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Me Jean Beauregard represented the Société d'énergie de la Baie James in this case

Employees cannot of their own accord contest in the Superior Court an arbitration award dismissing their grievance.

The courts of Quebec have held on several occasions that employees cannot present a motion for judicial review of an arbitration award dismissing their grievance where their union refuses to do so.

The decisions of the Superior Court have remained divided on one issue however: whether a union member can contest this same arbitration award through a direct action in nullity? The direct action in nullity is a different procedural remedy which, in contrast to the motion for judicial review, is subject to the rules relating to civil claims and therefore generally more lengthy and costly.

Last August 19, the Court of Appeal put an end to this controversy in the case law and dismissed the appeal of an employee who claimed to be able to proceed in this manner against our client, the James Bay Energy Corporation ("JBEC") (*Christian Noël* v. *La Société d'énergie de la Baie James (The James Bay Energy Corporation))*, (C.A.M. 500-09-002136-968).

The facts are simple and can be summarized as follows. The appellant, Mr. Noël, filed a grievance through his union contesting his dismissal. The arbitrator seized of the file confirmed the dismissal.

The union having decided not to proceed with a judicial review of the arbitration award, Mr. Noël brought the motion himself. Initially, the Superior Court granted a motion to dismiss presented by the JBEC alleging that the employee did not have the required interest under the *Code of Civil Procedure.*

A few weeks later, the employee this time presented a direct action in nullity and our client again brought a motion to dismiss. The Superior Court granted the motion to dismiss and the employee appealed to the Quebec Court of Appeal.

In a majority judgment, the Quebec Court of Appeal recalled the principle which holds that, apart from a few exceptional cases, the union alone is titleholder to the grievance and therefore it alone is a "party" to the litigation before the grievance arbitrator. The judges of the majority then confirmed that the employee did not have the required interest to bring his direct action in nullity, since this interest was the same as that required for a motion in judicial review, namely, that the employee be a "party" to the initial litigation.

As for the dissenting judge, he would have allowed the appeal, since it was his opinion that the interest required to bring a direct action in nullity was different and that the employee had this interest.

Thus, in the current state of the law, where a union refuses to represent an employee for the purposes of applying for judicial review of an arbitration award dismissing his or her grievance, the employee cannot, barring certain exceptional circumstances, proceed alone before the Superior Court.

In concluding, we should note that a motion for leave to appeal to the Supreme Court of Canada was filed last October 14 by the lawyers for Mr. Noël.

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