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Insofar as the claim for $25,000 and $40,000 above mentioned are concerned, the Court is satisfied that there was no humiliation or moral anguish caused to the plaintiff as a result of the defendant's misconduct. There was certainly no loss of love of his wife because of such misconduct. These two claims have therefore no merit.

With regard to the claim for $5,000 the plaintiff moved out of the apartment in which he had been living with his wife in September 1965 and set up a separate apartment for himself which was not in any way caused by the defendant's misconduct.

With regard to the claim for $2,000 and $3,000 the plaintiff first engaged detectives to investigate the conduct of his wife in February 1966. They were not engaged to check upon the relationship of his wife with the defendant because such relationship did not exist at that time. It is obvious that he wanted to divorce his wife and was looking for evidence to justify divorce proceeding. As far as he was concerned, it did not matter with whom his wife committed adultery. He wanted to break his marriage ties by divorce and was satisfied to hire and pay detectives in an endeavour to accomplish that purpose. The misconduct of the defendant only gave him the opportunity which he wanted that is to have grounds to divorce his wife which he did. When the detectives obtained the necessary evidence, it was necessary to engage lawyers to pursue the proceedings before the Senate at Ottawa, Ontario. These lawyers were engaged by the plaintiff solely for the purpose of assisting him to carry out his intention to divorce his wife. Under such circumstances, the Court is of the opinion that he is not entitled to claim these amounts from the defendant because the misconduct of the defendant only gave rise to the opportunity to the plaintiff to accomplish what he desired, that is, to get rid of his wife by divorce.

6. The plaintiff's action must therefore be dismissed but in view of the admitted misconduct of the defendant, it should be dismissed without costs.

JUDGMENT

THE COURT therefore DISMISSES the action of the plaintiff without costs.

Droit du travail

FRATERNITÉ INTERNATIONALE DES OUVRIERS EN ÉLECTRICITÉ, LOCAL 568 v. BÉDARD-GIRARD LTÉE, Cour d'Appel, Montréal, 11741, 14 mai 1969

Declinatory exception — Collective labour agreement — Illegal strike in violation of clause thereof — Action in damage instituted against the labour union — Cause of action not based on grievance to be settled by arbitration under the terms of the agreement — Jurisdiction of the Superior Court — Labour Code (S.R.Q. 1964 c. 141) art. 1g, 88, 89, 90 — C.P.C. art. 31.

OPINION OF MR. JUSTICE HYDE

This is an appeal from an interlocutory judgment of the Superior Court, District of Montreal, dated November 17th, 1968 dismissing Defendant's declinatory exception.

The Defendant union was sued for $150,000 damages for organizing a strike against the Plaintiff company contrary to the provisions of a collective

labour agreement entered into between the Union and a number of employers of which the Plaintiff Company is one.

Article XVI reads :

> « Pour la durée de cette convention, il n'y aura pas de grèves, contre-grèves, ralentissements ou tout autre arrêt de travail ou refus de travail ».

The agreement in question was in force from April 1st, 1966 to March 16th, 1969 and the Company alleges that notwithstanding the no-strike undertaking, the Union's shop stewards on August 19th, 1968 effectively prevented the Company's employees from working on four different jobs and that the strike later extended to other jobs as well.

Contending that this constituted an illegal strike in direct violation of Article XVI of the agreement, the Company instituted action before the Superior Court claiming damages of $150,000.

The Union took a declinatory exception on the ground that the whole cause of action was based on a *grievance* which by Article XVII of the agreement had to be settled by arbitration. This Article reads as follows :

> « Un grief est défini comme toute dispute entre les parties concernant l'interprétation ou l'application de cette convention. Il est entendu par les deux parties qu'un Comité de griefs sera formé de deux (2) représentants de l'Employeur et deux (2) représentants de l'Union qui se réuniront lorsqu'il en est nécessaire. Si le Comité ne peut résoudre le grief qui est survenu, ce grief sera réglé conformément aux dispositions du Code du travail ».

Article 31 C.P. provides that the Superior Court has jurisdiction in all cases where the law has not exclusively assigned the matter to some other court.

The Union says that this is just what the legislator has done in the Labour Code [1], it refers in particular to the following provisions :

> « Art. 1 — g. « grievance » — any disagreement respecting the interpretation or application of a collective agreement ;
>
> Art. 88 — Every grievance shall be submitted to arbitration in the manner provided in the collective agreement if it so provides and the parties abide by it; otherwise it shall be referred to an arbitration officer chosen by the parties or, failing agreement, appointed by the Minister.
>
> Art. 89 — The arbitration award shall be final and bind the parties. It may be executed in accordance with section 81.
>
> Art. 90 — During the period of a collective agreement, any disagreement other than a grievance within the meaning of section 1 shall not be settled except in the manner provided in the agreement and to the extent that the agreement so provides ».

The trial judge said that the stoppage of work was clearly a breach of the undertaking by the Union in Article XVI and that there was no difficulty in interpreting the same.

> « The Court, said he, is quite unable to accept that the acts of the defendant, as alleged, constitute in any sense a disagreement respecting the interpretation or application of the collective agreement. What we have here is a violation of a clear provision relating to the execution of the agreement and not a disagreement as to its interpretation or application ».

In a well reasoned judgment he dismisses the declinatory exception and I do not consider it necessary to review all the jurisprudence that he cites. He does

[1] S.R.Q. 64, c. 141.

however distinguish from a decision of the Superior Court in an unreported case of *Maluorni* v. *The Town of Mount Royal.*

Actually a few weeks before the judgment appealed from our Court reversed Mr. Justice Hannen in a judgment [2]. In that decision Mr. Justice Pratte, with the approval of his colleagues, said :

> « le législateur a voulu confier à des arbitres, à l'exclusion des tribunaux de droit commun, la tâche d'interpréter les conventions collectives et de préciser leur champ d'application ; il n'a pas manifesté l'intention de faire trancher seulement par les arbitres des litiges résultant de l'inexécution d'obligations assumées par un employeur envers ses employés aux termes de stipulations claire d'une convention collective.
>
> D'autre part, pour qu'il y ait une mésentente sur l'interprétation d'une convention collective, il ne doit pas suffire que l'employeur justifie son défaut d'exécuter une obligation clairement imposée par la convention en proposant de celle-ci une interprétation manifestement erronée. S'il en était autrement, l'employeur qui ne remplit pas les engagements qu'il a contractés envers ses employés pourrait toujours, à sa fantaisie, se soustraire à la juridiction des tribunaux de droit commun.
>
> En l'espèce, la convention collective me paraît claire, et je n'y vois rien qui puisse en aucune façon justifier l'interprétation que lui donne l'intimée. Le litige entre les parties ne porte pas en réalité sur l'interprétation de la convention; et comme il ne porte pas non plus sur la détermination du champ d'application de la convention, je suis porté à dire, suivant en cela la jurisprudence déjà citée, qu'il ne s'agit pas ici d'un grief qui doive, d'après l'article 88 du Code du travail, être réglé par arbitrage ».

Subsequently in the case of *Ass. des Policiers de Giffard* v. *Cité de Giffard* [3], the Chief Justice, with the approval of his colleagues, expressed a similar opinion :

> « La question à déterminer dans la présente cause n'est pas à proprement parler un grief au sens du Code du travail. Le droit du citoyen de s'adresser aux tribunaux de droit commun est la règle générale et toute restriction à l'exercice de ce droit constitue une exception et doit s'interpréter strictement. Or, ce qui est un grief, nous l'avons vu, c'est une mésentente relative à l'interprétation ou à l'application d'une convention collective, c'est-à-dire d'une entente écrite relative aux conditions de travail. Dans le cas qui nous occupe, personne ne conteste l'applicabilité de la clause stipulant temps et demi. Ce qui est contesté, c'est la date où cette condition de travail entra en vigueur.
>
> Avec respect pour l'opinion contraire, je crois donc que l'association n'était pas tenue de recourir à l'arbitrage avant de s'adresser à la Cour supérieure ».

In my opinion the Court below properly dismissed the declinatory exception and I would dismiss this appeal with costs.

NOTES DU JUGE BROSSARD

Je suis d'accord avec mon collègue, M. le juge Hyde ; comme lui et pour les raisons qu'il donne, je rejetterais cet appel avec dépens.

OPINION DU JUGE TURGEON

Je partage l'opinion de M. le juge Hyde et je conclurais comme lui.

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[2] *Maluorni* v. *La ville de Mont-Royal,* [1969] B.R. 922 à 925.

[3] [1968] B.R. 863 à 866.