Relations industrielles
Industrial Relations

Labour Jurisprudence

Denys Dion

Volume 5, numéro 3, décembre 1949

URI : https://id.erudit.org/iderudit/1023302ar
DOI : https://doi.org/10.7202/1023302ar

Aller au sommaire du numéro

Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)
1703-8138 (numérique)

Découvrir la revue

Citer ce document

Dion, D. (1949). Labour Jurisprudence. *Relations industrielles / Industrial Relations*, *5*(3), 28–29. https://doi.org/10.7202/1023302ar

Résumé de l'article

In order to keep the readers of the Bulletin up-to-date, the Research Service is undertaking a monthly report of Labour Jurisprudence. In principle, this report will bear on current cases of jurisprudence whether in the Civil Courts, as the Superior Court or the Court of King's Bench, or in the arbitration courts, or again on the interesting decisions of the different Provincial and Federal administrative Commissions. We might even deal with particular decisions of the courts of other countries. Although our special aim will be to stick to current cases it will frequently happen that the report will refer to the past in order to present the reader with an analysis of cases which remain, in spite of the passage of time, of great current interest. We are very well aware that jurisprudence has its most solid sources in decisions which go a long way back.

STATISTICS AND INFORMATION

I—ARBITRATION CASES ON OCTOBER 31, 1949

Employer	Affiliation of the Labour Group	President of the Council of Arbitration
City of Verdun — Firemen	T.L.C.	Me André Montpetit
City of Verdun — Policemen	C.B.F.	Me André Montpetit
Dominion Tar & Chemicals, Co.	C.C.L.	Justice Herman Barrette
M. E. Binz Co. Montmagny	C.C.C.L.	Justice Achille Pettigrew
St-Maurice Furniture	C.C.C.L.	Justice C.E. Guérin
Barry & Staines Linoleum Ltd.	C.C.C.L.	Justice T.A. Fontaine
General Cigar, Co. Ltd.	A.F.L.	Justice Jules Poisson
Asbestos Corporation Ltd., Johnson's Co. Ltd.	C.C.C.L.	Justice Thomas Tremblay
Flinkote Mines (Amiante Thetford-Mines)	C.C.C.L.	Justice Thomas Tremblay
Montreal Upholstering Co. Ltd.		Justice Herman Barrette
Singer Manufacturing Co.	C.I.O.	Justice Armand Cloutier
Classon Knitting Mills Ltd.	C.C.C.L.	C.D. Laviolette
S. Goldstein & Sons	C.I.O.	H. Carl Goldenberg
Standard Shirt Co.	C.C.C.L.	Justice Armand Cloutier
American Can. Co.	C.C.L.	Justice C.E. Guérin
Fonderie Légaré	C.C.C.L.	Justice Edouard Boisvert
Coyle Tanning-Bonner Leather	C.I.O.	Justice C.E. Guérin
City of Quebec — Bakerie	C.C.C.L.	Jean-Yves Gosselin
Matthew Moody & Sons Ltd.	C.C.L.	Justice Armand Cloutier
Federal Electric Manufacturing Co.	C.I.O.	Me Ulric Laurencelle
E. J. Maxwell Ltd.	C.L.A.	Me Roger Brossard
Canadian Industries Ltd. (Bronsburg)	C.C.L.	Justice Alphonse Caron
Drummondville and Victoriaville — Construction	C.C.C.L.	Justice T.A. Fontaine
City Furniture & Frame Co.	A.F.L.	Me André Montpetit
Paramount Leather Goods	A.F.L.	Justice T.A. Fontaine
Empire Shirt, Louiseville	C.C.C.L.	Me Jean Gagné
Eastern Furniture Co. Ltd.	C.C.C.L.	Me Gilles DeBilly
Atlas Bedding Ltd.	A.F.L.	Justice Irenée Lagarde

II—AWARDS BETWEEN OCTOBER 1 AND 31, 1949

Employer	Affiliation of the Labour Group	Date of the Award
Canadair Ltd.	T.L.C.	3-10-49
Leathercraft Manufacturing Co.	A.F.L.	13-10-49
Megantic Manufacturing Co.	C.C.C.L.	7-10-49
Back River Power Co.	C.C.C.L.	12-10-49
Metalcraft Manufacturing Co.	C.I.O.	13-10-49
Holtite Rubber Co. of Canada	C.C.C.L.	21-10-49
S. Rubin Ltd, Rubin Bros., Fashion Craft, J. Elkin E.T. Coulombe, Raoul Garneau, Samuel Dorfman, Gardner Clothing	C.C.C.L.	24-10-49

LABOUR JURISPRUDENCE

In order to keep the readers of the Bulletin up-to-date, the Research Service is undertaking a monthly report of Labour Jurisprudence. In principle, this report will bear on current cases of jurisprudence whether in the Civil Courts, as the Superior Court or the Court of King's Bench, or in the arbitration courts, or again on the interesting decisions of the different Provincial and Federal administrative Commissions. We might even deal with particular decisions of the courts of other countries. Although our special aim will be to stick to current cases it will frequently happen that the report will refer to the past in order to present the reader with an analysis of cases which remain, in spite of the passage of time, of great current interest. We are very well aware that jurisprudence has its most solid sources in decisions which go a long way back.

Effect of changes in the legal status of the parties to an agreement

J. L. Vachon & Fils signs a collective agreement with the representatives of its employees grouped in a non-incorporated association. After the signing J. L. Vachon & Fils becomes J. L. Vachon & Fils Ltd., by an act of sale, changing completely the legal entity of the employer.

Also, as well, the non-incorporated association becomes the « Syndicat du Bâtiment et Bois ouvré de Beauce », incorporated according to the Professional Syndicates' Act of Quebec. There again there is a change in the legal entity.

Wherefore, the employer claims that the parties being no longer the same, the collective agreement in effect between the old parties is now of no value. This claim

is upheld, in a dissenting opinion, by the arbitrator named by the party of the employer.

The two other arbitrators do not allow this claim entirely. They admit that it is indubitably true that new corporate bodies are in question. But they claim that the new corporate bodies are held by the previous collective agreement for the following reasons which the oral and documentary proofs demonstrate:

1. The new employer acquired the enterprise « not by an ordinary sale but by a transfer of the whole enterprise as a going concern ». From which they conclude that the new employer is shouldered with all the debts of the old. In their opinion, this obligation extends not « only to the financial obligations but also to all agreements respecting the enterprise ». And, in consequence, equally to the agreements made with the workmen.

2. There was not a general discharging of workers and a re-hiring, but a continuation of employment. » And this is confirmed by the new employer himself in a letter which he sends to the new syndicate.

3. In addition, both the new parties have communicated the changes in their legal status to the Labour Relations Commission which has substituted the name of the new employer for that of the old on the certificate accorded to the new syndicate.

4. Finally, the new syndicate admits as members all those already in good standing with the unincorporated association.

The two arbitrators conclude then that the new employer and the new syndicate are bound by the collective agreement between the old parties of whom the new ones are the continuance. And that, in consequence, both should enjoy the rights which this agreement has established, as well as supporting the obligations implied therein.

Could a higher wage rate than that of the decree be agreed upon otherwise than by an individual labour contract?

« The employer invokes the fact that the Collective Agreement Act forbids the stipulation of a wage differing from that fixed by the decree, with the sole exception of the clause of a labour contract foreseeing a higher remuneration for the wage-earners. He maintains that the collective agreement is not a labour contract and claim that it is thus invalidated by the decree. »

« We believe, say the two arbitrators in the majority, that it is necessary to state that if the collective agreement is not a labour contract, it is nontheless an agreement defining the clauses of individual labour contracts. Since labour contract stipulating higher wages than those fixed by decree can be entered into with validity, we cannot very well see how undertaking through a collective agreement to make use of this right recognized by the law can be prohibited. »

Effect of a decree with respect to an individual contract or a collective agreement

« The employer maintained that decree number 337 having decreed the wage rates applicable to his industry, its dispositions would in some way be substituted for those of the collective agreement. »

« In our opinion », say again, the two arbitrators in the majority, « this conception of the purpose of a decree given under the authority of the Collective Agreement Act (R.S.Q. chap. 163) is quite erroneous. These decrees are contractual only in their inspiration, they neither replace nor destroy the individual contracts or the collective labour contracts. They simply establish the general norm from which it is not permitted to depart, but in the frame-work of which, as in the frame-work of other laws and regulations of a public kind, the collective or separate agreements remain lawful. To us it seems necessary to apply to the Labour Relations Act faced with the Collective Agreement Act, the principle enunciated by the Honourable Mr. Justice Taschereau in Parity Committee-vs-Dominion Blank Book (1944, R.S.C. 213) concerning the Professional Syndicates' Act: « Both laws coexist and professional syndicates may enter into labour agreements with their employers under the condition, however, that their terms do no conflict with the existing law ».

« In addition, since the Labour Relations Act post dates the Collective Agreement Act, we must, in cases of disagreement, decide that the former's provisions must prevail. »

Professional Syndicates' Act and effects of the Collective Agreement

In order that a collective agreement may give the right to appeal before the courts foreseen by the Professional Syndicates' Act it must be an agreement fulfilling the requirements of article 21 of this Act. This article 21 « defines the collective agreement in terms which permit as union parties to the agreement, only professional syndicates, unions and federations of syndicates by virtue of this Act ».

This is not to say that without that an agreement is not effective. « Our Professional Syndicates' Act is not a peremptory law but a permissive one. One may take advantage of it but one is not obliged to do so. Again, beside the syndicates incorporated by virtue of this Act, our legislation permits and recognizes non-incorporated associations and their collective agreements while not granting them as a general thing, the right of appeal to the courts of common law. (cf. R.S.Q. Chap 162-A enacted by Geo VI, chap. 30, Division I, definitions — association, agreement) ».

« The fact that the association was not incorporated in accordance with the Professional Syndicates' Act when it signed a collective agreement did not prevent it in any way from taking advantage of the provisions of the Labour Relations Act which recognizes to a certain degree the existence of such collective agreements and prescribes arbitration in accordance with the Quebec Trade Disputes Act on all disputes arising between the parties during the duration of the said agreement. (art. 24, par. 2)

(Arbitration Council: for the Syndicat national catholique du Bâtiment de St. Joseph de Beauce and J. L. Vachon & Fils Limitée. Majority sentence: Maître Ls-Ph. Pigeon, president and Maître Ubald Desilets, arbitrator for the syndicate. Dissenting opinion: Maître Remy Taschereau, arbitrator chosen by the party of the employer. Quebec, Jan. 5, 1949).

Compiled by DENYS DION