SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-17-099539-176

DATE: November 28, 2025

BY THE HONOURABLE DOMINIQUE POULIN, J.S.C.

MINA CICALE
Plaintiff
v.
SWISS INTERNATIONAL AIR LINES LTD.
Defendant

JUDGMENT
(CLAIM FOR CONSTRUCTIVE DISMISSAL)

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OVERVIEW

[1] The parties are engaged in a litigious battle stemming from the circumstances in which the Plaintiff's employment was terminated in July 2014.

[2] The legal dispute arises when the Plaintiff Cicale, who has the important function of Country Manager in Canada for the Defendant (or "**Swiss**"), is asked to return to her former work location in New York, under new conditions.

[3] The Defendant justifies its decision on disciplinary concerns which Ms. Cicale firmly contests.

[4] Ms. Cicale deems the new conditions of employment offered by Swiss to be unacceptable and she refuses them.

[5] Swiss views this refusal as a resignation, which it deems to be effective as of July 31, 2014.

[6] Ms. Cicale views the situation as a constructive dismissal.

[7] Ms. Cicale claims that her employment was governed by the laws in Quebec. According to her, she should have received notice prior to her dismissal that is equivalent to 24 months of salary.

[8] Swiss answers that the laws of the state of New York apply and that it had every right to modify Ms. Cicale's place of employment and work conditions. The employer pleads Ms. Cicale resigned and that, in any event, it would have had every right to terminate her employment without notice under the laws of New York.

[9] For the reasons that follow, the Court finds that the termination of the contract was governed by the laws of the Province of Quebec.

[10] Nevertheless, the new conditions offered by the Defendant were, given the circumstances, suitable and did not amount to a constructive dismissal.

[11] Ms. Cicale's refusal to accept Swiss's reasonable offer caused her loss. She is the author of her own misfortune.

CONTEXT

[12] Over the years, Ms. Cicale has an accomplished career with the Defendant and its predecessor Crossair Ltd.

[13] She is first hired in 1999 as a Reservation Agent. In April 2002, she pursues her career as an account manager. She is promoted as Deputy Station Manager at the JFK airport in February 2007. In March 2009, she is appointed General Manager Sales and Service Center for the US and becomes a level 4 status as a Cadre with various benefits.

[14] In 2011, in recognition of her special contributions, she receives a merit-based increase in salary.

[15] On September 23, 2011, she is appointed, on an interim basis, as Country Manager in Canada.[1]

[16] On August 8, 2012, she is promoted to the position of Country Manager Canada with the title of Senior Manager.[2]

[17] The position of Country manager is the highest title in a given country. Ms. Cicale occupies the top position of the Canadian organization of Swiss.[3]

[18] Above and beyond her responsibilities as manager, Ms. Cicale acts under a Power of Attorney for Canada,[4] which provides powers of effecting payments, opening and closing bank accounts, representing Swiss in legal proceedings in Canada. She also is the principal signing officer at the Montreal airport.[5]

[19] Ms. Cicale reports to her superior based in Zurich, Vice President Arved Von Zur Muehlen, from September 2011 until early 2014, when he leaves Swiss to join another airline.

[20] From May 2014, Ms. Cicale reports to a newly appointed Director Senior Marketing in the Americas, Mr. Patrick Heymann.

[21] On or around June 5, 2014, Mr. Heymann invites Ms. Cicale to a meeting in the New York office in East Meadow. At the meeting, she is informed that her employer has discovered that she has been receiving double the monthly indemnity of $ 2,500.00 for her housing in Canada.

[22] A discussion follows, during which Ms. Cicale explains that Swiss, particularly Mr. Von Zur Muehlen, is aware of the situation which has prevailed from the beginning of her appointment in Canada and which she understood had been approved verbally.

[23] On June 12, 2014, Ms. Cicale receives a *Letter of Disciplinary Action*[6] in which she is blamed for self-approving an additional amount of $ 2,500.00 per month via Swiss internal expense reimbursement procedure. She is informed that her assignment in Canada will be terminated on July 31, 2014, and that she will be offered a local position in the US, which will be determined as soon as possible.

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1 Exhibit C-2
2 Exhibits C-1 and C-54.
3 Exhibit D-17 and testimony of Carole A. Sullivan, Manager HR Canada for the Defendant.
4 Exhibit C-35.
5 Exhibit C-36.
6 Exhibit C-5.

[24] Before the new position is made known to her, Ms. Cicale is called upon by Mr. Heymann to confirm whether she wishes to continue to work with Swiss in a position in the US that has yet to be determined.[7]

[25] On July 16, 2014, Swiss presents a replacement job proposal to Ms. Cicale (the "**Transfer back and Job Proposal**").[8] The offer is for the position of Function of Project Management, Direct Sales and Customer Service Excellence USA and Canada to commence on September 1, 2014, and continue to June 30, 2015. The level of the Function is Manager Cadre, with the same benefits. The offer stipulates that, upon completion of the project, Ms. Cicale may apply for any available position in the SWISS US Organization. The salary offered is $ 500 a month lower than her previous position. She would remain a Manager Cadre.

[26] Discussions follow during which Ms. Cicale informs the Defendant of her concerns about being demoted, the uncertainty related to the term of the project, and her feeling of being punished.

[27] Swiss maintains its position.The offer is non-negotiable.[9]

[28] On July 25, 2014, Ms. Cicale's counsel addresses a letter to the Defendant advising that his client is unable to accept the offer and that she considers herself to be the victim of a disguised dismissal.[10]

[29] On July 27, Swiss informs Ms. Cicale's counsel that her failure to respond is taken as a resignation, effective as of July 31, 2014.[11]

[30] Ms. Cicale later accepted a new position with another airline in October 2015, with a start date in January 2016.[12]

ANALYSIS

1. WHAT IS THE APPLICABLE LAW: QUEBEC OR NEW YORK?

[31] The parties disagree about the law that applies to the matter. Ms. Cicale advances that the laws of the Province of Quebec apply. Swiss maintains that the laws in force in the State of New York prevail.

[32] The determination of the applicable law is relevant to the analysis of the parties' arguments.

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7 Exhibit C-31.
8 Exhibit C-7.
9 Exhibit C-24.
10 Exhibit C-8.
11 Exhibit C-9.
12 Exhibit C-28.

[33] Under the present circumstances, allegations of constructive or unjustified dismissal do not give rise to a claim under the laws of the State of New York.[13] In the absence of an employment contract between the employer and the employee that contractually limits the right to terminate the employment relationship at any time, the "at-will" *employment doctrine* applies. According to this doctrine, the employer may terminate the employment relationship at any time, without notice and for any reason, subject only to the protections provided by law. The employer may also change an employee's terms of employment at its sole discretion at any time, without notice.

[34] Subject to the evidence, the claim for constructed or unjustified dismissal is available under Quebec law. In Quebec, *the right of an employee to a reasonable notice of termination or to an equivalent indemnity is a matter of public order.*[14] The employer must terminate an employment contract by giving notice of termination to the other party, unless serious reasons justify resiliating the contract without prior notice (art. 2091 and 2094 C.c.Q.). The notice of termination must be given in a reasonable delay, taking into account, in particular, the nature of the employment, the specific circumstances in which it is carried on and the duration of the period of work.

[35] For the reasons that follow, the Court is of the opinion that Quebec Law applies to the present matter.

1.1 Legal Principles

[36] Article 3118 of the *Civil Code of Quebec* sets out protections for workers to ensure that they benefit from the mandatory rules of the law of the State where they habitually carry out their work:

> 3118. The choice by the parties of the law applicable to a contract of employment cannot result in depriving the worker of the protection afforded to him by the mandatory rules of the law of the State where the worker habitually carries out his work, even if he is on temporary assignment in another State or, if the worker does not habitually carry out his work in any one State, of the law of the State where his employer has his domicile or establishment.
>
> In the absence of a designation by the parties, the law of the State where the worker habitually carries out his work or the law of the State where his employer has his domicile or establishment is, in the same circumstances, applicable to the contract of employment.

[37] The parties acknowledge that this provision is straightforward. However, they have different interpretations of the relevant facts and, hence, of the manner in which the provision applies.

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13 *Defendant's Jurisconsult Certificate by Ms. Daub*, January 3, 2025.

14 *Lang* c. *137579 Canada inc*., 2021 QCCS 5292 at para 128.

[38] More particularly, Swiss maintains that Ms. Cicale was assigned to work in Quebec on a temporary basis only, and that her usual place of work remained the State of New York. It argues that article 3118 C.C.Q. is clear and that her temporary assignment to Quebec did not change the applicable law.

[39] Ms. Cicale advances that her employment as Country Manager in Canada was not temporary. By August 2012, her assignment was no longer an interim replacement. According to Ms. Cicale, the *situs* of her work, where she habitually exercised her functions, was Montreal, Quebec.

1.2 Relevant Facts and Discussion

[40] It is reasonable to assume that Ms. Cicale would one day have planned to return to her homeland and live with her husband and son, who stayed behind. She did not commit to remain the company's Country Manager in Canada indefinitely. She never applied to become a Canadian citizen. She was working in Canada under a work permit.[15] She rented a furnished apartment.

[41] However, it cannot realistically be construed that Ms. Cicale still habitually carried out her work in the US and was only assigned to Quebec as Country Manager on a temporary basis.

[42] First, the execution of her new functions were performed exclusively in Canada, as determined by the letter confirming the changes in her employment (the "**Letter of Assignment as Country Manager"**).[16] The function of Country manager was part of the organization of Swiss in Canada. Ms. Cicale's work permit indicates Montreal to be the location of her employment.

[43] This assignment required her to rent an apartment in Montreal, where she spent most of her time during the week. The last lease she signed was for a period of one year, from December 2013 to December 2014.[17]

[44] She paid taxes in Quebec and Canada,[18] though she was also taxed in the US for social security and Medicare.[19] Her address, as indicated on her 2012, 2013 and 2014 T-4 slip was in Montreal, Quebec[20], as well as on her statement of earnings and deductions issued by Swiss[21].

[45] It is true, as the Defendant points out, that Ms. Cicale maintained her status as a US employee and her participation in the social advantages offered to the employees of

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15 Exhibit D-6.
16 Exhibit C-54.
17 Exhibit C-18.
18 Exhibit D-5.
19 Exhibit D-9.
20 Exhibit C-17.
21 Exhibit D-5.

Swiss in the US, including her participation in the retirement plan program and group insurance.[22] In order to maintain those benefits, her presence in the US was required at least 50 % of the time. But the evidence reveals that Ms. Cicale's presence in the US was principally for her personal affairs, as was well known by her employer.

[46] In an email sent on August 6, 2012,[23] Ms. Helen Del Terzo, responsible of Payroll and Human Resources, writes to her colleagues to discuss issues regarding insurance and income taxes. She explains:

> "The second issue is her Health insurance and income taxes. Mina will be living in Canada but her husband and son will stay in the US. As the husband and son have no other means of insurance, Mina would like to stay on the US policy. My understanding of our health policy, Mina must physically be in the US for half of the year in order to stay on the local US company insurance. They do not expect to be checking if she is actually here but on paper it must add up to that she could physically be here. In adding up weekends, vacation and other personal time and a couple of weeks during·the·year for work, she can achieve this requirement. In speaking to LH, a problem that could arise with this would be the US government could state since she is in the States for half the year, she could be taxed on her income."
>
> (Emphasis by the Court)

[47] Clearly, it is well understood at the time that Ms. Cicale will be performing her function in Canada, and will be spending only personal time in the US, except for a couple of weeks during the year for work.

[48] Swiss also argues that Ms. Cicale continued to supervise a team of approximately eight employees of the Customer Service Center for North America, who were located in New York. However, the evidence does not demonstrate that this work, which she continued over and above her function of Country Manager, necessitated that she spend more time in the US than the two weeks mentioned in the email cited above. Ms. Cicale stated before the Court that she needed to be at the N.Y. office only four to five times over the entire period.

[49] In essence, Swiss assigned Ms. Cicale to perform a new function in Quebec and it is in Quebec that she habitually carried out her work.

[50] This conclusion is supported by the Transfer back and Job Proposal addressed to Ms. Cicale in July 2014 when she is offered new conditions. She is informed of her *transfer back to the SWISS US Organization.*[24] The location of the new job offered is described as East Meadow, New York.

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22 Exhibit D-4.
23 Exhibit C-39.
24 Exhibit C-7.

[51] As for the character of her function as Country Manager, it cannot be considered that it was only temporary.

[52] Ms. Cicale's function as Country Manager became permanent on August 1, 2012,[25] as opposed to the previous year when she took over the function on a temporary basis because her predecessor was on a sick leave for an indefinite time.[26] Back then, as she explains, she conjugated both her functions in the U.S. and in Canada. She only came to Montreal every two weeks. When she was appointed on a permanent basis, Swiss needed to replace her in the U.S. From then on, she was present at her workplace in Montreal every week, from Monday to Thursday or Friday.

[53] The duration of this assignment as Country Manager did not depend on the completion of a particular project which would end at a particular time or after the accomplishment of a specific mandate. The Letter of New Assignment as Country Manager[27] does not specify a delay other than a review of her conditions at the end of the two-year period.

[54] Being Country Manager was not a temporary function. In all appearance, it needed to be filled by someone at all times. Ms. Cicale's predecessor needed to be replaced during his leave of absence. When Ms. Cicale left, an ad was posted for her replacement.

[55] The vacancy note issued following her departure describes the Job title as Director, Head of Sales & Marketing Canada, *on a full-time basis* and located in Montreal.[28] Ms. Cicale affirms that the attached Job description corresponds entirely to the functions that she accomplished as Country Manager.

[56] There was never a period of time determined for the duration of her employment in Canada nor a plan in place for her return to the US. Neither by her nor by the Defendant. Swiss was not in the process of searching for someone to replace Ms. Cicale.

[57] In 2013, when Ms. Cicale asked that a new contract mentioning that she would be working in Montreal for a maximum of 23 months be issued (this mention would have saved her taxes on her housing allowance),[29] her request was refused by Swiss. In the end, Ms. Cicale signed a lease expiring well after that period of 23 months in September 2013.[30]

[58] The obvious conclusion is that Ms. Cicale habitually carried out her work for Swiss in Quebec, at least for the period beginning in August 2012, when she officially became Account Manager Canada.

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25 Exhibit C-7.
26 Exhibit C-2.
27 Exhibit C-54.
28 Exhibit C-13.
29 Exhibit C-9.
30 Exhibit C-18.

1.3 Conclusion as to the Applicable Law

[59] The termination of Ms. Cicale's employment with Swiss was subject to the mandatory protections afforded by Quebec law.

2. WAS MS. CICALE VICTIM OF CONSTRUCTIVE DISMISSAL?

[60] Ms. Cicale argues that she was the victim of constructive dismissal. More particularly, she pleads that the Transfer Back Job Proposal made by Swiss was so different, and so disadvantageous to her, compared to her function as Country Manager, that it was not acceptable to her and would not have been acceptable to any reasonable person.

[61] The analysis leads to the conclusion that:

- the circumstances justified Swiss asking Ms. Cicale to leave her function as Country Manager and to transfer her back to the US, and

- the conditions of the new Job Proposal were suitable under the circumstances.

[62] The Court concludes that the Tranfer Back Job Proposal was justified and suitable and, hence, Ms. Cicale was not the victim of a constructive dismissal.

2.1 The Applicable Principles

[63] The jurisprudence of the Supreme Court teaches that work constitutes a fundamental aspect in the life of an individual. It is an essential component of a person's sense of identity, self-esteem and emotional well-being.[31]

[64] It is thus essential to balance the sanction imposed upon an employee who is the author of misconduct with the gravity of his misconduct.[32]

[65] The drastic sanction of dismissal will only be justified if the misconduct is of such seriousness that it is incompatible with the continuation of the employment relationship.[33] Dishonesty which goes to the very heart of the employer-employee relationship may constitute grounds for dismissal.[34]

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31 *McKinley* c. *BC Tel*, 2001 CSC 38, [2001] 2 RCS 161, at para 53, citing *Renvoi relatif à la Public Service Employee Relations Act (Alb.)*, 1987 CanLII 88 (CSC), [1987] 1 R.C.S. 313, chief Justice Dickson (dissidenting) at p. 368.

32 *Id*. at para 53.

33 *LeFrançois* c. *Canada (Procureur général)*, 2010 QCCA 1243, at para 59.

34 *Id*. at para 57.

[66] As explained by the Supreme Court in *Farber* v. *Royal Trust Co*.,[35] changes imposed by the employer that substantially alter the conditions of the employee's employment in the eyes of a reasonable person may amount to constructive dismissal:[36]

> 24. Where an employer decides unilaterally to make substantial changes to the essential terms of an employee's contract of employment and the employee does not agree to the changes and leaves his or her job, the employee has not resigned, but has been dismissed. Since the employer has not formally dismissed the employee, this is referred to as "constructive dismissal". By unilaterally seeking to make substantial changes to the essential terms of the employment contract, the employer is ceasing to meet its obligations and is therefore terminating the contract. The employee can then treat the contract as resiliated for breach and can leave. In such circumstances, the employee is entitled to compensation in lieu of notice and, where appropriate, damages.
>
> (Emphasis by the Court)

[67] A court called upon to determine the appropriateness of a sanction, whether a dismissal or any other sanction, must consider (1) the nature of the misconduct complained of, (2) the context of the misconduct and (3) the proportionality of the sanction imposed.[37]

[68] Factors considered as relevant in the case law include the employee's hierarchical position and level of responsibility, seniority, degree of functional autonomy, the difficulties faced by the company, the employee's awareness of the misconduct, the personal benefit derived from the misconduct, the employee's age, past conduct, and the workplace policies.[38]

[69] The burden of convincing that a given sanction is appropriate lies with the employer.[39]

2.2 Relevant Facts and Discussion

2.2.1 Nature and Context of the Misconduct

[70] The salary conditions for Ms. Cicale's employment as Country Manager are set out in the Letter of Assignment as Country Manager:[40]

> "Salary: $ 8,500 per month (paid semi-monthly)
>
> CAD 2 500 per month housing allowance

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35 *Farber* v. *Royal Trust Co.*, 1997 CanLII 387 (SCC), [1997] 1 SCR 846.
36 *Id*. at para 24.
37 *Valeurs mobilières Desjardins inc.* c. *Jean*, 2019 QCCA 128, at para 52.
38 *LeFrançois* c. *Canada (Procureur général)*, *supra* note 33, at para 60.
39 *Valeurs mobilières Desjardins inc.* c. *Jean*, *supra* note 37, at para 51.
40 Exhibit C-54

> To be reviewed at the end of two year period
>
> One time maximum allowance of USD 1500 for tax advice
>
> All Subject to all applicable taxes."

[71] Shortly after the beginning of her assignment, in November 2012, Ms. Cicale wrote to Mr. Von Zur Muehlen, asking him to confirm to colleagues in Human Resources that her rent allowance is $ 2,500 NET:[41]

> "Dear Arved,
>
> Per our phone conversation 2 weeks ago, can you please confirm to above colleagues in cc that my rent allowance is CAD 2,500 NET.
>
> We decided I stay where I am and LX will cover 100 % of the rent in order not to incur any moving costs and car allowance."

[72] The head of Human Resources in Switzerland replied that she had already confirmed to Mr. Von Zur Muehlen that the amount was to be gross, any tax contribution being at Ms. Cicale's charge.[42]

[73] In February 2013, Ms. Cicale wrote to Ms. Erin Sweeney, Head of Legal Affairs, requesting the issuance of a new contract mentioning that she would be working in Montreal for a maximum of 23 months, in order for her allowance to be nontaxable:[43]

> "Dear Erin,
>
> I consulted with an international tax specialist in Montreal and was advised that there is a provision in the Canadian Law where housing allowance is not taxable.
>
> For this, I need you to issue a new contract (Carol should have a copy of the old one) simply stating that I will work in Montreal for a maximum period of 23 months from August 2012.
>
> Please let me know if you have any questions. Arved is aware of this."

[74] Her conditions were not modified and Ms. Cicale continued to be taxed on her housing allowance.

[75] On March 28, 2013, Ms. Cicale wrote to Ms. Del Terzo, Payroll and Human Resources, asking her that the $ 2,500 added to her salary be qualified as an "Allowance" instead of a "Housing Allowance":[44]

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41 Exhibit D-8.
42 *Id*.
43 Exhibit D-9.
44 Exhibit D-10.

> "Dear Helen,
>
> I hope you are doing well.
>
> On the cost centre report, it shows that I have the following:
>
> Staff residential 2329.28 CHF 6524 YMQDM RENT APPT FEB13 2 2013 BWYGUC 2500 CAD
>
> Staff residential 2500 CHF 6524 Housing Allowance 2 2013 YGUC 2500 CHF
>
> Can you please ensure that the $2,500 that is added to my salary shows as Allowance, and not Housing allowance?"

[76] Ms. Del Terzo replied that the qualification of "Housing Allowance" was correct according to the employment letter.

[77] Ms. Cicale reiterated her request. She stated that she never agreed to those conditions and asked for the issuance of a new employment letter with the suggested allowance allocation. Again, she mentioned that Mr. Von Zur Muehlen agreed with the changes.

[78] Ms. Del Terzo transfered the request to Mrs. Sweeney, who was not clear on the reason for the request, "*Is the issue that it is being taxed*?" and "Which allowance?" Ms. Cicale responded that there is only one allowance and that there is no issue it is taxable.

[79] The changes requested were not made.

[80] The Housing Allowance continued to be paid to Ms. Cicale in the amount of CAD 2,500,00, per month, taxable and representing $ 1,113.85 per pay period.[45] The Payout Split and Earning Statement designated the payment as Housing Allowance.[46]

[81] Over and above the Housing Allowance that she received on her pay, Ms. Cicale approved, for herself, an expense for her rent of CAD 2,500 paid directly to her landlord.

[82] It was not until May 2014 that Swiss realized the situation. Then, Ms. Del Terzo informed her superior Carol Sullivan, Manager Human Ressources, that Ms. Cicale benefited from an overpayment of CAD 2,500 on a monthly basis, totalling CAD 55,000.[47] Mrs. Sullivan, in turn, informed Mr. Heymann.

[83] According to the procedures in place at Swiss, such an expense to the benefit of Ms. Cicale should have been approved by the signature of someone other than her, more specifically her Manager, Mr. Von Zur Muehlen, and then Mr. Heymann.

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45 Exhibit D-12.
46 Exibits D-4 and D-12.
47 *Id*.

[84] It is understood that this benefit was taxable. The Director Taxation Mr. Max Colpi indicated that any amount paid for housing, car, school or function allowance is a taxable benefit.[48] Ms. Cicale was taxed on the necessary adjustments, retroactively, once the error was discovered.

[85] Ms. Cicale argues that the Housing Allowance that she received should have been requalified as a “Function Allowance” based on the conversations that she had with Mr. Von Zur Muehlen. In addition, she raises that the rent was paid directly to the landlord by Swiss. The expense had already been budgeted for and she did not need approval from anyone else.

[86] Ms. Cicale points out that her email of March 28, 2013[49] clearly informed Swiss that two different payments of $ 2,500 were disbursed. Ms. Del Terzo explains that she did not understand what the two different lines stood for at the time. The email was remitted to Ms. Sullivan and to Ms. Sweeney, but apparently nothing was done to clarify the ambiguity. Ms. Del Terzo only investigated the issue in 2014. She obtained the relevant information from the accounting centre in Mexico. She learned that the requests for payment were made by the accounting staff in Montreal and approved by Ms. Cicale as his manager.

[87] Ms. Cicale’s understanding is not supported by the written designation of the allowance as a “Housing Allowance” on her Earning Statements. Furthermore, it is not in line with what appeared to be Ms.Cicale’s understanding of the nature of the allowance in November 2012 and February 2013, when she formulated requests regarding the taxation of the amount, which was clearly understood then to cover rent or housing.

[88] Clearly, Ms. Cicale’s conditions, as they appear from the Letter of assignment as Account Manager, included only one allowance of CAD 2 500, to cover for her housing, which was taxable. This amount corresponded to the indemnity paid in addition to her salary.

[89] Any reasonable person would have understood that the indemnity of $ 2,500 paid monthly and referred to as “Housing Allowance” was meant to cover for the costs of the rental of an apartment in Montreal.

[90] Ms. Cicale maintains that her conditions (Function Allowance plus rent) were approved by Mr. Von Zur Muehlen.[50] Necessarily, this understanding implies modifications to the conditions set forth in the Letter of Assignment as Country Manager.

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48 Exhibit D-18.
49 Exhibits C-19 or D-10.
50 Letter from Mrs. Cicale’s lawyer July 25, 2014, exhibit C-8.

[91] Whatever she may have discussed with Mr. Von Zur Muehlen, the contents of the discussions was never confirmed in writing of any form or included in any documents which would modify the terms of the Letter of Assignment as Country Manager.

[92] During her testimony, Ms. Cicale never stated that Mr. Muehlen officially approved that she receive a double indemnity of $ 2,500. The fact that he would have officially approved a change in her conditions is simply not demonstrated. The evidence does not include any email or writing from him confirming his awareness and approval. It is not conceivable that such a change would not be documented.

[93] Apparently, no one at Swiss communicated with Mr. Von Zur Muehlen to verify Mrs. Cicale's version of events.

[94] Mr. Von Zur Muehlen was not assigned as a witness.

[95] If Mr. Von Zur Muehlen was of the opinion that Mrs. Cicale was not properly compensated and gave his blessing that she approve the direct payment of the rent by Swiss to the lessor, this blessing did not constitute a formal modification of her conditions and certainly did not discharge Ms. Cicale of her obligations of transparency.

[96] The fact that Ms. Cicale self-approved this expense for almost two years knowing that it doubled the allowance set out in writing is an understandable cause of concern for Swiss.

[97] The fact that she received this additional benefit without being taxed, and without it appearing as a benefit on her pay stubs, should also have alerted Ms. Cicale that Swiss was not aware of the situation and that the double indemnity was never confirmed nor officially processed.

[98] This said, it is true that Ms. Cicale's email of February 2013 does raise questions regarding the two different entries for the rent expense. However, the discussion around it at the time regarded the designation of her allowance, and did not point to the fact that Mrs. Cicale was receiving a double indemnity. Still, Swiss could have been more alert and inquisitive regarding this ambiguity. The information was available and could have been discovered sooner.

[99] In the Letter of Disciplinary Action dated June 12, 2014,[51] Swiss underlines the absence of any documents, email or record of any kind suggesting that Ms. Cicale would be entitled to more than $ 2,500 of housing allowance mentioned in the letter of assignment. Swiss blames Ms. Cicale for her lack of diligence and transparency. It raises the importance of managers abiding by all rules and policies and avoiding even the appearance of impropriety.

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[51] Exhibit C-5.

2.2.2 Proportionality of the Sanction

[100] Swiss's position is reasonable and understandable.

[101] Given the context – Ms. Cicale's years of service and her perfect record (except for the allowance issue discussed above), her important functions and responsibilities, the fact that her immediate superior was allegedly informed of her doings and the fact that Swiss neglected to raise the flag in due time – dismissal from her employment at Swiss would not have been an appropriate sanction.

[102] In fact, the conduct of Ms. Cicale was in all appearance not incompatible with the continuation of her employment at Swiss. Had it been, the Job Proposal would not have been formulated.

[103] For all these reasons, Ms. Cicale's conduct did not justify a dismissal, be it constructive or explicit.

[104] Swiss decided to transfer Ms. Cicale back to New York in a different function.

[105] The decision by Swiss to "transfer back" Ms. Cicale to New York was appropriate under the circumstances. This sanction did not constitute a constructive dismissal. The parties' dispute over Ms. Cicale's self-approval of the rent expense, and Swiss' disciplinary concerns in relation thereto, were directly linked to the geographical location of her assignment. The concern raised by Mr. Heymann to have Ms. Cicale work closer to his supervision was justifiable in the circumstances, when the explanations given were not satisfactory.They still are not, as discussed above.

[106] In any event, Ms. Cicale had affirmed that she would not accept to continue to perform her function as Country Manager in Canada if the additional payment of $ 2,500 ceased.

[107] As concerns the new conditions offered to Ms. Cicale, the evidence shows that they were reasonable in the circumstances.

[108] The Transfer back and Job Proposal[52] which is offered to Mrs. Cicale reads as follows:

> "Based upon the recommendation of your SWISS management, we wish to inform you of your transfer back to the SWISS US Organization in accordance with the following description:
>
> Function: Project Management, Direct Sales and Customer Service Excellence USA and Canada. This project's expected timeline will commence September 1, 2014, and continue to approximately June 30, 2015. Upon completion of the project you may apply for any available positions in the SWISS US Organization.

[52] Exhibit C-7.

> Job location: East Meadow, New York
>
> Salary: $ 8,000 per month
>
> Employment: Manager, Cadre
>
> Reports to: Head of the Americas
>
> Effective Date: September 1, 2014
>
> Please note that nothing herein changes your employment-at-will status."

[109] A Project Brief is attached to the Proposal. It details the Goal and Scope of the Project, as well as the Responsibilities and Tasks. They involve monitoring of the quality of services, coordination of the training of the Swiss Core Team, co-ordination and monitoring of the group fulfillment to market the USA and Canada, management of interfaces of all servicing and sales. The Project appears as a duly elaborated plan developed for the transition towards the new organization requirements and the restructuring of the client servicing. The position entails assisting in the future reorganization of Swiss.

[110] Swiss considers the salary of USD 8,000 to be commensurate with the duties and responsibilities of the position. Swiss confirms its intention to offer Ms. Cicale a managerial position with the company at the end of the project, to the extent that such a position is available, with no interruption of salary or benefits during the transition. A reorganization is underway and Swiss maintains that it is unable to confirm what position will be available at that time. It is Swiss's hope that Ms. Cicale considers the offer favourably.[53]

[111] Ms. Cicale views the offer as a demotion. It does not appear to her to be a real job, since it is described as a project only, for a short-term duration. Given the uncertainties of Swiss's future organization, the unknowns regarding the position available in June 2015 places her in a stressful situation. She feels that a salary cut is unfair.[54] In her mail of July 23, 2014, she writes:[55]

> "Dear Patrick and Carol,
>
> Further to the matter of my current and future employment status at SWISS, please understand that these past 3 years have been a hardship on me and my family. Having to go through this demotion process along with the uncertainties of the future organization is adding more stress to an already difficult and stressful situation.
>
> I have been thinking about this offer for the last week and here is my proposal:

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53 Exhibit C-16.
54 Exhibit C-15.
55 Exhibit C-16.

- Salary: Since some key personnel will be taking the early retirement package, leading this project will be very challenging and time consuming. I feel a salary cut is unjust and unfair. My base salary for CA was much lower than that of my predecessor. I kindly ask you to reconsider your offer and keep me at the same salary.
- Title: Cadre assume this will be Senior Manager level 3B? any other title will affect my flight benefits and my bonus.
- In view that you cannot definitively state what position will be available once the project is completed by June 2015. I am requesting that I will be granted an offer similar to that of the early retirement that has been offered to bath management and staff in the U.S. If you are in agreement, please provide me with the full details of the package.

I look forward to this new project and I am confident given my experience that I will bring it to conclusion in SWISS' best interest.

Best Regards,

Mina"

[112] Swiss maintains its offer "as is" and states that it is non-negotiable in its entirety.[56]

[113] The result of the discussions, is, as we now know, unfortunate.

[114] On July 25, 2014, Ms. Cicale's counsel addresses a letter to the Defendant advising the company that their client is unable to accept the offer and that she considers herself to be a victim of a disguised dismissal.[57]

[115] On July 27, Swiss informs Mrs. Cicale's counsel that her lack of response is taken to be a resignation from her employment, effective as of July 31, 2014. [58]

[116] The letter from Swiss' General Counsel[59] emphasizes that Ms. Cicale was treated with leniency in spite of the circumstances surrounding the payments in excess of $ 50,000 which she obtained, hoping that Ms.Cicale *would see the wisdom of looking forward*.

[117] Swiss' General Counsel rightly states that *any action taken regarding her status or salary was minimal in nature.*

[118] He concludes:

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56 Exhibit C-24.
57 Exhibit C-8.
58 Exhibit C-9.
59 *Id*.

> "As you know, despite the facts and out of respect for your client's years with the Company and with the hope that she would understand the situation that she created herself and look forward (as Swiss was more than willing to do), an offer of employment was made which was open for acceptance through the close of business July 25, 2014.
>
> Your client has not responded and accepted such position so it is our understanding based on her lack of response and your appearance on her behalf that she has resigned her employment with SWISS effective as of July 31, 2014.
>
> **Please advise your client <u>not</u> to report for work this week. SWISS shall pay her salary through July 31, 2014.**"

[119] The Court agrees with Swiss that its approach was lenient.

[120] The Transfer Back and Job Proposal was formulated as a result of Ms. Cicale's conduct and the decision to repatriate her to the U.S.

[121] Necessarily, as a result, she could no longer play the role of Country Manager in Canada. Necessarily, her transfer back to New York would result in modifications in her employment.

[122] Ms. Cicale was offered a position of Manager in a context where the company was under a reorganization.

[123] The evidence does not reveal what other role, if any, she could have played at the time.

[124] Her status as a Cadre, with the same benefits, was maintained,[60] at a salary slightly lower than her salary of Country Manager, under conditions that were deemed by Swiss as being commensurate with the duties and responsibilities of the position.

[125] Mr. Heymann acknowledges that the description of the Job Proposal differs from the description of Ms. Cicale's function as Country Manager. The Job Proposal is for a Project which he deems suitable for Mrs. Cicale, at senior management level.

[126] It is noteworthy that the Job Proposal implied that Mrs. Cicale would return to the place of work she had before her stay in Montreal, close to her husband and son.

[127] Ms. Cicale would have preferred to benefit from the retirement program put into place for employees over 58 years old. But this program was not offered to younger employees.

[128] Although there was no guarantee of the availability of an employment of interest to Ms. Cicale in June 2025, there is no evidence of Swiss' unwillingness to offer her another managerial position with the company, to the extent that a position was available,

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60 Testimony of Ms. Helen Del Terzo.

with no interruption of salary or benefits, as it confirmed. Mr. Heymann confirms that such was his intention to offer her a managerial position.

[129] In conclusion, the evidence reveals that Swiss acted within its rights in deciding to transfer back Ms. Cicale to New York and formulated a suitable job proposal under the circumstances.

2.3 Conclusion as to Ms. Cicale's Claim Based on Constructive Dismissal

[130] Ms. Cicale's claim that she was the subject of constructive dismissal is dismissed.

3. MS. CICALE'S MONETARY CLAIMS

[131] Ms. Cicale formulates the following claims:

a) An indemnity in lieu of notice of 24 months of her total salary of $ 283,960.48, including both allowances;

b) An indemnity of $ 25,000.00 in moral damages for stress and humiliation;

c) A claim of $ 17,460.03 for her expenses resulting from the costs incurred as a result of the necessity to postpone the trial initially scheduled to proceed in October 2024.

[132] For the reasons that follow, the Court dismisses the first two claims but awards the compensation claimed by Ms. Cicale for the postponement of the trial.

[133] The Court also declares that the costs of the expertise incurred by the Defendant will not be included in the taxable costs.

3.1 The Claims Resulting from the Alleged Constructive Dismissal

[134] Both the claim in lieu of notice and the claim for damages are based on the allegations of constructive dismissal which are dismissed.

[135] The monetary claims based on allegations of constructive dismissal are, hence, ill founded.

[136] Furthermore, the claim for moral damages has no merit in the absence of any evidence of abuse of right, bad faith or gross misconduct on the part of Swiss[61]. Swiss acted within its rights in deciding to transfer Ms. Cicale back to New York and formulated a suitable job proposal under the circumstances.

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[61] *Ponce* v. *Montrusco & Associés inc.,* 2008 QCCA 329, at paras 22 to 32; *Structures Lamerain inc*. v. *Meloche*, 2015 QCCA 476, at paras 57 and 58.

[137] Moreover, the Court finds that the following arguments raised by the Defendant would have been opposable to Ms. Cicale.

[138] Swiss invokes the principle that the victim of a fault has the obligation to mitigate her damages (article 1479 C.C.Q.). In this instance, the Court is of the view that the Transfer Back and Job Proposal should have been accepted by Ms. Cicale in execution of this obligation, for the same reasons that led the Court to conclude that this job proposal was suitable for her. The Court agrees with the Defendant that Ms. Cicale should have accepted the Job Proposal, even if it meant looking for another job at the same time.

[139] Furthermore, Ms. Cicale delayed her search for a new employment, which she initiated in February 2015, for over six months after her termination with Swiss. She took a few months to travel and do yoga.[62] She secured a new employment with another Airline in October 2025, with a start date in January 2016. In reality, it took her one year to find a new employment. The claim in lieu of notice of 24 months is exaggerated.

[140] Basing the claim on revenues that include the two allocations which Ms. Cicale received for housing is also problematic. Half of this allowance was included in her revenues and served to compensate her for disbursements for housing. The other portion was never considered as part of her salary.

[141] Finally, the Plaintiff fails to deduct from her claim the revenues generated during the period for which she claims indemnification.

[142] Calculating a suitable indemnification would imply elaborating different scenarios which are incompatible with the Court's conclusions. This theoretical exercise in unwarranted.

3.2 The Claim Resulting from the Postponement of the Trial

[143] The trial was postponed as a result of modifications to the Defendant's defence ordered by the Court to plead the law of the U.S.

[144] The trial was initially scheduled to begin on October 28, 2024.

[145] On October 24, 2024, one business day before the first day of the scheduled hearing, the Defendant's solicitors communicated a jurisconsult certificate signed on the same day, asserting that an "at-will" employee cannot assert a claim for constructive dismissal.

[146] The Court found that the *Amended Statement of Defense and the Amended Request for Setting Down for Trial* did not announce that the law of the State of New York would be invoked.

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62 Exhibits C-12 and C-28.

[147] The Court nevertheless concluded that the Defendant should not be deprived of its right to invoke the rule of law supporting its defence and ordered that the pleadings be modified to include the law of the State of New York, with costs against the Defendant.

[148] In October 2024, the Court acknowledged the prejudice sustained by the Plaintiff as a result of having to postpone the trial, but considered that this prejudice was outweighed by the prejudice which would be sustained by the Defendant if it was denied the opportunity of asserting all its rights.

[149] At the present stage, the Court finds that Swiss's argument that the Law of the State of New York applies is ill founded.

[150] The costs of the expertise will not be awarded as part of the taxable judicial costs and compensation will be awarded to the Plaintiff by virtue of article 342 C.c.P.

[151] The evidence demonstrates that Ms. Cicale incurred an amount of $ 13,845.00 in legal fees in order to prepare for the trial October 2024 trial and attend on the first day. She spent $ 1,179.88 on airfare and $ 2,435.15 in expenses for her stay in Montreal.[63]

[152] These costs were incurred for a trial that did not proceed because the Defendant announced its intent to file an expertise report in extremis. In the end, it appears that the matter could well have proceeded without this expertise, since the Laws of the State of New York are found not to apply.

[153] Moreover, no postponement of the trial would have been required had the Defendant announced its intent and modified its defence in due time.

[154] For these reasons, the Court concludes that the Defendant committed a substantial breach in the conduct of the proceeding and considers it fair and reasonable to compensate Plaintiff by covering her legal fees to prepare for the trial in October 2024, as well as the unnecessary expenses incurred to travel to Montreal for the trial.

[155] The legal costs awarded as a result of the postponement of the trial are set to $ 17,460.03.

3.3 Conclusion regarding Mrs. Cicale's Monetary Claims

[156] Ms. Cicale will receive $ 17,460.03 from the Defendant.

FOR THESE REASONS, THE COURT:

[157] **DISMISSES** the Plaintiff's claims for alleged constructive dismissal;

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63 Exhibit C-51.

[158] **THE WHOLE** with costs in favour of the Defendant, excluding expert fees;

[159] **CONDEMNS** the Defendant to pay to the Plaintiff legal costs of $ 17,460.03, plus interest and additional indemnity since October 29, 2024.

_____
DOMINIQUE POULIN, J.S.C.

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Hearing date: October 28 and 29, 2024; May 26, 27 and 28, 2025;
Written pleadings communicated on July 4, August 15 and August 22, 2025.