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Dismissed after being convicted of procuring

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In a decision rendered on May 29, 2017,[1] arbitrator Jean-Pierre Lussier confirmed the dismissal of a cashier employed by the Société de transport de Montréal who was convicted of procuring.

The facts

Hired in February 2008, the employee pleaded guilty to charges of procuring in 2014. The victim was a 16 year old minor

The Société de transport de Montréal ("**STM**") dismissed the employee on the grounds that the conviction was incompatible with the inherent duties of a cashier.

The STM further claimed that the employee lied when he was hired, stating that he had never been convicted of an offence. In fact, he had been convicted of breaking and entering in 2002.

Charter protection

The Charter of Human Rights and Freedoms[2] states:

> "18.2. No one may dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence."

To justify the dismissal, the STM had to establish that there was a connection between the convictions for breaking and entering and procuring on the one hand and the position of cashier on the other.

The decision

The arbitrator held that the employee knowingly lied to the STM when he represented that he had not been convicted of a criminal offence, and that he was fully aware that the statement was false. It was not up to the employee to decide whether the previous conviction was or was not connected to the employment for which he was applying.

The arbitrator considered that the grounds for dismissal related to the conviction for procuring were sufficient and did not address the issue of whether the lie would have justified the dismissal.

In fact, the arbitrator felt that the conviction for procuring was connected to the position of cashier. In

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this regard, the arbitrator stated:

> [TRANSLATION] "Arbitrators have not hesitated to acknowledge that a sexual offence committed by an STM employee risks tainting the public's trust, thereby establishing the connection between the conviction and the employment."[3] (Emphasis added)

The public must be able to have complete confidence in the STM. To allow a cashier convicted of procuring to continue performing his duties would tarnish that relationship of trust and the STM's reputation.

The arbitrator noted that a cashier is regularly in contact with a clientele that can sometimes be vulnerable. This clientele is composed particularly of women, both minors and adults. Minors account for 11% of STM clients. Finally, a cashier is also responsible for ensuring the safety of commuters.

Note that the employee in question had also been acquitted of a series of procuring charges involving a young woman he met in the metro while working as a cashier

The arbitrator therefore concluded that the decision to fire the employee was not unreasonable and dismissed the grievance.

Conclusion

This arbitral award is very interesting because it establishes that an employer who provides transportation services to the public, and who must protect the public's safety during such transportation, is justified in terminating the employment of a person who has committed a sexual offence.

Keep in mind that the *Charter of Human Rights and Freedoms* is a quasi-constitutional law that protects individuals who have been convicted of a penal or criminal offence.

The case law on this issue should be monitored and the circumstances fully evaluated before deciding whether there is truly a connection between the offence and the employment.

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1. *Société de transport de Montréal c. Syndicat des chauffeurs d'autobus, opérateurs de métro et employés des services connexes au transport de la STM, section locale 1983* (SCFP) (Marco Oviedo Viera), 2017 QCTA 630.
2. C.Q.L.R., c. C-12.
3. *Société de transport de Montréal c. Syndicat des chauffeurs d'autobus, opérateurs de métro et employés des services connexes au transport de la STM, section locale 1983* (SCFP), supra note 1 at par. 31.

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