

Time Off for Employees to Vote in an Election

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TIME OFF FOR EMPLOYEES TO VOTE IN AN ELECTION

In a democratic country, the right to vote is a sacred right and the legislator must ensure that all citizens are able to use it. Therefore, the Quebec Election Act (9 George VI, (1945), c. 15, Art. 262) obliges the employer to grant time off to his employees to vote. Let us quote this provision.

« 262 1. Every employer must, on polling-day, allow every elector in his employ at least three hours to vote, in addition to the time ordinarily allowed for the midday meal, and must not make any deduction from the salary of such elector or subject him to any penalty by reason of his absence during such hours.

2. This section shall apply to railway companies and their employees, except employees charged with the operations of trains to whom such time cannot be granted without impairing the service.

3. Every person contravening this section shall be guilty of an offence and liable to a fine of one hundred to five hundred dollars, and to an imprisonment of fifteen days to twelve months. »

This provision was submitted to the court's interpretation in the case of the *King v. Canada Packers Limited* (reported in the « *Revue Legale* », 1949, p. 132); the judgment was given by Mr. Justice Armand Cloutier, of the Court of the Sessions of the Peace, in Montreal.

« The facts are as follows:

« The plaintiff was an elector in this Provincial election. He was supposed to work as usual this day between 7 a.m. and 5 p.m. on an hourly wage basis. The election was held from 9 a.m. to 6.30 p.m. During the morning, employers and employees could not agree on the hours to be used for voting. The plaintiff wished to take time off between 2 p.m. and 5 p.m. but was instructed to leave his work at 3.30 p.m. only, with the guarantee that he would be paid his salary in full. In spite of these instructions, the plaintiff quit his work at 2 p.m. The defendant retained the equivalent of one hour and a half on his weekly salary, which represented the loss of time, that is from 2 to 3.30 p.m. It is to be noted that no deduction has been made from the employees who conformed to the instructions mentioned above.

« The prosecutor, on one hand, pretends that this article authorized the plaintiff to absent himself for voting for three hours out of his working day and that the defendant wrongly withheld part of his wages.

« On the other hand, the defendant upheld that the statute only gives to the employee the necessary time, that is at least three hours, in order to permit him to vote,

and if an employee has not enough time to make the three hours in question, it is sufficient that the employer permits this employee to take enough time from his work to complete these three hours, without deducting any amount from his wages.

The court approved the procedure followed by *Canada Packers*. Let us quote an extract of the judgment:

« In this case, the defendant having permitted his employee to leave at 3.30 p.m., the polls only closing at 6.30 p.m., has therefore seen that his employee had the three hours required to exercise his right to vote and as he has paid the wages of the defendant for the period from 3.30 to 5 p.m., he has satisfied, according to us, the requirements of the statute. If the defendant has lost his wages for the period from 2 p.m. to 3.30 p.m., it is because he absented himself from his work without legal excuse under the circumstances.

« We must add that the British Columbia Court of Appeal, in a case, *Rex ex rel. Noble v. Falconer Marine Industries Ltd.*,¹ interpreting an article of the Federal Elections Act, written in about the same terms as our article of the Provincial Act which is involved, rejected the allegations of the plaintiff, which were similar to those of the present complaint. »

We must not forget that it is a penal matter which is involved here; this is not an enactment granting rights to employees but a provision preventing, under penalty of a fine, an employer from doing that which is prohibited therein.

What the article prohibits, is to deduct something from the pay, to withhold an amount from wages due. The provision does not obligate paying an employee his time lost, but it does not wish that the employee should loose, on the occasion of his time off for voting, the wages due to him.

The prohibition of deducting would therefore apply to employees paid at a fixed wage per day, per week, or per month; but hourly-paid employees or those on a piece-work basis, would not be entitled, according to this article 262, to an extra wage when they take time off to vote.

Canada Packers Limited, in granting to its hourly-paid employees, paid time off for voting, wished to be generous to its employees and ensure that even during the elections, they would receive their regular pay.

(1) 85 C.C.C. 192.