

Damages awarded by Arbitration Board — Application for certiorari to quash award — Wether board has power to award and assess damages

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Article abstract

The union had the capacity to incur liability for damages and the Board of Arbitrators were within their powers in proceeding to assess and award damages. The arbitrators had the same jurisdiction with respect to damages as they had to hear and dispose of the grievance which had arisen from a breach of the agreement. Moreover, since the union had the legal capacity to enter into a collective agreement, it was fastened with the responsibility that arose from a breach thereof and, therefore, it had the capacity to incur liability for damages.

In the matter of an arbitration between Polymer Corporation Ltd. and Oil Chemical and Atomic Workers International Union, Local 16-14 Ontario High Court of Justice, January 23, 1961; McRuer, C J.H.C.

board will proceed to assess the company's damages at a hearing to be convened by the board upon advice from the company that particulars as mentioned at the outset of this award have been furnished to the union and upon receipt of copies by members of the board.

Damages awarded by Arbitration Board — Application for certiorari to quash award — Whether board has power to award and assess damages

The union had the capacity to incur liability for damages and the Board of Arbitrators were within their powers in proceeding to assess and award damages. The arbitrators had the same jurisdiction with respect to damages as they had to hear and dispose of the grievance which had arisen from a breach of the agreement. Moreover, since the union had the legal capacity to enter into a collective agreement, it was fastened with the responsibility that arose from a breach thereof and, therefore, it had the capacity to incur liability for damages.¹

Two main points are raised for consideration by the Court: 1) Under the terms of the agreement and the provisions of the Industrial Relations Act has the Court any jurisdiction to interpret the agreement or is that jurisdiction vested solely in the Board of Arbitration? 2) If the Court has power to interpret the agreement, was the Board right in holding that it had power to award and assess damages? In my view it would require much clearer language that is used in the collective agreement to oust the jurisdiction of the Court to determine the scope of the jurisdiction of the arbitrators and to restrain them from going beyond their jurisdiction. I think the Court has power to construe the agreement and delineate the jurisdiction of the arbitrators.

...The jurisdiction of the arbitrators to award damages must be found in the language used by the parties as an expression of their intention. The contract here in question is not in the nature of an ordinary commercial contract. Although the precise terms of a collective agreement are not imposed by law, the law requires that it shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all disputes between the employer and employees concerning the meaning of the agreement or violation of the agreement.

The statute goes further and provides that if such a clause is not in the agreement the Labour Relations Board established under Act shall upon the application of either party « prescribe a provision for such purpose and a provision so prescribed shall be deemed to be a term of the collective agreement ». The intention of the statute is clearly expressed in sec. 19(3) which I repeat:

Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement and give effect thereto.

(1) In the matter of an arbitration between Polymer Corporation Ltd. and Oil Chemical and Atomic Workers International Union, Local 16-14 Ontario High Court of Justice, January 23, 1961; McRuer, C.J.H.C.

Neither of the parties has applied to the Labour Relations Board to have the scope of the agreement enlarged to comply with sec. 19(1) and I think it is to be taken from their course of conduct that the agreement was intended to comply with the statute. A collective agreement is different in some aspects from an ordinary commercial contract. In the first place, it is an agreement between a labour union and the employer of its members and that raises the question of the power to award damages against union. This I shall discuss later. In the second place, it is not that sort of contract that can be terminated by repudiation by one party merely because the other party has broken one of its terms. Under the statute «all differences between the parties» must be settled without stoppage of work. I think this aspect of the matter raises a stronger inference that the matter of damages for breach of the agreement should be assessed by the Board of Arbitration than in the case of a mere commercial contract. It was not argued that if the employer breached the agreement with respect to pay for overtime, for example, an arbitration board would not have power to award just compensation to the employees that had suffered by the breach. A breach of the agreement is a «grievance» to be dealt with and disposed of by an award of the arbitrators.

My conclusion is that unless there is force in the argument that the Board cannot award damages against the Union because it is not a legal entity, I think it must be taken that it has the same jurisdiction with respect to damages suffered by the employer as by the employees. It was argued that it is doubtful if a trade union is a suable entity in a Court of law. I can see no reason why the principles of law applied in *International Brotherhood of Teamsters v. Therien*, (1960) S.C.R. 265, should not be applied in the case before me. In the *Therien* case the main question was whether a trade union certified as a bargaining agent under The Labour Relations Act, Statutes of British Columbia 1954, c. 17, was a suable entity and liable in damages for tort. All the cases having any bearing on the matter are discussed in the judgment of Locke, J. rendering it unnecessary for me to deal further with them. As far as the matter I have to decide is concerned, I think two statements of the learned Justice at page 278 are conclusive of the aspect of the case I am now considering:

It is necessary for the exercise of the powers given that such union should have officers or other agents to act in their names and on their behalf. The legislature, by giving the right to act as agent for others and to contract on their behalf, has given them two of the essential qualities of a corporation in respect of liability for tort since a corporation can only act by its agents.

In the absence of anything to show a contrary intention — and there is nothing here — the legislature must be taken to have intended that the creature of the statute shall have the same duties and that its funds shall be subject to the same liabilities as the general law would impose on a private individual doing the same thing. *Qui sentit commodum sentire debet et onus*.

When Parliament provided for certification of a trade union with power to compel an employer to bargain with it and clothed it with power to enter into a «collective agreement» with the employer it invested the trade union with those corporate characteristics essential to a capacity to contract within the scope of the purposes of the Act. That being so, I think it necessarily follows from the

Therien case that since the trade union has the legal capacity to enter into a collective agreement, it has imposed on it the responsibility that flows from a breach of the agreement. The language of Farwell J. in *Taff Vale Railway v. Amalgamated Society of Railway Servants*, (1901) A.C. 426, applies with greater force to this case in view of the fact that the obligation to enter into the collective agreement was one created by statute:

The proper rule of construction of statutes such as these is that in the absence of express contrary intention the Legislature intends that the creature of the statute shall have the same duties, and that its funds shall be subject to the same liabilities as the general law would impose on a private individual doing the same thing.

BOARD EMPOWERED TO AWARD DAMAGES

Quite apart from any question as to whether an action may be maintained in a court against the Union, I think it quite clear that the Union has the capacity to incur liability for damages and hence the Board of Arbitrators are within their powers in proceeding to assess and award damages.

SENIORITY — Nature and scope of discretion for a company in applying a seniority clause — Power of the board to find against the company

A Company has no absolute right of discretion when applying a seniority clause containing objective criteria for its application in case of short-term lay-offs, otherwise the seniority rights of the employees could be obliterated by Company action.

The arbitration board must satisfy itself that the company's administrative act was taken with full appreciation of the right for senior employees to be retained on short-term layoffs provided in the Company's reasonable judgment exercised with care and in good faith, it is practical to retain them¹

The relevant parts of the agreement are:

« Article VII — SENIORITY

(b) Seniority shall govern in the case of employees with equivalent qualifications whenever a lay-off or a transfer or promotion to a classification included in the bargaining unit is necessary.

(c) The provisions of clause (b) need not apply to a lay-off which the Company expects will not exceed three working days in duration, due to lack of material or orders, equipment or transportation failure, strike or slowdown or any reason beyond the control of the Company.

(1) Canadian Industries Ltd. and Le Syndicat des Travailleurs de Produits Chimiques de McMasterville; H.D. Woods, Chairman, Me Raymond Caron, Company's nominee, Me Marc Lapointe, Union's nominee.