



I was fired following a strike

You've been working in the public service for a number of years. Your union wins a strike vote and several days later, the strike begins. Your employer then fires you for having participated in an illegal strike. Are your union and your union representative responsible for your dismissal?

THE FACTS

Three employees work for a transportation company as bus drivers. On April 25, 1995 their union wins a strike vote, and on May 8, the strike begins. Several hours later however, the union orders its members to return to work because the union representative has become aware that the advance written notice required to declare a strike in the public service was not duly submitted. As a result, the strike is declared illegal. The employer dismisses those employees who participated in the work stoppage, including the three claimants. The three decide to prosecute the union as well as the union leader, alleging that they became involved in an illegal strike as a result of their error. The employees sue their union leader as well as the union for lost salary, and moral injury as well as for compensation for abuse of rights and damage to their reputation.

THE ISSUE

Are the union and its representative at fault for failing to provide prior written notice of a strike? If yes, are the union manager and the union representative equally responsible?

Have the three employees proved the case for the claimed damages as well as the causal relationship between the error and the claimed damages?

THE DECISION

The claim is allowed in part.

THE GROUNDS

The union leader admitted that he forgot to send advance written notice of the strike to

the employer, when he knew he was required to do so. The tribunal came to the conclusion that this constitutes an error involving his personal responsibility. According to the *Civil Code of Québec*, the union is responsible for the errors of its representatives, and is therefore obliged to make amends for any resulting damages. As for the damages claimed, however, the tribunal states that the employees were required to minimise their claim according to the recognized principle of responsibility. The tribunal considers that they failed in this obligation because on July 6, 1995, they refused a general settlement offer from their employer, which would have permitted a return to work. The tribunal therefore determines that the period of loss of salary was seven weeks, that is, from May 8 (the strike date) to July 6 (the date the employer's offer was rejected). The tribunal awards \$2,000 to each employee for moral injury. The tribunal rejects the claim for abuse of rights and damage to reputation because he concludes that the claimants only provided information about the facts in the context of defending the action brought against them. The union and the union leader are mutually responsible for the payment of these amounts.

References

Boileau v. Travailleurs et travailleuses unis de l'alimentation et du commerce (T.U.A.C.), section locale 50, S.C. (Montréal), 500-05-048672-990, July 4, 2001, Judge : Claude Champagne (J.E. 2001-1410).

Labour Code, (R.S.Q. c. C-27), Sect.111.0.23.

Civil Code of Québec, (S.Q. 1991, c. 64), Sect.1457, 1463 and 1479

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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