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Résumé de l'article

A council of arbitration, appointed under the Act respecting Municipal and School Corporations and their Employees, which remained in office after rendering its award with power to hear any dispute arising as to its interpretation but whose authority has been limited by a clause in the agreement annexed to the award and reading as follows:

Le Tribunal d'arbitrage n'aura pas juridiction pour rendre une décision incompatible avec les dispositions de cette convention, ni pour changer, modifier ou amender quelque partie que ce soit de cette convention.

has the right to interpret its award and to correct a simple clerical error, but not to amend it.

In the present instance, under the terms of the award, the employees of the same category as plaintiff were entitled to be paid at the rate of $1.29 per hour for time worked up to 44 hours a week, plus 50% for time worked in excess of 44 hours a week, the whole retroactive to a specified date. It cannot be said that it is only through a clerical error that the award was made retroactive not only as to the rate of pay but also as to the hours of work a week, even if it resulted in hardship for the employer. A tribunal cannot amend its decision any time that it finds that it acted without full information or complete realization of the effect of such dicision

An arbitration award is not null because it was made retroactive for 13 months, contrary to the article 12 of the above-mentionned Act which limits the retroactivity to 12 months; but tis retroactivity should be reduced to that period. In amending its award as it did the council acted without jurisdiction and plaintiff was justified in taking action for the amount due to him under the award as originally made, but with the period of retroactivity shortened from 13 to 12 months.

domaine et influence d'une façon indirecte les travailleurs à faire partie d'une association. Est-ce vraiment là ce qu'on peut appeler le respect de la liberté d'association?

Jusqu'ici l'Etat a toujours joué le rôle d'arbitre entre le patron et l'ouvrier, il servait bien souvent de tampon, de conciliateur et règlementait la procédure des pourparlers. Aujourd'hui le législateur semble, en vertu de ce bill 90, vouloir prendre d'une façon indirecte la position d'agent d'affaires du syndicat ouvrier!

CONCLUSION

Ces quelques remarques n'ont certes pas vidé la question posée par cette nouvelle législation. Nous espérons que des personnes plus qualifiées prendront la relève et sauront défendre comme il se doit les intéressés et le public en général.

Si mes quelques remarques savent inciter les autorités en la matière à étudier le problème et à proposer des solutions plus équitables, j'aurai atteint mon but.

JURISPRUDENCE DU TRAVAIL

SERVICES PUBLICS — POUVOIR DU TRIBUNAL D'ARBITRAGE D'AMENDER SA PROPRE SENTENCE

A council of arbitration, appointed under the Act respecting Municipal and School Corporations and their Employees, which remained in office after rendering its award with power to hear any dispute arising as to its interpretation but whose authority has been limited by a clause in the agreement annexed to the award and reading as follows:

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This is an appeal from a judgement . . . dismissing plaintiff's action for a balance of wages amounting to $889. He was an employee of the Town of Jonquière, which has been succeeded by the defendant city [2] and the balance is allegedly due under a collective labour agreement between the town and the mis en cause. We were informed that this is only one of a series of actions arising out of the same agreement.

No testimony was made, and the facts appear from the exhibits and from an admission signed by counsel for the parties. The agreement in question was never signed but was deemed to be in force under the terms of an arbitration award dated February 1, 1954. It superseded an earlier agreement between the town and the union, which was binding for the year 1952 and was to remain in force unless either party gave notice to the contrary. Such notice was duly given by the union in November, 1952. The parties then started negotiations but were unable to reach an agreement. The matter was therefore referred to a council of arbitration, in accordance with the Act respecting Municipal and School Corporations and their Employees. [3]

In accordance with the Act, the council was composed of one representative each of the town and the union and a president appointed by the Minister of Municipal Affairs. They were appointed on September 23, 1953, and started sitting about a month later. Their award is dated February 1, 1954. It was signed by all three members, though the union's representative appended a report dissenting in part.

The demands of the union with which we are principally concerned were for higher pay and shorter hours. Specifically, the union had asked that the normal working week for hourly-paid employees be reduced from 48 hours to 40 hours with pay at the rate of time and a half for overtime work. (The union also repre-

(1) Munger (Plaintiff) Appelant V. Cité de Jonquière (Defendant) Respondent and Syndical National Catholique des Employés Municipaux de Jonquière Inc., mis en cause; Cour du Banc de la Reine. Tremblay, C.J., and Casey, Montgomery, Rivard and Drouin ad hoc, JJ. No. 5768 (S.C. 21-165). — Quebec, January 11, 1962. — Yves Pratte Q.C., Côté, Tremblay and Dechêne, for appelant. — Toussaint McNicoll Q.C., Fortin and Marceau, for respondent. Decision by Mr. Justice Montgomery.
(2) 1955-56, 4-5 Eliz. II, ch. 80, art. 5.
(3) 1949, 13 Geo. VI, ch. 26 as amended by 1950, 14 Geo. VI, ch. 58 and 1950-51, 14-15 Geo. VI, ch. 36, art. 3.

sented salaried employees, but we are not directly concerned with these, appellant having been an hourly-paid worker). This demand was dealt with in section 3 of the award which reads as follows:

Le but de cette demande est de faire bénéficier les employés extérieurs d'un congé le samedi après-midi.

La preuve faite démontre que cette ligne de conduite devient de plus en plus générale et il est normal que les employés municipaux puissent bénéficier de cette période de repos, et en conséquence cette demande est accordée.

Les employés de bureau demandent la revision de leur semaine de travail de façon à ne pas travailler les samedis.

Comme la durée de la présente convention se terminera à la fin de 1954 et qu'il y a lieu à ce sujet de faire un essai loyal, le présent tribunal décide que les employés de bureau ne travailleront pas le samedi pendant les mois de mai, juin, juillet, août et septembre.

Lors du renouvellement de la présente convention, les parties verront l'effet produit par cette décision et pourront s'entendre en conséquence.

Section 5 deals with wages and awards an increase of 5¢ per hour in the following terms:

En date du 7 février 1953, le syndicat demandait une augmentation de $0.05 l'heure pour les employés à l'heure, de $2.40 pour les employés à la semaine.

Cette demande grèvera le budget de la Ville de Jonquière pour une somme de près de $20,000, mais le présent tribunal la croit juste, vu la preuve faite et vu les avantages déjà donnés dans d'autres sanctions de la présente sentence arbitrale.

Section 6 awards a cost-of-living bonus. Section 11 provides that the agreement shall take effect retroactively to January 1, 1953, i.e. to the expiration of the previous agreement, and shall remain in effect until December 3, 1954, with provision for automatic renewal. Finally, the award refers to an annexed agreement in the following terms:

Pour conclure, le présent tribunal ordonne aux parties de signer la convention collective dont le texte est annexé.

A défaut par les parties de signer ladite convention collective, le tribunal décrète que la présente sentence arbitrale aura le même effet que la signature par les parties de ladite convention collective.

Under the heading: *Heures de travail,* this agreement provides as follows:

La journée de travail, du lundi au vendredi inclusivement, sera de huit heures pour les employés dont l'engagement est à l'heure, ou à la journée. Le samedi, la journée de travail sera de huit heures à midi, soit de 4 heures de travail.

La semaine de travail sera de 44 heures. Tout travail fait en plus de ce maximum sera rénuméré au taux et demi.

The wage scales are set out in the appendix A. The rate applicable to plaintiff, as a driver of snowplows and watering trucks, class A, is $1.29 per hour as compared with $1 per hour, plus $6.40 per week, under the previous agreement.

Regarding the duration of the agreement, article 20 provides as follows:

La présente convention entrera en vigueur rétroactivement à compter du 1er janvier 1953 pour une période de deux années, devant se terminer le 31 décembre 1954.

As appears from the foregoing, plaintiff and other employees in the same category were, under the terms of this agreement, entitled to be paid at the rate of $1.29 per hour for time worked up to 44 hours a week and at the same rate, plus 50%, for time worked in excess of 44 hours a week, the whole retroactive to January 1, 1953. This was apparently not what the town had expected. On February 4, it made a motion for the correction of the award, alleging that it was only through a clerical error that the provisions of the agreement relating to hours of work had been made retroactive. Despite the protests of the representative of the union, the other two members of the council granted the motion and amended the award and the annexed agreement accordingly.

Nothing was said in the motion or in the amendment as to the retroactive date of the wage increase, but the town interpreted the award as so amended as obliging it to pay plaintiff at the rate of only $1.19 per hour for the time worked before February 1, 1954. This rate of $1.19 (which is nowhere specifically mentioned in the award) gave effect to the 5¢ increase granted by section 5. The rate of $1.29 set forth in appendix A included additional compensation so that the employee would not lose by the reduction of the working week to 44 hours. The town therefore reasoned that if the reduction of hours was not to be retroactive the corresponding increase in hourly rates should not be retroactive either.

Plaintiff instituted the present action in May, 1956, claiming to be entitled to $889, being the difference between what had been paid to him by the town under its interpretation of the award as amended and what was due to him under the terms of the agreement as annexed to the original award for the period from February 1, 1953, to February 1, 1954. There is no dispute between the parties as to the number of hours worked or as to the accuracy of plaintiff's calculations. Defendant pleaded that the agreement had been validly amended and that plaintiff had been paid in full. It further pleaded that the award was null, having been made retroactive for a period of 13 months, while under section 12 of the Act it could not be retroactive for more than 12 months. Plaintiff answered that the amendment to the award was invalid.

The trial judge decided that the council of arbitration had the same authority to amend its award as a court has under article 546 C.P. The council having jurisdiction to amend its award, he considered that he should not review its discretion in this connection in view of the terms of section 15 of the Act. [4] He therefore held that the shortening of the normal working week was not retroactive. He adopted the reasoning of the town regarding the retroactivity of the wage increase. He accordingly dismissed the action.

Regarding defendant's contention that the whole agreement was null because it was made retroactive for 13 months, the trial judge says:

La raison donnée par la défenderesse pour demander que soit déclarée nulle toute la sentence arbitrale ne peut soutenir un examen sérieux. Si la rétroactivité ordonnée est plus grande que celle permise par la loi, la conséquence sera de limiter cette rétroactivité aux 12 mois autorisés. Si, en ne calculant pas ou en calculant mal le nombre de mois qu'il y a depuis le 1er février 1954 en rétrogradant jusqu'au 1er janvier 1953, l'on s'est trouvé à dire plus que la loi ne le permettait, il faudra, en comptant les mois écoulés depuis la date de la sentence, s'arrêter au douzième et ne pas se rendre au treizième puisque la loi ne le permet pas.

It is probable that when he took this action, plaintiff was aware that he could not claim the increase retroactively beyond 12 months, because he confined his demand to the hours of work in the twelve-month period. I accept the trial judge's reasoning on this point.

The principal question is whether the council of arbitration had the right to make this amendment of its award. There is no question that the council remained in office after the rendering of the award with power to hear any dispute that might arise as to its interpretation, but article 17 of the agreement annexed to the award contains the following limitation upon the council's authority:

Le tribunal d'arbitrage n'aura pas juridiction pour rendre une décision incompatible avec les dispositions de cette convention, ni pour changer, modifier ou amender quelque partie que ce soit de cette convention.

I am satisfied that the council had the right to interpret the award but not to amend it. This does not mean, however, that it did not have the right to correct a simple clerical error. Any body having quasi-judicial powers must have such a right, otherwise the consequences of a simple slip in drafting an award might be disastrous. The right of a court to correct a clerical error is expressly recognized by article 546 C.P. This article is not directly applicable in the present instance, but we may, in my opinion, apply the same principle.

I can see no clerical error in the award in the literal or more obvious sense. Counsel for defendant suggests, however, that the right to correct extends to every case where the award does not collectly reflect the true intent of the tribunal. It is true that the term "clerical error" is not a happy one, the French term *erreur de rédaction* being perhaps more accurate. In the present instance, it is far from clear that there was any error in the drafting of the award, which, on the points in dispute, is as clear and unambiguous as language could make it. It cannot be said that the council took it for granted that the award would not be enforced retroactively where this might result in hardship. On the contrary, in the case of one portion of the agreement, that relating to the cost-of-living bonus, it is specifically provided that this shall not be retroactive. [5]

Counsel for defendant suggests that the agreement annexed to the award is of secondary importance. It is quite true that nothing in the law obliged the council

(4) As amended by 1950-51, 14-15 Geo. VI, ch. 36, art. 3, and replaced by 1952-53, 1-2 Eliz. II, ch. 15, art. 4.

(5) Art. 8.

to draft such an agreement and that the whole award might have been incorporated in one document, but this is not the way in which the council chose to proceed, and the agreement forms an integral part of the award. The main body sets out the reasons for the award and its general terms, which are more specifically and clearly stated in the annexed agreement. If there were an actual conflict between the agreement and the main body of the award, we might be faced with a difficult problem and we might conclude that there had been a clerical error, but I find no such conflict.

I see nothing in the award that is manifestly unfair or that violates common sense. In particular, it seems natural to have made the award retroactive. The Act specifically provides for this, though it limits the retroactivity to 12 monts. [6] The former agreement between the town and the union was made retroactive for more than 4 months. It may be expected that workers engaged in a labour dispute will be more patient if they are reasonably assured that any gains secured in the eventual settlement will be made retroactive.

In deciding as to the validity of the amendment, the trial judge relied upon the decision of this Court in *Jacques V. Paré.* [7] In that case, plaintiff had sought to revendicate goods to a value of $199, and a judge of the Superior Court dismissed his action. It appears that, in deciding the case, the judge relied upon a written agreement between the parties and disregarded testimony as to a collateral verbal agreement. This should have caused him to maintain the action, but he seems to have become confused as to which of the parties was relying upon the alleged verbal agreement and he dismissed it. He susequently granted a motion to correct the judgment and maintained the action for the full amount. Another judge of the Superior Court then maintained an action instituted by the original defendant to have the amending judgment declared null, thereby restoring the original judgment which had dismissed the action. The original plaintiff appealed against this judgment, and our Court, by a majority of four to one, maintained the appeal. The majority held that under article 546 C.P. the first judge had the right to correct clerical errors in his judgment and that another judge of the same court did not have the right to review his discretion in this connection. Barclay, J., dissenting, held that the right to correct clerical errors did not go so far as to permit a judge to revise the substance of his judgment and that he could not give himself jurisdiction to change his judgment by a statement that he was merely correcting clerical errors.

The above decision may be distinguished on several grounds. It is based on the idea that article 546 C.P. gives to a court a specific jurisdiction to correct errors, but the article is not directly applicable to the council of arbitration. Several of the judges seem to have been shocked by the idea that one judge of the Superior Court might overrule the decision of another judge. Furthermore, in the above case, it seems that there was strong ground for holding that there had in fact been an error. I cannot agree that a tribunal having no power to amend its decision can obtain such power by stating that it is correcting a clerical error. On this point I agree with the reasoning of Barclay, J., in his dissenting opinion, although I consider that his definition of a clerical error is perhaps too restrictive.

(6) Art. 12.
(7) (1939) 66 K.B. 542.

I do not question the good faith of the majority of the members of the council. It appears to me that after they made their award it was brought to their attention that its retroactive features would impose upon the town a more serious financial burden than they had realized and that to this extent there was an error in their award. I cannot, however, accept that a bribunal can amend its decision any time that it finds that it acted without full information or complete realization of the effect of such decision.

I am, therefore, of the opinion that in amending its award as it did the council acted without jurisdiction and that plaintiff was justified in taking action for the amount due to him under the award as originally made but with the period of retroactivity shortened from 13 to 12 months. There being no dispute as to the calculations, his action should be maintained for the full amount of $889, wich interest from the date if institution of the action. I would accordingly maintain the appeal with costs.

ASSURANCE-GROUPE — RÉDUCTION DES PRIMES PAYABLES PAR LA COMPAGNIE ET LES EMPLOYÉS À LA SUITE DE L'ADOPTION DE LA LOI DE L'ASSURANCE HOSPITALISATION DU QUÉBEC

Sans pour cela que soient en rien diminués ou modifiés les bénéfices et avantages énumérés au plan d'assurance-groupe inclus dans la convention collective liant les parties, la Compagnie a le droit de diminuer sa contribution à ce plan, lorsque, par l'adoption de la Loi de l'assurance hospitalisation, l'Etat a assumé une partie des frais hospitaliers prévus par la convention collective existante. [1]

L'article 16.01 de la convention collective intervenue le 30 octobre 1959 entre les parties en cause se lit ainsi:

« La Compagnie convient de continuer à prendre toutes les dispositions raisonnables pour assurer la sécurité et la santé de ses employés durant leurs heures d'emploi.

La Compagnie s'engage de mettre à la disposition de ses employés le plan d'assurance qui existe à cette date et de payer cinquante pour cent (50%) du taux de la prime. Ce plan est sujet aux conditions de la police maîtresse, et l'assurance et l'administration en seront faites par une Compagnie d'Assurance reconnue. Il est entendu cependant que cette assurance pour les employés et leurs dépendants cessera immédiatement dès que l'employé aura cessé d'être activement employé par la Compagnie, excepté dans le cas où l'employé reçoit une compensation en vertu de la Loi des Accidents de Travail de la Province de Québec ou des bénéfices hebdomadaires en vertu du présent plan d'assurance. »

Or, à la suite de l'adoption de la Loi de l'assurance hospitalisation du Québec entrée en vigueur le 1er janvier 1961, l'Etat a assumé une partie des frais hospi-

(1) Hafner Fabrics of Canada Ltd., Granby, vs l'Union des Employés de Hafner Fabrics de Granby, Qué.; M. le Juge André Montpetit, président; Me Jean-H. Gagné, C.R., arbitre patronal; Me Jean Marquis, arbitre syndical, dissident; Ministère du Travail, Province de Québec, Bulletin d'information No 1646, 1962, 18 avril 1962.