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Jean-H. Gagné

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Article abstract

The awards studied under this heading were rendered during the months of August, September and October of this year and represent more than 25 decisions. An outline of the points which we found to be of the most interest in these awards follows, under the various subjects covered.

# ARBITRATION JURISPRUDENCE

*The awards studied under this heading were rendered during the months of August, September and October of this year and represent more than 25 decisions. An outline of the points which we found to be of the most interest in these awards follows, under the various subjects covered.*

## 1—MANAGEMENT RIGHTS

In two awards, the rights of the management were recognized by including a clause in the collective agreement.

In the case of the *Canadian Car and Foundry Limited*<sup>1</sup>, here is the clause, decided on unanimously, for inclusion in the collective agreement to be signed by both parties:

*"The Union recognizes the exclusive right of the Company to manage its plant and its other activities and to direct its working forces, to reorganize, close, disband any department or section thereof, and including the right to hire, suspend or discharge for cause, lay off, promote, demote and transfer employees, provided the company shall not use such rights and powers for the purpose of discriminating against any members of the Union or to evade seniority or other rights provided in this agreement."*

In the case of the *Aluminum Company of Canada* (Shawinigan plants)<sup>2</sup>, a similar decision was made unanimously by the council members:

*"1. The Syndicate recognizes that the customary functions of managing and operating the plant and of hiring and directing the working forces are vested with the Company. These functions include, but are not limited to the right to*

*hire, retire, promote, demote, transfer, lay-off, discipline and discharge for cause; the determination of the qualifications of an employee to perform the duties involved and fulfill the normal requirements of any job; the determination of the extent to which and the methods by which, production operations shall, from time to time, be carried on, including the right to extend, limit, curtail or cease operations; the making, publication and enforcement of rules for the promotion of safety, efficiency and discipline, and for the protection of the employees and of the Company's plant, equipment, production and operation.*

*2. All matters not covered by the present Agreement shall be deemed to be within the functions of Management.*

*3. The Company agrees that the exercise of its rights in this Section does not relieve the Company of its obligations, or prejudice the rights of the employees arising out of any provision of this agreement."*

## 2—UNION SECURITY

Of the union security formulas requested, only the voluntary and irrevocable check-off and the maintenance of membership seemed to have been granted without too much difficulty.

The Rand formula has been refused in every case except one where it was granted by the majority of the council, the employer's representative dissenting. The imperfect

GAGNE, JEAN-H., Master of Law, Lawyer at the Quebec Bar, Master of Social Sciences (Industrial Relations); partner in the law firm of Laplante et Gagné; in charge of the course on Personnel Management and the course on Labour Jurisprudence.

(1) Department of Labour, Document No. 507, page 11; date of award: Aug. 3rd, 1951. Dispute between the Canadian Car and Foundry Company Limited and the Brotherhood of Railway Carmen of America; members of council: president, Rene Lippe, employer's representative: D.A. Patterson; employees' representative: Roger Provost.

(2) Department of Labour, Document No. 510, page 8; date of award: Aug. 7, 1951; Dispute between the Aluminum Company of Canada Limited and the Syndicat national des employes de l'aluminium de Shawinigan Falls, Inc. Members of council: President, Geo. H. Heon; employer's representative: Auguste Desllets; employees' representative: Theodore Lesperance.

union shop was granted only in unanimous awards.

Here is a brief summary of the rejecting or accepting the various formulas of union security, as requested by the unions.

In the case of the *Canadian Car and Foundry Limited*<sup>3</sup>, the union requested the following: a) the maintenance of membership of present union members; b) the Rand formula for employees who are not union members at present; c) the union shop for future employees. The council only granted the voluntary and irrevocable check-off and maintenance of membership. The employer's representative dissented on the question. Here is the opinion of the president on this occasion:

*"No proof has been made in connection with the statements made in the Union's brief to the effect that since 1938 there has been in existence a Shop Union in these plants, which Shop Union completely destroyed normal relations between employees and management. Furthermore, the Chairman of this Arbitration Board personally is of the opinion that, even if such proof had been made, he would not have agreed to the establishment of the Rand formula for actual employees and the Union Shop for future employees, because the Chairman is of the opinion that these modalities of union security are illegal in this Province and should in no way be encouraged as they contravene the principles of true syndicalism. The compulsory conditions of the Rand formula prevent the employees from exercising a free choice in the matter of their affiliation."*

The union representative is in agreement with the president who makes the following recommendation:

*"a) The maintenance of membership for actual employees who are members of the Union;  
b) The voluntary but irrevocable check-off for the duration of the contract. The Chairman of this board feels that there is no compulsion in the maintenance of membership and that it is only fair to the Union that those employees who are at present members of the Union of their own free will, will remain as such for the duration of the contract."*

In another award, that given in the case of the *Dominion Glass Company Limited*<sup>4</sup>, the Rand formula was refused. Here are the motives invoked by the president of this council for so doing:

*"On this question, we are in agreement with the opinion of Judge Thomas Tremblay as expressed in his award of December 10th, 1949 in the case of the Asbestos Corporation Limited and the Syndicat national de l'Amiante de l'Asbestos Corporation, Inc.*

*In view of the economy of our civil law and the prescriptions of our code of civil procedure on the subject of property rights and methods of seizure, etc., we cannot accept the Rand formula.*

*In our opinion, a deduction from a salary may only be made if it is voluntary or if it is ordered by an executory judgment of a competent court.*

*The union negotiator submitted, however, that even the employees who do not belong to the union benefit from the collective agreement and its advantages, and, for this reason, they should be obliged to contribute to the expenses of the Union caused by the proceedings that it undertakes for the improvement of working conditions, etc.*

*The argument is certainly a valid one.*

*But it must also be considered that the union dues sought after, cover much more than the services rendered at the occasion of the negotiation of the labour contract. They are also used to support the union itself. It is because of this, it seems to us, that it becomes impossible to make the check-off of union dues obligatory, when the worker does not consent voluntarily to pay them."*

Another arbitration award seems, in one of its unanimous conclusions, to assert that it is customary not to take away from a union, without a special reason, a clause of union security already obtained in a former agreement. In this case, it was a question of maintenance of union membership and

(4) Department of Labour, Document No. 511, pages 17 and 18; date of award: Aug. 8, 1951. Dispute between the Dominion Glass Company Limited and the Union nationale des employés du verre; members of the council: president: Ulric Laurencelle; employer's representative: A.S. McNichols; union representative: Philippe Vaillancourt.

(3) *Ibid.* Document No. 507, page 12.

check-off of union dues. Here is what we read:<sup>5</sup>

*"The article entitled "maintenance of membership and check-off of union dues as drawn up by the parties in dispute, had been accepted for several years and was included in the last agreement. There has never been any trouble to apply it and consequently we have no hesitation to recommend unanimously to the Company and to the Union to include this article I in the collective agreement for the year 1951."*

In another award rendered in the case of the *Sparton Men's Wear*<sup>6</sup>, the principle of the union shop as a form of union security is condemned, the union representative dissenting. The president expresses this as follows:

*"The majority of your council... is of the opinion that this demand of the union (union shop) should be refused as illegal and against the principles of true unionism."*

However, in an award rendered in the case of *Henri Vallieres Inc.*<sup>7</sup>, the imperfect union shop is granted, the council expressing the unanimous opinion of the parties on the subject.

In an award rendered in the case of *Four-nier Limitée* of Plessisville<sup>8</sup>, the majority of the council, the employer's representative dissenting, granted the imperfect union shop. Here is the report of the demand and the motives for accepting it:

*"Article 6 of the project concerns union security. The project submitted by the*

*Union demands that all wage-earners, old and new, must, as a condition of maintenance of their employment, be or become within a certain time, members in good standing of the union. It is therefore a clause of perfect union shop that the Union demanded. The employer party refused any compromise whatever on this subject. The employer pleaded that there was no necessity to grant any clause of union security as the enterprise is a small one, that it is a family enterprise and that the present agreement is the first labour agreement in this particular industry.*

*To this, the Union pleaded that, in order to ensure the Union's survival, the clause of union security was necessary.*

*This question was the one discussed the most during the arbitration meetings and, in spite of all the efforts, the members of the council could not agree on this point.*

*The legal and moral aspects of the perfect union shop have already been studied and the members of the council, who have signed this report, have consulted with much interest, the different opinions given by the Hon. Judge Guerin and by Mr. Louis Philippe Pigeon on the subject. After due consideration, the president of the council and the union representative came to the conclusion that the Union's request should not be granted but should be modified to give the present workers the liberty of joining the Union or not. To force them to join would perhaps be to impair their rights. For future employees however, it would be one of the conditions of their employment that they join the Syndicate. Their rights would not suffer as they have not any rights yet. They would be advised before taking the job that they must belong to the Syndicate. They would be free to accept the job or not. The employer's representative on the council registers his dissidence on the question and opposes any form of union security."*

The Rand formula is granted in a majority decision, the employer's representative dissenting, in the award rendered in the case of *J.W. Kilgour and Bros* (Coaticook Plant)<sup>9</sup>, the terms of which follow:

- (5) Department of Labour, Document No. 514, page 3; date of award: Aug. 15, 1951. Dispute between the Eastern Furniture Company Limited and the Syndicat national des travailleurs du meuble, de Victoriaville. Members of council: president, Roger Thibodeau; employer's representative, Maurice H. Fortier; union representative, Jean Paul Geoffroy.
- (6) Department of Labour, Document No. 517, page 2; date of award: Sept. 4, 1951. Dispute between Sparton Men's Wear and the Union nationale du vetement Inc.; members of council: president: Rene Lippe; employer's representative: Louis Orenstein; employees' representative: Jean Paul Geoffroy.
- (7) Department of Labour, Document No. 520, page 2; date of award: Sept. 13, 1951. Dispute between Henri Vallieres Inc. and the Syndicat national des employes du meuble de Nicolet, Inc. Members of council: president, Jean H. Gagne; employer's representative, Gerald Lavoi; employees' representative, Jean Paul Geoffroy.
- (8) Department of Labour, Document No. 530, page 2; date of award: October 11, 1951. Dispute between Fournier Limitée and the Syndicat catholique des travailleurs en chaussures de Victoriaville, Inc. Members of council: president, Gilles de Billy; employer's representative, Albert Fournier; employees' representative, Albert Cote.

- (9) Department of Labour, Document No. 531, page 2; date of award: October 26, 1951. Dispute between J.W. Kilgour and Bros. and the Syndicat national des ouvriers du meuble de Coaticook. Members of the council: president: Mr. Andre Montpetit; employer's representative: Mr. R.W. Gould; employees' representative: Mr. Jean Paul Geoffroy.

"In last year's agreement, the parties adopted a formula of maintenance of membership along with a clause of voluntary and revocable check-off of union dues. By the text which it has submitted, the Syndicate requests the adoption of the Rand formula. The council, Mr. Gould dissenting, recommends that the parties accept this formula but only to affect new employees of the Company."

3—MEANING OF THE WORDS "EQUITY" AND "GOOD CONSCIENCE". EXPLANATION OF THE LAW

In an award rendered by Judge Georges H. Heon, in the case of the *Aluminum Company of Canada, Limited* (Shawinigan Plant)<sup>10</sup>, interesting consideration is given to the principles which should inspire those who sit on an arbitration council. Here is the explanatory statement:

"As previously stated, it would appear that the following acts have been invoked and would apply in this present dispute.

*Professional Syndicates' Act* (R.S.Q. 1941, chap. 162, as modified by 10 Geo. VI, chapters 52 and 12 Geo. VI, chap. 26).

*Labour Relations Act* (R.S.Q. 1941, chap. 162A, as modified by 9 Geo. VI, chap. 44 and 10 Geo. VI, chap. 37).

*Quebec Trade Disputes Act* (R.S.Q. 1941, chap. 167, as modified by 11 Geo. VI, chap. 64 and 12 Geo. VI, chap. 27), and its amendments of 1951 on the duration of the collective agreement.

Therefore, because the law so requires it, (Sect. 24, para. 3, *Quebec Trade Disputes Act*) the council must decide the present dispute "according to equity and good conscience". In the present dispute which is juridico-social, the word "equity" can only mean equal justice for all. (*Equitas est equalitas*) according to Christian standards, whereas the word "conscience" means at the same time, individual, collective and social conscience. It could be added, without fear of being mistaken, that concern for the common good, necessitates that "equity and good conscience" must also inspire the parties to an employer-employee dispute. In fact, since the council must decide the dispute (Sect. 24, paragraph 3, *Quebec Trade Disputes Act*), how could it do so if the parties do not use equity and good conscience in their demands, counter-demands, offers,

counter-offers, and presentation of the proof. Too often, the parties to a dispute, instead of presenting clearly their true attitude and taking their definite position in free negotiations, wait for the termination of the delay which follows the arbitration award to talk business. This practice must be discouraged, as well as that of making a package offer at the last moment to avoid a forced solution. Loyalty, good faith, complete frankness in free negotiations would avoid a great many arbitrations. Too often, the arbitration process is considered as a formality without importance, when it is really obligatory, serves the cause of social peace and has often proved itself as one of the most precious safeguards of the rights of the workers and the employers. In the present dispute, the council believes that it must make recommendations which will avoid, when negotiations are renewed, unending bargaining and ever-changing offers."

4—DURATION OF COLLECTIVE LABOUR AGREEMENT, ACCORDING TO OUR LAWS. WORKING CONDITIONS

Again in the award of Judge Heon, in the case of the *Aluminum Company* for their Shawinigan plants, may be seen more interesting considerations on the above-mentioned points.

On the duration of the collective agreement, we may read the following explanatory statement<sup>11</sup>.

"Section 15 of the *Labour Relations Act*, determining the duration of collective agreements, was amended by the Provincial Legislature during the month of March, 1951. This amendment provides that a collective agreement may be concluded for a period of one year, two years, and at the most three years. The parties to the expired agreement may also, for a period of less than one year, either make a new agreement or temporarily prolong the existing agreement.

The duration of labour agreements is an important factor in the industrial economy. Not only does it create a stability which is necessary to both the employers and the employees but it maintains to some extent, the social and industrial peace."

(10) *Ibidem*, Document No. 510, pp. 2 and 3.

(11) *Ibidem*, Document No. 510, p. 6.

In reference to working conditions, here are the subjects which these words cover in their true meaning, according to the terms of the award already quoted;<sup>12</sup> under the title: amendments to working conditions: starting and stopping times; Sunday work; limiting to two, the number of consecutive shifts that a worker may be called upon to work; payment of overtime on a daily basis; overtime for employees in essential services or for those whose work depends on continuous operations or essential services; plan of hospitalization insurance; changes in certain working conditions peculiar to the nature of operations of a department; general working conditions in a sector of the enterprise, such as, in the present case, the pot rooms.

**5—INCLUDING IN THE COLLECTIVE AGREEMENT SPECIAL PRIVILEGES GRANTED BY A COMPANY.**

In the case of the *Dominion Glass Company Ltd.*<sup>13</sup>, the council had to decide if the privileges granted by a company to its employees should be included or not in the collective labour agreement. The council decided that they should not be.

Here is what the union requested in regard to this subject:

*"i) Reserve :*

*This has as object to keep for the employees certain rights or privileges that they now enjoy, notwithstanding any article in the agreement.*

*As the Company does not intend to abolish them, it should not have any objection to this new article.*

*The privileges described in article 8, paragraph (c) of the annex U-33; smoking during working hours except in prohibited areas; canteen facilities at stated times; payment during times of machinery overhaul; rest periods and 'hygiene' periods.*

*The protection of the employees is concerned and this clause is to the interest of both parties."*

Here is how the council of arbitration decided the question:

*"a) In regard to the 'reserve' clause :*

*During the hearings, no facts were presented by the union representative which were of a nature to establish grievances against the Company, on the subject of rights and privileges which the employees now enjoy.*

*The text submitted by the Union is very vague and very general.*

*On the other hand, it would seem that the Company and their employees get along very well together in their relations of employer and employee and vice versa.*

*Is it necessary, by a new clause, to attempt to define rights and privileges, of which the list could become limiting and lend itself to useless discussions?*

*In the circumstances, it seems to us that it is better to let things remain as they are, in regard to this clause."*

(12) *Ibidem*, Document No. 510, pages 11, 12 and 13.

(13) *Ibidem*, Document No. 510, pp. 8 and 19.