

Mind Your Timing And Your Video Cameras



In a decision issued on September 26, 2013 in *Syndicat des travailleurs de Continental Asphalte (C.S.N.). et 9163-7272 Québec inc. (division de Construction DJL inc.)*, AZ-51013413, Arbitrator Nicolas Cliche dismissed a grievance by the union seeking the removal of the video cameras installed by the employer on its sprawling site. The arbitrator allowed the employer's preliminary exception based on the time elapsed between the installation of the video cameras (2003) and the filing of the grievance (2010), and went on to find that in any case, the video cameras had been put up for operational reasons and were not in violation of Quebec's *Charter of human rights and freedoms*.

Facts

The company operates a huge asphalt products facility. In 2003, it decided to install six video cameras. In 2007, four additional cameras were installed. The cameras are stationary and do not have a telephoto lens. They capture images allowing the company to monitor the flow of goods in transit, persons entering and exiting the site and the garage operations. The union's grievance was filed in 2010, seven years after the first video cameras were installed. In the meantime, three collective agreements had been signed between the parties. The video cameras were never an issue during the bargaining sessions. The parties discussed them from time to time, at meetings of the labour relations committee. No employee was ever disciplined as a result of the use of the video cameras, although one employee was criticized for extending his rest and meal breaks. One camera, which had been installed in the employee cafeteria in 2003, was removed because it was of no use to the company's operations.

The preliminary exception

The employer raised a preliminary exception based on the time elapsed between the installation of the video cameras (2003 and 2007) and the filing of the grievance (2010), which exception was allowed by the arbitrator. The arbitrator justified his decision on the basis that the employees and the union had known of the video cameras' existence since 2003, the subject having come up for discussion at meetings of the labour relations committee. Moreover, three collective agreements had been signed between the parties since the installation of the video cameras and the union had had three chances to bring the matter up during the bargaining that led to those collective agreements. The arbitrator concluded that the union was now estopped from doing so as a result of its past practice of accepting the cameras over a seven-year period under several collective agreements.

The merits

Even though he was not required to make a determination on the merits of the dispute, the arbitrator nevertheless decided to pursue his analysis, in the interest of, in his words, "guiding the workers in their future actions" in the collective bargaining context.

The arbitrator found the video cameras to have been installed for operational reasons. The company has a large quantity of very expensive equipment and the video cameras serve to protect the premises and monitor traffic. They monitor the comings and goings of visitors and the equipment on board the trucks circulating on the premises.

As for impairment of the employees' rights, the arbitrator did not consider their dignity to be compromised or the right to fair and reasonable working conditions protected by section 46 of the Charter to be infringed. In this regard, he stressed that the video cameras afforded a view of the premises as a whole, were not there to anger the workers and were never used to discipline an employee for his behaviour. However, the arbitrator noted that his decision might have been different if a video camera were installed at a specific workstation, at a specific location for the purposes of filming an employee on a continuous basis.

On the subject of the right to privacy, the arbitrator considered that an employee "who goes around the garage repairing equipment is no longer really in the private sphere inasmuch as he is seen by his co-workers and foreman." The right to privacy would nevertheless be infringed if the video cameras were directed at a particular workstation or employee.

Commentary

This decision highlights the possibility of an employer making an argument in defence against a grievance based on the union's lack of action and the passage of time. In this case the arbitrator dismissed the grievance basically because too much time had elapsed between the initiative taken by the employer and the action taken by the union to dispute it. On the merits of the case, the arbitrator was of the view that the existence of video cameras in a place of business does not violate the employees' rights and freedoms where the employer is able to clearly establish that they are justified for reasons that are strictly operational in nature. Of course, the justification and the need to use cameras for the protection of persons and property are subject to the arbitrator's assessment.

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