LA CITE DE JONQUIERE (*Defendant*) ..... } APPELLANT;

AND

FREDDY MUNGER *ET AL.* (*Plaintiff*) ..... } RESPONDENT.

1963
*Mar. 6
Oct. 1

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

Labour—Collective agreement—Provisions imposed by arbitration award—Alleged error in retroactive clause—Power to amend—Labour Relations Act, R.S.Q. 1941, c. 162A, s. 17—An Act respecting Municipal and School Corporations and their Employees, 1949, 13 Geo. VI (Que.), c. 26, s. 12.

On February 1, 1954, an arbitration council, appointed under the *Act respecting Municipal and School Corporations and their Employees*, 1949, 13 Geo. VI (Que.), c. 26, made an award prescribing the hours of work and wage scales to be in force between the appellant City and its employees. Attached to and forming part of the award was the text of a collective agreement. The award was made retroactive to a specified date, 13 months back. Subsequently, at the instance of the employer, the arbitration council amended the award on the ground of alleged clerical error to provide that all the provisions as to hours of work should become effective only as of the date of the original award.

The plaintiff, an employee of the City, sued for a balance of wages of $829.24, being the amount he would have received had the wage increase been given effect retroactively. The City contended that the

*PRESENT: Taschereau, Cartwright, Fauteux, Abbott and Hall JJ.

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agreement had been validly amended and, alternatively, that the award was null since it was made retroactive for a period of 13 months while under s. 12 of the Act it could not be made retroactive for more than 12 months. The trial judge dismissed the action, but this judgment was reversed by the Court of Queen's Bench. The City was granted leave to appeal to this Court.

Held: The appeal should be dismissed.

The award was not null because it was made retroactive for a period exceeding that which was permitted by the Act. The effect of s. 12 in the circumstances of this case was to render the agreement retroactive for 12 months.

The terms of the agreement were clear and unambiguous and under them the plaintiff was entitled to the amount which has been awarded to him.

The council had no power to make the alterations. It had the right to interpret the award and to correct a simple clerical error, but not to amend it. The error, if there was an error, which the Council purported to correct, was not a clerical error. It was doubtful as to whether it could be said that the council was in error in making the award retroactive. However, if they erred in so doing it was in a matter of substance and not in expression.

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

Toussaint McNicoll, Q.C., for the defendant, appellant.

Yves Pratte, Q.C., for the plaintiff, respondent.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This appeal is brought, pursuant to leave granted by this Court, from a unanimous judgment of the Court of Queen's Bench (Appeal Side) of the Province of Quebec[1], which reversed the judgment of the learned trial judge and gave judgment in favour of the respondent for $889.24 with interest and costs.

The facts are not in dispute. For a number of years the respondent has been employed by the appellant as a truck driver (snow-blower and watering truck, Class A) and the mis-en-cause, Le Syndicat National Catholique des Employés Municipaux de Jonquière Inc., has been duly certified by the Labour Relations Board of the Province of Quebec as the bargaining agent of all employees of the appellant.

Prior to December 31, 1952, the working conditions of the respondent were governed by the terms of a collective

[1] [1962] Que. Q.B. 381.

labour agreement made between the appellant and the mis-en-cause, which terminated on the last mentioned date. The appellant and the mis-en-cause were unable to agree upon the terms of a new collective labour agreement and the dispute was referred to a Council of Arbitration, hereinafter referred to as "The Council", set up in accordance with the provisions of *An Act respecting Municipal and School Corporations and their employees,* Statutes of Quebec, 13 Geo. VI, c. 26, hereinafter referred to as "The Act". The Council heard the parties and made its award on February 1, 1954.

By this award the Council prescribed the working conditions which were to be in force between the appellant and its employees for the two-year period from January 1, 1953 to December 31, 1954. Attached to and forming part of the award was the text of a collective labour agreement to which the award referred as follows:

> Pour conclure, le présent tribunal ordonne aux parties de signer la convention collective dont le texte est annexé.
>
> A défaut par les parties de signer ladite convention collective, le tribunal décrète que la présente sentence arbitrale aura le même effet que la signature par les parties de ladite convention collective.

The award was signed by all members of the Council although the member appointed by the union appended a report dissenting in part; it was delivered on February 1, 1954, to the clerk of the Council to be communicated to the parties and was immediately communicated to them.

The relevant terms of the collective agreement created by the award, particularly those relating to hours of work and wage scales, are set out in the reasons of Montgomery J. and need not be repeated.

The opening paragraph of art. 20 of the agreement reads as follows:

> La présente convention entrera en vigueur rétroactivement à compter du 1er janvier 1953 pour une période de deux années, devant se terminer le 31 décembre 1954.

It was argued by the appellant at the trial and in the Court of Queen's Bench that the whole agreement was null because it was made retroactive for thirteen months while under s. 12 of the Act it could not be made retroactive for more than twelve months. I did not understand this argument to be pressed before us but, in any case, I would reject it for the reasons given by the learned trial

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judge which were quoted and accepted by Montgomery J. The effect of s. 12 in the circumstances of this case is to render the agreement retroactive to February 1, 1953, instead of to January 1. This view was apparently taken by the legal advisers of the respondent as his claim was restricted to the period from February 1, 1953 to February 1, 1954.

I agree with Montgomery J. that the terms of the agreement are clear and unambiguous and that under them the respondent is entitled to the amount which has been awarded to him.

The question on which there has been a difference of opinion between the learned trial judge and the Court of Queen's Bench is whether the terms of the agreement forming part of the award of February 1, 1954, were validly varied by a document dated February 24, 1954, signed by two members of the Council, under the following circumstances. On or about February 6, 1954, the appellant gave notice to the members of the Council of a motion asking that the Council correct a manifest clerical error in the award concerning the retroactivity of the provisions as to hours of work. The member of the Council appointed by the union notified the Council that he refused to take part in the hearing of the motion on the ground that the award as delivered represented the decision arrived at by the Council and that it was without jurisdiction to alter it. The remaining members of the Council heard the motion and on February 24, 1954, purported to deliver a judgment amending the award and the agreement forming part thereof to provide that all the provisions as to hours of work should become effective only as of February 1, 1954.

I agree with the unanimous opinion of the Court of Queen's Bench that the Council had no power to make this alteration.

I wish to adopt the following passage in the reasons of Montgomery J.:

> I am satisfied that the council had the right to interpret the award but not to amend it. This does not mean, however, that it did not have the right to correct a simple clerical error. Anybody having quasi-judicial powers must have such a right, otherwise the consequences of a simple slip in drafting an award might be disastrous. The right of a court to correct a clerical error is expressly recognized by Article 546 of the Code of Civil Procedure. This article is not directly applicable in the present instance, but we may, in my opinion, apply the same principle.

I find myself in complete agreement with the reasons of Montgomery J. for holding that the error, if error it was, which the majority of the Council purported to correct by the document of February 24, 1954, was not a clerical error. There is nothing that I wish to add to those reasons.

I share the doubts of Montgomery J. as to whether it can be said that the Council was in error in making the award retroactive; if, however, they erred in so doing it was in a matter of substance; there was no error in expressing in the words of the award and of the agreement which formed an integral part of it the decision at which the Council had arrived.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Attorney for the defendant, appellant: T. McNicoll, Jonquière.

Attorneys for the plaintiff, respondent: Pratte, Coté, Tremblay & Dechêne, Quebec.