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Résumé de l'article

Dans la présente chronique, nous rapporterons spécialement un jugement de la Cour Supérieure en matière de retenue de cotisations syndicales.

JURISPRUDENCE DU TRAVAIL

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1—SERVICES PUBLICS — COMMISSIONS SCOLAIRES

Dans un arbitrage entre la *Municipalité Scolaire de la Cité de St-Jean et le Syndicat de ses professeurs laïcs* [1], la partie patronale, au lieu de laisser se continuer le débat devant le Conseil d'arbitrage, a décidé de faire des propositions directes à la partie syndicale. Après étude de contrepropositions faites par le Syndicat, les parties en viennent à une entente immédiate.

La sentence rapporte l'entente survenue entre les parties de la manière suivante:

> Me GAGNE: *Messieurs les arbitres, la Municipalité scolaire de la Cité de St-Jean, Québec, pour abréger les procédures devant le présent Conseil d'arbitrage, a fait des propositions à la partie syndicale, lesquelles ont fait l'objet de négociations directes entre les parties.*

Après de multiples discussions les parties en sont venues à une entente.

> Me LAPOINTE: *Au nom du Syndicat des Professeurs Catholiques de St-Jean, le procureur de la partie syndicale désire déclarer qu'à la suite de propositions qui ont été faites directement au représentant du dit syndicat, et dans le but de montrer un esprit de coopération, des contrepropositions ont été faites à la partie patronale qui ont amené une entente entre les parties.*

Dans un autre cas, celui du *Bureau des Commissaires d'Ecoles Catholiques Romains de la Cité de Sherbroke* [2], le syndicat en cause a fait une demande de suspension de délibéré jusqu'à ce qu'une législation spéciale « pour améliorer le sort des Commissions Scolaires » soit adoptée par le Gouvernement de la Province. Les membres du Conseil d'arbitrage ont rejeté cette motion dans les termes suivants:

> 1—*Considérant que la demande de Me Roger Thibaudeau de la suspension du délibéré n'allègue aucun fait nouveau;*
>
> 2—*Considérant de plus que Me Thibaudeau qui était au courant qu'une législation pour améliorer le sort des Commissions Scolaires était mentionnée dans le discours du Trône, a déclaré à la dernière séance d'arbitrage qu'il n'était pas nécessaire d'attendre cette législation pour rendre notre décision, nous renvoyons donc la demande de suspension du prononcé de la sentence arbitrale.*
>
> *Ci-joint se trouve la décision minoritaire de M. Guindon.*
>
> *Signé à Sherbrooke, ce 13ième jour de janvier dans l'année de Notre-Seigneur, mil neuf cent cinquante-six.*
>
> J.-C. Samson
> Maurice Delorme

(1) Différend entre la Municipalité Scolaire de la Cité de St-Jean, P.Q. et le Syndicat des Professeurs Catholiques de St-Jean, P.Q. Date de la sentence, le 29 juin 1956, pages 1 et 2. Membres du tribunal: président, M. le Juge René Lippé; arbitre patronal: Me Jean Massicotte; arbitre syndical: Me Théodore Lespérance.

(2) Différend entre le Bureau des Commissaires d'Ecoles Catholiques Romains de la Cité de Sherbrooke, page 1 et 25; date de la sentence: 13 janvier 1956. Membres du tribunal: président: M. le Juge J.-C. Samson; arbitre patronal: Me Maurice Delorme; arbitre syndical: M. Léo Guindon.

GAGNE, JEAN-H., LL.L., M.Sc.Soc. (relations industrielles); chargé de clinique en jurisprudence du travail à l'Université Laval.

Toutefois, l'arbitre syndical, minoritaire, donne raison au procureur du syndicat; il accorde cette motion en s'exprimant dans ces termes:

« Il importe que le professeur, exempt de toute gêne matérielle, jouisse de la tranquilité de l'esprit afin de lui permettre de donner le meilleur de lui-même aux élèves qui lui sont confiés.

Les conditions de travail du professeur doivent être en rapport avec le « niveau social » de sa profession. Elles doivent être supérieures à celles de l'employé manuel ou de tout autre occupant une fonction inférieure. Elles doivent rendre possible l'appel et le choix des meilleurs sujets, stimuler l'enthousiasme et l'effort des anciens, encourager les débutants, et situer ainsi l'enseignement à la place importante qui lui revient de droit dans notre province et notre pays démocratiques et chrétiens.

La Loi 13, Geo. VI, ch. 26, défendant la grève aux professeurs, obligeant à l'arbitrage des différends et rendant la décision arbitrale exécutoire doit assurer justice aux professeurs.

Dans le cas soumis au présent Tribunal, il a été prouvé hors de tout doute que les professeurs avaient raison de rejeter l'offre faite par la Commission scolaire le 2 juin 1955 (exhibit R-9) et de maintenir leurs demandes prouvées des plus raisonnables.

J'ai rendu ma décision d'après la preuve faite, et en tenant compte de la capacité de payer de la commission scolaire: capacité de payer qui a été prouvée être des meilleures!

Puisse cette décision satisfaire tous les intéressés et la profession en particulier. »

Signé à Sherbrooke, le 13 janvier 1956.

Léo Guindon,
arbitre syndical

Le secrétariat de la Province a également publié au long la sentence minoritaire de l'arbitre syndical qui comporte plusieurs commentaire.

2—DÉCISION DE LA COUR SUPÉRIEURE EN MATIÈRE DE RETENUE DE COTISATIONS SYNDICALES

Nous reproduisons ici le texte du jugement de l'Honorable Juge A. Montpetit, de la Cour Supérieure du District de Montréal. Cet arrêt n'a pas encore été rendu public et peut être utile à ceux que pareilles matières intéressent.

Dans le cas de *A. Robert Sloan -vs- Canadian National Railway Co. Ltd. & Al* [3], nous laissons de côté la partie du jugement où l'honorable Juge rapporte le contenu des procédures. Nous reproduisons le reste:

II

"The essential facts, in this case, are simple and suffer no contradiction.

a) Plaintiff has been at the service of the C.N.R. (first as a fireman and then as as engineer) for a period of thirty eight years approximately.

b) Since November 1952, he is neither a member of the Brotherhood of Locomotive Enginemen and Firemen nor of the Brotherhood of Locomotive Engineers.

It should be mentioned here however that Plaintiff was a member of the former for seventeen years and of the latter for eighteen years.

c) Since March 8th, the Brotherhood of Locomotive Engineers have been recognized as the certified bargaining agent for the "Locomotive engineers handling steam or other classes of motive power while employed as such in Canada by the Canadian National Railway" (see exhibit D.B. 1).

d) Since March 4th, the Brotherhood of Locomotive Firemen and Enginemen has been recognized as the certified bargaining agent for "all the employees of the Canadian National Railways, engaged as locomotive firemen, locomotive firemen's helpers, hostlers and outside hostlers' helpers" (see exhibit D.B. 2).

e) Although the pertinent documents have not been filed in the record, there is no doubt that, on February 1st, 1955, collective agreements between the C.N.R. and each of the two Brotherhoods were in force and that the said collective agreements affected all the C.N.R. employees above referred to.

(3) C.S. No 372070, A. Robert Sloan -vs- Canadian National Railway & Al. Jugement rendu le 24 février 1956, pages 6 et suivantes.

f) On February 1st, 1955, the Brotherhoods and the C.N.R. signed another agreement which they called a "Union Dues agreement" to be effective April 1st, 1955, until March 31st, 1956.

The essential provisions of this agreement will be fully discussed hereunder.

g) In the months of April and May 1955, Plaintiff received two "notices of delinquency" under the Union Dues agreement and he eventually lost his "seniority" rights for three days during the latter month. Having paid the "union dues" under protest, he recoverred the said rights automatically.

III

The whole issue revolves around the legality of the Union Dues agreement filed at Plaintiff's exhibit P-1.

The essential provisions of this agreement may be summarized as follows:
a) As of April 1st, 1955, all C.N.R. employees covered by the collective agreements (then in force) between the Defendants *are bound* to tender and pay the union dues assessed by the two Brotherhoods and amounting in April and May 1955 (the only two months which are of concern here) to $6.05 per month.

b) Upon failure to do so within twenty days from the first of each month, these employees are considered as *delinquent and are* liable to *lose their "preference of employment" as of the tenth day* of the following month.

c) An employee who has been notified of this delinquency (and the Brotherhoods are contractually bound to so notify him through what is referred to as a "notice of delinquency") is entitled to request a hearing, but he must do so in writing and within ten days from the date of the said notice.

d) The receipt of such a request operates a stay of action and, until such time as a final decision is rendered, thereon, the loss of "preference of employment" is suspended.

e) "Either (a) withdrawal by the Brotherhood of notice of delinquency or (b) proof to the Locomotive Firemen by the employee that he has tendered to the Brotherhood payment of arrears for the month of delinquency, shall restore preference of employment" (see clause 5 of the Agreement).

f) "The effect of "loss of preference of employment" will be that a locomotive engineer, locomotive firemen (helper) hostler or hostler helper delinquent will lose the privilege of exercising his seniority to service of any kind and is not to be called for work unless there is no one else available" (see clause 6 of the agreement).

g) In the event of any action at law, suit or proceeding against the parties hereto or any of them relating to the loss of preference of employment by a locomotive Engineer or a Locomotive Firemen (Helper), Hostler or Hostler Helper pursuant to paragraph I (A) and (B) or to any other action taken pursuant to the provisions of this agreement, all parties shall cooperate fully in the defence of such action. Each party shall bear its own cost of such defence except that, if at the request of the Brotherhoods or wither of them, Counsel is employed and counsel fees are incurred, these shall be borne by the Brotherhood or Brotherhoods so requesting. Save as aforemaid the Brotherhoods, jointly and severally, shall indemnity and save harmless the Railway Company from any losses, damages, costs, liability or expenses suffered or sustained by it resulting from an action at law, suit or proceeding taken against the Railway Company by a Locomotive Engineer or a Locomotive Fireman (Helper), Hostler or Hostler's Helper based upon his loss or preference of employment or other action taken by the Railway Company pursuant to the provisions of this agreement" (see clause 14 of the agreement).

In his verbal argumentation, Plaintiff's attorney submitted the four following propositions:

a) The aforesaid Union Dues agreement is not a "collective agreement".

b) The Defendants did not have the right and authority to sign same.

c) The said agreement is contrary to the Industrial Relations and Disputes Investigation Act (R.S.C. 1952, c. 152), to the Civil Code, and to the constitution and by-laws of the Brotherhoods.

d) It is also against public order. Needless to say, Defendants' attorneys have contended that these four propositions were erroneous and ill-founded in fact and in law.

I will deal with these propositions in the order they were submitted.

IV

Under section 53 of the Industrial Relations and Disputes Investigation Act, Part I thereof (which sets forth, amongst other matters, the procedure pertaining to collective bargaining) applies... "in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada including, but not so as to restrict the generality of the foregoing...

b) railways, canals, telegraphs and other works and undertaking connecting a province with any other or others of the province, or extending beyond the limits of a province . . . . . and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers."

There is no doubt therefore, and all parties hereto are in agreement on this point, the Part I of the aforesaid Act (sections 1 to 52 inclusively) applies in this instance.

Section 2 (I) (d) of the said Act defines a "collective agreement" as meaning . . . "an agreement in writing between an employer or an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employment of employees including provisions with reference to rates of pay and hours of work".

There is no dispute, between the parties, that the Union Dues agreement has intervened between an employer (C.N.R.) and two bargaining agents (the Brotherhood Defendants) of a group of the said employer's employees (locomotive engineers and firemen & Al).

In support of his first proposition, Plaintiff however argues (1) that the said Union Dues agreement does not contain either "terms or conditions of employment" of the said employees or "provisions with reference to rates of pay and hours of work" and (2) that it cannot therefore be considered as a "collective agreement" within the terms of the definition above quoted.

Evidently, the Union Dues agreement does not deal with "rates of pay" of "Hours of work".

But can it not be said that the main provisions thereof contain what *purport* to be "terms of conditions of employment"?

The Act does not define this expression.

However, in section 6 (1) thereof, it provides that "nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or *granting a preference of employment to members of a specified trade union*".

It is to be noted that the aforesaid text follows provisions recognizing every employee's right to be a member of a trade union and to participate in the activities thereof (section 3, first paragraph) and stating, under the heading "Unfair Labour Practices", that "no employer . . . shall impose any condition in a contract of employment seeking to restrain an employee from exercising his rights under this Act" (section 4 (3) (b) . . . and that "no employer . . . shall seek by intimidation, by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employer to refrain from becoming or to cease to be a mem-

ber or officer or representative of a trade union and no other person shall seek by intimidation or coercion to compel an employee to become or refrain from becoming or to cease to be a member of a trade union" (section 4 (4)).

It therefore seems to me that the Act, although it endorses the well-known principles of freedom of association and, consequently, of non-intervention of an employer in the employee's exercise of this freedom, acknowledges also, by way of a reserve pertaining to these two principles, the right and privilege for a specified trade union to try and obtain from an employer, in a collective agreement, provisions which either require, as a condition of employment, membership in the said trade union or grant a "preference or employment" to the members thereof.

Such being the case, I fail to see how provisions to such an effect could, under the Act, be considered as anything else but "terms or conditions of employment".

For these reasons, but without expressing any opinion at the present stage as to whether the so-called clause of "loss of preference or employment" included in the Union Dues agreement does or does not fall within the orbit of section 6 (1) of the Act and is or not of the type or category referred to therein, I come to the conclusion that Plaintiff's contention that the said agreement cannot be considered as a "collective agreement" because it does not contain "terms or conditions of employment" or, at least, what *purport* to be "terms or conditions of employment" is ill-founded in law.

Of course, I readily admit — and Plaintiff has also raised this issue — that the said Union Dues agreement contains also certain provisions which have nothing to do with a "collective agreement" as defined in the Act.

Such are, for instance, clauses 10, 11 and 14 thereof which respectively deal with an understanding between the two Brotherhoods concerning the solicitation of members amongst the employees and the exchange of seniority lists (clauses 10 and 11) and with an understanding of all parties to co-operate in the defence of any action taken pursuant to the provisions of the Union Dues agreement (clause 14).

Be that as it may, I do not believe — and, on this point, I disagree again with Plaintiff — that the fact that the parties hereto have incorporated in the Union Dues agreement the aforesaid clauses which are manifestly not "terms or conditions of employment of employees", nor references to "rates of pay and hours of work" has the effect either of rendering the said "collective agreement" illegal as such and null and void as a whole, or even, of making it lose its legal characteristics and consequences as a collective agreement as regards the provisions thereof which are deemed or purport to be "terms or conditions of employment".

In other words, I am of the opinion that the following distinction should be made:

a) Clauses I to 9, 12, 13 and 15 of the Union Dues agreement should be considered prima facie as being of the nature of a "collective agreement" within the meaning of section 2 (I) (d) of the Industrial Relations and Disputes Investigation Act.

b) Clauses 10, 11 and 14 thereof should be considered as being of the nature of a private agreement between the Brotherhoods and/or the C.N.R.

V

Plaintiff's second proposition is based on the contention that nowhere in the Industrial Relations and Disputes Investigation Act is the possibility foreseen of more than one trade union or bargaining agent joining together as a party to a "collective agreement".

I fail to see how Plaintiff can seriously argue that in the absence of a text in the aforesaid Act authorizing or allowing specifically such a situation, it can be concluded therefrom that it is prohibited or illegal.

In my opinion, the general rule still applies: an agreement whether it be "collective" or not, may be

reached and signed by more than two contracting parties.

In this instance, both Brotherhoods are certified as bargaining agents (see exhibits D. B. 1 and D.B. 2). Both are entitled to claim, and benefit from their rights and privileges as such under the Act. They have done so, and the Union Dues agreement cannot be declared invalid and set aside merely for this reason.

VI

I now come to Plaintiff's third proposition.

Before discussing what may be the legal consequences, towards a non-member of a specified trade union (such as the Plaintiff) of a provision in a collective agreement granting a preference of employment to members of such a trade union, it seems to me quite in order to try and establish whether or not the so-called clause of "loss of preference of employment" in the Union Dues agreement is a provision granting a "preference of employment" within the meaning of this expression as used in the said section 6 (1).

What is a "preference of employment?"

What did the Parliamant of Canada wish to convey by the use of that expression?

Can it be said to extend to a provision granting a preference *in the terms and conditions of employment?*

To answer these questions, and since there is no definition of this expression in the Act, I believe one must first bear in mind that section 6 (1), as already mentioned, constitutes more or less a qualification or limitation of the principle of freedom of association recognized in the said Act.

This being so, section 6 (1) goes on to enunciate two alternative provisions as not being prohibited: (a) a provision, in a collective agreement, whereby employees, *as a condition of employment*, are required to join a specified trade union; or (b) a provision which grants to members of a specified trade union a *preference* as far as their employment is concerned.

Manifestly, the first alternative provision is much more drastic than the second. It refers to the type of "union security" clauses which are the most far reaching, such as closed shop clauses and others to a similar effect. If agreed to, *it become a specific condition of employment.* So much so, that if someone refuses to join the specified trade union in question, he cannot be employed by the employer concerned.

The second alternative provision *is not a condition of employment.* It merely deals with a privilege which entitles the members of a specified trade union to be preferred to non-members in their employment, that is, in my opinion, *in the fact of being employed and remaining employed.* For instance, a clause in a collective agreement whereby the employer would agree to hire, or retain the services of members of a specified trade union in preference to non-members would be a "preference of employment" provision within the meaning a section 6 (1). Such also would be a provision where the employer would consent to give preference to members of a specified trade union over non-members in cases of lay-off.

But I fail to see how the expression *"preference of employment"* could justify (to the extent of being considered as "non-prohibited" under section 6 (1) a prevision whereby, during the period of employment and within the said period, members of a specified trade union (and only because they are members) would be entitled, as compared to non-members, to a "preference status" *in the terms and conditions of their employment.*

I do not believe that Parliament ever had the intention of going that far. I am convinced that if it had such a purpose in mind, it would have expressed itself in unambiguous terms.

This being so, an referring back to the specific "loss of preference of employment" clause in the Union Dues agreement, it becomes evident

that it cannot be said to fall within the orbit of section 6 (1).

The said clause (see clause 6) deprives all locomotive engineers, locomotive firemen, hostlers or hostlers helpers *delinquent*, (that is, who have not paid the Brotherhoods' union dues within a specified time) *of the privilege of exercising their seniority rights to service of any kind and of their right to be called for work*, unless there is no one else available.

This clause, in my opinion, and whatever be the working used to describe it, is not a "preference of employment" provision as foreseen in section 6 (1).

As a matter of fact, and even assuming (for the sake of discussion only) that preference in the terms and conditions of employment during the effective period of employment and within such period would be covered by the expression "preference of employment" in section 6 (1). I am not at all convinced that the provisions of the Union Dues agreement could be considered of such a type.

It seems to me that these provisions, taken as a whole, are much more concerned with "depriving" the non-members of some of their rights as employees than with "granting" the members a specific right or privilege. The purpose here is negative. It is equavalent of saying to non-members: "Pay or be penalized", the whole in a case where their adhesion to the Brotherhods is not and was not a "condition of employment".

For all these reasons, I conclude that the provisions of the Union Dues agreement pertaining to the so-called "loss of preference of employment" cannot be considered as being allowed or permissible under section 6 (1) of the Industrial Relations and Dispute Investigation Act.

Can it be said however that these provisions are binding upon Plaintiff, notwithstanding the fact that they are not of the "non-prohibited" type referred to in section 6 (1)?

I do not believe so.

a) The main purpose of these provisions is to have all employees, whether they be members or not of the Brotherhoods, pay union dues, not as a condition of employment which the C.N.R. would agree to recognize and impose on all said employees, but under the threat of losing their so-called "preference of employment". The only alternative left to the employees who do not wish to lose this right or privilege is to pay as requested.

Of course, the Union Dues agreement does not compel the alleged delinquent employees upon payment of the monthly union dues to join one of the two Brotherhoods.

On this point, may I refer to clause 9 thereof: "Membership in either of the organization signatory hereto *shall be available* to any employee eligible under the provision of the constitution of the applicable organization. Membership shall not be denied for reasons of race, national origin, colour or religion".

Even if the first sentence of clause 9 had not been included in the Union Dues agreement, I believe that "membership" would still have been "available" to any employee eligible. Except under special circunstances (which certainly do not exist here) I know of no trade union which adopts a policy whereby "membership" within its rank is not "available" at all times to eligible employees.

It seems to me that the main purpose of this first sentence added to the second one (which is seldom found in collective agreements in Canada) is more or less to let the "eligible employee" know that the Brotherhoods, make "membership available" to all, without discrimination towards race, origin, colour or religion, the whole notwithstanding the fact that under their respective constitutions (see exhibit D.B. 3 and D.B. 4), no one can become a member thereof unless he is of the "white race". I will not discuss here the validity or legal consequences of this statement in the Union Dues agreement which was made without the Brotherhoods' respective constitutions being first amended.

Be that as it may, and whether the delinquent employees are or are

not *bound* to join or strongly feel that they should since they are compelled to pay the union dues. I am of the opinion that the above provisions, taken as a whole, are contrary to the letter and spirit of the Industrial Relations and Disputes Investigation Act in as such as they seek by intimidation, threat of a penalty (suspension of seniority rights) or coercion to compel more or less some employees (including Plaintiff) to become members of one of the two Brotherhoods or, to say the least, to pay union dues as if they were members thereof (see especially section 4 (4) of the Act). They impose upon non-members an obligation to which they have never agreed and which (as already stated) was never presented to them as being a condition of their employment by the C.N.R.

As such, these provisions certainly cannot be considered as binding upon Plaintiff under the aforesaid Act.

b) Under the Civil Code, the provisions of the Union Dues agreement certainly do not constitute what is known as a "stipulation pour autrui".

The well known rule that contracts have effect only between the contracting parties and that they cannot affect third person (1023 C. C.) suffer only two exceptions which are mentioned in article 1028 and 1029 C.C. These articles read as follows:

1028 C.C.

"A person cannot, by a contract in his own name, bind any one but himself and his heirs and legal representatives; but he may contract in his own name that another shall perform an obligation, and in this case he is liable in damages if such obligation be not performed by the person indicated."

1029 C.C.

"A party in like manner may stipulate for benefit of a third person, when such is the condition of a contract which he makes for himself, or of a gift which he makes to another; and he who makes the stipulation cannot revoke it, if the third person have signified his assent to it."

Neither of these exceptions apply here.

Even if it is true that the C.N.R. and the two Brotherhoods have agreed that the employees would "perform an obligation", to wit, pay the union dues, this does not mean that the said employees are legally bounded to act accordingly. Upon their failure to do so, the only recourse left to the contracting parties is one in damages (if any).

As far as article 1029 C.C. is concerned, I fail to see how it could be said that the C.N.R. and/or the Brotherhoods have stipulated "for the benefit" of the employees (especially the non-members).

This being so, the general principle still applies: since Plaintiff never was a contracting party to the Union Dues agreement; since it cannot be said that, under the Civil Code, he constituted the Brotherhoods as his representative or agent or gave them a power of attorney or a mandate to bind him under the said agreement; and since Plaintiff refuses to acquiesce to the obligation which is imposed upon him therein, the provisions of the said agreement cannot be binding upon him under the Civil Code.

In support of this third proposition Plaintiff has also argued that the Union Dues agreement is contrary to the constitution and by-laws of each of the Brotherhoods.

I do not believe it would serve any useful purpose to discuss this point here. Even if I came to the conclusion that the Union Dues agreement is valid under the said constitutions and by-laws, this would not make it valid under the Industrial Relations and Disputes Investigation Act or the Civil Code and I still would have to conclude that it is not binding upon Plaintiff.

For this same reason, I will not go into Plaintiff's fourth proposition to the effect that the said agreements is contrary to public order.

VII

Before concluding, I wish to deal with two of the arguments raised by Defendants.

a) The Brotherhoods' attorney has referred me to the decision of the Supreme Court in the case of Perrault vs Gauthier & Al (28 S. C. R. 241) where it was held that:

> *"Workmen who in carrying out the regulations of a trade union forbidding them to work at trade in company with non-union workmen, without threats, violence, intimidation or other illegal means take such measures as result in preventing a non-union workman from obtaining employment at his trade in establishments where union-workmen are engaged, do not thereby incur liability to an action for damages."*

In my opinion, this decision which had to deal with an action in damages against the officers of a union who had allegedly combined and conspired together to deprive the Plaintiff of the free exercice of this trade and to prevent him from obtaining employment in his trade, has no bearing whatsoever in the present case.

b) The C.N.R. attorney has suggested that Plaintiff is not entitled to the conclusions of his action as drawn.

I agree with this proposition, but only in as such as it may be argued that Plaintiff is asking that the Union Dues agreement be declared and void as a whole and to the benefit of other employees of the C.N.R. but himself.

This, however, should not prevent this Court from recognizing Plaintiff's manifest right and interest to have clauses 1 to 9, 12, 13 and 15 of the Union Dues agreement declared illegal, null and void and, consequently, to annul it to all purposes and to the said extent *as far as he is concerned.*

VIII

CONSIDERING that Plaintiff has proven the essential allegations of his declaration;

CONSIDERING that Defendants have not established the grounds raised in their respective plea;

CONSIDERING that Plaintiff's action is well founded in fact and in law;

FOR THESE REASONS:

This Court DOTH MAINTAIN Plaintiff's action with costs against Defendants; DOTH DECLARE illegal, null and void clauses 1 to 9, 12, 13 and 15 of the Union Dues agreement (exhibit P-1) and DOTH ANNUL the said agreement to all purposes and to the said extent in so far as Plaintiff is concerned.

(S) ANDRE MONTPETIT
J.S.C.