Relations industrielles
Industrial Relations

Congédiement illégal — Délai de la plainte en vertu des articles 21a et 21b de la Loi des Relations ouvrières de Québec

Volume 17, numéro 4, octobre 1962

URI : https://id.erudit.org/iderudit/1021482ar
DOI : https://doi.org/10.7202/1021482ar

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Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

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

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Citer ce document

(1962). *Congédiement illégal* — Délai de la plainte en vertu des articles 21a et 21b de la Loi des Relations ouvrières de Québec. *Relations industrielles / Industrial Relations*, *17*(4), 474–480. https://doi.org/10.7202/1021482ar

Résumé de l'article

Le délai imposé par les articles 21a et 21b de la Loi des Relations ouvrières pour porter plainte à la Commission en cas de congédiement illégal, est un délai de « déchéance », dont l'expiration est fatale et prend fin automatiquement et inévitablement au bout de quinze jours de la date de congédiement, quelles qu'aient été les circonstances intermédiaires et même si son terme survient un jour non-juridique. La Commission ne peut l'étendre en aucune circonstance.

Raymond St-Pierre, requérant, vs. Associated Textiles of Canada Limited, intimée; M. le juge Allan B. Gold, vice-président; M. L.-M. Côté, commissaire, dissident; Me K.G. Kaker, c.r., commissaire; Commission des Relations ouvrières de Québec, Fiche no 1717-4, P-1200/1961; Montréal, le 5 octobre 1962.

Gingras était susceptible de résoudre. La logique commande donc d'inviter les travailleurs à faire savoir s'ils entendent maintenir ou réduire la majorité de l'Union des ouvriers du Textile d'Amérique (local 1530). Cependant, pour éviter toute confusion, il serait préférable que le bulletin de vote comporte la formule usuelle bien connue, et qui aurait en l'occurence le même sens et la même portée, consistant à déclarer si l'on désire ou non être représenté par la dite Union.

Ce nouveau scrutin constitue un complément du premier. Il n'y a donc pas lieu d'annuler celui tenu en date du 7 septembre mais bien de le maintenir en suspens. Il appartiendra ensuite à cette Commission, soit de statuer sur la demande en reconnaissance syndicale de chacune des requérantes, soit de prescrire, selon les circonstances, les mesures qu'elle croira alors les plus appropriées à fournir une solution au litige opposant les parties en cause.

En conséquence, la Commission *permet à Gilles Gingras l'exercice du droit de vote* et, à cette fin :

1—*Ordonne qu'un scrutin secret* soit tenu parmi les salariés préposés à la production de la mise-en-cause, afin de savoir s'ils désirent maintenir ou réduire la majorité actuellement acquise par l'Union des ouvriers du Textile d'Amérique (local 1530), le tout selon les modalités suivantes :

a) La date du scrutin à être déterminée de concert entre l'Union concernée et la mise-en-cause ; mais à défaut d'entente à ce sujet, dans un délai de trois (3) jours depuis la signification de la présente ordonnance, ladite date à être fixée péremptoirement par la Commission ;

b) La liste électorale sera celle reconnue et approuvée par les inspecteurs de la Commission lors du premier scrutin, sauf à y inclure le nom de Gilles Gingras et à y exclure celui de Dame Alarie ; le tout sous réserve de la faculté pour cette Commission d'apprécier et de décider tout point susceptible de justifier, à raison des circonstances, une modification de cette liste électorale ;

c) Le bulletin de vote comportera une formule rédigée en des termes qui permettent au voteur de signfier qu'il désire ou non être représenté par l'Union des ouvriers du Textile d'Amérique (local 1530) ;

2—*Maintient en suspens le scrutin du 7 septembre 1961.*

CONGEDIEMENT ILLEGAL

DÉLAI DE LA PLAINTE EN VERTU DES ARTICLES 21A ET 21B DE LA LOI DES RELATIONS OUVRIÈRES DE QUÉBEC

Le délai imposé par les articles 21a et 21b de la Loi des Relations ouvrières pour porter plainte à la Commission en cas de congédiement illégal, est un délai de « déchéance », dont l'expiration est fatale et prend fin automatiquement et inévitablement au bout de quinze jours de la date de congédiement, quelles qu'aient été les circonstances intermédiaires et même si son terme survient un jour

non-juridique. La Commission ne peut l'étendre en aucune circonstance. [1]

I

By Complaint filed with the Board on the 11th of September, 1961, the Complainant alleges that he was illegally dismissed by his employer, ASSOCIATED TEXTILES OF CANADA LIMITED (hereinafter called the Company), and prays for redress under the provisions of Section 21 a) ff., of the Labour Relations Act.

Section 21 a) and b) of the Act are the only sections that are material to this case, in view of the conclusion to which we have come.

These sections read as follows :

« Section 21 a. — When an employee is dismissed, suspended or transferred by the employer or his agent, because of the exercise by such employee of a right granted to him by this act, or because of trade union activities permitted by it, the Board may order the employer to reinstate, within eight days of the service of the Board's ordinance to that effect, such employee in his employ, with all his rights and privileges, and pay him, as an indemnity, the equivalent of the salary and other advantages of which he was deprived by such dismissal, suspension or transfer, and the employer shall be bound to comply with the Board's ordinance to that effect. »

« Section 21 b. — An employee who believes to have been illegally dismissed, suspended or transferred for a reason mentioned in section 21 a must, if he wishes to take advantage of the provisions of the said section, present his complaint in writing to the Board within fifteen days of such dismissal, suspension or transfer. »

...It is common ground that the Complainant was dismissed from his employment on the 25th of August, 1961.

II

After hearing the parties, their witnesses and argument from learned counsel, and after giving the matter much consideration, we have come to the conclusion that the Complaint is tardy and out of time. The Complaint was not delivered to the Board until the 11th of September, 1961. Under the circumstances, it was not presented to us within 15 days from the date of the Complainant's dismissal as required by Section 21 b) of the Act (supra).

Complainant has forfeited his right to take advantage of the provisions of Section 21 a) ff., of the Act.

(1) Raymond St-Pierre, requérant, vs. Associated Textiles of Canada Limited, intimée; M. le juge Allan B. Gold, vice-président; M. L.-M. Côté, commissaire, dissident; Me K.G. Kaker, c.r., commissaire; Commission des Relations ouvrières de Québec, Fiche no 1717-4, P-1200/1961; Montréal, le 5 octobre 1962.

Although this case differs in one respect from the case of *Hatz v. Winnipeg Packers Reg'd.*, a decision of the Board dated the 20th of June, 1962, (our file No. 7565) — in that case the 15th day fell on a Friday and in the present instance, it fell on a Saturday — we do not believe that on the evidence before us there is cause to distinguish between them.

For the reasons therefore, indicated in the *Winnipeg Packers* case, and for the further reasons herein later set out, we have come to the conclusion that the Complaint must be dismissed.

While we do not propose to recite at length the ratio decidendi of the *Winnipeg Packers* case, it may be desirable to state them briefly for the benefit of the parties concerned.

These reasons may be summarized as follows :

1) The language used in Sections 21 a) ff., of the Act, particularly Section 21 b) is precise and unambiguous, and the meaning is perfectly clear. No more is necessary therefore than to expound the words used in their natural and ordinary sense in order to understand the intention of the legislature. Under the circumstances, the question of whether these sections are to be strictly or liberally construed can hardly be said to arise. In the event, however, that construction is necessary, we are of the opinion that these sections are to be strictly construed as they are exceptional provisions, extraordinary of the common law, and which encroach on the rights of the employer.

2) The delay of 15 days provided by Section 21 b) is a delay of forfeiture (déchéance). « Le retardataire encourt une véritable déchéance, il est déchu de la prérogative que lui accordait la loi... Le juge doit d'office les appliquer ».

3) It runs against everyone, even against minors and interdicts, and even in cases where it is physically impossible to act.

4) It can neither be suspended nor interrupted, and it runs during legal holidays. « La déchéance apparaît donc comme une mesure jouant automatiquement et inévitablement au bout d'un certain temps quelles qu'aient été les circonstances intermédiaires ».

5) The expiry of the delay is fatal no matter when it falls, and even if it falls on a non-juridical day.

6) In using the word « soumettre » in French, and « present » in English in Section 21 b) of the Act, the legislature intended the words to have the meaning that is common to them. Thus, in order to comply with this Section, the Complaint must be delivered to, and received by, the Board within the required delay.

7) The Act does not lay down the method by which the Complaint must be, or may be, delivered to the Board. In consequence, if the Complainant chooses to send the Complaint by mail the Post Office becomes his agent. Under the circumstances, the failure to deliver by the Post Office within the required delay is a failure on the part of the Complainant, and is fatal to his demand. QUI FACIT PER ALIUM FACIT PER SE.

8) Section 39 of the Post Office Act (1952 R.S.C. Chapter 212) offers no comfort or assistance to the Complainant who uses the mail for the dispatch of his

Complaint. The issue before us is not one of ownership of the mailed document, but whether or not the same was delivered to the Board in good time. The deposit of the Complaint in a Post Office Box within the delay is not a compliance with the requirements of the Labour Relations Act unless the Post Office effectively delivers the Complaint within the stipulated delay.

9) The Post Office is not the agent of the Board; and unless and until so provided by an amendment to the Act, or unless the Board in a particular instance expressly or tacitly constitutes the Post Office its agent — which is not the case here — (in which event the civil law authorities concerning commercial contracts by correspondence might have their application), the failure to deliver by the Post Office within the delay is fatal to the Complaint.

10) The personal circumstances of the Complainant, the nature of his work, the distance that he may live from a Post Office or any other circumstance or combination of circumstances which may hinder or prevent him from presenting his Complaint in good time, cannot be considered as an excuse or justification, or cause for extending the delay, under the Act; The Board has no discretion to excuse the default or extend the delay in question.

11) Section 52 of the Interpretation Act (R.S.Q. 1941, Chapter 1) is not applicable to the present instance. This section applies only to *delays of procedure*, i.e. delays during which the law directs that things must be done during a suit. It does not apply to delays of forfeiture.

III

Learned counsel for Complainant raised several arguments which, in his submission, would tend to justify or excuse Complainant's default. For the reasons hereinabove stated we are of the opinion that these arguments must fail. They are effectively answered and disposed of by our reasons for judgment in the *Winnipeg Packers'* case (supra).

However, among these arguments, there was one upon which learned counsel for Complainant laid particular emphasis, urging it with even more than his customary vigor, and it is desirable to refer to it in somewhat greater detail.

As we have indicated, the Complainant was dismissed from his employment on the 25th of August, 1961. The delay of 15 days commenced to run on the following day, that is the 26th of August, and terminated, therefore, at midnight on the 9th of September, 1961. Now, the 9th of September was a Saturday. Counsel for the Complainant contends that because the 15th day fell on a Saturday, and our offices are closed on Saturday and Sunday, the delay in question is automatically extended to the following Monday, the day when, in fact, the Complaint was received by us.

As we have already indicated this argument cannot prevail.

The expiry of the delay is fatal whenever it expires; it cannot be extended. But it may not be amiss to add that in the present instance, there is no evidence before us at all to even suggest that the Complaint would have been delivered to us on the Saturday in question if our offices had been open and fully staffed.

No proof was tendered to us — though we invited it — that the Complainant or his agent attempted to deliver the Complaint on Saturday and could not do so because our offices were not open.

The best that the Complannant could do, was suggest to us — and it was far from proven — that the Complaint was sent by ordinary mail on either the Thursday or the Friday preceding, and therefore is presumed to have been delivered to us by the postman on Saturday.

In this connection, the Complainant reproaches the Board for not having retained the envelope in which the Complaint was dispatched, which would have shown clearly the date and time of receipt by the Post Office, but as we have already stated that is not the point at all, because the date of mailing is not conclusive of the date of presentation.

The fact that the letter was mailed on a Thursday or Friday — assuming that in fact it was — does not free the Complainant from the obligation of proving that the Complaint was presented to the Board within the legal delays.

At the risk of repetition, we must say again that the Post Office is not our agent in this instance. The issue before us is not when the Complaint was *dispatched,* by mail, messenger or any other agent ; the issue is when it was *presented* to us. It is on this issue that the Complainant has failed to make his proof.

Our records indicate that the Complaint was received on Monday morning, after the delays had expired. If the Complainant disputes this fact, as he does, it is up to him to prove the contrary. For him to state that because it was mailed before the delay has expired, it must be presumed to have been received by us within the delay is to beg the question. No such presumption is created by our statute — (contrary, for example, to the Labour Relations Act of Ontario, where this contingency is expressly provided for) — and no presumption of fact can be drawn from these circumstances, because in our view they do not meet the standard of legal proof required in matters of this kind.

> *MONTREAL TRAMWAYS COMPANY AND LEVEILLE, 1933, S.C.R. 456, LAMONT J., AT P. 469 :*
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> « By article 1242 C.C. presumptions not established by law are left to the discretion and judgment of the Court. The corresponding article in the Code Napoleon (art. 1353) is to the same effect but with the limitation that the Court will admit only such presumptions as are « graves, précises et concordantes », by which is meant presumptions in which the connection between the facts established in evidence and the fact to be proved is such that the existence of the known facts establishes by inference or deduction the fact in dispute.
>
> Article 1242 of the Quebec Civil Code does not contain the limitation of the Code Napoleon but as a presumption to be admitted as legal proof is necessarily a deduction from proven facts, there is, perhaps, but little if any difference between the meaning to be ascribed to the two articles. See the Montreal Rolling Mills v. Corcoran (1896 — 26 Can. S.C.R. 595).

In our view the facts do not justify presumption of delivery within the delay.

Indeed, when the Complainant argues that having mailed his Complaint on Thursday we must presume that we received it on Saturday, the question may well be put why in fact we did not receive the Complaint on Friday, considering that the postal delivery within the limits of the Island of Montreal should be reasonably expeditious. But the very fact that such a question can be put serves to demonstrate how dangerous it is — in the absence of evidence — to enter into the realm of speculation as to the time that it takes, or may take, for the postal authorities to deliver any specific piece of mail at any given time from one place to another. Indeed, to accept Complainant's contention is to enter into the field of pure conjecture, and as has been said « A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess » (per Lord MacMillan in Jones v. G.W. Railway Co., 1930 — (47 T.L.R. 39) at P. 45).

IV

Complainant also contends that we should not have raised the issue of the expiry of the delay, proprio motu. As we stated in the *Winnipeg Packers'* case, and briefly indicated in our summary (supra), it is the duty of the Board to do so in the case of a déchéance. The failure to present the Complaint within the delay is fatal. To close our eyes, in the circumstances, would be to abandon the role we are called upon to fulfil as well as a manifestation of bias in the administration of the Act. We believe no more need be said under this head.

As for the delay itself and its expiry, the Complainant, in a sense, is the author of his own misfortune. For even on Saturdays, when our offices are closed, there is someone on duty in the bulding to permit entry and in order to receive deliveries. In the case of personal delivery, or delivery by messenger, or registered or special delivery mail, the proof is easily and readily available that such delivery was made to the man on duty, or that it could not be made — if that is the case — because of his absence or failure to accept the material tendered to him. In the present instance, this proof was not available to the Complainant because he chose to send his Complaint by ordinary mail. The burden of proof is upon him, and as he cannot discharge it he must unfortunately suffer the consequences.

All in all, the most that can be said is that in selecting the Post Office to deliver his Complaint by ordinary mail the Complainant elected to use an agency which either failed to do the job for him in good time, or was unable to furnish him the necessary proof that it had done so. In either case the result is the same. As there is no proof before us that the Complaint was presented within the legal delay — indeed the proof before us is that it was not — the Complaint cannot be received.

V

It has been suggested to us that the law is harsh and that we should modify it in order to give Complainant the necessary relief. After all, we are told, what is the difference whether the Complaint is one day late or not? What prejudice does the employer suffer? It is here that the danger lies. For even assuming this reasoning to be valid — and we do not believe for a moment that it is — where

do we draw the line ? If one day is excusable, why not two days, and then why not a week or a month ? The delay of fifteen days within which the Complaint must be presented would then become an indeterminate delay, left to us alone to decide. This is clearly not the intention of the legislator — one has only to read the text to see that — but indeed it can be stated with certainty, to be contrary to his intention. For in those cases where the Courts are given the right to excuse the default and/or to extend the delay, the statutes say so clearly and unequivocally ; and in our case the statute is silent.

For us to embark in the present case upon a venture of correcting the Act, by adding to it something which it does not contain in order to make it say something which it does not say, but which we believe should be said (assuming that we have come to that conclusion), is to usurp the role of the legislator, and to put aside the role of judge. It may be that in the instance before us the law is harsh, that there is a gap in it, and that it should be changed — we neither hold nor express an opinion upon this point, indeed it is not for us to do so — but if this is the case, then the remedy lies in legislative amendment, and nowhere else. It is to Parliament that the citizen must address himself to obtain this change, not to us.

VI

...In view of the conclusions to which we have come on the question of the delay it becomes unnecessary for us to deal with the evidence which we heard on the merits of the Complaint itself.

VII

Considering, therefore, that the Complaint in this case was presented to the Board beyond the delays provided by law ;

Considering that the said Complaint is tardy and out of time ;

Considering that the Complainant has forfeited his right to the relief prayed for ;

Considering that the said Complaint is unfounded in law ;

FOR THE FOREGOING REASONS the said Complaint is hereby dismissed, for all legal purposes.

CONGÉDIEMENT ILLÉGAL

UNE MISE-À-PIED EST-ELLE UN CONGÉDIEMENT AU SENS DE LA LOI?

An employee who is laid off is dismissed in the sense of Sections 21a) ff. A lay-off for union activities is a mischief that the legislator intended to suppress by the said enactment. To decide otherwise would be to open the door to an unscrupulous employer, who in the guise