

J. R. BALDWIN APPELLANT;

AND

YVES POULIOT RESPONDENT.

1969
*Mar. 7
Apr. 29

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Crown—Pilot—Cancellation of license for violation of by-law—Whether pilotage authority had jurisdiction to order cancellation—Exchequer Court Act, R.S.C. 1952, c. 98—Canada Shipping Act, R.S.C. 1952, c. 29.

The appellant, as the pilotage authority for the district of Quebec, issued an order under which the license of the respondent as a pilot for that district was withdrawn on the ground that he had been guilty of consuming intoxicating liquor while on duty, contrary to the provisions of art. 19(1) of the General By-Law of the Quebec pilotage authority. The order withdrawing the license had been made following an inquiry held under art. 21 of the General By-Law. In an action commenced by the respondent in the Exchequer Court, the trial judge held that art. 19(1) of the General By-Law was null and void on the ground that the pilotage authority had exceeded its power to make by-laws under s. 329 of the *Canada Shipping Act*, R.S.C. 1952, c. 29. The pilotage authority was granted leave to appeal to this Court.

*PRESENT: Fauteux, Abbott, Martland, Ritchie and Hall JJ.

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In enacting s. 329(f) of the *Canada Shipping Act*, Parliament intended to confer upon a pilotage authority wide powers to regulate by by-law the conduct of pilots under its jurisdiction. Article 19(1) of the General By-Law, which prohibits the consumption of alcoholic beverages by a pilot while on duty or about to go on duty, was validly enacted under the authority of the said section 329.

Article 21 of the General By-Law, which authorizes the holding of such an inquiry as was held in this case, was valid.

Couronne—Pilote—Annulation d'un brevet de pilote pour violation de règlement—L'autorité de pilotage avait-elle juridiction pour ordonner l'annulation— Loi sur la Cour de l'Échiquier, S.R.C. 1952, c. 98— Loi sur la marine marchande du Canada, S.R.C. 1952, c. 29.

L'appelant, en sa qualité d'autorité de pilotage du district de Québec, a émis une ordonnance en vertu de laquelle le brevet de pilote de l'intimé lui a été retiré pour le motif qu'il s'était rendu coupable d'avoir consommé de la boisson enivrante pendant qu'il était de service, contrairement aux dispositions de l'art. 19(1) du règlement général de la circonscription de pilotage de Québec. L'ordonnance en question a été émise à la suite d'une enquête tenue sous l'art. 21 du règlement général. Dans une action instituée par l'intimé devant la Cour de l'Échiquier, le juge au procès a statué que l'art. 19(1) du règlement général était nul pour le motif que l'autorité de pilotage avait excédé son pouvoir de faire des règlements sous l'art. 329 de la *Loi sur la marine marchande du Canada*, S.R.C. 1952, c. 29. L'autorité de pilotage a obtenu la permission d'en appeler à cette Cour.

Arrêt: L'appel doit être accueilli.

Le Parlement a eu l'intention, en édictant l'art. 329(f) de la *Loi sur la marine marchande du Canada*, de conférer à l'autorité de pilotage des pouvoirs très étendus d'établir des règlements concernant la conduite des pilotes sous sa juridiction. L'article 19(1) du règlement général, qui défend la consommation par un pilote de liqueurs enivrantes pendant qu'il est de service ou à la veille de l'être, a été valablement passé sous l'autorité dudit article 329.

L'article 21 du règlement général qui autorise la tenue d'une enquête du genre de celle qui a été tenue dans cette cause est valide.

APPEL d'un jugement du Juge Dumoulin de la Cour de l'Échiquier du Canada. Appel accueilli.

APPEAL from a judgment of Dumoulin J. of the Exchequer Court of Canada. Appeal allowed.

Paul Coderre, Q.C., for the appellant.

Raymond Caron, for the respondent.

The judgment of the Court was delivered by

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ABBOTT J.:—Appellant, in his capacity as the pilotage authority for the pilotage district of Quebec (hereinafter referred to as the “Authority”), has appealed from a judgment of the Exchequer Court of Canada, dated November 12, 1968, annulling an Order of the Authority dated May 19, 1967, under which the licence of respondent as a pilot for the said pilotage district was withdrawn on the ground that he had been guilty of having consumed intoxicating liquor while on duty, contrary to the provisions of art. 19(1) of the General By-Law of the Authority (SOR 57-51 as amended). The said Order was made by the Authority, following an inquiry held under art. 21 of the said General By-Law.

On December 10, 1968, I granted leave to appeal from the said judgment, under s. 83 of the *Exchequer Court Act*, subject to respondent's right to argue before the Court as to whether such leave to appeal could be granted. At the hearing before us, counsel for both parties agreed that leave could be granted and I share that view. It seems clear that future rights of appellant as pilotage authority are affected by the judgment *a quo*.

In his action before the Exchequer Court, respondent asked (1) that the Order withdrawing his licence as a pilot be cancelled and annulled by reason of numerous irregularities and illegalities alleged in the Statement of Claim, and (2) that art. 19(1) of the General By-Law of the Authority be declared irregular, illegal and beyond the powers of the Authority to enact under the provisions of s. 329 of the *Canada Shipping Act*, R.S.C. 1952, c. 29, as amended.

Under Rule 149 of the Rules of the Exchequer Court, on the application of respondent, the President of the Exchequer Court ordered that the following questions of law be determined prior to a hearing on the merits.

1. Has the Exchequer Court jurisdiction to hear and determine the present action?
2. Was the Order of the Authority withdrawing the licence of respondent illegal and without effect, because arts. 19(1) and 21 of the General By-Law above referred to are *ultra vires*, the powers of the Authority?

At the hearing in the Court below, it was conceded that the Exchequer Court had jurisdiction in view of the

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decision of this Court in *Jones & Maheux v. Gamache*,¹ judgment in which was rendered on October, 1, 1968. As to the second question, the learned trial judge held that art. 19(1) of the General By-Law of the Authority was null and void, on the ground that the Authority had exceeded its power to make by-laws under s. 329 of the *Canada Shipping Act*, when it adopted the said article. This being sufficient to dispose of the question before him, he did not find it necessary to consider the validity of art. 21 of the said by-law.

The relevant portions of s. 329 and the said art. 19(1) read as follows:

Section 329:

Subject to the provisions of this Part, or of any Act for the time being in force in its pilotage district, every pilotage authority shall, within its district, have power, from time to time, by by-law confirmed by the Governor in Council, to

* * *

- (f) make regulations for the government of pilots, and of masters and mates holding certificates enabling them to act as pilots on their own ships, and for ensuring their good conduct on board ship and ashore and constant attendance to and effectual performance of their duty on board and on shore, and for the government of apprentices, and for regulating the number thereof and for the holding of enquiries either before the pilotage authority or any other person into any matters dealt with in this Part; and without restricting the generality of the foregoing make regulations with respect to every licensed pilot or apprentice pilot who, either within or without the district for which he is licensed,

* * *

- (iii) acts as pilot or apprentice pilot while under the influence of intoxicating liquor or narcotic drugs, while on duty or about to go on duty,

* * *

Article 19(1):

No pilot shall, while on duty or about to go on duty, consume intoxicating liquor or consume or use a narcotic drug; and the licence of any pilot contravening these provisions shall be withdrawn by the Authority.

This Court held in *Jones & Maheux v. Gamache* that the word "government" (in the French version "gouverne") contemplates the conduct of pilots. It seems evident to me that the consumption of alcoholic beverages while on duty comes under that heading.

The learned trial judge was of opinion that sub-para. (iii) of para. (f) of s. 329 had the effect of limiting the

¹ [1969] S.C.R. 119.

general provisions of the text of the section to cases where a pilot was "under the influence" of alcoholic beverages. In other words, it would have to be shown that his behaviour was in fact affected by the alcohol he had consumed. He, therefore, held that the Authority, in enacting art. 19(1) which prohibits the consumption of alcoholic beverages by a pilot while on duty or about to go on duty, had exceeded the power conferred by the statute. With the greatest respect for the opinion of the learned trial judge, I am unable to agree with that interpretation.

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It seems clear that, in enacting s. 329(f), Parliament intended to confer upon a pilotage authority wide powers to regulate by by-law the conduct of pilots under its jurisdiction. That intention is evidenced by the fact that the operative text of para. (f), just prior to an enumeration of certain specified matters, contains the words "and without restricting the generality of the foregoing make regulations with respect to every licensed pilot or apprentice pilot, who, either within or without the district for which he is licensed,..." There then follows an enumeration of seven specified subjects.

A similar question was considered by this Court in *Re George Edwin Gray*.² The issue there related to the power of the Governor-in-Council to make regulations under a provision of the *War Measures Act*, which read as follows:

The Governor in Council shall have power to do and authorize such acts and things, and to make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:—...

There followed an enumeration of six specified subjects.

At p. 158, Fitzpatrick C.J. said this:

But it is said that the enumeration of several matters in section 6 of the "*War Measures Act*" limits the effect of the general power conferred. The answer to this objection, as urged by Mr. Newcombe, would appear to be 1st, that the statute itself expressly provides otherwise; and 2nd, that the reason for introducing specifications was that those specified subjects were more or less remote from those which were connected with the war, and it was therefore thought expedient to declare explicitly that

² (1918), 57 S.C.R. 150, [1918] 3 W.W.R. 111, 42 D.L.R. 1.

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the legislative power of the government could go even thus far. The decisions of the Judicial Committee of the Privy Council, under section 91 of the "*British North America Act*," upon similar language exclude such limited interpretation.

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And at p. 167, Duff J., as he then was, said:

The authority conferred by the words quoted is a law-making authority, that is to say an authority (within the scope and subject to the conditions prescribed) to supersede the existing law whether resting on statute or otherwise; and since the enactment is always speaking, "*Interpretation Act*," section 9, it is an authority to do so from time to time. It follows that unless the language of the first branch of section 6 is affected by a qualifying context or by subsequent statutory modification the order-in-council of the 20th April (the subject matter of which in the above expressed view is indisputably within the scope of the "*War Measures Act*") is authorized by it.

There is no qualifying context. There is in the second branch of the section an enumeration (an enumeration let it be said rather of groups of subjects which it appears to have been thought might possibly be regarded as "marginal instances" as to which there might conceivably arise some controversy whether or not they fell within the first branch of the section) of particular subjects and a declaration that the powers thereby given to the Governor-in-council extended to these subjects, so enumerated; but there is also a declaration that this enumeration shall not have the effect of limiting the "generality" of the language of the first branch of the section—the language quoted above. Thus the context, instead of qualifying the preceding language (the language quoted), emphasizes the comprehensive character of it and pointedly suggests the intention that the words are to be comprehensively interpreted and applied.

As was the case in *Gray*, the enumeration of specified subjects in s. 329(f) does not have the effect, in my opinion, of limiting the general power to make by-laws regulating the conduct of pilots which is conferred under the section. It follows that art. 19(1) of the General By-Law was validly enacted under the authority of the said s. 329.

Respondent also challenged the validity of art. 21 of the General By-Law of the Authority which reads

Article 21

(1) Where a pilot is charged with having violated a provision of this By-law,

- (a) the Authority may appoint a person to hold an inquiry to determine the validity of the charge; or
- (b) with the consent of the pilot charged, the Superintendent may determine the validity of the charge.

(2) Where a person appointed pursuant to paragraph (a) of subsection (1) determines that the pilot charged has violated any of the provisions of this By-law, the Authority may impose on that pilot a penalty not exceeding two hundred dollars or withdraw or suspend his licence or both impose a penalty and withdraw or suspend his licence.

(3) Where the Superintendent, pursuant to paragraph (b) of subsection (1), determines that the pilot charged has violated any of the provisions of this By-law, the Superintendent may impose on that pilot a penalty not exceeding one hundred dollars.

(4) Any penalty imposed on a pilot pursuant to subsection (2) or (3) may be recovered by deduction from moneys owing to that pilot by the Authority and the Authority may suspend the licence of a pilot until the penalty imposed on him has been paid.

The relevant portion of s. 329 of the *Canada Shipping Act* under which this by-law was enacted reads:

Subject to the provisions of this Part, or of any Act for the time being in force in its pilotage district, every pilotage authority shall . . . have power . . . by by-law confirmed by the Governor in Council to . . . make regulations . . . for the holding of enquiries either before the pilotage authority or any other person into any matters dealt with in this Part;

Respondent submitted that art. 21 of the General By-Law is beyond the power of the Authority to enact on the ground that s. 329 does not authorize the Authority to enact a by-law in such general terms, without specifying the procedure to be followed on an inquiry and designating some person or persons other than the Authority to make such enquiry.

I am unable to agree with that submission. In my opinion the enquiry contemplated, under s. 329 of the Act and art. 21 of the General By-Law, is a purely administrative matter to ascertain facts. The power of the person appointed to conduct such enquiry is to make an enquiry as to fact and to report to the Authority. Any decision must be made by the Authority itself which is not bound to accept the finding of the person named to conduct the enquiry. In my view, art. 21 of the General By-Law of the Authority, which authorizes the holding of such an enquiry, is valid.

The present appeal is limited to the question of the validity of arts. 19(1) and 21 of the General By-Law of the Authority. We do not have to consider whether, on the merits, the Authority was justified in adopting the Order which it did withdrawing the respondent's licence.

The appeal should be allowed with costs, the judgment of the Exchequer Court set aside, and the record returned to that Court.

Appeal allowed with costs.

Solicitor for the appellant: D. S. Maxwell, Ottawa.

Solicitor for the respondent: R. Caron, Québec.

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