1961

*Oct. 10, 11
Dec. 15

FOREST INDUSTRIAL RELATIONS LIMITED and INTERNATIONAL WOODWORKERS OF AMERICA and the LABOUR RELATIONS BOARD OF THE PROVINCE OF BRITISH COLUMBIA (*Defendants*) } APPELLANTS;

AND

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 882 (*Prosecutor*) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Labour—Administrative law—Oral hearing by Labour Relations Board on union's application for certification—Further representations by union in writing and replies thereto—No opportunity for union to answer replies—Propriety of Board's procedure—Labour Relations Act, 1954 (B.C.), c. 17, s. 62(8).

The respondent union sought from the Labour Relations Board of British Columbia and was refused certification as representative of the engineers and firemen in ten plants of the lumber industry. Its application was opposed by the appellant company as representative of the industry, and by the appellant union, International Woodworkers of America, the certified bargaining agent for the whole industry. Following an oral hearing at which all parties had full opportunity to call evidence, to cross-examine witnesses and submit argument, the Board visited two representative plants. Shortly before the view was held, the respondent suggested that the hearing be reopened for the purpose of making further representations. The Board decided against this but advised the interested parties that it would consider further representations in writing. The respondent made its submissions by letter. The Board sent copies of this letter to the appellant company and the appellant union, and informed the respondent by telephone that it had done so. The company and the I.W.A. replied in writing, but these letters were not sent to the respondent union, which consequently did not have an opportunity of answering the replies. Following the Board's rejection of the application for certification, the respondent brought an application for *certiorari* to quash the decision. This application was dismissed by the trial judge but granted on appeal to the Court of Appeal. The appellants appealed to this Court.

Held: The appeal should be allowed.

Both parties had been given a full opportunity to be heard. After a full oral hearing and a view of two representative plants, the Board merely gave the interested parties an opportunity to make any further submissions they chose. After hearing from one side and hearing from the other side in reply, it was not a departure from the rules of natural

*PRESENT: Locke, Cartwright, Martland, Judson and Ritchie JJ.

justice for the Board to hold that the debate had gone on long enough and that it was time to stop. Furthermore, the Board had fully complied with s. 62(8) of the *Labour Relations Act,* which provides that "The Board shall determine its own procedure but shall in every case give an opportunity to all interested parties to present evidence and make representations."

The Board had every right to afford the company and the I.W.A. a reasonable time to reply to the further submissions of the respondent even if, as in the event, it meant an extension of the time set by the Board.

The record disclosed no basis for the finding below that the company and the I.W.A. had added substantially to the representations made by them at the oral hearing in their replies to the further submissions of the respondent.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], allowing an appeal from a judgment of Verchere J. dismissing an application to quash a decision of the Labour Relations Board. Appeal allowed.

D. A. S. Lanskail, for defendant, appellant, Forest Industrial Relations Ltd.

A. B. Macdonald, for defendant, appellant, International Woodworkers of America.

A. W. Mercer, for defendant, appellant, Labour Relations Board of B.C.

T. R. Berger, for prosecutor, respondent.

The judgment of the Court was delivered by

JUDSON J.:—This appeal is from the judgment of the British Columbia Court of Appeal[1] which quashed a decision of the Labour Relations Board. The respondent, International Union of Operating Engineers Local 882, had sought from the Board and had been refused certification as representative of the engineers and firemen in ten plants of the lumber industry. Its application was opposed by the appellant, Forest Industrial Relations Limited, as representative of the industry, and by the appellant union, International Woodworkers of America, which wished to retain its position as bargaining agent for the whole industry. Following the Board's rejection of the application, the respondent brought an application for *certiorari* to quash the decision. This application was dismissed by Verchere J. but granted on appeal to the Court of Appeal.

[1] (1961), 34 W.W.R. 659, 28 D.L.R. (2d) 249.

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The respondent's application, which was dated April 26, 1960, was made on behalf of what constituted but a small group of a large body of employees in each of the plants. The appellant union, the I.W.A., is the certified bargaining agent for the whole industry. On receipt of the application, the Board sent the usual notices to all interested parties, namely, to Forest Industrial Relations Limited, as representing the employers, to the appellant union, the I.W.A., and to the employees affected by the applications.

The Board, pursuant to the provisions of s. 12(2) of the *Labour Relations Act,* first made its own inquiries by an examination of the records, and on May 25, 1960, sent a notice of hearing to all interested parties for June 8, 1960. An oral hearing was held on that date in the presence of the appellant union, the appellant employer and the respondent union, at which time all parties had a full opportunity to be heard, to call evidence, to cross-examine witnesses and make their submissions. During the hearing the appellant employer invited the Board to visit representative plants. The Board agreed to do so and notified all parties that it would visit two plants on June 20, 1960.

Shortly before the view was held, the respondent union suggested that the hearing be reopened for the purpose of making further representations. The Board decided against this but advised the interested parties that it would consider further submissions in writing to be made not later than July 12, 1960. Forest Industrial Relations Limited replied that it had completed its submissions but requested an opportunity to reply if representations were made by others. The I.W.A. replied that its case was complete but that it wished to be informed if the hearings were to be reopened. The respondent union made its submissions by letter dated July 7, 1960. The Board sent copies of this letter to Forest Industrial Relations Limited and the I.W.A. by letter dated July 12, 1960, and informed the respondent union by telephone that it had done so. Forest Industrial Relations Limited replied in writing to the submissions of the respondent union by letter dated July 20, 1960, and the I.W.A. by letter dated July 22, 1960. These replies were not sent to the respondent union.

On July 28, 1960, the Board notified the respondent union that its application was rejected on the ground that its units of employees were not appropriate for collective bargaining. On September 26, 1960, the respondent union moved for an *order nisi* to show cause why a *writ of certiorari* should not issue to quash the decision of the Board. It was this application which was rejected by Verchere J. and granted by the Court of Appeal.

I have set out this outline of the course taken by these proceedings because, in my respectful opinion, on these facts the issues of jurisdiction and departure from the rules of natural justice, upon which the judgment of the Court of Appeal was founded, do not arise. The respondent's real complaint is that it should have been afforded an opportunity of replying to the submissions made by Forest Industrial Relations Limited and the I.W.A. in their letters of July 20 and July 22, 1960. Both parties in this case on these facts had been given a full opportunity to be heard. After a full oral hearing and a view of two representative plants, the Board merely gave the interested parties an opportunity to make any further submissions they chose. After hearing from one side and hearing from the other side in reply, it is not a departure from the rules of natural justice for the Board to hold that the debate had gone on long enough and that it was time to stop. Further, the Board fully complied with its own Act (s. 62(8)), which states that "The Board shall determine its own procedure but shall in every case give an opportunity to all interested parties to present evidence and make representations."

It is also urged against the decision that the Board received the representations of the two appellants after the deadline that it had set for July 12, 1960. I cannot see that the mere departure from the date can have any bearing upon the decision in this case. The respondent did not send its written submissions until July 7 and these were not sent on to the two appellants until July 12. The Board had every right to afford these two interested parties a reasonable time to reply to the further submissions of the respondent even if it meant an extension of time.

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It was also said in the reasons of the Court of Appeal that Forest Industrial Relations Limited and the I.W.A. in their letters of July 20 and July 22 had added substantially to the representations made by them at the hearing of June 8. An examination of the record discloses no basis for such a finding. There is nothing in the record about the representations made and the evidence given on June 8. No stenographic record was made of this hearing and the material does not attempt to state what went on beyond the fact that there was an oral hearing with all interested parties present and with a full opportunity to adduce evidence, examine and cross-examine and submit argument. The two last mentioned letters of the appellants did no more than reply point by point to the representations made by the respondent in its letter of July 7. Counsel for the respondent was invited to compare his client's letter with the replies received to it and to point to any new material in the replies. He stated that there was no new material but that nevertheless his client had a right of reply and had been deprived of it. I do not think that his client had any such right as he asserted.

I would allow the appeal, set aside the order of the Court of Appeal and restore the order of Verchere J. The respondent, International Union of Operating Engineers Local 882, should pay to the appellants, Forest Industrial Relations Limited and International Woodworkers of America, their costs throughout. There should be no order for costs for the Labour Relations Board.

Appeal allowed with costs to the appellants, Forest Industrial Relations Limited and International Woodworkers of America.

Solicitor for Forest Industrial Relations Limited: D. A. S. Lanskail, Vancouver.

Solicitor for International Woodworkers of America: Alex B. Macdonald, Vancouver.

Solicitors for Labour Relations Board of the Province of British Columbia: Paine, Edmonds, Mercer & Williams, Vancouver.

Solicitors for the respondent: Shulman, Tupper, Gray, Worrall & Berger, Vancouver.