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IS A CLAUSE REQUIRING AN EMPLOYEE TO REIMBURSE TRAINING COSTS LEGAL?

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CAN THE PARTIES TO AN INDIVIDUAL EMPLOYMENT CONTRACT INCLUDE A CLAUSE STIPULATING THAT THE EMPLOYEE MUST REIMBURSE HIS TRAINING COSTS TO THE EMPLOYER IF HE RESIGNS?

Upon hiring and throughout the course of employment, employers often require employees to receive training. There are various reasons why employers want their employees to undergo training sessions, such as for safety purposes, special functions, technological changes, requirements of a supplier, etc.

Significant costs can be incurred by training employees, particularly in industries where the turnover rate is high. Can employers ensure they receive a return on their investment or are they at the mercy of employees' sudden departures?

The *Commission des relations du travail* (hereinafter the "CRT") recently considered this issue in the case of *Chayer* v. *Atelka Inc.*[1] The employer is in the customer service sector offering outsourcing services to major players in the telecommunications industry. Employees are assigned to a customer and must first receive training in order to gain the necessary knowledge for the work at hand. When one campaign ends and another begins, employees are required to sign a new employment contract and attend new training sessions on the specific nature of the business of the client. In this case, the employee refused to sign an agreement attached to her new employment contract requiring her to reimburse the training fee.

The complainant position was a customer service agent. Her role was primarily to answer calls from the customers of the company for whom the contract was being performed. Upon her return from maternity leave, she was offered the opportunity to work on a new campaign. To do so, a thirty-one day training program and two-week integration period were required and, in this context, she was asked to sign a new employment contract as well as an agreement to reimburse the training fee.

The reimbursement clause read as follows:

> [Translation] "Should the employee voluntarily terminate the employment or not abide by the undertakings given when she was hired (availability as per the work schedule) the employee will, within 16 weeks of the first day of production, reimburse Atelka for the expenses incurred in accordance with a computation that is inversely proportional to the amount of time she spent within the company.
>
> The fixed cost to be considered for the calculation of this compensation is $125 per week."

The complainant claimed that the requirement to sign the agreement contravened section 85.1 of the *Labour Standards Act*[2] (hereinafter "LSA"), which states that *"an employer cannot require an amount of money from an employee to pay for expenses related to the operations and mandatory employment-related costs of the enterprise."*

The CRT concluded in this case that the clause was illegal and that the complainant had properly refused to accept it as a part of her employment contract.

This conclusion was based on the Court of Appeal's decision in *Créances Garanties du Canada* v. *Commission des normes du travail*[3] in which the court held that the deduction from the wages of the expenses of a permit required for the collection agent's functions contravened section 85.1 LSA because these expenses were related to the operations of the collection agency. The employer paid for the cost of the permit and subsequently deducted $50 every week from the employees' pay until this cost has been

[1] 2010 QCCRT 128.

[2] R.S.Q. c. N-1.1.

[3] *Créances Garanties du Canada* v. *Commission des normes du travail*, 2008 QCCA 1428.

paid in full. In his judgment, the Honourable Justice Michel Robert noted that section 85.1 LSA was enacted to protect the compensation of employees from certain deductions that employers might make from their wages. He concluded that the acquisition of the permits required for a collection agent is related to the operations of an agency in this line of business. The same would not be true if the permits could be of use with another employer than the one requiring it:

> [26] [...] It is true that, like a collection agency which cannot function without collection agents, a law firm cannot function without lawyers duly enrolled in the Bar and a transportation company cannot function without validly licensed drivers. However, in contrast to the lawyer or driver, the collection agent is unable to derive a personal benefit from his permit, i.e., independently of his employee status.[4]

The essential criterion in this type of situation, initially laid down in the aforementioned *Créances Garanties du Canada* decision and reiterated by the CRT, is based on the finding that the training given was not a *"personal asset"* to the employee. Indeed, the employee could not use the training that she had received anywhere else other than for the specific purpose of her work for that employer and in that specific campaign:

> [Translation] [27] [...] Not only is the training given to agents not useful to them elsewhere, but it only applies to a campaign given by their employer, which must be started over again each time one campaign ends and another begins. One must conclude that the said reimbursement clause contravenes section 85.1 of the Act and that the respondent did not have the right to require the employee's signature.[5]

The words *"expenses related to the operations of an enterprise"* in section 85.1 refer to the expenses resulting from the normal operations of the business in carrying out the dominant purpose undertaken by it. If the training is essential to the business and the employee derives no benefit from the training outside his exclusive relationship with his employer, then the expenses of this training are expenses related to the operations of the business under section 85.1 of the LSA and must therefore be paid by the employer.

Finally, bear in mind that under section 57(4) of the LSA an employee is deemed to be at work during any training required by the employer and the employee must be paid at least the minimum wage pursuant to section 40 of the LSA. Section 40 provides that an employee *"is entitled to be paid a wage that is at least equivalent"* to the minimum wage set by the government, while section 57 LSA provides for certain situations in which the employee is deemed to be at work, particularly *"during any trial period or training required by the employer."* A clause providing for the reimbursement of the training fees may therefore potentially also contravene the applicable minimum wage provisions.

In conclusion, one may not impose a clause in a contract providing for the reimbursement of training costs in the event of an employee's voluntary departure when such training solely benefits the employer. An employee who is dismissed as a result of his refusal to sign such a clause may therefore exercise one of the recourses under sections 122 and 123 of the LSA. Thus, in the aforementioned *Atelka* decision, the administrative judge allowed the complaint, quashed the dismissal, and ordered that the complainant be reinstated in her position.

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4 *Supra*, note 3, p. 8.

5 *Supra*, note 1, p. 8.

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