calculation or any other clerical error; (f) in disciplinary matters, confirm, amend or set aside the decision of the employer and, if such is the case, substitute therefor the decision he deems fair and reasonable, taking into account the circumstances concerning the matter. However, where the collective agreement provides for a specific sanction for the fault alleged against the employee in the case submitted to arbitration, the arbitrator shall only confirm or set aside the decision of the employer, or, if such is the case, amend it to bring it into conformity with the sanction provided for in the collective agreement; (g) render any other decision, including a provisional order, intended to protect the rights of the parties.

GRIEVANCE

"Nature of grievance: Dismissal of Mr. Michel Tremblay without good and sufficient cause on January 11, 2017.

"Settlement requested: That the dismissal be rescinded and that the griever be reinstated in his position with all his rights and privileges, including full compensation with interest as provided under the Labour Code and restoration of seniority."

REPRIMAND

Québec, July 5, 2016

Dear Mr. Michel Tremblay:

This is a written reprimand for your late arrival to work on June 24, 2016. This is not the first time we have informed you of our dissatisfaction with your tardiness.

Your late arrival on June 24, 2016, caused serious inconvenience. It is important that you are at work when you are scheduled to be. If additional incidents of tardiness occur, more severe disciplinary action may be taken against you.

Yvette Ladouceur, Assistant to the CEO