Reconciling Family And Professional Obligations: What Should An Employer Do?

The Commission des relations du travail (CNT) confirmed in *Dannie Bouchard c. 9180-6166 Québec inc. Honda de la Capitale*, a decision rendered on January 20, 2015, that employers are not obligated to modify an employee's work schedule to accommodate obligations relating to the care of the employee's child, under neither the *Charter of Human Rights and Freedoms* (Quebec Charter) nor the *Act Respecting Labour Standards* (Act). The ruling is one in a series of decisions in Quebec on the issue of an employer's obligations with respect to the reconciliation of its employees' professional and family obligations.

In this case, the employee had been working for the employer as director of financial services for some years. Several people held this position within the company and their work was scheduled between the hours of 9 a.m. and 9 p.m. during the week. Directors were given two mornings and one evening off per week, but were required to work four evenings per week.

Before returning from maternity leave, the employee informed her employer that she could only work between 8 a.m. and 4 p.m. and would not be able to work evenings. The employee could not rely on her parents or her spouse to care for her child and she had trouble finding a daycare that was available both day and night. The employer rejected her request and reminded the employee that she had to respect her schedule.

When she returned to work, the employee refused to sign her work schedule, which included four evenings of work during the week. Furthermore, despite the warnings of her employer, the employee did not respect the schedule established by the employer. Three days after her return to work—a period during which the employer gave her a verbal warning and a written warning—the employer suspended the employee without pay for two weeks for insubordination. The suspension letter given to the employee contained a warning that she would be dismissed if she did not comply with her work schedule. When she returned from her suspension, the employee again ignored the schedule established by the employer. As a result, the employer informed the employee of her dismissal. The employee filed a complaint at the CNT alleging that she had been dismissed illegally and without good and sufficient cause.

Two issues were raised before the CNT:

- Did the employee exercise a right provided for by the Act; that is, taking leave for family obligations under section 79.7, and was she dismissed following the

exercise of this right?
- Does the employer have an obligation to modify the employee's work schedule to take into account requirements relating to the care of the employee's child, unless this imposes undue hardship on the employer?

The CNT first rejected the employee's claim that she had exercised her right to take leave for family obligations as provided for by the Act. Section 79.7 of the Act stipulates that an employee may be absent up to a maximum of 10 days per year to fulfil obligations related to care.

However, to avail herself of this leave, the employee must advise her employer as soon as possible and must take reasonable steps within her power to limit the leave and the duration of the leave. In this case, family leave to fulfil obligations related to the care of a child and the need for a maximum of 10 days of leave were never discussed between the employee and her employer. On the contrary, the employee was demanding a modification to her work schedule for an indeterminate duration. Furthermore, the employee did not demonstrate that she had taken the reasonable steps within her power to limit the leave and the duration of the leave. Finally, since the employee did not establish that she had exercised a right provided for by the Act, she could not avail herself of section 122 of the Act, which prohibits taking reprisals against an employee who exercises a right provided for by the Act.

The CNT also rejected the employee's claim that she had been dismissed without good and sufficient cause. The CNT emphasized that the employer had provided sufficient warnings, including a suspension, to allow the employee to understand the possible consequences of refusing to accept the work schedule imposed by the employer. Furthermore, the employee never reconsidered her position and did not seek to find a solution to her problem. Her dismissal was therefore justified.

Finally, the CNT concluded that the employee was not dismissed in violation of section 10 of the Quebec Charter, which prohibits discrimination based on, *inter alia*, civil status. The Quebec Charter does not specifically prohibit discrimination based on family status. However, the employee submitted that the notion of "civil status," which is a ground for discrimination under the Quebec Charter, should be interpreted to include family status.

According to the CNT, civil status does not include family status. The CNT raised the Québec Court of Appeal's recent decision in *Beauchesne c. Syndicat des cols bleus regroupés de Montréal (SCFP-301)*, in which the court reaffirmed that family status was not included in the "civil status" ground. In that case, the employee, the mother of a child with a disability, had been refused a promotion because she was not available to work evenings and weekends. She claimed that she had been the victim of discrimination based on the grounds of civil status, handicap and the use of any means to palliate a handicap. The court concluded that neither of these grounds applied and that the employee had not been promoted because she was not available to assume the position during all shifts, not because she was a parent. Moreover, the court concluded that the Quebec Charter does not allow a person to rely on the handicap of another person or the use of any means to palliate a handicap for him- or herself.

These decisions reiterate that pursuant to the Quebec Charter, the employer does not have to modify the work schedule of an employee to accommodate the employee's family obligations. That being said, employers should always keep in mind the rights provided for by the Act relating to family leave. Furthermore, the CNT's decision is a reminder of the importance of progressively disciplining employees before taking the ultimate disciplinary measure; dismissal.

It is interesting to note that contrary to what is stipulated in the Quebec Charter, the Ontario *Human Rights Code* explicitly provides protection for “family status.” Furthermore, the Federal Court’s recent decision in *Canada (Procureur général) c. Johnstone* confirmed that employers under federal jurisdiction have an obligation to accommodate the family status of their employees.

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