COMMISSION DU SALAIRE MINIMUM (*Plaintiff*) ..... APPELLANT;

AND

THE BELL TELEPHONE COMPANY OF CANADA (*Defendant*)..... RESPONDENT.

1966
*June 20, 21, 22
Oct. 4

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Constitutional law—Labour—Minimum wages—Imposition of levy—Telephone company operating inter-provincial telecommunication system and service—Whether subject to provincial statute—Minimum Wage Act, R.S.Q. 1941, c. 164—Industrial Relations and Disputes Investigation Act, R.S.C. 1952, c. 152—Canada Labour Statutes Code, 1964-65 (Can.), c. 38—B.N.A. Act, 1867, ss. 91(29), 92(10).

Pursuant to a by-law enacted by virtue of the powers conferred upon it by the *Minimum Wage Act*, R.S.Q. 1941, c. 164, the Minimum Wage Commission sought to impose a wage levy upon the defendant

*PRESENT: Taschereau C.J. and Fauteux, Abbott, Martland, Judson, Ritchie and Hall JJ.

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company, in respect of the year 1959. The defendant contended that it was not subject to the *Minimum Wage Act*. The trial judge maintained the action, but his judgment was reversed by the Court of Appeal. The Commission appealed to this Court. The Attorney General of Canada, the Attorney General of Quebec and the Attorney General for Ontario were granted leave to intervene.

Held: The appeal should be dismissed.

The *Minimum Wage Act*, being a statute which, *inter alia*, purports to regulate to an extent the wages to be paid by an employer to his employees, does not apply to the defendant company because the defendant is an undertaking of the kind described in subs. 10(*a*) and (*c*) of s. 92 of the *B.N.A. Act*. The determination of such matters as hours of work, rates of wages, working conditions and the like, is a vital part of the management and operation of any commercial or industrial undertaking. Regulation of the field of employer and employees' relationships in an undertaking such as that of the defendant is a "matter" coming within the class of subjects defined in s. 92(10)(*a*) of the *B.N.A. Act* and, consequently, is within the exclusive legislative jurisdiction of the Parliament of Canada. Therefore, any provincial legislation in that field, whilst valid in respect of employers not within exclusive federal legislative jurisdiction, cannot apply to employers who are within that exclusive control.

Droit constitutionnel — Travail—Salaire minimum — Prélèvement d'un impôt—Compagnie de téléphone opérant un système interprovincial de communications et de service—Compagnie est-elle sujette au statut provincial——Loi du Salaire minimum, S.R.Q. 1941, c. 164—Loi sur les Relations industrielles et sur les enquêtes visant les différends du travail, S.R.C. 1952, c. 152—Code canadien du travail, 1964-65 (Can.), c. 38—Acte de l'Amérique du Nord britannique, 1867, arts. 91(29), 92(10).

La Commission du Salaire minimum a réclamé de la compagnie défenderesse une somme de quelque $50,000 à titre de prélèvement pour l'année 1959 aux termes de son règlement passé en vertu des pouvoirs qui lui sont conférés par la *Loi du Salaire minimum*, S.R.Q. 1941, c. 164. La défenderesse soutient qu'elle n'était pas sujette à la *Loi du Salaire minimum*. Le Juge au procès a maintenu l'action, mais son jugement a été renversé par la Cour d'Appel. La Commission en appela devant cette Cour. Le Procureur Général du Canada, le Procureur Général de Québec et le Procureur Général de l'Ontario ont obtenu la permission d'intervenir.

Arrêt: L'appel doit être rejeté.

La *Loi du Salaire minimum*, étant un statut qui, entre autres, a pour but de réglementer jusqu'à un certain point les salaires qu'un employeur doit payer à ses salariés, ne s'applique pas à la compagnie défenderesse parce que cette compagnie est une entreprise de la sorte de celles qui sont décrites aux paragraphes 10(*a*) et (*c*) de l'article 92 de l'*Acte de l'Amérique du Nord britannique*. La détermination de matières telles que les heures de travail, les taux des salaires, les conditions de travail et autres semblables, est une partie essentielle de l'administration et de l'opération de toute entreprise commerciale ou industrielle. La réglementation du domaine des relations entre employeurs et salariés dans une entreprise telle que celle de la défenderesse est une «matière» tombant dans la catégorie des sujets énumérés à l'article

92(10)(*a*) de l'*Acte de l'Amérique du Nord britannique* et, en conséquence, relève de la compétence législative exclusive du Parlement du Canada. Conséquemment, toute législation provinciale dans ce domaine, quoique valide relativement aux employeurs ne tombant pas sous la juridiction législative exclusive du fédéral, ne peut pas s'appliquer aux employeurs qui tombent sous ce contrôle exclusif.

APPEL d'un jugement de la Cour du banc de la reine, province de Québec[1], renversant un jugement du Juge Brossard. Appel rejeté.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, province of Quebec[1], reversing a judgment of Brossard J. Appeal dismissed.

Gérald Le Dain, Q.C., and *Arthur Boivin, Q.C.*, for the plaintiff, appellant, and for the Attorney General of Quebec.

P. C. Venne, Q.C., and *Jean de Grandpré, Q.C.*, for the defendant, respondent.

Rodrigue Bédard, Q.C., for the Attorney General of Canada.

F. W. Callaghan and *E. M. Pollock*, for the Attorney General for Ontario.

The judgment of the Court was delivered by

MARTLAND J.:—This is an appeal from the unanimous decision of the Court of Queen's Bench (Appeal Side) of the Province of Quebec[1], which allowed the appeal of the present respondent from the judgment at trial and dismissed the appellant's action against the respondent.

The appellant's claim was for the sum of $53,473.64, being the amount of a levy which the appellant sought to impose upon the respondent, in respect of the year 1959, pursuant to By-Law B1, 1947, enacted by the appellant by virtue of the powers conferred upon it by the *Minimum Wage Act*, R.S.Q. 1941, c. 164, being a sum of one-tenth of one per cent of the wages paid to its employees governed by an ordinance of the appellant. The statutory authority to impose such a levy is found in s. 8e of that Act, which enabled the appellant:

To levy upon the professional employers contemplated by an ordinance a sum not exceeding one per cent of the wages paid to their employees.

[1] [1966] Que. Q.B. 301.

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The appellant, prior to the enactment of the by-law above mentioned, had enacted Ordinance No. 4, 1957, applicable to all employees governed by the *Minimum Wage Act*, with certain specified exceptions. The respondent's employees were not within any of the excepted categories. It provided, inter alia, for minimum wage rates, hours of work, payment of overtime and holidays with pay.

The authority to enact the ordinance is contained in s. 13 of the Act, which provides that:

> 13. The Commission may, by ordinance, determine, for stated periods of time and for designated territories, the rate of minimum wage payable to any category of employees indicated by it, the terms of payment, working hours, conditions of apprenticeship, the proportion between the number of skilled workmen and that of apprentices in any stated undertaking, the classification of the operations and the other working conditions deemed in conformity with the spirit of the Act.

The respondent contends that it is not subject to the levy because the provisions of the ordinance and of the statute pursuant to which the ordinance was enacted cannot apply to it, since it is an undertaking of the kind described in subs. 10(*a*) and (*c*) of s. 92 of the *British North America Act*. That the respondent is an undertaking falling within the class defined in subs. 10(*a*) and that it has been declared by the Parliament of Canada to be a work for the general advantage of Canada pursuant to subs. 10(*c*) is not in issue.

There is no question as to the amount involved or as to the respondent being subject to the levy if the defence which it has raised is not sustained. It is also conceded that the *Minimum Wage Act* is, generally, within the competence of the Legislature of Quebec. The only matter to be determined is whether it can apply to an undertaking which is within paras. (*a*), (*b*) or (*c*) of subs. 10 of s. 92 of the *British North America Act*.

Three of the judges in the Court below (the Chief Justice and Rinfret and Owen JJ.) were of the opinion that the fixing of a minimum wage and the regulation of the other matters provided for in the *Minimum Wage Act* could, in relation to the employees of such an undertaking, be effected only by the Parliament of Canada. The other two members of the Court (Hyde and Taschereau JJ.), while of the opinion that, in the absence of legislation by the federal parliament, the provincial legislation would be applicable,

were of the opinion that the key section of the Act, s. 13, did, in fact, conflict with the provisions of the *Industrial Relations and Disputes Investigation Act*, R.S.C. 1952, c. 152.

The appellant's submission is that the legislation in question did apply to the respondent until the federal parliament occupied the field and that this was not done until the enactment, on March 18, 1965, of the *Canada Labour Standards Code*, Statutes of Canada 1964-65, c. 38.

The relevant provisions of the *British North America Act* are as follows:

> 91. . . . it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—
>
> * * *
>
> 29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.
>
> 92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—
>
> * * *
>
> 10. Local Works and Undertakings other than such as are of the following Classes:—
>
> (*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
>
> (*b*) Lines of Steam Ships between the Province and any British or Foreign Country:
>
> (*c*) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

I have quoted these well known provisions of the Act in full because I think it is of assistance to refer back to their actual wording in defining the issue in the present case. The *Minimum Wage Act* is a statute which, inter alia, purports to regulate to an extent the wages to be paid by the respondent to its employees. If the regulation of the wages paid to its employees by an undertaking within the excepted classes in s. 92(10) is a *"matter"* coming within those classes of subject, then, by virtue of s. 91(29), it is within the exclusive legislative authority of the Canadian Parliament.

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The question is, therefore, as to what "matters" are within the classes of legislative subjects defined in that paragraph. Clearly they extend beyond the mere physical structure of, e.g., a railway or a telegraph system. The words "works" and "undertakings" are to be read disjunctively (*Attorney-General for Ontario v. Winner*[1]) and the word "undertaking" has been defined in *re Regulation and Control of Radio Communication in Canada*[2]:

> "Undertaking" is not a physical thing, but is an arrangement under which of course physical things are used.

In my opinion all matters which are a vital part of the operation of an interprovincial undertaking as a going concern are matters which are subject to the exclusive legislative control of the federal parliament within s. 91(29). It was not disputed in argument that the regulation of the rates to be paid by the respondent's customers is a matter for federal legislation. In the *Winner* case, *supra,* the regulation of those places at which passengers of an interprovincial bus line might be picked up or to which they might be carried was held not to be subject to provincial control. Similarly, I feel that the regulation and control of the scale of wages to be paid by an interprovincial undertaking, such as that of the respondent, is a matter for exclusive federal control.

I would adopt the statement of Abbott J. in this Court, in the *Reference as to the Validity of the Industrial Relations and Disputes Investigation Act*[3]:

> The right to strike and the right to bargain collectively are now generally recognized, and the determination of such matters as hours of work, rates of wages, working conditions and the like, is in my opinion a vital part of the management and operation of any commercial or industrial undertaking. This being so, the power to regulate such matters, in the case of undertakings which fall within the legislative authority of Parliament lies with Parliament and not with the Provincial Legislatures.

In my view, this conclusion does not run counter to decided authorities. They have been carefully reviewed in the judgments in the Court below. I do not propose to discuss them in detail, but will confine my remarks to the two authorities on which counsel for the appellant chiefly relied.

1 [1954] A.C. 541, 13 W.W.R. (N.S.) 657, 71 C.R.T.C. 225.
2 [1932] A.C. 304 at 315, 1 W.W.R. 563.
3 [1955] S.C.R. 529 at 592, 3 D.L.R. 721.

The first of these is *Workmen's Compensation Board v. Canadian Pacific Railway Company*[1]. That action was brought by the railway company to prevent the British Columbia Workmen's Compensation Board from paying compensation to dependants of crew members employed on one of the company's steamships which was lost outside British territory. The notes of the argument do not indicate that counsel for the railway company relied at all upon the fact that it was an undertaking within s. 92(10)(*b*). The case was argued on the issue as to whether the *Workmen's Compensation Act* affected civil rights outside the province when it applied to accidents occurring outside the province.

The only passage in the judgment which refers to the position of the company as a railway company is the following, at p. 192:

> No doubt for some purposes the law sought to be enforced affects the liberty to carry on its business of a Dominion railway company to which various provisions of s. 91 of the British North America Act of 1867 apply. But for other purposes, with which the Legislature of British Columbia had jurisdiction to deal under s. 92, it was competent to that Legislature to pass laws regulating the civil duties of a Dominion railway company which carried on business within the Province, and in the course of that business was engaging workmen whose civil rights under their contracts of employment had been placed by the Act of 1867 within the jurisdiction of the province.

There is no specific reference in this passage to s. 92(10), nor is it attempted to define the scope of those matters with respect to which the federal parliament has exclusive legislative jurisdiction under that subsection. The case did hold that the railway company was subject to the provisions of the *Workmen's Compensation Act*.

In my opinion there is a distinction between legislation of that kind, and that which is in issue here. The *Workmen's Compensation Act* conferred upon injured employees and upon the dependants of deceased employees certain statutory rights to compensation where the injury or death resulted from an accident arising out of and in the course of the employment. Compensation was payable not by the employer, but out of a fund administered by the Board to which employers were required to contribute. Viscount Haldane (p. 191) refers to the employee's right under the Act as the result of a "statutory condition of employment",

[1] [1920] A.C. 184, 48 D.L.R. 218.

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but I think it is more accurately described as a statutory right. The Act did not purport to regulate the contract of employment. What it did do was to create certain new legal rights which were to be in lieu of all rights of action to which the employee or his dependants might otherwise have been entitled at common law or by statute.

On the other hand, a statute which deals with a matter which, apart from regulatory legislation, would have been the subject matter of contract between employer and employee, e.g., rates of pay or hours of work, affects a vital part of the management and operation of the undertaking to which it relates. This being so, if such regulation relates to an undertaking which is within s. 92(10) (*a*), (*b*) or (*c*), in my opinion it can only be enacted by the federal parliament.

The other authority on which counsel for the appellant particularly relied was the *Reference as to the Legislative Jurisdiction over Hours of Labour*[1]. That was a reference to this Court by the Governor General in Council, which was made as a result of the draft convention adopted by the International Labour Conference of the League of Nations limiting the hours of labour in industrial undertakings. An article in the Treaty of Versailles provided that each of the members of the Labour Conference undertook to bring the draft convention before the authorities competent to legislate. Canada was a member, and the reference was made to determine the appropriate legislative authorities.

The conclusion of this Court was that primarily the subject matter of hours of work was generally within the competence of the provincial legislatures, but that the authority of those legislatures did not extend to enable them to give the force of law to the provisions contained in the draft convention in relation to servants of the Dominion Government.

In the course of the reasons of this Court, delivered by Duff J. (as he then was), there was a brief reference, at p. 511, to ss. 91(29) and 92(10) of the *British North America Act*, in the following terms:

> It is now settled that the Dominion, in virtue of its authority in respect of works and undertakings falling within its jurisdiction, by force of section 91, no. 29, and sec. 92, no. 10, has certain powers of regulation

[1] [1925] S.C.R. 505.

touching the employment of persons engaged on such works or undertakings. The effect of such legislation by the Dominion to execution of this power is that provincial authority in relation to the subject matter of such legislation is superseded, and remains inoperative so long as the Dominion legislation continues in force. There would appear to be no doubt that, as regards such undertakings—a Dominion railway, for example—the Dominion possesses authority to enact legislation in relation to the subjects dealt with in the draft convention.

He went on to say that, there having been no Dominion legislation on the subject, other than the empowering of the Board of Railway Commissioners to make regulations concerning hours of duty of railway employees with a view to the safety of the public and of the employees, which power had never been exercised by the Board, the primary authority of the provincial legislatures remained unimpaired.

This case lends some support to the argument that the federal power to legislate on the matter of hours of work in relation to undertakings subject to federal legislation under s. 92(10) is an ancillary rather than an exclusive power, but the issue did not have to be determined in that case.

As is pointed out in the Court below by Rinfret J., the judgment of this Court, delivered by Duff J. in the *Reference re Waters and Water-Powers*[1], contains, at p. 214, a reference to the fact that:

"railway legislation, strictly so called" (in respect of such railways), is within the exclusive competence of the Dominion, and such legislation may include, inter alia, regulations for the construction, the repair and the alteration of the railway and for its management.

He referred to the case of *Canadian Pacific Railway v Corporation of the Parish of Notre Dame de Bonsecours*[2].

Again, at p. 226, he says:

As to the first branch, it seems unnecessary to say that a province would be exceeding its powers if it attempted to intervene in matters committed exclusively to Dominion control, by attempting, for example, to interfere with the structure or management of a work withdrawn entirely from provincial jurisdiction, such as a work authorized by the Dominion by legislation in execution of its powers under s. 92(10a).

There are two cases in this Court which, in my opinion, bear a closer relationship to the circumstances of the present case than either of the two authorities which I have just considered. The first of these is the *Reference re the*

[1] [1929] S.C.R. 200. [2] [1899] A.C. 367 at 372.

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Minimum Wage Act of the Province of Saskatchewan[1]. The question in issue there was as to whether the Act in question applied to one Leo Fleming, who had been hired temporarily and paid by a postmistress of a revenue post office at Maple Creek, Saskatchewan. It was held that it did not apply, even though Parliament had not dealt with the subject by legislation.

Rinfret C.J. and Taschereau J. (as he then was) both held that as the "Postal Service" was a matter of exclusive federal legislative jurisdiction under s. 92(5), the provincial legislation could not apply to Fleming.

As Taschereau J. put it, at p. 257:

> It follows that the fixing of the wages of the Postal employees, is a matter in pith and substance "Postal Service Legislation", upon which the provinces may not legislate without invading a field "exclusively" assigned to the Dominion.

Rand J., with whom Locke J. concurred, said, at p. 263:

> I take this legislation to aim at the regulation of the business, occupation or employment in which the work of the employee for which the minimum wage is prescribed is carried out, and which, as well as the employer, is for such purposes within the legislative control of the province. In the case before us, the postmistress has neither business nor service of her own into which the employee is or can be introduced; and *the actual employment to which the employee is committed is beyond provincial jurisdiction.* The condition for the application of the statute is, therefore, absent. Were the post office operated as a private provincial business, I have no doubt that in the circumstances here the proprietor would be bound by the Act as employer and the postmistress as his agent.

(The italics are my own.)

Kellock J. based his opinion on the proposition that a provincial legislature could not legislate as to the hours of labour of Dominion servants.

Estey J., at p. 269, said:

> If, therefore, the said employment of Fleming was within the "Postal Service" as that term is used in the B.N.A. Act, his employment was subject to Dominion legislation only.

In my view, the conclusion in this case is properly stated in the headnote, as follows:

> The employee became employed in the business of the Post Office of Canada and therefore part of the Postal Service. His wages were, as such, within the exclusive legislative field of the Parliament of Canada and any encroachment by provincial legislation on that subject, must be looked

[1] [1948] S.C.R. 248, 91 C.C.C. 366, 3 D.L.R. 801.

upon as being ultra vires, whether or not Parliament has or has not dealt with the subject by legislation.

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I see no difference in principle between the position of an employee hired and paid, not by the Crown, but by an individual, but who was engaged in the Postal Service, s. 91(5), and an employee of an interprovincial undertaking, s. 91(29) and s. 92(10), in relation to the exclusive power of the federal parliament to legislate regarding his wage rate.

The other decision is in respect of the *Reference as to the Validity of the Industrial Relations and Disputes Investigation Act*[1], to which I have already made some reference. This Court had to consider the validity of federal legislation in the field of labour relations applicable to businesses within the legislative authority of the Parliament of Canada. The Act was held to be within the federal power, and the decision, in my view, did recognize that that field constituted an essential part of the operation of such an undertaking.

With respect, I subscribe to this view. In my opinion, regulation of the field of employer and employee relationships in an undertaking such as that of the respondent's, as in the case of the regulation of the rates which they charge to their customers, is a "matter" coming within the class of subject defined in s. 92(10)(*a*) and, that being so, is within the exclusive legislative jurisdiction of the Parliament of Canada. Consequently, any provincial legislation in that field, while valid in respect of employers not within exclusive federal legislative jurisdiction, cannot apply to employers who are within that exclusive control.

The appeal should be dismissed with costs. There should be no costs payable by or to the intervenants.

Appeal dismissed with costs.

Attorney for the plaintiff, appellant: A. Boivin, Montreal.

Attorneys for the defendant, respondent: Munnoch, Venne, Fiset & Robitaille, Montreal.

[1] [1955] S.C.R. 529, 3 D.L.R. 721.