SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-040835-087

DATE: JANUARY 29, 2009

BY: **THE HONOURABLE DANIEL H. TINGLEY, J.S.C**

RUDOLPH ADLER	**(Mr. Adler)**
And	
STEPHEN HUET	**(Mr. Huet)**
Petitioners	
v.	
COMMISSION DES RELATIONS DE TRAVAIL	**(Commission)**
and	
SYNDICAT DES COLS BLEUS REGROUPÉS DE MONTRÉAL (SCFP, 301)	**(Syndicat)**
Respondents	
and	
VILLE DE MONTRÉAL	**(Montréal)**
VILLE DE CÔTE ST-LUC	**(Côte St-Luc)**
VILLE DE HAMPSTEAD	**(Hampstead)**
VILLE DE MONTRÉAL-OUEST	**(Montréal-Ouest)**
Mises en cause	

JUDGMENT
(On a Motion for Judicial Review)

JT 0971

THE ISSUE

[1] The Syndicat, having fumbled the ball by failing to pursue two grievances it initiated in January 2005 on behalf of Messrs. Adler and Huet concerning their seniority and rehiring rights, now invokes the short prescription of article 47.3 C.T.[1] to defeat their complaints against it to the Commission brought in April 2007 pursuant to the provisions of article 47.2 C.T.[2] requiring certified associations to act fairly and in good faith towards employees comprised in bargaining units they represent.

[2] The Commission dismissed the complaints of Messrs. Adler and Huet against their Syndicat, concluding they had been brought after the expiry of the 6 month delay provided by article 47.3 C.T. Messrs. Adler and Huet ask the Court to annul the Commission's decision and order that their complaints against the Syndicat be returned to the Commission to be disposed of according to law.

THE FACTS

[3] Messrs. Adler and Huet affirmed they had been improperly laid off work by certain of the Mises en cause in March 2004 and never rehired according to their seniority status, prompting the Syndicat to file grievances on their behalf against the Mises en cause municipalities before the Commission.

[4] As long ago as May 2005, a Syndicat consultant, Mr. Latulippe, apparently gave an opinion to the Syndicat's "Comité de griefs" not to refer these two grievances to arbitration:

> [...] parce que les employés auxiliaires pour avoir droit de grief doivent rencontrer une exigence qui est une période d'essai complétée ce qui n'est pas le cas pour les deux messieurs [...] [3]

[5] Messrs. Adler and Huet knew nothing of this until mid September of 2006 when Mr. Latulippe finally told Mr. Huet by telephone that a decision had been taken by the Syndicat "à l'effet de pas porter les griefs à l'arbitrage".[4]

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1 Which provides that: ***47.3 [Complaint and application to the Commission]*** *If an employee who has been dismissed on the subject of a disciplinary sanction or who believes he has been the victim of psychological harassment under sections 81.18 to 81.20 of the Act respecting labour standards (R.S.Q., chapter N-1.1), believes that, in that respect, the certified association has contravened section 47.2, the employee must, if he wishes to rely on that section, file, within six months, a complaint with and apply in writing to the Commission for an order directing that the employee's claim be referred to arbitration.*

2 Requiring that: ***47.2 [Behaviour of certified association]*** *A certified association shall not act in bad faith or in an arbitrary or discriminatory manner or show serious negligence in respect of employees comprised in a bargaining unit represented by it, whether or not they are members.*

3 At page 84 of the transcript of the hearing before the Commissioner.

4 At page 90 of the transcript.

[6] Despite this disturbing news, coming some 20 months after the grievances had been lodged, the Syndicat seemed ready to resume efforts to "récupérer les emplois" of Messrs. Adler and Huet in November and December 2006 and January 2007. This part of the story is told by the Commission in its decision:

> [17] À son retour de congé de maladie, Michel Latulippe prend connaissance d'une rencontre entre son coordonnateur, Michel Fontaine, et Stephen Huet à la fin novembre 2006. Il est décidé, à cette rencontre, de tenter de récupérer les emplois de Stephen Huet et Rudolph Adler par la voie de la négociation déjà en cours depuis 2006 à la table de Hampstead, étant donné qu'ils n'avaient pas droit au grief. Le mandate a été donné à Benoît Gosselin, le conseiller syndical responsable des négociations pour le secteur de Hampstead. Il lui revenait de decider du bon moment pour introduire le sujet dans le cours des négociations. Michel Latulippe est attitré aux négociations aux tables des secteurs Côte Saint-Luc et Montréal Ouest.
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> [18] Quant à Stephen Huet, il explique qu'en décembre 2006 ou en janvier 2007, il parle à Sophie Fabrice. Il ne peut pas préciser le moment; il n'a pas une bonne mémoire pour les dates. Elle lui dit que son grief sera entendu à une certaine date en janvier ou février 2007. Cependant, elle lui laisse un message téléphonique lui disant que celle-ci ne tient plus et que le syndicat lui communiquera une autre date.
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> [19] Stephen Huet se rend au bureau du syndicat et discute avec Jocelyn Trottier. Ce dernier l'informe que son cas est spécial et qu'il ne pourra pas se régler rapidement. Jocelyn Trottier et monsieur Lafortune décident de soumettre les griefs lors des négociations du 14 février 2007. Stephen Huet en informe Rudolph Adler.
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> [20] Stephen Huet se rend au bureau du syndicat le 20 février 2007. Il rencontre Jocelyn Trottier, Benoît Vachon, Michel Latulippe, monsieur Lafortune, et un autre représentant syndical. Il est troublé; c'est sa première expérience avec le syndicat. Benoît Vachon lui dit que la vie est dure et injuste, que son cas et celui de Rudolph Adler sont spéciaux et qu'il attend le bon moment pour les soumettre, possiblement dans six mois ou dans six ans. C'est à ce moment, que Stephen Huet réalise que le syndicat ne le défendra pas. On se moque de lui. Il n'a jamais obtenu une réponse écrite du syndicat au sujet de son grief.
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> [21] Le 26 mars 2007, le procureur de Stephen Huet et de Rudolph Adler envoie une lettre à Michel Parent relativement aux griefs. Il demande au syndicat de lui faire parvenir une copie de la décision de l'arrondissement quant au refus des griefs, les listes d'ancienneté pertinentes, le nom des salariés affectés au même travail que Stephen Huet et Rudoph Adler qui ont été rappelés au travail et la liste des employés temporaires ou auxiliaires à compter du 3 mars 2005. Le syndicat ne répond pas à cette lettre. Stephen Huet explique qu'il avait déjà fait ces demandes au syndicat, sans résultats.

[7] As noted from this summary, no letter was ever sent by the Syndicat to either Mr. Adler or Mr. Huet confirming what had happened to their grievances more than a year earlier[5] and Mr. Adler only learned of it from Mr. Huet.

THE COMMISSION'S DECISION

[8] The Commission decided that the complaints against the Syndicat were brought beyond the delay provided in article 47.3 C.T. for the following reasons:

> [37] Stephen Huet parle d'une autre conversation avec Michel Latulippe. Le contenu de cette conversation est corroboré par les témoignages des deux protagonistes et par les propos écrits dans la plainte de Stephen Huet. Michel Latulippe informe Stephen Huet que le syndicat refuse de poursuivre les griefs parce qu'il n'existe aucune chance de succès et lui propose de communiquer avec le président du syndicat s'il n'est pas satisfait. De toute évidence, Michel Latulippe formule cette suggestion parce que Stephen Huet fait valoir, à ce moment, son désaccord sur l'évaluation du syndicat au sujet du nombre d'heures qu'il a travaillées pour compléter sa période d'essai. Cette conversation a nécessairement lieu avant le début du congé de maladie de Michel Latulippe le 17 septembre 2006. La conversation ne souffre pas d'équivoque. Stephen Huet rapporte son contenu en audience et par écrit dans sa plainte. Il comprend ce qui se passe puisqu'il défend son point de vue sur les heures travaillées.
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> [38] Force est de conclure que Stephen Huet prend connaissance de la décision claire du syndicat de ne pas poursuivre les griefs et des raisons à son soutien le 14 septembre 2006. Le syndicat a possiblement réitéré cette décision par la suite, mais cela n'empêche pas que Stephen Huet en prend connaissance à cette date. C'est cette décision du syndicat qui est contestée par le présent recours. En effet, il croit que le syndicat est fautif parce qu'il n'a pas référé les griefs en arbitrage et il veut qu'un arbitre entende sa réclamation.
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> [39] Les plaignants prétendent qu'il n'existe pas de preuve d'une décision syndicale de procéder par la voie des négociations collectives pour tenter de récupérer leur travail après avoir renoncé d'aller en arbitrage. Avec égards, peu importe les termes utilisés par Stephen Huet, tout indique qu'il est au courant depuis environ novembre 2006, que le syndicat présentera son cas et celui de Rudolph Adler lors d'une séance de négociation qui devait se tenir en janvier 2007, mais qui a été reportée au 14 ou au 20 février suivant. Selon son propre témoignage, il rencontre Jocelyn Trottier et lui pare au téléphone à partir de la fin novembre 2006. Ce n'est pas en arbitrage que son grief ou son cas devait être entendu, déposé ou présenté, mais bel et bien à la table de négociation.
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> [40] De toute évidence, le négociateur syndical n'a pas réussi à introduire ce sujet lors de la séance de négociation du 14 ou du 20 février 2007. Lors de la

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[5] Unlike what happened in Lapierre c. Tribunal du travail, C.S.L. 540-05-006540-011; 2002-07-09 at paragraphs [4] and [13], where the Syndicat officially informed its member by letter in clear and unambiguous terms that it would not submit the grievances to arbitration.

> rencontre du 20 février 2007 entre Stephen Huet et des représentants syndicaux, ceux-ci lui font valoir qu'il est difficile de prédire quand il sera possible de discuter de leurs cas dans le cours des négociations collectives. Ainsi Stephen Huet réalise qu'il ne retrouvera pas son travail rapidement par cette stratégie. C'est à compter de ce moment qu'il entreprend des démarches qui aboutissent au dépôt des présentes plaintes contre la décision du syndicat de ne pas poursuivre les griefs en arbitrage.

[9] It added at paragraph [41] of its decision that by applying under a repealed section of the Labour Code (article 124) for permission to proceed beyond the delay of article 47.3 C.T., Messrs. Adler and Huet in effect admitted their complaints were prescribed.

STANDARD OF REVIEW

[10] Decisions of the Commission acting in its official capacity are without appeal[6] and are protected by a complete privative clause[7] from all recourses contemplated in articles 33 and 834 to 846 of the Code of Civil Procedure "except on a question of jurisdiction".[8] Given that the Commission is "at the heart of its jurisdiction, interpreting and applying the provisions of the Labour Code in the light of the evidence and the admissions that it had before it",[9] we are not in the presence of a question of absence of jurisdiction.

[11] Thus, the standard for review of the Commission's decision is that of unreasonableness, according to the Commission, a specialized court, the deference implicit from the presence of a privative clause.[10]

DISCUSSION

A. Errors in the Decision

[12] The Court agrees with Messrs. Adler and Huet that the Commission erred in deciding on the evidence before it that the short delay of article 47.3 C.T. began to run from the time – September 14, 2006 – Mr. Huet was informed during a telephone conversation that the Syndicat was not going to pursue his and Mr. Adler's grievances against the municipalities that had laid them off and failed to rehire them, particularly in the light of subsequent events.

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6 See article 134 C.T.

7 See Madame Justice Thibault in IGA Des Sources Charlesbourg c. Travailleurs et Travailleuses Unis de l'Alimentation et du Commerce, Section Locale 503, C.A.Q. 200-09-005635-062; 2007-12-19, at paragraphs [55] to [59] inclusive, where she refers to articles 139.1 and 114 C.T.

8 See articles 139 and 139.1 C.T.

9 See Lapierre c. Tribunal du Travail, C.A.M. 500-09-012600-029 at paragraphs [30] to [33] inclusive of the Reasons of Mr. Justice Rothman.

10 See Justices Bastarache and LeBel's comments in Dunsmuir c. New Brunswick, (2008) 1 S.C.R. 190, at paragraphs [51] to [56] inclusive.

[13] Considered in isolation, even ignoring subsequent events, the decision was unreasonable. A refusal to act or, as in this case, to continue to act requires a modicum of formality. A lawyer who wishes to cease acting for a litigant requires the permission of a Court after notice to his or her client.[11] In the Lapierre affair[12] a letter in clear and unambiguous terms was considered sufficient to put the Union member on notice.

[14] Generally, discontinuance of a suit or proceeding also involves certain basic formalities;[13] the filing of a declaration by the party who wishes to withdraw.

[15] Reluctantly responding by telephone to a series of requests for information as to the status of a litigant's grievance and informing him only then of a decision made more than a year previously that the Syndicat was not going to pursue his grievance hardly satisfies what is generally required in such situations.[14]

[16] Counsel for the Syndicat tried to convince the Court that this is the way things are done between unions and their members. If that is so, this Court finds such practice to be unacceptable. At the very least, a union member is entitled to be told in writing, in a timely manner so as not to cause undue prejudice and in clear and unambiguous terms with reasons that his union will no longer represent him in his grievance.[15] That was certainly not done here. Mr. Adler never heard anything from the Syndicat. He learned of the apparent fate of his grievance from Mr. Huet.

[17] But there is more. As described in the Commission's decision reproduced above in paragraph [8], it is evident from the subsequent events that occurred during the winter of 2006/2007 that the Syndicat had decided after all to go to bat for Messrs. Adler and Huet. It was going to present their case to the municipalities at the negotiating table. Regrettably, this never came to pass and by late February, 2007, Messrs. Adler and Huet realized at last that they had been let down by their Syndicat.

[18] In such circumstances, Messrs. Adler and Huet were entirely justified in thinking the Syndicat had resumed acting for them. At the very least, if the short prescription of article 47.3 C.T. had begun to run in mid-September 2006 – the Court does not think it did – it had been interrupted by the behaviour and undertakings of the Syndicat in the winter of 2006/2007.[16]

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11 See article 249 C.C.P.
12 Supra, Note 5, at paragraph [13].
13 See articles 263 and 264 C.C.P.
14 As to procedural fairness, see Dunsmuir, supra, Note 10, especially at paragraphs [77] to [90] inclusive and [129].
15 Supra, Note 9, per the Lapierre affair.
16 See Chapter III of Title One of Book VIII (Prescription) of the Civil Code of Québec.

B. Nature of the Errors

[19] The failure of the Commission to even consider that the behaviour of the Syndicat over the winter of 2006/2007 might constitute an interruption of prescription is almost as astonishing as its acceptance of the mere verbal affirmation of a decision taken by the Syndicat more than a year earlier not to pursue grievances it had initiated on behalf of two of its members as constituting the commencement of a prescription period.

[20] Given its shockingly negligent behaviour towards Messrs. Adler and Huet, it is no wonder the Syndicat reconsidered their predicament and undertook to remedy it at the negotiating table. Messrs. Adler and Huet didn't care how their grievances were resolved, whether by arbitration or at the negotiating table. They were lulled by the undertakings of the Syndicat over that winter into believing their seniority rights would ultimately be recognized.

[21] The Court congratulates the Syndicat for at least promising to restore Messrs. Adler and Huet's seniority rights at the negotiating table, albeit very late in the day. However, the Syndicat should not for one second think to sidestep its responsibilities towards its members when it subsequently fails to even present the grievances at the negotiating table, as promised. To invoke the short prescription of Article 47.3 C.T. in these circumstances is as brazen and bizarre as the Commission's acceptance of it.

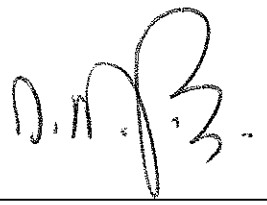
[22] **FOR THESE REASONS, THE COURT:**

[23] **MAINTAINS** Petitioners' Motion for Judicial Review;

[24] **ANNULS** the Commission's decision rendered on January 3, 2008;

[25] **ORDERS** that Petitioners' complaints in record numbers CM 2007-1931 and CM 2007-1913 be returned before the Commission to be disposed of according to law;

[26] **THE WHOLE** with costs.



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Dates of hearing: December 16, 2008 and January 21, 2009