

1926
*Feb. 15.
*Feb. 22.

QUEBEC RAILWAY LIGHT & POWER } APPELLANT;
COMPANY (DEFENDANT) }
AND
CANADIAN PACIFIC RAILWAY } RESPONDENT.
COMPANY (PLAINTIFF) }

Railway—Crossing of tracks by two railways—Order of the Board of Railway Commissioners—Signalman paid by one company—Re-imbursement of half by other company—Injury to signalman—Joint liability.

The appellant company obtained leave from the Board of Railway Commissioners to cross the tracks of the respondent company and the Order of the Board provided that the respondent company “shall employ and pay the signalmen necessary to operate the interlocking plant, at the joint expense” of both companies.

Held that the compensation under the Workmen’s Compensation Act granted to a signalman injured while lifting a semaphore lever was an expenditure within the terms of the order.

APPEAL from a decision of the Court of King’s Bench, appeal side, province of Quebec, affirming the judgment of the Superior Court and maintaining the respondent’s action. The material facts of the case and the questions at

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

issue are fully stated in the above head-note and in the judgment now reported.

St. Laurent K.C. and *P. Taschereau* for the appellant.

Tilley K.C. and *Gravel K.C.* for the respondent.

The judgment of the court was delivered by

MIGNAULT J.—This is an appeal by special leave of this court from a judgment of the Court of King's Bench, Quebec.

On the 24th of June, 1910, the appellant obtained leave from the Board of Railway Commissioners for Canada to cross the tracks of the respondent in St. Valier street, in the city of Quebec. By the order of the Board, certain directions were given as to the installation of semaphores, of a diamond and derails, of the interlocking plant and of an annunciator to warn signalmen of the approach of trains. The order further contained the following provision:—

7. The Canadian Pacific Railway Company shall employ and pay the signalman necessary to operate the interlocking plant, at the joint expense of the applicant company (the present appellant); the applicant company to reimburse the Canadian Pacific Railway Company to the extent of one half the said expense upon the rendering of monthly accounts by the Canadian Pacific Railway Company to the applicant company.

An accident having happened to a signalman while lifting a semaphore lever, the workman brought an action against the present respondent under the Quebec Workmen's Compensation Act (R.S.Q. 1909, ss. 7321 et seq.), and was awarded \$3,000 as compensation, with interest and costs. The respondent had contested the plaintiff's action, so that it was condemned to pay a considerable sum for costs as well as for the interest on the capital sum awarded. The respondent paid the amount of the judgment, and claimed one half of its expenditure from the appellant. It was granted merely one half of the capital sum awarded to the signalman, the court being of the opinion that it had uselessly contested the latter's action, thus incurring by its own fault liability for the costs of contestation and for interest. This judgment having been affirmed by the Court of King's Bench, the appellant obtained special leave to appeal to this court.

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Mignault J.

We are all of opinion that the compensation granted to the signalman under the statute is an expenditure which comes fairly within the terms of the seventh paragraph of the order of the Board of Railway Commissioners. The respondent is ordered to employ and pay the signalmen necessary to operate the interlocking plant at the joint expense of the appellant, and the obligation of the latter is to reimburse the respondent to the extent of one half "the said expense." To borrow the language of their Lordships of the Judicial Committee in *Workmen's Compensation Board v. Canadian Pacific Railway Co.* (1), the right conferred on the workman, by the *Workmen's Compensation Act*, is the result of a statutory condition of the contract of employment made with him, and his right to compensation arises, not out of tort, but out of his statutory contract. The *Workmen's Compensation Act* in question in that case was the statute passed by the legislature of British Columbia, but the language of their Lordships applies with equal force to the Quebec *Workmen's Compensation Act*. The right to compensation under that Act does not arise out of a fault committed or presumed, but is a right possessed by the workman under his contract of employment. It follows that when the respondent paid this compensation to the signalman, it made a payment to which paragraph 7 of the order applies, and the liability of the appellant to reimburse one half of this payment cannot be questioned.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *St. Laurent, Gagné, Devlin & Taschereau.*

Solicitors for the respondent: *Pentland, Grant, Thomson & Hearn.*

(1) [1920] A.C. 184, at p. 191.