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THE EMPLOYER'S RECOURSE FOR RECOVERY OF AN EMPLOYEE'S INDEBTEDNESS ARISING FROM A LEAVE OF ABSENCE WITH DEFERRED SALARY

An employee on leave of absence with deferred salary will often resign before the termination of the leave without repaying the employer the salary advanced during the leave. If the employee refuses to repay the sums owing, before which tribunal should the employer proceed? Should the employer file a grievance or take action in the ordinary civil law Courts to recover the sums outstanding?

THE COURT OF APPEAL

In 1991, the Court of Appeal¹ held that the resignation of an employee on leave with deferred salary terminated the arbitrator's jurisdiction and that, as a result, only the civil law Courts were competent to hear the employer's claim. Based on that decision, the employer must bring an action in the Superior Court or the Court of Quebec, depending on the amount of the claim.

Summary

The Court of Appeal	1
Centre hospitalier Pierre-Boucher c. Faucher	2
The Superior Court	2
The Supreme Court	3

1. *Désormeaux c. Centre de développement des jeunes de l'Outaouais*, JE 91-849.

The impact of that decision was such that the Quebec Hospital Association advised its members that they should now turn to the civil Courts rather than an arbitrator to claim the sums owing by an employee who resigned before the end of a deferred salary leave and that the issue appeared to be definitely resolved. Since the employer must refer to the civil law Courts, the collection of such amounts had become more time-consuming and costly than before an arbitrator, which often hinders the collection process.

CENTRE HOSPITALIER PIERRE-BOUCHER V. FAUCHER

On December 14, 1995, the arbitrator Denis Tremblay rendered a decision on a grievance filed by the Centre hospitalier Pierre-Boucher for the recovery of a significant amount of money owing by an employee who had been on leave of absence with deferred salary and had resigned before the expiry of the plan. The arbitrator allowed the preliminary objection raised by the employee and dismissed the employer grievance on the basis that the

employee's resignation had changed the legal relationship in which he was involved at the time of the leave, thereby causing him to lose his status as an employee. Thus, the arbitrator followed the decision of the Court of Appeal.

THE SUPERIOR COURT

The Centre hospitalier Pierre-Boucher applied to the Superior Court for a review of the arbitrator's decision and, on March 19, 1996, Mr. Justice Jean-Jude Chabot, of the Superior Court of the District of Longueuil, rendered a decision. He held that he felt bound by the decision of the Court of Appeal and dismissed the employer's petition.

However, it is surprising to see that, Mr. Justice Chabot unequivocally found that the case in question "**clearly falls under the collective agreement**" and that the position of the Court of Appeal ran against the guidelines imposed by the Supreme Court of Canada, adding that "**it will be up to the Court of Appeal to change its jurisprudence**".

THE SUPREME COURT

Centre hospitalier Pierre-Boucher v. Faucher, it will be up to every employer to adopt its own line of conduct.

In fact, the Supreme Court of Canada² rendered two major decisions in June 1995 on the issue of the exclusive jurisdiction of the arbitrator where the dispute, in its essential character, concerns the interpretation and violation of the collective agreement.

Marie-Claude Perreault

In his decision, the arbitrator Tremblay made no reference to these two Supreme Court cases.

Based on the above, the Centre hospitalier Pierre-Boucher lodged an appeal from the Superior Court judgment to the Court of Appeal and requested that the latter amend its jurisprudence in accordance with the rule of law set forth by the Supreme Court in the above-mentioned judgments.

The issue is still up in the air, and it will be very interesting to follow this case in order to know what stand the Court of Appeal will take in view of the two Supreme Court rulings. Pending the Court of Appeal judgment and any appeal therefrom in

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