?Delgadillo c. Blinds To Go, 2017 QCCA 818: The Concept of "Senior Managerial Personnel" Revisited by the Court of Appeal

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Each year, many employees avail themselves of their right to file a complaint with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (the "CNESST"), alleging that they have been dismissed without a good and sufficient cause. The *Act Respecting Labour Standards* (the "Act") provides that "senior managerial personnel" may not avail themselves of this recourse. The case law is replete with examples of employers attempting to invoke that exception to the Act, in order to seek the dismissal of complaints for dismissal without a good and sufficient cause filed by employees they consider to belong to "senior managerial personnel".

In June 2017, the Court of Appeal rendered an interesting decision confirming and also specifying the criteria to be considered in determining whether an employee is, or is not, considered "senior managerial personnel", within the meaning of the Act.

Facts

Blinds To Go (the "Employer") is a company specializing in the manufacture of made-to-measure products within short timeframes. To carry out its operations effectively, it owns two manufacturing plants, as well as hundreds of retail stores, where customers can place orders. As soon as a product is ordered, it is manufactured in one of those two factories, and delivered to the customer within a maximum period of 48 hours. Mr. Roberto Delgadillo was hired as manager of one of those manufacturing plants — factories that the Court of Appeal held to be a "nerve-centre of the business[1]", having regard to the Employer's specific operations.

Following his dismissal, Mr. Delgadillo filed a complaint under the Act, alleging that he had been dismissed without a good and sufficient cause. The employer applied to have the complaint dismissed, on the ground that Mr. Delgadillo, considered as "senior managerial personnel", could not benefit from any such legal recourse.

History of the Case

On July 5, 2013, the *Commission des relations du travail* (the "CRT"), which has now become the *Tribunal administratif du travail* (or the "TAT"), rendered a first decision, concluding that Mr. Delgadillo was **not** a senior manager, and therefore that the Employer's preliminary objection was to be dismissed[2]. Essentially, the CRT held that Mr. Delgadillo had no right to oversee *the whole* of the company's operations, but only those of a *single department*, however important that department was[3]. Subsequently, on August 18, 2014, the CRT allowed Mr. Delgadillo's complaint, finding that his dismissal was unjustified[4].

The Employer then applied for judicial review of both decisions of the CRT. Applying the standard of correctness to both decisions, the Superior Court rendered a judgment on December 16, 2015, quashing the CRT's decisions and holding that, in fact, Mr. Delgadillo **was** a senior manager within the meaning of the Act[5].

Mr. Delgadillo obtained leave to appeal the Superior Court's decision on February 9, 2016[6], whence the proceedings before the Court of Appeal and the decision summarized here.

The Court of Appeal's Decision

After finding that the applicable standard of review of the CRT's two decisions was reasonableness, rather than correctness (which the Superior Court had applied at the judicial review stage), the Court of Appeal examined whether the CRT's two decisions were in fact "reasonable" under the circumstances.

The Court of Appeal concluded that the CRT had committed two fatal errors in its reasoning.

On the one hand, the Court of Appeal held that the CRT had totally ignored the particular nature of the business, the context, as well as the position occupied by Mr. Delgadillo, and had thus rendered a decision which did not fall within a range of possible outcomes in light of the applicable law and was unacceptable as regards the facts.

On the other hand, the Court of Appeal recalled that although the concept of "senior managerial personnel" within the meaning of the Act must be interpreted restrictively, it could not be given so narrow a meaning as to apply exclusively to persons occupying the position of president of a company.

In that context, the Court of Appeal concluded that Mr. Delgadillo was a senior manager, within the meaning of the Act, summarizing the facts underpinning that conclusion as follows:

- The relationship of trust and the close connections between Mr. Delgadillo and the owners of the company;
- Mr. Delgadillo's important duties in the company;
- The vast latitude granted to Mr. Delgadillo in the performance of his duties;
- The fact that Mr. Delgadillo was active at the highest levels of the company;
- The fact that Mr. Delgadillo reported only to the president or the vice-president, in addition to the fact that he could contact them directly, without going through any

intermediary, and that he discussed matters with them almost on a footing of equality;
- Mr. Delgadillo's generous working conditions (including his salary, which could be as high as $375,000, one of the highest in the company);
- Mr. Delgadillo's participation in setting company strategies and policies.

It is interesting to note that the Court of Appeal found that Mr. Delgadillo had "senior managerial personnel" status, despite the fact that his authority extended only to the one plant that he managed. In so concluding, the Court of Appeal appears to have taken account of the fact that Mr. Delgadillo was required to cooperate with the managers of other departments in that same factory, and therefore that he in fact ensured the management of all of its operations. That he had no power of veto was not considered to be a determining factor by the Court of Appeal.

Conclusions

The *Delgadillo* case confirms and re-applies the usual criteria applicable by the TAT (formerly the CRT)[7] for determining "senior managerial personnel" status, and further reiterates the point that the facts of each case must always be considered in determining the status of a complainant. In particular, the decision reaffirms the importance of considering the *specific context of the company* in undertaking that analysis.

That being said, we believe that the *Delgadillo* decision could well lead the TAT to revisit the previously established case law and potentially to view certain executives who have departmental, functional, divisional, regional or "consulting" authority as belonging to "senior managerial personnel" within the meaning of the Act, having regard, of course, to the context of each case. The premise that someone responsible for just one department cannot be a senior manager must therefore be set aside definitively.

Obviously, we are of the view that not all plant managers, or all managers of departments, can qualify to be recognized as "senior managerial personnel" by the TAT. The very specific context of this case was mentioned several times by the Court of Appeal itself and so the precedent must be used with prudence.

One thing is certain, however: it is no longer only the "top managers" of companies who can be considered to be "senior managerial personnel" within the meaning of the Act.

[1] *Delgadillo* c. *Blinds To Go*, 2017 QCCA 818 at para. 22. See also paras. 33 and 34.

[2] *Delgadillo et Blinds To Go Inc./Marché du store inc.*, 2013 QCCRT 0327.

[3] *Delgadillo et Blinds To Go Inc./Marché du store inc.*, 2013 QCCRT 0327 at para. 39.

[4] *Delgadillo et Blinds To Go Inc. — Le Marché du store inc.*, 2014 QCCRT 0442.

[5] *Blinds To Go Inc. (Marché du store inc.)* c. *Commission des relations du travail*, 2015 QCCS 5997.

[6] *Delgadillo* c. *Blinds To Go Inc.*, 2016 QCCA 246.

[7] To wit: (1) the hierarchical position of the employee, (2) the personnel management of the employee whose status is contested, (3) the employee's relationships with the owner, (4) the employee's working conditions, as well as his/her arrival and progression within the company, (5) the employee's participation in management, the development of policy decisions of the company, etc. and (6) the enjoyment of great autonomy, important discretion and significant decision-making power. See, for example: *Commission des normes du travail c. Beaulieu*¸ [2001] R.J.D.T. 10 (CA) at paras. 21 *et seq*.

By

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