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BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 298 (*Defendant*) ..... APPELLANT;

AND

L'HOPITAL SAINT-LUC AND JEWISH GENERAL HOSPITAL (*Plaintiffs*) . RESPONDENTS.

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

Labour—Arbitration—Objection to clause in award—Whether arbitrators exceeded jurisdiction—The Public Services Employees' Disputes Act, R.S.Q. 1941, c. 169—The Quebec Trade Disputes Act, R.S.Q. 1941, c. 167.

When the plaintiff hospitals and the defendant union found themselves unable to agree upon a new contract, the matter was referred to a council of arbitration under *The Public Service Employees' Disputes Act,* R.S.Q. 1941, c. 169, and according to the provisions of *The Quebec Trade Disputes Act,* R.S.Q. 1941, c. 167. The council of arbitration rendered its decision which included a formula consisting of the following three clauses:

A partir de la date de ce contrat, l'employeur consent d'engager comme employé seulement les personnes qui donnent volontairement leur autorisation écrite et dûment signée, pour retenir sur leur salaire la cotisation syndicale qui est fixée au montant de $2.50 par mois, pour la durée de la convention.

Il est entendu que cette autorisation ne sera pas demandée comme condition d'emploi, mais sera simplement la modalité pour défrayer le maintien de l'agence négociatrice collective dûment certifiée en vertu de la Loi des relations ouvrières de la province de Québec.

Si l'employeur désire engager une personne qui ne consent pas, pour des raisons personnelles, à donner l'autorisation écrite dont il est question au premier paragraphe, l'employeur pourra engager tel employé, mais dans ce cas l'employeur sera tenu de payer lesdites cotisations en ajoutant le montant de ces cotisations aux argents perçus sous l'article 2, parag. 3.

The hospitals sought the annulment of these three clauses. The trial judge held that the council of arbitration had exceeded its jurisdiction and that the three clauses were therefore illegal and null. This judgment was affirmed by the Court of Queen's Bench. The union appealed to this Court.

Held: The appeal should be dismissed.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], affirming a judgment of Montpetit J. Appeal dismissed.

*PRESENT: Kerwin C.J. and Taschereau, Fauteux, Abbott and Ritchie JJ.

[1] [1960] Que. Q.B. 875.

J. Gazdik, for the defendant, appellant.

J. Filion, Q.C., for the plaintiffs, respondents.

At the conclusion of the argument of counsel for the defendant union, the following judgment was delivered

THE CHIEF JUSTICE (orally, for the Court):—We are all of opinion that the appeal fails and must be dismissed with costs. The decision in *Paquet*[1] is quite distinguishable. It is sufficient to state that in the present case clause 3 of the formula is not a condition of employment; that neither of the other two clauses may be severed and treated in isolation, and that therefore the whole of the formula falls.

Appeal dismissed with costs.

Attorneys for the defendant, appellant: Cutler, Lachapelle & Gazdik, Montreal.

Attorneys for the plaintiffs, respondents: Badeaux, Filion, Badeaux & Beland, Montreal.

[1] *Syndicat Catholique des Employées de Magasins de Québec v. Cie. Paquet Ltée,* [1959] S.C.R. 206, 18 D.L.R. (2d) 346.