The Supervac Decision: The Court of Appeal Ruling

February 06, 2018

CNESST v. 9069-4654 Québec inc. et CLP

In *CNESST* v. 9069-4654 Québec inc. et CLP, better known as the Supervac case, the Court of Appeal of Québec was called upon by the CNESST's Occupation Health and Safety Division, to decide whether an employer could be allowed a transfer of the costs of income replacement indemnities paid to its injured worker, when the employee's post-injury temporary assignment was terminated by his dismissal, on the basis that the resumption of the payment of those indemnities following the dismissal was unrelated to the original workplace injury.

In this case, the Court was required to define the scope of subsection 326(1) of the *Act respecting industrial accidents and occupational diseases* (the "AIAOD"), which provides as follows:

The Commission shall impute to the employer the cost of benefits payable by reason of an industrial accident suffered by a worker while in the employ of the employer.

The Court was essentially called upon to decide whether that provision could be used to grant an employer a partial imputation of the cost of such benefits.

A Return to the Roots

The Court of Appeal ultimately ruled, in a unanimous decision written by Justice Paul Vézina, that the only way for an employer to obtain a transfer of costs, whether partial or total, is following subsection 326(2) of the AIAOD and to prove that the costs imputed in the case would unduly burden it or that the accident was imputable to a third person.

Consequently, it is no longer possible to simply allege that the costs concerned are unrelated to the industrial accident within the meaning of subsection 326(1) of the AIAOD. The employer must also demonstrate that it is unduly burdened. The Court provides no clarification, however, as to how the employer can release itself of the burden of proving that it is "unduly burdened."

The Court of Appeal did, however, clarify one essential and vital factor relating to cost-sharing applications of employers when they claim to have been unduly burdened within the meaning of subsection 326(2) of the AIAOD, by holding that an employer may obtain either a partial or a total transfer of costs where it considers that it has been unduly burdened. The Administrative Labour Tribunal (the "ALT"), Occupational Health and Safety Division, formerly the Commission des lésions professionnelles, had formerly decided that only a total, and not a partial, transfer was possible.

The Court of Appeal has therefore restored the case law as it was before *Supervac*.

Time Limitations

In addition, the Court of Appeal clarified the application of subsection 326(3) of the AIAOD, providing that an application for a transfer of costs under that section must be filed within the year following the date of the accident. The Court has thus widened the scope of subsection 326(3) and has explained that the one-year time limitation [translation] “runs only from the day when the right to the exception arises.” In this case, the Court held that the limitation period started only from the date of the employee’s dismissal.

A New Potential Difficulty in Obtaining a Transfer of Costs on Grounds of Dismissal

The Court of Appeal, in this decision, queried whether the employer is "unduly burdened" where a temporary assignment of its injured employee is terminated by the latter’s dismissal. It nevertheless refused to answer that question and remanded the case to the ALT’s Occupational Health and Safety Division.

For the first time, however, the Court of Appeal has provided some food for thought for the ALT’s Occupational Health and Safety Division. The Court queried whether it was within the jurisdiction of the ALT’s Occupational Health and Safety Division to analyze the correctness of a sanction. In fact, the Court held that if the dismissal was unjustified, the employee’s temporary assignment would have resumed, and the employer would therefore not have been "unduly burdened."

It is all the more disturbing for employers to see the Court rule that even a justified dismissal might not lead to a transfer of costs, because such action could send the wrong message to employers and prevent a worker from returning to work after an accident, which is the primary objective of the AIAOD.

The Court of Appeal refused to rule on these issues because it deemed the ALT, Occupational Health and Safety Division, to be better placed to decide the whole matter, considering its expertise.

It will be interesting to see how the jurisprudence of the ALT’s Occupational Health and Safety Division develops in the light of this new decision, both in the *Supervac* case, which is ongoing, and in other cases.

By

Catherine Deslauriers

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Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
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F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749