THE HAMILTON STREET RAILWAY COMPANY (*Defendant*) ..... APPELLANT;

1966
* Oct. 19
Oct. 28

AND

DERICK NORTHCOTT (*Plaintiff*) .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Labour—Dispute over pay guaranteed to employees under collective agreement—Issue referred by union and company to arbitration board—Declaration of entitlement—Alternative procedure for recovery of wages—The Labour Relations Act, R.S.O. 1960, c. 202, s. 34(9)—The Rights of Labour Act, R.S.O. 1960, c. 354, s. 3(3).

In a dispute over the pay that a spare operator was guaranteed under a collective agreement between the union and the street railway during each regular fourteen-day period, the union claimed that if the spare operator worked at all during this period, he was guaranteed a minimum of seventy hours' pay. The company disputed this and on this issue the parties went to arbitration under art. VIII of the agreement. The union was successful in getting a declaration favourable to the interpretation which would give the employees their money, but the arbitration board did not state in its reasons how much each was entitled to because they were not parties to the grievance procedure under art. VIII.

The employees then sued in the Division Court for their unpaid guaranteed pay and were met with the defence that they had no remedy because they had not followed art. VI grievance procedure. The company submitted that if each employee had presented a grievance under art. VI within the specified time limits, they would have secured declarations that they were entitled to specific sums of money. Having secured these declarations, they could have filed them with the Supreme Court under s. 34(9) of *The Labour Relations Act*, R.S.O. 1960, c. 202, and then they would have had a judgment instead of what they presently had—useless declarations of right. The company further submitted that because the employees might have followed the grievance procedure under art. VI, secured these declarations and filed them as judgments, there was no jurisdiction in any court to consider the matter.

The Division Court judge and the Court of Appeal having rejected the company's contention, an appeal, with leave, was brought to this Court.

Held: The appeal should be dismissed.

The collective agreement was not concerned with the non-payment of wages. These could be sued for in the ordinary courts. If, however, the right to be paid depended upon the interpretation of the collective agreement, this was within the exclusive jurisdiction of a board of

* PRESENT: Cartwright, Martland, Judson, Ritchie and Spence JJ.

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arbitration appointed under the agreement, but whether this decision came under grievance procedure under art. VI, with the consequent registration of the equivalent of a judgment or a declaration at the instance of the union under art. VIII, made no difference. In the one case the individual employees got the equivalent of judgments; in the other case, they had declarations of right on which they could sue.

Where wages were concerned, if the employee let the specified time limit go by before he filed a grievance, the union could still pursue the matter under art. VIII as it did here.

Re Grottoli v. Lock & Son Ltd., [1963] 2 O.R. 254, referred to.

APPEAL from a judgment of the Court of Appeal for Ontario, dismissing an appeal from a judgment of Warrender Co. Ct. J. Appeal dismissed.

Norman Mathews, Q.C., and *William S. Cook*, for the defendant, appellant.

Sydney Paikin, Q.C., for the plaintiff, respondent.

The judgment of the Court was delivered by

JUDSON J.:—At the conclusion of the hearing the appeal was dismissed. Written reasons were to be given later.

The dispute is over the pay that a spare operator is guaranteed under the collective agreement between the union and the street railway during each regular fourteen-day period. The union says that if the spare operator works at all during this period, he is guaranteed a minimum of seventy hours' pay. The company disputes this and on this issue the parties went to arbitration under art. VIII of the agreement.

The union secured a decision favourable to the spare operators that they were entitled to their seventy hours' pay. The majority decision of the Board also held that the union was entitled to pursue its complaint under art. VIII of the agreement.

The company now says, and it has said throughout, that this procedure was wrong or if it is not wrong it is of no use to the employees because they cannot do anything with a mere declaration of entitlement. It says that each employee should have presented a grievance under art. VI dealing with grievance procedure. If they had followed this procedure within the time limits specified in the agreement, they would have secured declarations that they were entitled to

specific sums of money. Having secured these declarations, they could have filed them with the Supreme Court under s. 34(9) of *The Labour Relations Act*, R.S.O. 1960, c. 202, and then they would have had a judgment instead of what they have now—useless declarations of right. The company further says that because the employees might have followed the grievance procedure under art. VI, secured these declarations and filed them as judgments, there is no jurisdiction in any court to consider the matter. The result, therefore, is a procedural dilemma.

The union has been successful in getting the declaration favourable to the interpretation which would give the employees their money, but the arbitration board did not state in its reasons how much each was entitled to because they were not parties to the grievance procedure under art. VIII. The employees' next step was to sue in the Division Court for their unpaid guaranteed pay. They were met with the defence that they had no remedy because they had not followed art. VI grievance procedure.

Both the Division Court judge and the Court of Appeal have rejected this contention. These men have a point conclusively settled in their favour by the arbitration board. They can go before a court and say, "We are entitled to this money. All that remains is a mere matter of calculation. These are the hours for which we are entitled to be paid—seventy hours minus whatever hours we were paid for and which we actually worked."

This is all that has happened and, in my opinion, the courts have jurisdiction to determine this matter. This was the precise point decided by McRuer C.J., in *Re Grottoli v. Lock & Son Ltd.*[1].

If one follows the company's argument to its ultimate conclusion it means that no employee can ever sue for wages unpaid. He would have to follow the grievance procedure in the collective agreement and be bound by very stringent time limits. This would be so even though there is no dispute about the wages being due and owing. The collective agreement is not concerned with non-payment of wages. These may be sued for in the ordinary courts. If, however, the right to be paid depends upon the interpretation of the collective agreement, this is within the exclusive

[1] [1963] 2 O.R. 254, 39 D.L.R. (2d) 128.

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jurisdiction of a board of arbitration appointed under the agreement, but whether this decision comes under grievance procedure under art. VI, with the consequent registration of the equivalent of a judgment or a declaration at the instance of the union under art. VIII, makes no difference. In the one case the individual employees get the equivalent of judgments; in the other case, they have declarations of right on which they can sue.

I would go further and say that where wages are concerned, if the employee lets the six days go by before he files a grievance, the union can still pursue the matter under art. VIII as it did here.

The Rights of Labour Act, R.S.O. 1960, c. 354, has nothing to do with this case. Section 3(3) provides:

> 3.(3) A collective bargaining agreement shall not be the subject of any action in any court unless it may be the subject of such action irrespective of any of the provisions of this Act or of *The Labour Relations Act*.

The citation of a conclusive arbitration award under a collective bargaining agreement as the foundation for a claim for wages is not the same thing as making the collective agreement the subject of any action in any court.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the defendant, appellant: Mathews, Dinsdale & Clark, Toronto.

Solicitors for the plaintiff, respondent: White, Paikin, Foreman & Grannum, Hamilton.