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Disciplinary Measures Where Exists an Alleged Violation of a Collective Agreement

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Article abstract

A majority of the Board (the union representative dissenting) is of opinion that unless the obeying of an order would constitute an infraction of the law or a safety or health hazard to the employee, the order should be obeyed.

Quebec Iron and Titanium Corporation and l'Union des Ouvriers du Fer et du Titanium de Sorel. Jules Poisson, J. Président; Raymond Caron, Company representative; Gérard Picard, union représentative, dissenting. Ministère du Travail, Province de Québec, Bulletin d'Information, no. 1553, 15 mai 1961.

ment un mercredi. Il a dit à la demanderesse: « Vous allez finir votre semaine et après on n'a plus besoin de vos services ». Il ajoute que la demanderesse est revenue le lundi suivant et a travaillé une autre semaine complète. Il ressort donc du témoignage de M. Gérald Weisor que celui-ci avait donné à la demanderesse un avis de congé de trois jours, ce qui est nettement insuffisant au regard de l'article 1668 du Code civil. Si la demanderesse n'était pas revenue travailler au magasin de la défenderesse le lundi suivant, elle aurait certainement eu droit à une autre semaine de salaire. Mais, en fait, elle est revenue au travail le lundi suivant. A ce moment, son contrat de louage de services était déjà maintenu tacitement pour une autre semaine, vu que l'avis de congé de M. Gérald Weisor n'était pas conforme à l'article 1668 C.c. L'avis n'étant pas conforme à cet article, le contrat d'engagement n'avait pas pris fin. Le Tribunal réfère les parties sur ce point à la cause de *Lambert vs Les Commissaires du Hâvre de Québec*, 39, R.L. 170.

Il semble d'ailleurs que la défenderesse ait compris la chose ainsi puisque, le lundi, au cours de la journée, M. Samuel Weisor, son président, servit lui-même à la demanderesse un autre avis de congé en plus de lui motiver les raisons de son congédiement. Toujours d'après la cause de *Lambert vs Les Commissaires du Hâvre de Québec*, ce nouvel avis donné par M. Samuel Weisor ne pouvait prendre effet qu'à l'expiration de cette nouvelle semaine commencée, et c'est ainsi que la demanderesse avait alors droit à son salaire pour une autre semaine en plus de la dernière semaine où elle a effectivement travaillé au magasin de la défenderesse.

En d'autres termes, si l'avis de congé n'est pas conforme à l'article 1668 C.c. le contrat reste en vigueur. S'il reste en vigueur, il faut donc un nouvel avis de congé conforme à l'article 1668 C.c. pour y mettre fin. Or, dans la présente espèce, ce nouvel avis de congé donné à la demanderesse par M. Samuel Weisor était trop tardif pour valoir dans la dernière semaine de travail de la demanderesse. Il ne pouvait commencer à valoir que pour la semaine suivante et c'est précisément le salaire de cette semaine là qui n'a pas été payé à la demanderesse et que celle-ci réclame dans la présente action.

PAR CES MOTIFS, le Tribunal maintient l'action de la demanderesse pour la somme de $30.00 avec dépens.

DISCIPLINARY MEASURES WHERE EXISTS AN ALLEGED VIOLATION OF A COLLECTIVE AGREEMENT

> *A majority of the Board (the union representative dissenting) is of opinion that unless the obeying of an order would constitute an infraction of the law or a safety or health hazard to the employee, the order should be obeyed.* [1]

The mandate of the Board and the submission to arbitration state that the matter at issue is as follows:

(1) Quebec Iron and Titanium Corporation and l'Union des Ouvriers du Fer et du Titanium de Sorel. Jules Poisson, J. Président; Raymond Caron, Company representative; Gérard Picard, union représentative, dissenting. Ministère du Travail, Province de Québec, Bulletin d'Information, no. 1553, 15 mai 1961.

« L'Union ci-haut mentionnée prétend que la Compagnie devrait retirer *toutes* les mesures disciplinaires données aux « Millwrights » parce que le syndicat conteste à la Compagnie le droit de faire passer des tests à ces employés en vertu de la convention collective et du manuel C.W.S.

Il est entendu que ce mandat s'étend à toutes les mesures disciplinaires données par la Compagnie à ce Groupe d'employés (Millwrights) pour avoir refusé de passer les tests ».

The Company's brief states that all the grievances read as follows:

« Nous contestons les rapports disciplinaires que nous avons reçus, le tout est contraire au manuel C.W.S. et à la convention de travail, nous contestons aussi l'interprétation anglaise donnée aux disciplinaires ».

FACTS

In October 1960, the Company decided to require its Millwrights to take a blueprint-reading text during working hours to ascertain which employees, if any, had difficulty in this regard. This decision was stated to have been made because the Company had reason to believe that some Millwrights had difficulty reading blueprints. The Company filed, as Exhibit C-4, a description of the job classification « Millwright » which forms part of the Co-operative Wage Manuel which, in turn, forms part of the collective agreement. The said description under the heading « Manual Skill » includes the words « to read prints and sketches ».

Upon learning of the proposed text the Union objected but the Company insisted. On November 2nd and following days the employees scheduled to take the test on Company time to the room specified for the purpose but refused to write the test.

For so refusing to obey the Company's order the employees involved were disciplined. Such discipline was in accordance with the Company's established practice where-under points are entered in each employee's record. The result or effect thereof varies depending upon the points if any, which have previously been charged to the individual employee.

CONTENTION OF THE PARTIES

The Union contends that the collective labour agreement does not give the right to impose tests upon the employees and that, on the contrary, The Cooperative Wage Manual, which forms part of the collective agreement, specifically provides for the automatic advancement of learners to non-assigned maintenance jobs (which include Millwrights) while providing for tests for tradesmen. The Union further contends that as the collective agreement does not permit the Company to require the tests in question, the Millwrights were entitled to refuse to submit to the tests. It was stated by the attorney for the Union that it is a fundamental right of an employee to refuse an order that is illegal or contrary to the collective agreement.

The Company contends:

a) That there is nothing in the collective agreement which prohibits such a test.

b) That Millwrights are required under the collective agreement to be able to read blueprints and the Company had reason to believe that certain Millwrights could not properly do so.
c) That the issue is not wether or not the Company is entitled to require the tests but whether employees are entitled to disobey an order which is not unlawful and does not create an unusual healthhazard.
d) That if an employee considers an order to be contrary to the collective agreement his recourse is to obey the order and then lodge a grievance.

AWARD

A majority of this Board is of opinion that unless the obeying of an order would constitute an infraction of the law or a safety or health hazard to the employee, the order should be obeyed . If the employee is of opinion that the order is contrary to his rights under the collective agreement his recourse then is to lodge a grievance in accordance with the terms of the collective agreement. The employee is not entitled to take the law into his own hands nor to decide whether the order is justified or debatable. To refuse to obey an order because it is deamed contrary to the collective agreement would be to ignore the grievance procedure and could lead to an impossible operating and administrative situation in the plant to the detriment of all concerned.

The Union was concerned with possible prejudicial consequences to the Millwrights if they were required to take the test and argued that as these employees had qualified as Millwrights and acted as such for an average of about five years their qualifications could not now be questioned. A majority of this Board is of opinion that there is nothing in the collective agreement which prohibits the Company from taking such measures as it may deem appropriate to ascertain if its employees are capable of doing the work required for their job classification under the collective agreement. However any action that might be taken by the Company against any employees as a result of the test might become the subject of a grievance particularly as the nature of the test was not agreed jointly with the Union. In the case before us, it was established that the Company had advised the Union that no employee would be down-graded because of the result of the test at least until any employee failing the test had been given the opportunity to take the necessary course to learn to read blueprints. It was established that a Provincial Arts and Trade School is located in Sorel and that the Company had agreed to pay a portion of the cost of the necessary course for those employees taking it.

Accordingly the grievance is dismissed. Mr. Picard dissenting.

CONGÉDIEMENT ET PROCÉDURE REQUISES

Le congédiement constituant une punition extrême, l'employé a le droit d'être entendu, et il incombe à l'employeur de prouver le rapport entre l'infraction et la sanction. [1]

(1) Hôpital St-Jean et Association des Employés de l'Hôpital de St-Jean Inc., Roger Ouimet, J.C.S. président; Jean-Robert Gauthier, arbitre syndical; Jean Filion, C.R. arbitre patronal, dissident. Ministère du Travail, Province de Québec, Bulletin d'information, 17 mai 1961, no. 1555.