

ADMINISTRATIVE SUSPENSION WITHOUT PAY PROHIBITED IN QUEBEC

Cabiakman v. Industrial Alliance Life Insurance Co. 2004 SCC 55.

The Plaintiff was a Sales Manager for one of the branch offices of the Defendant employer. Shortly after he was hired, the Plaintiff was charged with attempted extortion. The employer suspended the Plaintiff without pay pending the resolution of the criminal charges. The suspension was characterized as “administrative” rather than disciplinary. The Plaintiff was acquitted two years after the charges were laid and was reinstated in his position by the employer. The Plaintiff’s action was for wages over the two year period of suspension. The Supreme Court of Canada framed the issue as follows: Does the employer have an obligation to pay an employee while the employee is under an “administrative” suspension.

The Supreme Court of Canada found that the employer had to pay the employee’s wages over the two year suspension period. The Court based its decision on the reciprocal obligations created by a contract of employment under the *Civil Code* of Quebec. One of the obligations under the *Civil Code* is that the employer allows the employee to perform the work agreed upon, and pay the employee remuneration. The Court recognized a power for employers to unilaterally suspend an employee for administrative reasons, but held that it was not open to the employer to cease paying the employee if it denies the employee the opportunity to perform the work. The Court also stated that the situation could have been regarded as a constructive dismissal.

Although the decision was decided in the context of Quebec’s *Civil Code*, the decision is instructive of the Supreme Court of Canada’s view on suspending employee’s for administrative reasons without pay.