

THE USE OF SURVEILLANCE VIDEOTAPES

Syndicat des travailleurs (euses) de Bridgestone Firestone de Joliette c.,
Bridgestone/Firestone Canada inc. (French text) Quebec Court of Appeal, August 30, 1999,
[1999] J.Q. no 3026

Facts

On June 18, 1994, Breault stepped on some glass and fell at the factory where he worked. The doctor he consulted at a clinic ordered a period of complete rest, while the company doctor recommended that he go back to work. Breault relied on his own doctor's medical opinion and refused all work assignments. As a result of not returning to work, Breault was terminated two months after the accident.

The employer justified the dismissal partly on the basis of three videotapes that contained secretly filmed footage of Breault participating in activities that were inconsistent with his doctor's diagnosis of an injury calling for rest. The union challenged the dismissal before an arbitrator and sought to have the videotaped evidence declared inadmissible on the grounds that shooting the images constituted an invasion of privacy. The arbitrator rejected the union's argument and upheld the dismissal based on the evidence contained in the videos. The matter was reviewed by the Quebec Court of Appeal.

Held

The Court of Appeal dismissed the union's appeal and focused on the *use* of surveillance videotapes. The Court affirmed that although surveillance outside of the workplace may appear to violate an employee's right to privacy, surveillance outside the workplace is [TRANSLATION] "allowed if it is justified by rational motives and conducted in a reasonable manner". In other words, the Court concluded that surveillance may be used under two conditions:

1. if it is necessary in order to investigate an employee's claims of disability, and
2. if it is carried out in the least intrusive possible manner.

In the case at hand, because the monitoring was restricted to particular times, places and conditions, the Court held that it did not compromise Breault's dignity. As a result, the arbitrator was justified in allowing the video to be used as evidence against the employee.