1967

*Nov. 6, 7
Dec. 18

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, FLIN FLON LODGE NO. 1848; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 1405; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL UNION NO. 451; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION NO. 1614; BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION NO. 1497; INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 828

APPELLANTS;

AND

HUDSON BAY MINING AND SMELTING CO., LIMITED .. RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Labour relations—Collective agreement—Provision whereby company agreed to continue support of welfare plans in accordance with terms of present agreements—Dispute arising from proposed integration of company pension plan with Canada Pension Plan—Arbitration award in favour of appellant unions—Motion to set aside award on basis board exceeded jurisdiction—Validity of award.

The respondent company proposed to "integrate" the benefits under its retirement pension plan with those under the Canada Pension Plan and this involved a change with respect to contributions. The appellant unions took exception to this proposal and submitted a grievance which was referred to an arbitration board. The appellants contended that the action by the respondent involved a breach by it of Art. XIV of the collective agreement made between the appellants and the respondent. They contended that, under this article, the respondent had agreed that it would not discontinue its support of the existing welfare plans, and that the phrase "in accordance with the terms of the present agreements" meant that the support of the plans as they existed when the collective agreement became effective would be continued. The respondent contended that the phrase meant in accordance with all of the terms of the present agreements, including the terms giving the right to change or discontinue the company plan.

The arbitration board, by a majority of two to one, upheld the appellants' interpretation of Art. XIV. The respondent was directed to reinstate the company plan and to make adjustment for the period since the plan had been changed. On a motion to set aside the award based on the submission that the board had exceeded its jurisdiction, it was

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

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held that the board had not exceeded its jurisdiction and the motion was dismissed. An appeal from this decision was allowed by the Court of Appeal. The majority of that Court was of the view that the arbitration board, by its decision, had amended the terms of the collective agreement, which, under s. 3 of Art. XXIII of the agreement they were precluded from doing. An appeal from the judgment of the Court of Appeal was then brought to this Court.

Held: The appeal should be allowed and the order of the judge of first instance restored.

In reaching the conclusion which it did, the arbitration board was fulfilling its duty to interpret Art. XIV and it did not, by its decision, amend the collective agreement. When the respondent agreed to continue its support of the welfare plans in accordance with the terms of the present agreements that commitment could certainly be construed as an undertaking by it not to discontinue any of those plans, but to maintain them as they then existed. Such an interpretation of the article was not only a proper one, but was probably the right one. But whether right or wrong, the board interpreted and did not amend the agreement. This being so, it did not exceed its jurisdiction and its award was valid.

APPEAL from a judgment of the Court of Appeal for Manitoba[1], reversing a judgment of Dickson J. dismissing a motion to set aside an award of an arbitration board. Appeal allowed.

S. Green and *L. Mitchell,* for the appellants.

Alan Sweatman, Q.C., and *W. L. Palk,* for the respondents.

The judgment of the Court was delivered by

MARTLAND J.:—This is an appeal from a judgment of the Court of Appeal of Manitoba[1], which, by a majority of two to one (Freedman J.A. dissenting), reversed the decision of Dickson J. (as he then was), who had dismissed a motion by the respondent for an order to declare that an award, dated August 16, 1966, by an arbitration board constituted pursuant to Art. XXIII of a collective agreement, dated September 16, 1965, made between the appellants and the respondent, exceeded the board's jurisdiction and was invalid.

The collective agreement contained provision for the determination of a grievance concerning its interpretation, and provided for a reference of any dispute, which could

[1] [1967], 59 W.W.R. 472, 61 D.L.R. (2d) 429.

not be settled by negotiation between the Company and the Unions, to an arbitration board constituted pursuant to Art. XXIII. Section 3 of that Article provided:

> The decision of a majority of the arbitration board shall be in writing and delivered to the parties hereto. It shall be final and binding upon the parties hereto, subject to the condition that the decision shall not, without the consent and approval of the parties hereto, rescind or amend any of the terms or conditions of this collective bargaining agreement, but shall be in general accord with the scope and terms thereof.

The dispute which was referred to the arbitration board in this case was as to the interpretation of Art. XIV of the collective agreement, which provided:

> WELFARE PLANS
>
> The Company agrees to continue, in accordance with the terms of the present agreements, its support of the welfare plans now available to the employees, namely:
>
> Apprentice Plan
> Vacations-with-Pay Plan
> Group Life Insurance
> Retirement Pension Plan
> Non-occupational Accident and Sickness Benefit Plan
> Hudson Bay Mining Employees' Health Association
> Hudson Bay Mining Employees' Death Benefit Plan.

At the time this Article came into effect there were in existence the welfare plans described in it. The dispute arose in relation to the Retirement Pension Plan, hereinafter referred to as "the Company Plan". This Plan became effective on May 1, 1940, and had undergone various revisions after its inception, the last of these being effected on January 1, 1964. The respondent's employees contributed 3 per cent of their earnings and the respondent contributed the balance necessary to purchase the amount of pension to which employees became entitled; namely, an annual pension equal to 45 per cent of the employee's total contributions.

The respondent's position in relation to this Plan is summarized in a booklet entitled "Welfare Plans", which the respondent issued to its employees, the relevant portion of which states:

> (a) The Company shall administer the Plan and have the power to decide all matters with respect thereto, insofar as there is no conflict with the rules, regulations and practices of the Canadian Government Annuities Branch and the North American Life Assurance Company.

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(b) The Company reserves the right to change or discontinue the Plan at any time if, in the sole opinion of the Company, conditions require. In the event of it being necessary to discontinue the Plan, contributions deposited up to such time by both employee and Company shall vest solely with the employees.

On December 3, 1965, the respondent advised its employees that the Canada Pension Plan would become effective January 1, 1966, requiring under its regulations contribution of 1.8 per cent of an employee's earnings; that instead of deducting extra contributions from employees, appropriate Canada Pension Plan contributions would be taken out of the contributions deducted for the Company Plan, *i.e.*, from the 3 per cent of earnings, and forwarded to the Canada Pension Plan at Ottawa. The effect of this was that instead of 3 per cent of the employee's salary going to the Company Plan, 1.2 per cent would go to the Company Plan and 1.8 per cent to the Canada Pension Plan. As the employee's pension under the Company Plan was directly related to his contributions to the Company Plan, he would receive a reduced pension under the Company Plan. He would, of course, also be contributing to the Canada Pension Plan and in due course receive a pension under the Canada Pension Plan.

In other words, the respondent proposed to "integrate" the pension benefits under the Company Plan with the pension benefits under the Canada Pension Plan.

The appellants contended that this action by the respondent involved a breach by it of Art. XIV of the collective agreement. They contended that, under this Article, the respondent had agreed that it would not discontinue its support of the existing welfare plans, and that the phrase "in accordance with the terms of the present agreements" meant that the support of the plans as they existed when the collective agreement became effective would be continued.

The respondent contended that that phrase meant in accordance with all of the terms of the present agreements, including the terms giving the right to change or discontinue the Company Plan.

The arbitration board, by a majority of two to one, upheld the appellants' interpretation of Art. XIV.

Dickson J., who heard the motion to set aside the award based on the submission that the board had exceeded its jurisdiction, held that the board had not exceeded its jurisdiction. His reasons appear in the following passage from his judgment:

> The Board of Arbitration was constituted by applicant and respondents. At the outset of the hearing before the Board, counsel for applicant agreed, according to the report of the applicant's nominee, Mr. Taylor, "that the grievance was properly before the Board". The Award makes it clear that the members of the Board of Arbitration directed their minds to the question of the construction to be placed upon Article XIV. This was the question put to the Board by applicant and respondents. The Award does not go beyond that question. The interpretation given by the Board is one which the language of Article XIV will reasonably bear. That is sufficient to defeat applicant's motion, which therefore fails.

The majority of the Court of Appeal was of the view that the arbitration board, by its decision, had amended the terms of the collective agreement, which, under s. 3 of Art. XXIII of the agreement they were precluded from doing. Guy J.A. states this view, as follows:

> The issue to be decided in the instant case is clear-cut and brief. It is simply this: Did the majority of the Arbitration Board exceed its jurisdiction by in fact amending the contract between the parties?
>
> With great respect, I am of the view that it did just that. When the collective bargaining agreement and the booklet outlining the Welfare Plans are read together (as they must be to determine the real *consensus ad idem* between the parties) it seems to me to be abundantly clear that the signatories to the collective bargaining agreement were fully aware of the fact that the welfare plans would have to be adjusted from time to time as conditions demand. This is shown by the portions of the Welfare Plans' booklet quoted above. Viewed in this light, it is apparent to me that when the new agreement became effective in 1965, the words quoted above: "The Company agrees to continue, in accordance with the terms of the present agreements, its support of the welfare plans now available to the employees . . .", did not in any way limit that support to the exact formulae which had been previously followed, but simply provided that the support of any particular Welfare Plan would not be withdrawn. As I have indicated, the proposed integration of the Pension Welfare Plan with the new Canada Pension Plan is certainly contemplated by the parties to the dispute.

With respect, I am unable to agree with these conclusions and I share the view expressed by Dickson J. that in reaching the conclusion which it did, the arbitration board was fulfilling its duty to interpret Art. XIV and it did not, by its decision, amend the collective agreement. When the respondent agreed to continue its support of the welfare

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plans in accordance with the terms of the present agreements that commitment can certainly be construed as an undertaking by it not to discontinue any of those plans, but to maintain them as they then existed. Such an interpretation of the Article is, in my opinion, not only a proper one, but is probably the right one. But whether right or wrong, in my view the board interpreted and did not amend the agreement. This being so, it did not exceed its jurisdiction and its award is valid.

I would allow the appeal and restore the order of the learned judge of first instance. The appellants should be entitled to their costs in this Court and in the Court below.

Appeal allowed with costs.

Solicitors for the appellants: Mitchell, Green & Minuk, Winnipeg.

Solicitors for the respondents: Pitblado, Hoskin & Company, Winnipeg.