Court of Appeal Holds: Senior Manager Negligent in Performing His Leadership Duties Entitled to No Indemnity in Lieu of Prior Notice

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Summary

In the case of *Garneau c. Gestion Universitas inc.*, 2018 QCCA 1525, the plaintiff — an actuary who held a senior management position as Chief Executive Officer (CEO) — was dismissed by his employer, without notice or any indemnity in lieu of notice, after 12 years of uninterrupted service.

At the conclusion of a 17-day trial, the Superior Court dismissed the plaintiff's suit. The court held that the plaintiff's shortcomings and the negative working environment resulting from his lackadaisical management, taken together, constituted serious grounds permitting the employer to terminate the plaintiff's employment contract unilaterally and without notice.

In appeal, the plaintiff alleged, among other things, that the trial judge had erred in concluding that the employer had serious grounds to dismiss him without notice, and he petitioned the Court of Appeal to award him an amount of $2,155,027.00 as an indemnity in lieu of reasonable notice. The plaintiff further claimed an amount of $100,000.00 in moral damages, arguing that the employer had fired him in an abusive manner, in a covert, hurtful, humiliating and brutal fashion, thus causing him both personal and professional injury, including major damage to his reputation.

In support of is contentions, the plaintiff argued, more particularly, that he had properly fulfilled the obligations of his contract of employment, that the decision to dismiss him was taken without any rigorous analysis of the situation and without providing him with any prior opportunity to correct his so-called shortcomings, and that the employer had dismissed him precipitously. Essentially, the plaintiff contended that the judge of first instance had improperly assessed the evidence adduced by the parties.

The Court of Appeal dismissed the plaintiff's arguments, holding that he could not [translation] "*be unaware of the failings in his management and leadership, since they had been pointed out in a timely manner and on more than one occasion*" over the years, [translation] "*repeatedly and clearly*" in management reports, as well as in a

survey dealing with the working atmosphere within the company. In the light of the evidence submitted by the employer, the plaintiff was fully cognizant of the problems in the company and what it expected of him, especially that he be more attentive to the complaints of the managers working under his direction, that meetings be better prepared and more productive, that he be more involved and strive to identify the company's priorities more clearly. Finally, in view of the plaintiff's senior status within the corporate hierarchy and his failure to exercise his leadership role, the employer had serious grounds to terminate his employment without prior notice.

With respect to the plaintiff's argument that the employer had dismissed him in an abusive manner, thus justifying the award of a substantial sum in moral damages, the Court of Appeal found that argument unfounded. Even if the plaintiff's firing had occurred in a precipitous manner — which the Court of Appeal declined to decide — there was no question of any "brutal" dismissal, given the context, in which the plaintiff, over the years, had received several warnings from the employer indicating that his performance on the job was wanting.

Discussion

As we know, a "disciplinary dismissal" occurs where an employee fails or neglects to perform one or more acts, which omissions or negligence, owing to their seriousness, justify terminating the employment relationship without notice and without payment of any indemnity in lieu thereof. A disciplinary dismissal is a reaction to an employee's intentional misconduct or to the employee's unwillingness or neglect to act as he/she should act, thus committing a "disciplinary fault". An "administrative dismissal" occurs, not in reaction to any wrongful act, omission or negligence of the employee, but in reaction to the latter's inability to satisfy the employer's requirements. Administrative dismissal is justified, for example, where, at the conclusion of a process of evaluation or upgrading of the employee's skillset, the employee still appears incapable of fulfilling the requirements of his/her position. Such incompetence will then constitute valid grounds for terminating his/her employment without notice or any indemnity in lieu of notice.

In *Ganeau c. Gestion Universitas inc.*, in first instance, the Superior Court did not clearly indicate, in its reasons for judgment, whether it deemed the plaintiff's dismissal to have taken place for disciplinary or administrative reasons. A close reading of the Court of Appeal's judgment, however, suggests that it took the view that this was a disciplinary termination, since the court held that [translation]: "*the judge obviously chose to accept the evidence that* [the plaintiff]*, by virtue of his actions, had refused to take any responsibility for the shortcomings of which he was aware, and saw, in this chronic inaction* [by the plaintiff]*, a kind of wilful blindness to the warnings he had received from different sources since late 2010*", and that [translation]: "*according to the preponderance of evidence, the plaintiff improperly renounced the leadership role that he should have played under the circumstances.*"In other words, since the plaintiff was aware of the problems and had failed or neglected intentionally to remedy the situation, his dismissal for serious reasons and without prior notice or indemnity in lieu thereof was therefore justified.

Whether the plaintiff's dismissal occurred for disciplinary or administrative reasons, however, an attentive reading of the facts of this case reveals an important point: at no time during the five (5)-year period in which it had voiced criticisms of the plaintiff, had the employer informed him, either orally or in writing, that his failure to correct his

shortcomings in leadership — and to resolve the problems resulting therefrom – could eventually lead to the termination of his employment.

Generally speaking, except where there exists some immediate and serious cause warranting disciplinary dismissal, prudent employers will always be better advised to issue clear warnings to their employees, indicating that their misbehaviour or similar failings could eventually justify their dismissal on serious grounds and without prior notice. That being said, the *Garneau c. Gestion Universitas inc.* decision, in our opinion, is an important judgment — confirming a position repeatedly taken by the *Commission des relations du travail*, and then by the Administrative Labour Tribunal — to the effect that in dismissal cases involving executive officers, courts will not necessarily require employers to make proof of a similar rigour in issuing warnings of eventual dismissal as is required when ordinary employees are terminated.

By

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