

# The High Cost Of Reinstatement For Québec Employers



**On January 20, 2022, the Administrative Labour Tribunal (the “Tribunal”) awarded an employee dismissed without cause, termination pay in the amount of \$716,970.71 as well as an indemnity for lost wages, loss of pension rights, moral damages, and reimbursement of expert fees.**

The Tribunal’s decision reminds us of the sizable award that can be granted to an employee terminated without cause and sets out the factors the Tribunal will take into account when ruling on a complaint by an employee asking for reinstatement.

The reasons were rendered by the Honourable Henrik Ellefsen, administrative judge.

## **The facts**

The employee had worked for Industries Toromont Ltd., a company specialized in the sale, service and repair of machinery and heavy equipment in the Val-d’Or area (the “Employer”), for close to 19 years. On January 8, 2016, the Employer dismissed the employee for falsifying his claims for overtime.

In ruling on the merits, the Tribunal held that the Employer had not met its burden of proving that the dismissal was based on just and sufficient cause and reserved jurisdiction to determine the appropriate remedies, including the indemnity owed in the event reinstatement was impossible.

This is the context in which the Tribunal was asked to determine what amount should be paid due to the dismissal.

## **Analysis**

### **The mitigation of damages must be analysed in the context of the termination of employment and the conclusions sought**

The Tribunal began by noting that, even when an employee is dismissed without cause, he has an obligation to mitigate his damages, i.e. to make reasonable efforts to find a new job in the same or a related field and not to refuse reasonable job offers. However, the judge pointed out that it was important to examine this obligation in the overall context in which the employment ended.

In this particular case, the employee's reputation was damaged vis-à-vis potential employers in the Val-d'Or area due to the allegations that he had claimed overtime he had not worked. The sector in which he specialized was limited and everyone knew each other.

The employee also told potential employers that, once the lawsuit he had brought was decided, he was hoping to be reinstated in the position he had lost, which made them less interested in hiring him.

Given these facts and the context in which his employment had ended, the Tribunal noted that the obligation to minimize damages must be analysed in light of the difficult situation in which the employee found himself following his dismissal and that he should not be forced to lie about his hopes of being reinstated. The Tribunal therefore held that the employee had not breached his obligation to minimize his damages.

### **Overtime is included in calculating the indemnity for loss of salary**

Firstly, since the employee only learned during the hearing about compensation that the Employer could not reinstate him, the Tribunal held that the period to be compensated must correspond to the entire time between the end of employment and the hearing, i.e. more than five (5) years.

To determine what indemnity for loss of wages the employee was entitled to, the Tribunal based its decision on his salary for the four years prior to the dismissal. It is important to note that the judge included his overtime pay in calculating the indemnity.

Taking into account the salary he would have earned between January 8, 2016, the date he was dismissed, and October 20, 2021, the date of the hearing, less the amounts he earned during that period, the Tribunal held that the amount of lost wages was \$372,658.87.

It added \$133,022 for loss of pension rights, for a total of **\$505,680.87**.

### **Since reinstatement was impossible, the Tribunal granted an amount as severance pay**

Given the size of the branch where the employee worked, the acrimony and the loss of mutual trust that developed between the parties during the dispute, the judge held that reinstatement was impossible and that severance pay should be granted.

To determine the amount, the judge took into account the employee's age, his specialty and his ability to find a new job. It granted him an amount equal to two weeks of pay per year of service.

Since the employee had worked for the Employer for 25 years as of the date the Tribunal held that reinstatement was impossible rather than the actual date his employment ended, the judge awarded an amount of **\$104,922.65** as severance pay.

### **Moral damages granted based solely on the complainant's testimony**

The employee testified that the loss of his job and his legal battle to obtain what he was owed severely affected his physical and mental health.

Taking account once again of the specific context of the case, namely the reason given for his dismissal in a milieu where everyone knows each other, the judge held

that the complainant's testimony alone was sufficient to meet his burden of proving the damages suffered.

Acknowledging that moral harm is by its very essence intangible and that assessing it and converting it into an amount of compensation are not an exact science, the Tribunal awarded **\$3,000** for moral harm suffered due to his dismissal.

### **Reimbursement of experts' fees**

The last type of compensation granted to the employee was the reimbursement of the cost of hiring an actuary to estimate his financial loss. After deducting from the claim an amount corresponding to unnecessary work done by the actuary due to incorrect information provided by the employee, the judge awarded **\$12,037.87** as reimbursement of experts' fees.

### **Conclusion**

This decision serves as a reminder to Employers to proceed with caution and exercise restraint when serious allegations of misconduct are made against an employee which lead to his dismissal. Otherwise, the resulting compensation could be high if the complainant asks for reinstatement, especially where the employee works in a specialized field in a small area and given the time it takes for decisions to be rendered in this type of case.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

by [Eveline Poirier](#) and [Juliette Bousquet](#)  
Stikeman Elliott LLP