The Administrative Labour Tribunal confirms the dismissal of a senior manager for serious misconduct

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BLG recently secured a second favourable decision for its client, Kleen-Flo Tumbler Industries Limited, in *Desaulniers v Kleen-Flo Tumbler Industries Limited*, 2025 QCTAT 471. The case involved the dismissal of a senior manager for misappropriation of gift cards and the disclosure of sensitive and confidential proprietary information.

Our firm's previous win in the 2023 case *Couture v Kleen Flo Tumbler Industries Limited*, 2023 QCCS 2175 also confirmed a senior manager's dismissal for serious misconduct, for different reasons.

Background

This new case involved a complainant who held the position of Vice President – Sales for Eastern Canada and the Maritimes with Kleen-Flo Tumbler Industries Limited, a company which manufactures and sells chemical products for motor vehicles.

When his employment was terminated, the complainant had almost 35 years of service with the organization. During his last 10 years of service, he was employed in a management position and was the second-highest paid individual in the organization.

As part of the company's activities, the employer ran a rewards program for its clientele. When clients purchased certain Kleen-Flo products, the employers' sales representatives could, depending on the amount of product purchased, provide the buyer with gift cards for promotional purposes.

In March 2019, the employer launched an internal investigation after discovering that an important amount in gift cards was provided to an individual who would not have been eligible to such rewards under normal circumstances. A more thorough investigation revealed several irregular transactions indicating that the complainant had personally requested thousands of dollars in gift cards for products sales that were never concluded, or for products sales that would normally be ineligible for gift cards rewards.

In April 2019, during a meeting with one of the company's owners, the complainant was shown documentary evidence regarding his actions and admitted the gift card misappropriation. The complainant asked the employer to drop the investigation and allow him to retire with dignity at the end of the year. Initially, the employer refused, but later accepted the proposal at the complainant's insistence.

However, in October 2019, a few months before he was set to retire, the complainant changed his tune and claimed that the employer owed him an indemnity in lieu of notice since his position was being "abolished" at the end of the year. The employer was surprised by this behavior and ignored the request.

In December 2019, the complainant raised his request again, claiming an indemnity of $250,000. The employer refused and, later on, received a copy of a PowerPoint presentation prepared at the complainant's request and destined to the employer's biggest client. In this presentation, the complainant shared highly confidential information about the employer, including the production costs and profit margins for certain products, while offering his services to this client as a "consultant" or "project manager."

Further to these actions, the employer dismissed the complainant for cause on December 20, 2019. A few weeks later, the complainant filed a complaint for dismissal without good and sufficient cause, as well as a complaint for forced retirement with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST).

Case summary and judgment

After 20 days of hearing, held between 2022 and 2024, the Tribunal allowed the employer's preliminary objection and dismissed the two complaints. More specifically:

- The Tribunal begins with an assessment of the parties' credibility. It describes the versions of the facts presented by the employer's witnesses as [translation] "having more compelling value, being more consistent and more convincing." In contrast, the Tribunal finds that the complainant's testimony is lacking in consistency and coherence, given the numerous implausible statements he makes, including his continuous denial of the evidence. The Tribunal also notes that the complainant's theory of the case appears to have been put together during the course of the hearing instead of being based on the facts when they actually occurred.
- Concerning the issue of dismissal without good and sufficient cause, the Tribunal concludes that the evidence clearly shows the complainant had announced his retirement, which was to take effect on December 31, 2019. However, since the employer terminated the complainant's employment on December 20, 2019, a dismissal also occurred. Given the evidence, the Tribunal concludes that the complainant was a "senior manager" and that he was therefore ineligible to the dismissal without good and sufficient cause. The Tribunal decision in this regard is based, notably, on the level of the complainant's decision-making autonomy within his position, and on his participation in the company's key orientations.
- Concerning the issue of forced retirement, the Tribunal concludes that the complainant does not meet the essential requirements for this type of remedy. More specifically, there was no evidence that the employer's practice, pursuant to a retirement plan or another policy, was to require employees of a certain age

to retire, nor was there any evidence that the complainant's employment was terminated because of his age.

- Since the evidence demonstrates that the complainant was a senior manager and that the essential requirements for the forced retirement remedy are not met, the Tribunal could simply dismiss the complaints at the preliminary stage. However, given the extensive proceedings and resources invested by the parties to present their respective position, the Tribunal concludes that it would be [translation] "desirable and to everyone's advantage to rule on all of the issues" and render a decision on the grounds for dismissal, namely the allegations of gift card misappropriation and the disclosure of sensitive and confidential proprietary information.
- In the end, the Tribunal finds in favor of the employer and concludes that the complainant's misuse of the gift card program and his disloyal actions justified his summary dismissal without progression of sanctions.

Key takeaways

- **Senior manager status**

  Regarding the issue of whether the complainant was a "senior manager" and therefore ineligible to the dismissal without good and sufficient cause remedy, the Tribunal provides an important review of the applicable criteria. Based on the Court of Appeal's decision in *Delgadillo* v *Blinds To Go Inc.*, 2017 QCCA 818, the Tribunal states that an employee's lack of veto does not necessarily negate their participation in the company's decision-making process. The fact that an employee is closely involved or takes part in the company's key decisions can suffice to conclude that this employee is a "senior manager."

- **Intention to retire**

  Even where there is no written confirmation that an employee planned to resign or retire on a specific date, it remains possible to conclude, based on witness testimony and material evidence, that an employee intended to do so and had communicated as much.

- **Forced retirement**

  When an employee has reached or passed retirement age is dismissed and files a complaint for forced retirement per the Act *respecting labour standards*, they must prove that the employer's practice is to require employees to retire at a certain age or after a certain number of years of service, pursuant to a retirement plan or other prohibited grounds under the Act.

- **Misappropriation of the employer's property**

  Even where the evidence does not necessarily support the conclusion that an employee misappropriated the employer's property for their personal benefit, the misappropriation can lead to a finding of dismissal for good and sufficient cause. Such behavior also amounts to serious misconduct and therefore, to an exception

to the progression of sanctions doctrine, notably where the employee holds an important position requiring a high level of honesty and integrity.

- **Breach of the duty of loyalty**

  The Tribunal states that when an employee breaches their duty of loyalty and, in doing so, puts themselves in a situation of conflict of interest or puts their employer in a vulnerable position, the employee's reasons and intentions for their behavior do not amount to mitigating factors and cannot be used to minimize their fault or reduce the sanctions imposed by the employer.

Contact us

If you have any questions or need assistance regarding labour standards, including situations involving termination of employment, please do not hesitate to reach out to the contacts below, or any member of BLG's Labour and Employment Group.

By

Justine B. Laurier, Alexis Renaud, Samuel Roy

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blg.com

BLG Offices

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

T 403.232.9500
F 403.266.1395

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

T 613.237.5160
F 613.230.8842

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

T 604.687.5744
F 604.687.1415

Montréal

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

T 514.954.2555
F 514.879.9015

Toronto

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

T 416.367.6000
F 416.367.6749

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