1962

*Feb. 7, 8
Mar. 26

HOWE SOUND COMPANY ..... APPELLANT;

AND

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CANADA), LOCAL 663 ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Labour—Certiorari—Collective agreement—Union's grievance referred to board of arbitration—Whether certiorari lies against arbitration board—Labour Relations Act, 1954 (B.C.), c. 17.

The respondent union was certified as bargaining representative of the employees of company A which later ceased operations and dissolved. Subsequently the appellant company was incorporated and took over the operations of A and in due course entered into a collective agreement with the respondent. By article 23 of the agreement, the appellant agreed to contribute to a retirement benefit plan for employees and agreed "to recognize past service of those ex-employees of [A] who have not withdrawn from the plan prior to the date of this agreement". The union alleged that the company refused to carry out the provisions of article 23 the effect of which, as claimed by the union, was to cover all former employees of A who had not withdrawn from the plan prior to the date of the collective agreement, whether they had been rehired by the appellant company or not. The matter was referred to a board of arbitration the creation of which was provided for by the agreement; two members were appointed by the parties and a third by the Labour Relations Board pursuant to a request of the parties.

The company consistently maintained its position that the alleged grievance was not a proper subject for arbitration under the terms of the agreement. The majority of the arbitration board ruled that the board had jurisdiction to proceed with the hearing of the union's grievance. On an application by the company for a writ of *certiorari*, it was directed that the proceedings be moved into the Supreme Court of British Columbia and that the ruling of the board be quashed. In the Court of Appeal, for the first time, the question was raised whether *certiorari* would lie against the board; that Court held unanimously that it would

PRESENT: Kerwin C.J. and Taschereau, Locke, Cartwright and Martland JJ.

1962

HOWE SOUND CO. v. INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

not on the ground that *certiorari* does not lie against an arbitrator or arbitration board unless the arbitrator or board is a statutory arbitrator or statutory board. From that judgment the company appealed to this Court. It was argued that the provision in the agreement that the decision of the board shall be final, read in the light of s. 22(1) of the *Labour Relations Act*, 1954 (B.C.), c. 17, requiring "a provision for final and conclusive settlement . . . of all differences", had the effect of prohibiting recourse to the courts by either party to question the jurisdiction of the board or the validity of its award, and thus left prohibition and *certiorari* as the only available remedies.

Held: The appeal should be dismissed.

The appellant's submission that by the combined effect of ss. 21, 22, 24 and 60 of the *Labour Relations Act* the arbitration board set up under the terms of the collective agreement was, in substance, a statutory board to which the parties were required to resort was rejected.

Even if the agreement had not provided that it was made in recognition of and subject to all Dominion and provincial regulations pertaining thereto and to the laws of British Columbia, and that the decision of the arbitration board should be final, insofar as such decision was not inconsistent with any pertinent law, order or directive, words clearer than those used in the agreement and in the statute would be necessary to have the effect of ousting the jurisdiction of the courts. It was open to the parties should occasion arise, to question the jurisdiction of the board or the validity of any award it makes in such manner as is permitted by the *Arbitration Act*, R.S.B.C. 1960, c. 14 or by the common law. For these reasons and those of the Court below this arbitration board was not one to which *certiorari* lay and consequently the appeal failed.

R. v. National Joint Council for the Craft of Dental Technicians, [1953] 1 Q.B. 704, referred to.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], setting aside a judgment of McInnes J. given on an application for a writ of *certiorari* and directing that the proceedings before a board of arbitration be moved into the Supreme Court of British Columbia and quashing a decision of the board.

J. J. Robinette, Q.C., and *J. G. Alley*, for the appellant.

W. J. Wallace, for the respondent.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This appeal is brought, pursuant to leave granted by this Court, from a judgment of the Court of Appeal for British Columbia[1] whereby a judgment of McInnes J. was set aside. The last-mentioned judgment was given on an application for a writ of *certiorari* and directed that the proceedings before a board of arbitration

[1] (1961-62), 36 W.W.R. 181, 29 D.L.R. (2d) 76.

1962

HOWE SOUND CO. v. INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

Cartwright J.

be moved into the Supreme Court of British Columbia and that a decision or ruling of the board made on November 18, 1960, be quashed.

In order to make clear the questions which arise on this appeal it is necessary to set out the facts in some detail.

On June 8, 1944, the respondent was certified as bargaining representative of the employees of Britannia Mining and Smelting Company Limited, hereinafter sometimes referred to as "the Britannia Company". On December 23, 1958, the Labour Relations Board, established under the *Labour Relations Act*, 1954 (B.C.), c. 17, varied the certificate of June 8, 1944, by deleting the name of the Britannia Company each time it appeared therein and substituting in its place the name Howe Sound Company.

The details of the arrangement by which the appellant took over the operations formerly carried on by the Britannia Company are not set out in the record before us. The certificate of the Labour Relations Board dated December 23, 1958, contains the recital that the Board is satisfied that the name of the employer has been changed to "Howe Sound Company". The factum of the appellant puts the matter as follows:

> The appellant was successor to Britannia Mining & Smelting Co. Ltd. That company ceased its operations some considerable time before the present agreement came into force and the company dissolved. Subsequently the present company was incorporated and commenced operations and in due course entered into the present Collective Agreement. The respondent had obtained the exclusive right to represent the appellant's employees in collective bargaining by a ruling of the Labour Relations Board dated November 23rd, 1958.

In the factum of the respondent it is put as follows:

> The employer's operation was taken over by the appellant, Howe Sound Company, and the respondent's bargaining certificate from the provincial Labour Relations Board was amended accordingly on December 23, 1958.

The Standard Life Assurance Company issued a group pension policy to the Britannia Company dated August 21, 1956. By endorsement, dated February 27, 1959, attached to the policy it is recited that by an assignment dated August 9, 1958, the Britannia Company had assigned all its rights in the policy to the appellant and it is declared

[1] (1961-62), 36 W.W.R. 181, 29 D.L.R. (2d) 76.

and agreed that with effect from the last-mentioned date the person assured and employer under the policy shall be Howe Sound Company.

The policy provides pensions and death benefits for employees. The premiums are payable partly by the employees who participate in the plan and partly by the appellant. Pursuant to the policy a certificate and a booklet were given to each participating employee. Membership in the plan was made compulsory for new employees and irrevocable for those who had joined it so long as they continued in the employment of the appellant.

Paragraph 22 of the booklet appears to be in accordance with condition 8 of the policy; it reads as follows:

22. WHAT HAPPENS IF I LEAVE THE COMPANY'S SERVICE?

(*a*) You may take a return of all your contributions with compound interest in cash (See Clause 24);

or (*b*) You may take a paid-up deferred retirement benefit for the amount secured by your past contributions with payments commencing at your Normal Retirement Age.

If you leave after not less than five years' participation in the Plan as a contributing member and elect option (*b*), you will also receive the undernoted percentage of the retirement benefit purchased by the Company's contributions on your behalf up to the date of withdrawal, in the form of paid-up retirement benefit at Normal Retirement Age.

Years of participation in the Plan	*Percentage of retirement benefit purchased by the Company's contributions*
5	10%
6	20%
7	30%
8	40%
9	50%
10	60%
11	70%
12	80%
13	90%
14 (or within 10 years of Normal Retirement Age)	100%

Paragraph 29 of the booklet reads as follows:

29. DOES THE PLAN AFFECT MY FUTURE EMPLOYMENT?

The Plan does not guarantee you future employment with the Company nor does it in any way restrict the right of the Company to terminate your employment.

A collective agreement, dated November 27, 1958, and effective from December 1, 1958, was entered into between the appellant and the respondent. This agreement was to

1962

HOWE SOUND CO. v. INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

Cartwright J.

remain in effect for two years and to remain in full force thereafter "until superseded by a new agreement or until negotiations are broken off by failure to agree."

Clauses A and B and the opening sentence of clause C of article 16 of the agreement read as follows:

ARTICLE 16.

GRIEVANCE PROCEDURE:

A. In the case of any dispute or grievance arising as to the interpretation of this Agreement or any local agreement made in connection therewith, whether the dispute or grievance is claimed by the Company to have arisen, or by any persons employed, or by the men as a whole, then the parties shall endeavour to settle the matter as hereinafter provided. But before any grievances or disputes shall be submitted to the Grievance Committee, the person or persons affected shall endeavour, by personal application to the shiftboss or foreman in charge of the work where the dispute arises, to settle the matter. In a case where a workman is making a personal application as referred to above and wishes to be accompanied by one member of the Grievance Committee, he shall be permitted to do so. The first step in the grievance procedure may be submitted in writing.

B. In the case of any local dispute arising in or about the property of the Company, and which there has been a failure to reach an agreement between the employee and the shiftboss or foreman in charge of the work, the matter shall be submitted in writing to the Grievance Committee for that particular plant and to the Superintendent who shall endeavour to settle the matter and, if they agree, their decision shall be final. In the event of the failure of the Plant Grievance Committee and the Superintendent of the plant or department to settle any dispute so referred to them, the matter in dispute shall be submitted in writing to the Manager, and the representative of the International Union of Mine, Mill and Smelter Workers or the General Grievance Committee of the local Union, and all parties shall endeavour to settle the dispute as speedily as possible; if they agree their decisions shall be final. In the event of their failure to agree, they shall endeavour to select an Arbitration Board of three (3). The arbitrator selected by the Union and the one selected by the Company shall be selected within five (5) working days (excluding Sundays and holidays) following the receipt of the written request originating the arbitration proceedings. Those who are selected shall, within three (3) working days (excluding Sundays and holidays) after the appointment of the last member of the Board, choose an additional member who shall be Chairman. In the event of failure to agree upon the additional member to act as Chairman, the parties involved shall request the Labour Relations Board (B.C.) to appoint the Chairman, further requesting that this appointment be made within seven (7) days of date such request is received (excluding Sundays and holidays). The decision of the Arbitration Board shall be final and binding on both parties, insofar as such decision is not inconsistent with any law, order or directive of any Government, agency of Government, or other body constituted to enact, administer or issue such law, order or directive, and such authority has jurisdiction on the date of the rendering of such decision.

In no event shall the Board have the power to alter, modify or amend this Agreement in any respect.

Expenses and compensation of the arbitrators selected by the parties as members of the Arbitration Board, shall be borne by the respective organizations selecting them. The expense and compensation, if any, of the Chairman of the Arbitration Board shall be divided equally between the parties involved. The Arbitration Board shall establish its own rules of procedure. Such rules, however, must not deny the right of hearing to the parties involved in the dispute.

C. In the meantime, and in all cases while disputes are being investigated and settled, the employee or employees or all other parties involved must continue to work pending investigation and until final decision has been reached.

Article 25 of the agreement reads as follows:

ARTICLE 25

THIS AGREEMENT between the Union and the Company is made in recognition of and subject to the provisions of all Dominion and/or Provincial regulations pertaining thereto and to the laws in force in the Province of British Columbia from time to time.

Article 23 of the agreement reads as follows:

ARTICLE 23

RETIREMENT PLAN:

The Company agrees to contribute to a Retirement Benefit Plan in accordance with an agreement between Howe Sound Company and The Standard Life Assurance Company. For the purpose of this Article the Company agrees to recognize past service of those ex-employees of Britannia Mining and Smelting Co. Limited (dissolved) who have not withdrawn from the Plan prior to the date of this agreement.

Under date of September 29, 1960, a document headed "Grievance Report, Local 663, I.U.M.M. & S.W." was signed by G. A. Bennett, business agent of the respondent. It reads as follows:

Nature of Grievance.

The effect of Article 23 of the current collective agreement signed and agreed between the Howe Sound Company Britannia Division and Local 663, of the International Union of Mine, Mill and Smelterworkers (Canada) of Britannia Beach, B.C. is to cover all former employees of the Britannia Mining and Smelting Co. Limited (whether such employees were hired by the Howe Sound Company Britannia Division or not) following the shutdown of February 28, 1958 as regards their past service with the Britannia Mining and Smelting Co. Ltd., who had not withdrawn from the Plan prior to the date of the said collective agreement; but the Company has refused to carry out the provisions of Article 23.

1962

HOWE SOUND CO. v. INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

Cartwright J.

By letter dated September 29, 1960, Mr. Bennett wrote to Mr. Pringle, the manager of the appellant. This letter reads in part:

> At our meeting today it was agreed by the Company and the Union that the above grievance be referred to a Board of Arbitration as we had been unable to reach agreement.
>
> It has also been mutually agreed that, as discussions had already taken place between Mr. G. A. Bennett, Business Agent of Local 663 and the Management of Howe Sound Company (Britannia Division) the first two stages of grievance proceedings have been completed.

The reply to this letter is dated October 5, 1960. It was written by the solicitors for the appellant and reads in part:

> With reference to the second paragraph of your letter, we wish to advise that the Company reserves the right to take the position before the Board of Arbitration that the alleged grievance is not properly arbitrable under Article 16 of the present Collective Bargaining Agreement. We are strengthened in this position as it appears from the prior discussions which have taken place that this is an attempt on the part of the Union to have determined whether or not certain ex-employees of Britannia Mining and Smelting Co. Limited are still covered by the Group Pension Policy underwritten by The Standard Life Assurance Company. In our opinion, if any ex-employee claims to be entitled to participate in the scheme to a greater extent than to have paid back to him his contributions plus interest, he should begin a court action against the assurance company and our client. A court decision would be binding on all the parties. Such is not the case with respect to a decision of the Board of Arbitration. For example, how could a decision in favour of the Union or the Company bind the assurance company or an ex-employee who has not been rehired by Howe Sound? In these circumstances, we will have to contend before the Board that, in part at least, the matter is not properly a grievance.

The appellant has consistently maintained its position that the alleged grievance is not a proper subject for arbitration under the terms of article 16 and I think it clear that by taking part in the arbitration in the manner hereafter mentioned it has not lost its right to assert that the arbitrators have no authority to make an award. It is not necessary to set out the repeated protests made on behalf of the appellant.

The law on this point is correctly stated in the following passages in Russell on Arbitration, 16th ed., at pages 162 and 163:

> If a party to a reference objects that the arbitrators are entering upon the consideration of a matter not referred to them and protests against it, and the arbitrators nevertheless go into the question and receive evidence on it, and the party, still under protest, continues to attend before the

arbitrators and cross-examines the witnesses on the point objected to, he does not thereby waive his objection, nor is he estopped from saying that the arbitrators have exceeded their authority by awarding on the matter.

* * *

Continuing to take part in the proceedings after protest made does not amount to consent.

The respondent appointed Mr. Harvey Murphy and the appellant appointed Mr. J. A. C. Ross to be members of the board of arbitration. They failed to agree upon a third member and on October 17, 1960, requested the Labour Relations Board to appoint a third member to act as chairman. Pursuant to this request the Labour Relations Board appointed Professor C. B. Bourne.

It is stated in the respondent's factum that the board met on November 4, 1960, that counsel for the appellant raised a preliminary objection to the board's jurisdiction, that the board reserved its decision on the objection and adjourned the hearing until November 21, 1960.

In a letter to Professor Bourne dated November 9, 1960, the solicitors for the respondent refer to suggestions made by him at "the first sittings of the Arbitration Board on the 4th instant". The letter reads in part:

In reference to the four specific questions which were asked, I am instructed as follows:

1. As to the identity of the person or persons on whose behalf the grievance is taken: this grievance is taken by the above Union on behalf of all ex-employees of the Britannia Company who had not, prior to the 1st day of December, 1958, withdrawn from the retirement plan in question. In this connection, it should be made clear that the Union does not propose to arbitrate the case of a single individual, but desires to arbitrate the rights of this group under Section 23.

2. As to whether the grievance and arbitration are stated under Article 16 A or B: the grievance and arbitration are under Article 16 A.

3. As to the manner in which it claimed the company has failed to recognize the rights of the ex-employees in question: this, of course, is a matter of evidence which will be presented before the Board at the appropriate time.

4. As to the issue of whether the dispute is between the parties to the agreement: the Union desires to submit argument on this issue at the appropriate time.

On November 18, 1960, the board gave its decision, written by the chairman and concurred in by Mr. Murphy.

1962

HOWE SOUND CO. v. INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

Cartwright J.

After reciting the making and reiteration of the appellant's objection to the jurisdiction of the board the reasons continue:

> The objection is based on the grounds (i) that the Union is making a claim on behalf of persons who are not employees of the Company and are not covered by the collective agreement, and (ii) that the disposition of the claim will involve determining the rights of an insurance company which is not a party to the collective agreement.
>
> The dispute is about the meaning of Article 23 of the collective agreement made by the Company and the Union. The Union is contending that by it the Company made certain promises to the Union in relation to former employees of the Britannia Mining & Smelting Co. Ltd., whose successors the Company is, and that those promises are not being fulfilled.
>
> By Article 16 of the collective agreement the Company and the Union agreed to arbitrate "any dispute or grievance arising as to the interpretation of this agreement . . . whether the dispute or grievance is claimed by any person employed, or by the men as a whole . . ." when they fail to reach agreement about such disputes. The Company argues that this article only applies to the grievances of specific present employees.
>
> This interpretation of Article 16 is, in my opinion, too restrictive. When the Union entered into the agreement with the Company it was acting on behalf of "the men as a whole" and when it alleges that the Company is not complying with an article of the agreement, it is complaining on behalf of "the men as a whole". It is not necessary for the Union to show that some particular employee is prejudiced. If the Company fails to carry out any term of the collective agreement, it is a matter of concern for the whole body of employees covered by the agreement and they have a grievance even though the immediate beneficiary of the promise by the Company may be a third party to the agreement. I hold, therefore, that the grievance of the Union, involving as it does the interpretation of an article of the collective agreement, comes within the provisions of Article 16.
>
> The objection that the rights of third parties are involved is also, in my opinion, not sufficient ground for holding that the Board cannot deal with the dispute between the parties, to this collective agreement. It is true that the decision of the Board cannot affect the rights of third parties. But that is not sufficient reason for the Board's refusing to declare the rights of the parties to the collective agreement as provided for by Article 16. In any case, at the present stage of this arbitration, before the hearing has even started, it is not certain that any rights of third parties will be adversely affected by anything the Board decides.
>
> My decision, then, is that the Board has jurisdiction to proceed with the hearing of the Union's grievance.

It is stated in the respondent's factum that the board reconvened on November 21, 1960, that at the board's request counsel agreed on a formulation of the issue before it, that

the union called its first witness and the proceedings stopped upon the board being served with the notice of motion for a writ of *certiorari*. The issue formulated reads as follows:

Question Before Board

November 21, 1960.

Does Article 23 of the Collective Agreement dated December 1, 1958 impose on the Company the obligation to make pension contributions for past service of ex-employees of Britannia Mining and Smelting Co., Limited who had not withdrawn prior to the date of the agreement from the Retirement Benefit Plan referred to in that Article and who have not been rehired by the Company since that date?

John Stanton
Counsel for Local 663
I U M M S W
Under Protest
as recorded
A. W. Fisher.

It is said in the appellant's factum that at the hearing before McInnes J. counsel for the respondent stated that none of the persons referred to in the question quoted above had been hired by the appellant.

The grounds set out in the notice of motion are lengthy but they are really little more than repetitions in various forms of ground 1(a) which reads as follows:

> (a) There was no statement before the said Board or submission to it of a dispute or grievance between the said Company and the said Union or any other person, persons or body of persons entitled to claim the benefit of the collective agreement between the said Company and the said Union dated the 27th day of November, 1958;

After reading the whole record with care I am unable to say just what it is of which the union complains. It is, I think, to be regretted that the board did not require the union to state plainly what it asserts the company has done or has failed to do in contravention of the combined effect of article 23 of the collective agreement and the agreement with the Standard Life Assurance Company referred to therein. Arbitrators have implied power to order each party to deliver particulars so as to define the actual point or points in dispute between the parties; see Russell on Arbitration, 16th ed., at pages 150 and 151. However, this was not done and we must deal with the matter on the material before us.

1962

HOWE SOUND CO. v. INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

Cartwright J.

The proceedings in the courts below have followed a somewhat unusual course. Substantially the only question raised on the motion before McInnes J. was whether the board had jurisdiction to determine the matter referred to it, but at the commencement of his reasons the learned judge says:

> At the outset objection was taken by counsel for the company to the jurisdiction of the Board to hear and determine the matter referred to it. In the view that I take of the matter it is not necessary to determine the question of jurisdiction and I will assume for the purposes of this judgment that the Board had jurisdiction without necessarily so finding.

The learned Judge goes on to consider the terms of the collective agreement and certain sections of the *Labour Relations Act* and says in part:

> The plain meaning and intent of the whole agreement, and particularly Articles 16 and 23, is that employees of the present company who were formerly employed by the Britannia company shall retain the full benefits to which they were entitled under the pension plan which was in existence between the old company and its employees. No other meaning is possible or was ever intended to be conveyed by the terms of the present Collective Agreement and in particular, Article 23 thereof.

With the greatest respect, that was not the question which the learned Judge was called upon to decide; his function was to determine whether or not the board had jurisdiction to decide it.

In the result McInnes J. ordered that the ruling of the board be quashed.

In the Court of Appeal, for the first time, the question was raised whether *certiorari* would lie against this arbitration board; that Court held unanimously that it would not and consequently allowed the appeal without dealing with any other questions.

The issue is succinctly stated in the following paragraph in the reasons of Tysoe J.A.:

> *Certiorari* does not lie against an arbitrator or arbitration board unless the arbitrator or board is a statutory arbitrator or statutory board; that is a person or board to whom by Statute the parties must resort. Prerogative Writs of *Certiorari* and Prohibition do not go to ordinary private arbitration boards set up by agreement of parties: *R. v. National Joint Council for the Craft of Dental Technicians* [1953] 1 Q.B. 704. We must, therefore, decide whether this arbitration board is a private arbitration body set up by agreement, or a statutory board.

In *R. v. National Joint Council for the Craft of Dental Technicians*[1], Lord Goddard says at pages 707 and 708:

> But the bodies to which in modern times the remedies of these prerogative writs have been applied have all been statutory bodies on whom Parliament has conferred statutory powers and duties which, when exercised, may lead to the detriment of subjects who may have to submit to their jurisdiction.

and at page 708:

> There is no instance of which I know in the books where *certiorari* has gone to any arbitrator except a statutory arbitrator, and a statutory arbitrator is one to whom by Statute the parties must resort.

I did not understand counsel for the appellant to question the accuracy of these passages as general statements of the law. He submitted, however, that by the combined effect of ss. 21, 22, 24 and 60 of the *Labour Relations Act* the arbitration board set up under article 16 of the collective agreement is, in substance, a statutory board to which by statute the parties must resort. He argued that while its creation is provided for and its powers are conferred upon it by the agreement and two of its members are appointed by the parties and the third pursuant to the request of those two, all these things are agreed to not of the free will of the parties but under the compulsion of the statute. In support of this submission the appellant relies, amongst others, on the case of *Re International Nickel Company of Canada Limited and Rivando*[2], a unanimous decision of the Court of Appeal for Ontario.

Whether this argument is entitled to prevail must depend chiefly on the wording of the statute which is said to compel the creation of the tribunal and to require the parties to resort to it, and there are differences between the Ontario legislation and that in force in British Columbia.

The sections of the *Labour Relations Act* upon which the appellant relies read as follows:

> 21. Every person who is bound by a collective agreement, whether entered into before or after the coming into force of this Act, shall do everything he is required to do, and shall refrain from doing anything that he is required to refrain from doing, by the provisions of the collective agreement, and failure to so do or refrain from so doing is an offence against this Act.

[1] [1953] 1 Q.B. 704.

[2] [1956] O.R. 379, 2 D.L.R. (2d) 700.

1962

HOWE SOUND CO. v. INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS

Cartwright J.

22. (1) Every collective agreement entered into after the commencement of this Act shall contain a provision for final and conclusive settlement without stoppage of work, by arbitration or otherwise, of all differences between the persons bound by the agreement concerning its interpretation, application, operation, or any alleged violation thereof.

(2) Where a collective agreement, whether entered into before or after the commencement of this Act, does not contain a provision as required by this section, the Minister shall by order prescribe a provision for such purpose, and a provision so prescribed shall be deemed to be a term of the collective agreement and binding on all persons bound by the agreement.

24. Each of the parties to a collective agreement shall forthwith, upon its execution, file one copy with the Minister.

60. Every trade-union, employers' organization, or person who does anything prohibited by this Act, or who refuses or neglects to do anything required by this Act to be done by him, is guilty of an offence and, except where some other penalty is by this Act provided for the act, refusal, or neglect, is liable, on summary conviction:

(*a*) if an individual, to a fine not exceeding fifty dollars; or

(*b*) if a corporation, trade-union, or employers' organization, to a fine not exceeding two hundred and fifty dollars.

Counsel for the appellant argues that the provision in the agreement that the decision of the arbitration board shall be final, read in the light of s. 22 (1) of the Act requiring "a provision for final and conclusive settlement . . . of all differences", has the effect of prohibiting recourse to the courts by either party to question the jurisdiction of the board or the validity of its award, and thus leaves prohibition and *certiorari* as the only available remedies.

Even if the agreement did not contain article 25 and the concluding sentence of the first paragraph of clause B of article 16, quoted above, it would be my opinion that words clearer than those used in the agreement and in the statute would be necessary to have the effect of ousting the jurisdiction of the courts. In my view it is open to the parties should occasion arise, to question the jurisdiction of the board or the validity of any award it makes in such manner as is permitted by the *Arbitration Act*, R.S.B.C. 1960, c. 14 or by the common law.

For these reasons and those given by Tysoe J.A., with which I am in substantial agreement, I have reached the conclusion that this arbitration board is not one to which *certiorari* lies and that consequently the appeal fails.

I share the view of Tysoe J.A. that the question of what the situation would be should the parties to a collective agreement fail to include in it a provision for final and conclusive settlement without stoppage of work so as to bring into operation the provisions of subs. (2) of s. 22 of the *Labour Relations Act* should be reserved for future consideration.

It is to be regretted that after hearings in three Courts the parties have not received an answer to the question whether the board has jurisdiction to deal with the matter submitted to it but having held that *certiorari* does not lie it seems to me that we can only do as the Court of Appeal did and leave the parties to whatever recourse they may have.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Davis, Hossie, Campbell, Brazier & McLorg, Vancouver.

Solicitors for the respondent: Stanton & Buckley, Vancouver.