LA CITE DE MONTREAL (DEFENDANT) . . APPELLANT;

AND

PHILIPPE BELEC (PLAINTIFF) . . . . . RESPONDENT.

1927

*May 19.
*June 17.

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

Labour union—Federation of municipal employees—Police employees—Resolution by municipality forbidding membership—Threat of dismissal—Validity—"Municipal Strike and Lock-out Act" (Q.) 11 Geo. V, c. 46, now R.S.Q. [1925], c. 98, sections 2520 oc, 2520 od, 2520 oj.

The respondent is the secretary of a branch of the Federation of Municipal Employees, formed by the police employees of the city of Montreal. The municipal council passed a resolution that no member of the police force would be allowed to be a member of the police union and authorized the chief of police to act accordingly. The latter issued an order that it was "strictly forbidden for all officers or men to belong to the police union as constituted and they have eight days from to-day to dispose of all money," etc. The respondent asked by his action that the resolution and the order be annulled and set aside as being in contravention with the provisions of the "Municipal Strike and Lock-out Act."

Held that, even if the resolution and the order constituted a threat of dismissal in case of non-compliance with them, the city of Montreal did not contravene the Act, as the legislative intention was to limit its application to cases in which there had been an actual dismissal of an employee before submitting the dispute to a board of arbitration.

Judgment of the Court of King's Bench (Q.R. 42 K.B. 335) reversed.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1) affirming the judgment of the Superior Court at Montreal, Coderre J., and maintaining the respondent's action.

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

(1) (1927) Q.R. 42 K.B. 335.

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The material facts of the case and the questions at issue are stated in the above head-note and in the judgment now reported.

C. Laurendeau K.C. and *G. St. Pierre K.C.* for the appellant.

E. Lafleur K.C. and *J. Sullivan K.C.* for the respondent.

The judgment of the court was delivered by

LAMONT J.—This is an appeal by the city of Montreal against the judgment of the Court of King's Bench (appeal side) confirming a judgment of the Superior Court which declared illegal and void certain resolutions passed by the city and a certain order of the chief of police based thereon.

For some time prior to July, 1922, friction had existed between the city council and the Federation of Municipal Employees. This federation was a labour union including among its members the police employees of various cities and municipalities in the Dominion. In 1918 a branch of the union, known as branch no. 62, was formed by the police employees of Montreal. The plaintiff was the secretary of this branch. The union desired the city to recognize its existence and to deal with it through its duly appointed representatives in case of any dispute between the city and any of the members of the union employees of the city. This the city would not do. On July 13th, 1922, the union passed a resolution in which their grievances, so far as they related to the police force, were set out in the following words:—

Considérant: que les employés de la cité de Montréal se plaignent de souffrir depuis longtemps de nombreux griefs dont les principaux sont:

Chez les policiers: refus de la part du comité exécutif du conseil que l'arbitrage qu'ils ont demandé et qui leur a été accordé par le ministre des Travaux publics et du Travail suive son cours;

A copy of this resolution was forwarded to the city council and was by it referred to a special committee which reported as follows:—

1. Votre commission se déclare opposée à l'union de la police telle qu'elle existe actuellement.

2. Votre commission est d'opinion qu'aucune fédération des employés municipaux ne doit exister en ce qui concerne les membres du corps de police, des pompiers et les employés du département de l'aqueduc; la

commission n'a cependant aucune objection à l'existence de l'Association de Bienfaisance de la Police, de celle des pompiers, et d'une autre semblable dans le département de l'aqueduc.

This report was unanimously adopted by the council on September 15th, 1922. On November 28th, 1923, the council passed the following resolution:—

Résolu

Vu que l'union des policiers n'est pas reconnue par la cité;

Qu'aucun membre de la force constabulaire ne peut faire partie de telle société; et que le chef de police soit autorisé à prendre les mesures disciplinaires nécessaires pour que l'on se conforme aux résolutions adoptées par le conseil et le comité exécutif.

Instructions were given to the chief of police in accordance with this resolution. On November 29th the chief of police issued the following order:—

That it is strictly forbidden for all officers or men to belong to the police union as constituted and they have 8 days from to-day to dispose of all money, etc.

Order of the executive board.

Per Chief Bélanger.

Considering that the resolutions and order above referred to contravened the provisions of the *Municipal Strike and Lock-out Act*, c. 46, 11 Geo. V (now [1925] R.S.Q., c. 98), the plaintiff, on March 31st, 1924, brought this action, and asked that the resolutions of September 15th, 1922, and November 28th, 1923, and the order of the chief of police of November 29th, 1923, be annulled and set aside on the ground that they were *ultra vires* of the city council and contrary to law. He further asked that an injunction issue restricting the city from enforcing the said order. The learned trial judge upheld the plaintiff's claim and declared illegal and void the said resolutions and order; and he granted the injunction restraining the city from proceeding to enforce them. On appeal the Court of King's Bench (Dorion and Tellier JJ. dissenting) affirmed the judgment of the Superior Court. The city now appeals to this court.

The pertinent provisions of s. 2520 *o*, are as follows:—

2520 *oc*. This section shall apply to any claim or dispute between employers and employees in connection with the following matters:

a. The price to be paid for work done or in course of being done, whether the disagreement has arisen with respect to wages, working hours, by night or by day, or the length of day or night work;

b. The dismissal of one or more employees on account of membership in any labour union.

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2520 *od*. It shall be unlawful for an employer to declare or cause a lock-out, or for employees to strike, on account of any dispute mentioned in the foregoing article before such dispute has been submitted to a board of arbitration.

2520 *oj*. Any employer who declares or who is the cause of a lock-out in contravention of the provisions of this section, shall be liable to a fine of not less than one hundred nor more than one thousand dollars, for every day or part of a day that such lock-out lasts.

It is admitted that there is no claim or dispute under sub. s. (*a*) of 2520 *oc*. The action, therefore, if it can be maintained, must come within sub. s. (*b*).

For the city it is contended that the action is premature in that there can be no claim or dispute in connection with the dismissal of an employee on account of membership in a labour union until an employee has been actually dismissed because of such membership. While for the respondents it is contended that the resolutions of November 28th, 1923, passed by the city, and the order of the chief of police based thereon, constituted a clear threat of dismissal in case of non-compliance with the order; that such threat, even without a dismissal, created between the city and its police employees, who desired to maintain their membership in the union, a dispute which could properly be said to be

a dispute in connection with the dismissal of one or more employees;

that the dismissal of those employees would amount to a lock-out within the meaning of 2520 *od*, and that as the declaring or causing of a lock-out would be unlawful before such dispute had been submitted to arbitration, the legislature must have intended that resort should be had to arbitration in order to forestall and prevent the threatened lock-out. This contention was given effect to in the courts below.

With great deference I am of opinion that the judgments below cannot be upheld. It is quite clear that there was a difference of opinion between the city council and the union as to the desirability of having the city recognize the union. Such a difference of opinion, however, the legislature has not seen fit to bring within the purview of the Act. As an employer who declares or is the cause of a lock-out in contravention of the section is liable to a penalty for so doing, the section must be strictly construed and must be limited in its application to such matters as clearly come within the language used.

The section, in so far as this action is concerned, is limited to a

claim or dispute in connection with the dismissal of one or more employees.

Now it will be observed that there is no intimation in the language of the resolutions or order that a failure to comply with the order will be followed by dismissal. There is, therefore, no express threat of dismissal. It is, however, contended that as the exercise of the power of dismissal is the only means which the city has of compelling obedience to the order, the language of the order implies that non-compliance therewith will be followed by dismissal, and that it was so understood by the employees. Even if that be so it is not, in my opinion, sufficient to constitute

a claim or dispute in connection with the dismissal of one or more employees.

Until an employee has been dismissed I am unable to see how any claim or dispute can arise in connection with his dismissal. Upon this point I find myself in harmony with the reasons given by Mr. Justice Dorion and Mr. Justice Tellier.

In his judgment Mr. Justice Dorion says:—

Je crois que déclarer la grève, ou la contre-grève, c'est la faire. La contre-grève c'est le renvoi des employés. Or la cité n'a démis aucun policier. Et si les policiers persistent dans leur refus de quitter l'union, la cité peut encore se conformer à la loi (c'est précisément le temps où cela doit se faire) et demander la création d'un conseil d'arbitrage suivant l'article 2520 *c.f.*

And Mr. Justice Tellier says:—

Il n'y a qu'au cas où le conseil s'aviserait de sévir contre les réfractaires et de recourir à la contre-grève ou au renvoi des policiers qu'il violerait la loi. Jusque là, il est dans son droit, et la loi des grèves et contre-grèves municipales est sans application, parce que le cas qu'elle prévoit ne se présente pas.

The resolutions and order under attack in this action were declarations of policy on the part of the city council. They constituted an expression of the council's intention. The council, however, was always in a position to review its expressed intention and to alter its policy at any time before carrying it into effect. And that is evidently what took place here. The eight days specified in the order of the chief of police expired, but their expiration was not followed by any dismissal. The council stayed its hand as it had a perfect right to do and its implied threat of dis-

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missal never amounted to more than a threat. Wherein then did the city contravene the Act? If the legislature had intended the Act to apply to a claim or dispute in connection with a threat of dismissal as well as to a claim or dispute in connection with the dismissal itself, it could and doubtless would have said so. Not having said so I am of opinion that the legislative intention was to limit the application of the Act under sub. s. (*b*) to cases in which there had been an actual dismissal.

That such was the legislative intention is, I think, supported by the language used in s. 2520 *oj*, above quoted.

If the city had been prosecuted for declaring or causing a lock-out under the circumstances existing in this case, could it have been subjected to the penalty mentioned in that section? In my opinion it could not. It would, in my opinion, have been a sufficient answer on the part of the city to have shewn that its police employees were at work in the performance of their duties on the days on which the city was charged with having locked them out. Where the employees continue to perform their duties under their employment a lock-out cannot, in my opinion, be said to exist. As no policeman was dismissed on account of membership in any labour union, the city has not, in my opinion, contravened the provisions of the Act. The plaintiff's action must therefore fail.

I would allow the appeal, set aside the judgments in the courts below and enter judgment for the city with costs in all courts.

Appeal allowed with costs.

Solicitors for the appellant: *Damphousse, Butler & St. Pierre.*

Solicitors for the respondent: *Mercier & Sullivan.*