Relations industrielles
Industrial Relations

Convention collective — Validité de certaines clauses — Caractère légal d'un arrêt de travail destiné à les respecter

Volume 17, Number 4, October 1962

URI: https://id.erudit.org/iderudit/1021484ar
DOI: https://doi.org/10.7202/1021484ar

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Publisher(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (print)
1703-8138 (digital)

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Cite this document

(1962). *Convention collective* — Validité de certaines clauses — Caractère légal d'un arrêt de travail destiné à les respecter. *Relations industrielles / Industrial Relations*, *17*(4), 487–490. https://doi.org/10.7202/1021484ar

Article abstract

1. A clause in a labour agreement, according to which an employer undertakes not to require an employee to work on domestic nonunion shop goods, or on goods imported from a specified country is perfectly legal and valid.

2. A refusal on the part of employees to carry out work which an employer would require them to carry out in violation of such a clause would not constitute an illegal stoppage of work

The Association of Millinery Manufacturers vs The United Hatters Cap and Millinery Workers International Union, Local No. 49; Judge Emile Trottier of the Court of Sessions of the Peace, single arbitrator. A.L. Stein, Q.C., counsel of the Association, and Me Philip Cutler, counsel for the Union, Private arbitration.

sense the author of his own misfortune. The Board does not believe there is any substance to this argument.

His so-called lay-off commenced December 1st, 1960, and almost a year later at the hearing of this case was still in effect. The Company had advised him that they would let him know when they required him and in fact never did so.

What better proof is required that the Company deemed this so-called lay-off to be a dismissal and treated it as such ?

It may be useful to recall that it is settled law that the best rule of interpretation of an agreement is the manner upon which the parties have acted upon it.

See BENTLEY & SON LTD. v. LEVY & SONS LTD. — 61 S.C. 322 (Rinfret, J.) and the authorities therein cited.

FOR THE FOREGOING REASONS, the Board is of the opinion that the objection raised by the Company to the jurisdiction of the Board is unfounded, and we hereby confirm, insofar as it may be necessary to do so, the decision rendered *cour tenante* at the opening of the trial, dismissing the said objection for all legal purposes.

CONVENTION COLLECTIVE

VALIDITÉ DE CERTAINES CLAUSES
CARACTÈRE LÉGAL D'UN ARRÊT DE TRAVAIL DESTINÉ À LES RESPECTER

1. *A clause in a labour agreement, according to which an employer undertakes not to require an employee to work on domestic non-union shop goods, or on goods imported from a specified country is perfectly legal and valid.*

2. *A refusal on the part of employees to carry out work which an employer would require them to carry out in violation of such a clause would not constitute an illegal stoppage of work.* [1]

The points at issue on which the consent of both parties exists, are the following :

1.—The interpretation and application of certain clauses of the present collective labor agreement existing between the parties, which are Section 11 of the Agreement of October 28, 1958, and Section 9 of the Agremnt of May 12th, 1960.

2. The complaint of the First Party against the Second Party for the illegal stoppage of work by blockers on imported hoods prior to, and during the pendency of the discussions, correspondence and negotiations for arbitration proceedings

(1) The Association of Millinery Manufacturers vs The United Hatters Cap and Millinery Workers International Union, Local No. 49; Judge Emile Trottier of the Court of Sessions of the Peace, single arbitrator. A.L. Stein, Q.C., counsel of the Association, and Me Philip Cutler, counsel for the Union, Private arbitration.

requested by the First Party, and the award of damages or punitive damages or other penalties, for such illegal stoppage of acts ;

Your arbitrator, having heard the evidence and the arguments by counsel for both parties, after mature deliberation for several weeks, renders the following decision :

RULING ON THE MERITS

I. Interpretation and application of clauses 11 and 9.

The Collective Labor Agreement presently in force between the parties is based on the Agreement of the month of April 1950, renewed and altered by the supplementary Agreements of May 22nd, 1952, June 17th, 1955, October 28th, 1958, May 12th, 1960, and February 13th, 1961.

Each of these supplementary Agreements lays it down that all the clauses of the preceding Agreements made between the parties continue to exist, unless they were amendd or modified by these supplementary Agreements.

The two clauses which I am asked to interpret are the following :

11. *UNION BODIES AND CZECHOSLOVAKIAN HAT BODIES*

No factory employee as herein defined shall be required by an employer to handle process, or otherwise work on any domestic hat body which has not been manufactured in a union shop.

No factory employee as herein defined shall be required to perform work on fur felt or velour hat bodies imported from Czechoslovakia by the employer. This prohibition, however, shall not apply to « melusines » nor in similar cases if equal quality hat body is unobtainable by the employer...

9. *FOREIGN HOODS*

The Association will recommend to all member-manufacturers to purchase Canadian fur felt hoods wherever possible, and each member-manufacturer should abide by this recommendation wherever possible.

The Agreement of May 12th, 1960, contains no clause whatever indicating that this clause 9 replaces, amends, or varies clause 11 of the Agreement of October 28th, 1958, quite to the contrary, the second paragraph of the preamble and clause 1 have the effect of indicating that clause 11 continues to form part of the Collective Labor Agreement in force, since it is not replaced, amended or varied.

It is apparent upon a reading of these two supplementary Agreements of October 28th, 1958, and May 12th, 1960, that both of these clauses exist and that clause 9 cannot have the effect of replacing clause 11. Not only are these two clauses not contradictory, but they are actually complementary.

Moreover, the Association admits the simultaneous existence of clauses 11 and 9 through exhibit A-10, which is a communication that it sent to its members on December 21st, 1960, at the time the Union was manifesting its intention of exacting the fulfilment by the Association of the obligations it had undertaken on behalf of its members. It admits this implicitly by the « Memorandum of Submission to Arbitration » of June 6th, 1962.

The two parties had a common intention when they reached their accord on their respective wishes. As this common intention is doubtful, these two clauses must be interpreted in the literal meaning of their words. This interpretation must be neither broad nor restrictive.

By the first paragraph of clause 11, the employer undertakes not to require an employee « to handle, process or otherwise work on any domestic hat body which had not been manufactured in a union shop ».

By the second paragraph of this same clause 11, the employer undertakes further not to require an employee « to perform work on fur felt or velour hat bodies imported from Czechoslovakia, except melusines nor in similar cases if equal quality is unobtainable by the employer ».

The employer contracted two well-defined, very precise obligations. It cannot require the execution of work on goods manufactured in other than a union shop, nor on fur felts or velour hat bodies imported from Czechoslovakia, unless these goods are melusines or in similar cases, if equal hat body is unobtainable.

By subscribing to these two clauses, the employers, members of the Association, assumed an obligation in favor of their employees, and the latter acquired the right to refuse to execute the work which they might be required to execute in violation of this clause 11.

This clause is perfectly legal and valid. It binds the employers, and no personal considerations or considerations of equity can be allowed to diminish its effects. It may be disadvantageous for them, but it constitutes the law between the parties.

To interpret this clause as the Association would like to do would be to ignore the aim or the result that the parties had in mind in subscribing to it — to render it, in other words, inexecutory.

Another conflict exists between the parties on the subject of the interpretation of the second sentence of the second paragraph of clause 11 ; « This prohibition however shall not apply to « melusines » nor in similar cases, if equal quality hat body is unobtainable by the employer ».

There is no doubt that the sole factor which the parties had in mind when they agreed to this exception was quality and not price. If the employer can procure an equal quality in Canada, he cannot take advantage of the exception whatever the price may be that he has to pay to get the goods. The quality of goods is not determined by its price. The employer is undoubtedly interested in obtaining a material or a certain quality at the best price, but by this clause 11 the members of the Association ignored price, and the exception that was inserted in their favor in the contract provided only for the case where they could not

procure goods of equal quality in Canada, and without regard to the price. Even a very broad interpretation cannot give to the words « equal quality » the meaning the Association seems to seek to give them.

Clause 9 of the Supplementary Agreement of May 12th, 1960, which did not replace clause 11 of the preceding Agreement, complements it rather, and it shows clearly the Union's concern to get the members of the Association to buy in Canada the goods required for their trade. The Association undertook to recommend to its members that they buy fur felt hoods manufactured in Canada, and the members must follow this recommendation. Here again, it cannot be a question of price that is involved, but of kinds of goods or quality of goods.

2. Illegal stoppage of work.

During the arguments before me, counsel for the Association declared that it no longer insisted on its demand for damages against the Union, and that the undersigned was asked « merely to rule on the complaint as to the illegal stoppage ». This declaration comprises a renunciation of this demand for damages, of punitive damages and penalties, and I am thus called upon to rule only on the work stoppage.

There is thus no need for me to decide whether or not in my capacity as arbitrator I have jurisdiction to award damages or a penalty.

All of the witnesses for the Association have established that there was no work stoppage.

There may have been a manifestation of intention on the part of certain employees, but none of them having in effect refused to carry out the work the employer asked them to carry out, there cannot have been a work stoppage in violation of the collective labor agreement. A manifestation of intention does not constitute a work stoppage.

But if the evidence had established that there was a refusal on the part of employees to carry out work which an employer had required them to carry out in violation of clause 11 of the Agreement of October 28th, 1958, this refusal would not have constituted an illegal stoppage of work, nor would it have been a violation of clause 37 of the Collective Labor Agreement.

I am of the opinion that the refusal of an employee to work on « domestic hat body which has not been manufactured in a union shop » or on « fur felt or velour hat bodies imported from Czechoslovakia » cannot constitute a work stoppage within the meaning of article 37, nor by virtue of the Labor Relations Act, in view of the collective labor agreement in force.

Consequently, the Association's complaint cannot be maintained and is hereby rejected.