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Cancellation of a contract for a building after hiring non-union employees

A general contractor under an agreement with a Union, of which the respondents were officers, undertook to employ on its contracts only union labour for that class of work in which the Union engaged. Having secured a contract for a building project it assigned part of the work to a sub-contractor which also employed only union labour. The latter, in the belief that the apellant was also an employer of union labour, gave a contract for part of such work to the appellant and the general contractor sharing the same belief, approved. The respondents, on learning of the contract awarded the appellant, advised the general contractor that their Union under the circumstances would be unable to supply it with union labour for other work of the same general nature as that awarded the appellant. The general contractor then told its sub-contractor that non-union men could not work on the job and the sub-contractor then advised the appellant that any men he employed there must be union men, and the appellant agreed.

At the time the appellant secured his contract he was aware of the Union's rule forbidding its members to work with non-union men entered into collective agreements with the Master Plumbers Association only and not with individual master plumbers such as the appellant. Notwithstanding, he made no effort to join the Master Plumbers Association, nor did his workmen apply to join the Union. He however attempted to negotiate with the Union through the respondents but without success. The contract he had obtained was thereupon terminated by mutual consent and he then brought action against the respondents claiming they had conspired to interfere with his contractual relations.

Held: The respondents as officers of the Union were within their rights in advising the general contractor of the consequences that would ensue if the appellant carried out his contract by the employment of non-union labour. The evidence did not support the contention that they conspired to injure the appellant, nor that any acts on their part, or of either of them, was the cause of the cancellation of the appellant's contract.

Smithies vs. National Association of Operative Plasterers, (1909) 1 K.B. 310, and Larkin v. Long, (1915) A.C. 814, distinguished. Local Union No. 1562, United Mine Workers of America v. Williams and Rees, 59 Can. S.C.R. 240 at 247 referred to; Quinn v. Leathem, (1901) A.C. 495 and Lumley v. Gye, (1853) 2 E. & B. 216, applied.

Per: Rand J. — The proper view to attribute to the cancellation of the contract was not the refusal of labour by the respondents but to the chosen course of action by the building contractor.

Per: Rand J. — It is now established beyond controversy that in the competition between workmen and employers and between groups of workmen, concerted abstention from work for the purpose of serving the interest of organized labour is justifiable conduct. Crofter Harris Tweed Co. v. Veitch, (1942) All. E.R. 142.

Judgment of the Cour of Appeal, (1949) O.R. 85; (1949) 1 D.L.R., 544, affirmed.[1]

(1) Cf. 1950 C.L.R. 385.

(Because of the importance which this judgement might have for certain readers of ours, we thought it a good idea to present an extract of the essential material as contained in the official reports.)

Minimum wage and tips

The defendant corporation which was operating a café or restaurant was obliged according to the Minimum Wage Act and its amendments and Ordinances, to pay to its waiters and other servants, a minimum wage of thirty cents an hour. If it is proven that the defendant has made an arrangement with some of its employees in order to pay a salary inferior to the legal wage and that, in fact, it has paid no salary to other employees, the plaintiff corporation is justified to claim the salaries not paid even without mentioning that the amount received will be distributed.

Tips are not part of the salary.

(Minimum Wage Commission v. Quartier Latin, 1950, S.C. 399.)

The survival of the fittest is the ageless law of nature, but the fittest are rarely the strong. The fittest are those endowed with the qualifications for adaptation, the ability to accept the inevitable and conform to the unavoidable, to harmonize with existing or changing conditions.

Dane E. Smalley