IN FACT AND IN LAW

Labour and Employment

March 2007

Recent CLP Decision:

the obligation to give reasons for its decisions and the power to issue a stay of proceedings

By Marie-Claude Perreault and Vicky Lemelin, in collaboration with Sophie Prégent, stagiaire

On January 22, 2007, the Commission des lésions professionnelles (the "Board") handed down a decision in *Harvey et Brasserie Labatt ltée*[1] further to a motion for revocation filed by the employer against a decision rendered by a first commissioner.

This decision deals with the reasons that may be invoked for revoking a decision when the first commissioner fails to give reasons for his decision, as well as the power of the Board to issue a stay of proceedings in connection with a motion for revocation so the employee may continue to receive benefits pending another hearing.

In this case, a temporary driver employed by Labatt Breweries consulted his doctor who diagnosed synovitus and acromioclavicular osteoarthritis in the right shoulder. According to the first commissioner, [Translation] "[...] the gestures described with respect to the stature of the employee allow to conclude that the duties of the employee involved specific risks which lead to the injury for which the employee is receiving treatment and care."[2] Accordingly, the commissioner held that the employee should benefit from the application of section 30 of the *Act respecting industrial accidents and occupational diseases*[3], which reads as follows:

"A worker having contracted a disease not listed in Schedule I out of or in the course of employment and not as a result of an industrial accident or of an injury or disease caused by such an accident is considered to have contracted an occupational disease if he satisfies the Commission that his disease is characteristic of work he has done or is directly related to the risks peculiar to that work."

The employer therefore asked that this decision be revoked based on section 429.56 (3) of the Act, which gives the Board the power to review and which reads as follows:

"The board, on an application, may review or revoke any decision or order it has made

[...]

3) where a substantive or procedural defect is of a nature likely to invalidate the decision

[...]"

According to the employer, the first commissioner committed a clear and overriding error in that he disregarded certain testimony without giving his reasons for so doing, which constitutes a lack of reasons.

The employee, on the other hand, [Translation] "[...] believes that the decision shows that the first commissioner took a position supported by the evidence submitted. The fact that a decision is incomplete and not perfectly drafted does not render it null and void."[4]

Before examining the grounds for revoking the decision, the Board explained that great restraint must be shown when one is asked to review a decision:

1 *Harvey et Brasserie Labatt ltée*, CLP 246947-02-0410, 22/01/07, AZ-50412263.

2 *Id.*, 3.

3 *Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A-3.001, hereinafter the "Act".

4 *Harvey et Brasserie Labatt ltée*, supra, footnote 1, 4.

[Translation] "The impugned decision may not be reviewed or revoked unless it is shown that the conclusion which the first commissioner arrived at is based on an appreciation of the facts presented or an application of the rule of law which is clearly erroneous and such error is a deciding factor." [5]

In this case, given the lack of reasons for the decision rendered by the first commissioner, the Board revoked the decision.

Lack of reasons

The first commissioner rendered a brief decision, giving no explanation as to why he set aside the report of the doctor of the employer, who had explained, among other things, [Translation] "[that] since 1990 no case of acromioclavicular osteoarthritis has been recognized as being related to the work of a deliveryman." [6] He also set aside the literature submitted by the doctor, according to which [Translation] "[...] there is no relationship between acromioclavicular osteoarthritis and tasks such as those of an employee who delivers cases of beer." [7]

The Board explained that [Translation] "[...] although a commissioner is not required to restate in detail each piece of evidence or accept expert evidence, he must nonetheless explain why he is setting aside testimony rendered and evidence submitted." [8]

Accordingly, [Translation] "[t]he fact that there is a sentence in the decision mentioning that a commissioner has examined all the documentary evidence and that he has considered the arguments of the parties does not constitute reasons." [9] The Board also relied on the decision in *Emballage Workman inc. (Multisac) et Martinez et CSST* [10], which discussed the use of the terms [Translation] "studied all the documentary evidence" and "arguments of the parties", stating: [Translation] "This is general wording which underlies virtually all decisions and which constitutes a kind of preamble to the description of the reasons of the commissioner." [11]

In the same case, the Board stated:

[Translation] "Reading the decision does not allow us to understand the decision-making process of the commissioner and the reasoning behind the decision. The commissioner merely wrote a conclusion, without explaining himself. It is impossible to understand the basis for his decision. He held that [Translation] "*the evidence showed*" that the employment was suitable without referring to any evidence, without analysing the inconsistent facts and without setting out the elements which formed the basis for his decision.

Although it was not necessary to comment on all the facts submitted into evidence or to decide on all the arguments the parties presented to him, he nonetheless had to give reasons for his decision, albeit briefly." [12]

The Board also relied on *Thifault* et *Commission des lésions professionnelles et CSST* [13], in which the Superior Court explained the following:

[Translation] "After hearing a witness, the court may set aside his testimony if it does not consider it credible, but it must give reasons in its decision. If the decision does not contain such reasons, we must conclude that the court found the witnesses credible and that it took this evidence into consideration in coming to its decision." [14]

The Board then noted that, in reading the first decision, [Translation] "[...] it is impossible to know what steps the first commissioner took to come to his conclusions." [15] It therefore allowed the motion for revocation, as this lack of reasons constituted a defect which invalidates the decision of the first commissioner.

This decision reiterated the importance of the reasons for a decision as, if reasons are not given, it is impossible to determine what evidence was taken into consideration by the decision-maker. The requirement to give clear reasons also finds support in section 429.50 of the Act, which provides that:

"429.50 Every decision by the board must be in writing, give the reasons on which it is based, be signed and be notified to the parties and to the Commission.

[...]" (emphasis added)

Stay of proceedings

During the hearing, the employee asked that, if the Board revoked the decision, a stay of proceedings be issued to [Translation] "[...] maintain payment of the income replacement benefit until the case is heard by another commissioner." [16]

Subsection 378(2) of the Act sets out the various powers of the Board and its commissioners:

"They are also vested with all the powers necessary for the performance of their duties; they may, in particular, make any order they consider appropriate to safeguard the rights of the parties."

[5] *Id.*, 6.

[6] *Id.*, 3.

[7] *Id.*

[8] *Id.*, 8.

[9] *Id.*

[10] *Emballage Workman inc. (Multisac) et Martinez et CSST,* [2002] CLP 139.

[11] *Id.*, 146.

[12] *Id.*, 145.

[13] *Thifault et Commission des lésions professionnelles et CSST,* [2000] CLP 814.

[14] *Id.*, 820.

[15] *Harvey et Brasserie Labatt ltée,* supra, footnote 1, 8.

[16] *Id.*, 9.

The Board quoted several decisions which held that the it does not have jurisdiction to issue stays of proceedings or to suspend the enforcement of decisions.

In *Giben Canada inc.* and *Industries Okaply ltée* [17], the Board dismissed a motion for a stay of proceedings regarding a decision rendered by a CSST inspector. In its view, the power to issue orders set out in subsection 378(2) of the Act [Translation] "[...] does not allow the Board to order the CSST to suspend enforcement of a decision it has rendered [...] as an explicit legislative enabling power is necessary to allow such an order to be issued [...]." [18] Given the lack of inherent jurisdiction of the Board, there must be an explicit legislative power enabling a decision-maker to issue an order which would affect the decision-making process of a lower body [19].

The Board came to the same conclusion in *Jean et Service entretien Distinction inc.* [20], in which it explained [Translation] "[...] that the general power to issue orders granted to the Board cannot be used to stay the execution of a decision." [21]

In 1989 the CALP had also held that [Translation] "[...] the Appeal Commission does not have a general power to order a stay of proceedings." [22]

Accordingly, in the decision being examined, the Board reiterated that it only has statutory powers, not the inherent powers of a Superior Court which authorize the Court to issue appropriate orders [Translation] "at any time and on all matters".

Conclusion

The *Harvey* case restates the need and importance for persons involved in a judicial or administrative process to know and understand the basis for decisions rendered concerning them and to contest them if the reasons seem inadequate.

When medical evidence is submitted to the Board, the commissioner must give reasons explaining why such evidence should be rejected. This is a fundamental right for all parties appearing before the Board.

Finally, if a first decision is attacked, the *Harvey* case reminds us that when the Board holds that it is null and void, it cannot issue an order to extend it until the case has been re-heard.

Marie-Claude Perreault
514 877-2958
mcperreault@lavery.qc.ca

and

Vicky Lemelin
514 877-3002
vlemelin@lavery.qc.ca

In collaboration with
Sophie Prégent, stagiaire

[17] *Giben Canada inc. et Industries Okaply ltée*, [2004] CLP 929.

[18] *Id.*, 932.

[19] *Id.*, 933.

[20] *Jean et Service entretien Distinction inc.*, CLP 155009-71-0102-R, November 26, 2004, B. Roy.

[21] *Id.*, 2.

[22] *Hopourian et Aérocar Canada ltée*, [1989] CALP 1056, at page 1059.

You may contact any of the following members of the Labour and Employment Group regarding this bulletin.

Pierre L. Baribeau	514 877-2965
Eve Beaudet	418 266-3066
Pierre Beaudoin	418 266-3068
Jean Beauregard	514 877-2976
Valérie Belle-Isle	418 266-3059
Monique Brassard	514 877-2942
Denis Charest	514 877-2962
Pierre Daviault	450 978-8107
Michel Desrosiers	514 877-2939
Jocelyne Forget	514 877-2956
Philippe Frère	514 877-2978
Alain Gascon	514 877-2953
Michel Gélinas	514 877-2984
Isabelle Gosselin	514 877-2960
Jean-François Hotte	514 877-2916
Nicolas Joubert	514 877-2918
Claude Larose	418 266-3062
France Legault	514 877-2923
Guy Lemay	514 877-2966
Vicky Lemelin	514 877-3002
Carl Lessard	514 877-2963
Josiane L'Heureux	514 877-2954
Catherine Maheu	514 877-2912
Isabelle Marcoux	514 877-3085
Véronique Morin	514 877-3082
Marie-Claude Perreault	514 877-2958
Marie-Hélène Riverin	418 266-3082
Madeleine Roy	418 266-3074

Montreal
Suite 4000
1 Place Ville Marie
Montreal Quebec
H3B 4M4

Telephone:
514 871-1522
Fax:
514 871-8977

Quebec City
Suite 500
925 Grande Allée Ouest
Quebec Quebec
G1S 1C1

Telephone:
418 688-5000
Fax:
418 688-3458

Laval
Suite 500
3080 boul. Le Carrefour
Laval Quebec
H7T 2R5

Telephone:
514 978-8100
Fax:
514 978-8111

Ottawa
Suite 1810
360 Albert Street
Ottawa Ontario
K1R 7X7

Telephone:
613 594-4936
Fax:
613 594-8783

Subscription
You may subscribe cancel your subscription or modify your profile by visiting Publications on our website at www.laverydebilly.com or by contacting Carole Genest at 514 877-3071.

Copyright © 2007, Lavery, de Billy, L.L.P. - Barristers and Solicitors. This bulletin provides our clients with general comments on recent legal developments. The text is not a legal opinion. Readers should not act solely on the basis of the information contained herein.

www.laverydebilly.com

LAVERY, DE BILLY
BARRISTERS AND SOLICITORS