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The Desormeaux judgment is set aside: a grievance arbitrator is the competent tribunal in respect of claims relating to deferred pay leave.

In which forum is an employer required to bring a claim against an employee who has resigned after benefiting from deferred pay leave: a grievance arbitrator or the Superior Court?

Since 1991, the *Desormeaux* decision rendered by the Court of Appeal has been the authority on this issue. This decision held that even where the collective agreement governed the rights and obligations arising out of deferred pay leave, the regular law courts retained jurisdiction over an employer's claims in this regard.

Last August 12, the Quebec Court of Appeal set aside this decision and affirmed the position which we took on behalf of the *Centre hospitalier Pierre-Boucher*: claims of this kind must effectively be submitted to a grievance arbitrator. (*Centre hospitalier Pierre-Boucher* v. *U.E.S., local 298 (F.T.Q.), Daniel Faucher et al., C.A.M. 500-09-002455-962*).

Me Jean-François Hotte represented the Centre Hospitalier Pierre-Boucher in this case

The three judges stated that they were bound by the decision of the Supreme Court of Canada in the *Dayco* case. Thus, even if Mr. Faucher was no longer subject to the collective agreement when he refused to pay, the employer acquired the right to institute a grievance the day the employee exercised his own right to deferred pay leave.

This case is in line with the position resolutely laid down in the past few years by the Supreme Court - cited moreover by the Court of Appeal - which has held that if the litigation is essentially a matter of the interpretation, application, administration or non-performance of the collective agreement, the grievance arbitrator's exclusive jurisdiction must be recognized.

Thus, the employer will henceforth be required to present its claim relating to a deferred pay leave contemplated in a collective agreement to a grievance arbitrator with all the advantages that the use of this recourse entails as compared with legal proceedings.

To conclude, it is important to mention that our labour law group has developed a strategy to allow employers having already filed civil actions to react to the new legal situation arising out of this case. Employers who have chosen not to undertake recovery proceedings due to the costs associated with such proceedings in the courts may in some cases be tempted to reconsider their decision in light of this recent case in the Court of Appeal.

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