Salaries Paid To Student Employee An Important Decision by the Quebec Human Rights Tribunal

May 25, 2018

On May 11, 20181, the Québec Human Rights Tribunal (the "Tribunal") ordered the Aluminerie de Bécancour ("ABI") to pay its student employees damages to compensate them for losses they had sustained as a result of being paid a reduced hourly wage under the salary scales that applied in each collective agreement. These Tribunal also ordered each student employee to receive $1,000 in moral damages.

In addition, the Tribunal instructed ABI to amend the relevant clauses of its collective agreements and render them compliant with the *Charter of Human Rights and Freedoms* 2(the "Charter"), by eliminating a distinction in pay based on the employees' status as students.

The Factual Background

The Québec Human Rights Commission (the "Commission"), acting on a complaint from the United Steelworkers Union, Local 970 (the "Union"), instituted proceedings before the Tribunal, alleging that the salary scales that applied to student employees were discriminatory, on the ground that the students were being paid a lower hourly rate than other employees, even though they were doing the same work. For its part, ABI contended that the work done by the students differed from that done by regular or casual employees, within the meaning of the applicable collective agreements.

The Tribunal's Conclusions

The Tribunal concluded that the salaries provided to students were *prima facie* discriminatory and that the reduced salary scale for students, compared to that of regular and casual employees, was based on prohibited grounds of discrimination under section 10 of the Charter, in this case, social condition and age. The Tribunal also held that this distinction violated the dignity of the student employees, contrary to section 4 of the Charter, owing to the fact that ABI had not respected their right to receive equal pay for equal work, without any discrimination.

More specifically, the Tribunal held that social condition was a distinctive factor in this case, given that the students made up a small percentage of the overall number of unionized employees, that collective bargaining had occurred while these student employees were not on the job and that they had not been asked to vote on their salary scales. Likewise, the Tribunal found that age was also a distinctive factor since the students were younger than the majority of the unionized workers.

Moreover, the Tribunal concluded that these discriminatory distinctions could not be justified under any of the exemptions set forth at section 19 of the Charter, namely: experience, seniority, length of service, merit, productivity or overtime. The Tribunal cited the following reasons:

- the student employees worked in the same hazardous and potentially toxic environment as regular and casual employees;
- the student employees were just as competent as the regular or casual employees;
- when the student employees worked overtime, they were paid at the rate that applied to casual employees;
- the hourly rate paid to casual employees who were being trained was higher than the rate paid to students who had completed their training periods and who were working on the production line; and
- from their first day at work, casual employees earned more than student employees that had worked four different periods of summer employment and who had worked on as many occasions during holiday periods.

Lastly, the Tribunal decided not to hold the Union jointly and severally liable with ABI for this salary-based discrimination. The Tribunal ruled that the Union had never desired to create a pay differential for student employees. Rather, ABI had unilaterally raised the issue at the bargaining table.

The Possible Consequences of this Decision

To our knowledge, this is the first decision on this point ever rendered under the Charter in Québec. In view of the potential and very serious repercussions of the decision, both for ABI and for a number of other Québec employers, it is to be expected that the decision will be appealed to the Québec Court of Appeal.

In the meantime, Québec employers that are subject to the provisions of the Charter would be well-advised to be cautious in establishing salary scales for their student employees, as those conditions will be viewed in accordance with the provisions of sections 4, 10 and 19 of the Charter, and may be determined to be discriminatory. In particular, employers must be able to show that any difference in the wages paid to their student employees is truly based on their experience, seniority, length of service, merit, productivity or overtime work.

1 *Commission des droits de la personne et des droits de la jeunesse (Beaudry et autres)* c. *Aluminerie de Bécancour inc.,*2018 QCTDP 12.

2 CQLR, c. C-12 [the “Charter”].

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