Notices of Termination Likely to be Revisited by the Supreme Court of Canada



Last week, the Supreme Court granted leave to appeal from an important Quebec Court of Appeal decision on labour standards, which may bring significant changes in the interpretation of the law on notices of termination (or délai-congé) for employment contracts.

In the facts of the case, Mr. Guay (hereinafter "the employee") worked for Asphalte Desjardins Inc. (hereinafter "the employer") from 1994 to 2008, moving up through the company ranks and ending up as a project manager. In February 2008, when the employee presented his employer with a resignation letter intending to leave on March 7, 2008, the employer unsuccessfully tried to convince him to stay. Given the situation, the employer decided not to wait until March 7 and let the employee go on the following day, without compensation.

Following the majority of the Court of Appeal, when the employment contract is for an undetermined term, an employer can decide to immediately end the employment relationship with a resigning employee without compensation, as a notice of termination is an opportunity for the receiving party to deal with the inconveniences of the end of a relationship; the notice of termination is not a right to the giving party. In addressing the employers' duties set out by art. 82 of *An Act Respecting Labour Standards*, R.S.Q. c. N-1.1, the majority underlines how this applies only in cases where the employer initiates the termination. In other words, this duty is not mandatory in a situation where the employee resigns – unless, of course, "the manner of resiliation is abusive".

By rendering this decision, the majority of the Court of Appeal rejected a longstanding jurisprudence from the Court of Québec, which was rather favourable to employees, i.e. compensation shall be given even when an employer waives the notice of termination following an employee's resignation.

Case Information

Commission des normes du travail c. Asphalte Desjardins Inc. 2013 QCCA 484

SCC Court File No.: 35375

Date Leave to Appeal Granted: September 5, 2013

By Marc-Andre Russell on September 17th, 2013