

IN THE MATTER OF LEGISLATIVE JURISDICTION OVER HOURS
OF LABOUR

1925

*June 11.
*June 18.

REFERENCE BY THE GOVERNOR GENERAL IN COUNCIL

Constitutional law—Labour—Legislative jurisdiction—Treaty of Versailles—Labour Conference of League of Nations—Draft Convention—Submission to members.

In 1919 the International Labour Conference of the League of Nations adopted a draft convention limiting the hours of labour in industrial undertakings. It was referred to a select standing committee of the League with the result that an article in the Treaty of Versailles provided that "each of the members (of the Labour Conference) undertakes that it will * * * bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action." The Dominion of Canada is a member.

Held, that the only obligation of the Dominion of Canada is to bring the draft convention before the competent authority for action.

Held also, that the matter of labour in industrial undertakings in Canada, is primarily within the competence of provincial legislatures, but Parliament can legislate as to labour in territories not yet organized into, or forming part of, a province and as to labour of servants of the Dominion if these are within the scope of the draft convention.

REFERENCE by the Governor General in Council of questions respecting legislative jurisdiction over hours of labour for hearing and consideration.

No. 1

P.C. 2218.

The Committee of the Privy Council have had before them a report, dated 23rd December, 1924, from the Minister of Justice, stating that he has had under consideration, upon reference from the Honourable the Minister of Labour, the report of the Select Standing Committee on Industrial and International Relations, which was adopted by resolution passed by the House of Commons of Canada on the 18th July, 1924, and is in the terms following:—

"A Resolution was adopted by the House of Commons on May 23, declaring it expedient that a certain Draft Convention which was adopted at the 1st Session of the International Labour Conference of the League of Nations in 1919 limiting the Hours of work in Industrial Undertakings to eight in the day and forty-eight in the week should be referred to the Select Standing Committee on Industrial and International Relations for examination and report,

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

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having regard to the Labour Provisions of the Treaties of Peace and to the Order in Council of November 6, 1920, dealing with the jurisdiction of the Dominion Parliament and the Provincial Legislatures.

"Your Committee has held several sittings and made a careful examination of the Draft Convention, the Labour Part of the Treaties of Peace, and the Order in Council of November 6, 1920, dealing with the jurisdiction of the Dominion Parliament and of the provincial legislatures. Evidence was taken with respect to the present position of the eight-hour day in industrial employment in Canada and other countries. Information was presented to your Committee with reference to a conference which was held in Ottawa in September last between representatives of the Dominion and Provincial Governments which indicate that notwithstanding the view expressed in the Order in Council of November 6, 1920, doubt existed in certain quarters as to the jurisdiction of the federal and provincial authorities, respectively.

"It is accordingly recommended that measures be taken to refer the 'Draft Convention Limiting the Hours of Work in Industrial Undertakings to eight in the day and forty-eight in the week' to the Supreme Court of Canada for hearing and consideration under Section 60 of the Supreme Court Act together with such questions as will serve to secure an advisory judgment from the Court on the jurisdiction of the Dominion Parliament and of the provincial legislatures, respectively."

The Order in Council of November 6, 1920 (P.C. 2722) referred to in the foregoing report, was passed on the report of the then Minister of Justice (the Rt. Hon. C. J. Doherty) and deals, in part, with the nature of the obligation of the Dominion of Canada as a member of the International Labour Conference, constituted under the Labour Part (Part XIII) of the Treaty of Versailles and the corresponding provisions of the other treaties of peace with relation to the draft conventions or recommendations which may from time to time be adopted by the International Labour Conference and in order to appropriate legislative or other action being taken to give effect to them, and the opinion expressed by the Minister upon this point was set

forth in the following paragraph of the said Order in Council:—

“The Minister further states that he is of opinion that the provisions of the Labour Part of the Treaty of Versailles do not impose any obligation on the Dominion of Canada to enact into law the different draft conventions or recommendations which may from time to time be adopted by the Conference. The obligation as set forth is simply in the nature of an undertaking on the part of each member within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within a period of one year, then at the earliest practicable moment, and in any case not later than eighteen months from the closing of the Conference ‘to bring the recommendations or draft conventions before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action.’ The treaty engagement being of this character, it is not such as to justify legislation on the part of Parliament under the authority of section 132 of the British North America Act, 1867, to give effect to any of the proposals of the said draft conventions and recommendations, which must be held, as between the Dominion and the provinces, to be within the legislative competence of the latter. The Government’s obligation will, in the opinion of the Minister, be fully carried out if the different conventions and recommendations are brought before the competent authority, Dominion or Provincial, accordingly as it may appeal, having regard to the scope and objects, the true nature and character of the legislation required to give effect to the proposals of the conventions and recommendations respectively, that they fall within the legislative competence of the one or the other.”

The said Order in Council of the 6th November, 1920, also embodied the Minister’s opinion upon the question whether the provisions of the “Draft Convention Limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-Eight in the Week,” adopted at the first session of the International Labour Conference at its first annual meeting, 29th October-29th November, 1919, came within the legislative competence of the Parliament

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of Canada or of the provincial legislatures. The Minister reported that the proposals of this Convention "involve legislation which is competent to Parliament in so far as Dominion works and undertakings are affected, but which the provincial legislatures have otherwise the power to enact and apply generally and comprehensively."

The Minister observes, however, that the Select Standing Committee on Industrial and International Relations of the House of Commons received information which indicated "that, notwithstanding the view expressed in the Order in Council of November 6, 1920, doubt existed in certain quarters as to the jurisdiction of the federal and provincial authorities, respectively."

The Minister considers it expedient, in view of the said report of the Committee on Industrial and International Relations and of the importance of the subject-matter involved, that the question which has arisen as to the respective legislative powers of the Parliament of Canada and the provincial legislatures in relation to the enactment of the legislation required to give effect to the provisions of the said draft convention should be judicially determined, and he, accordingly, recommends that the following questions, together with copies of the Treaty of Peace with Germany and the "Draft Convention Limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-Eight in the Week,"* be referred by Your Excellency in Council to the Supreme Court of Canada, for hearing and consideration, pursuant to the authority of Section 60 of the Supreme Court Act.

- (1) What is the nature of the obligation of the Dominion of Canada as a member of the International Labour Conference, under the provisions of the Labour Part (Part XIII) of the Treaty of Versailles and of the corresponding provisions of the other Treaties of Peace, with relation to such draft conventions and recommendations as may be from time to time adopted by the said Conference under the authority of and pursuant to the aforesaid provisions?

- (2) Are the legislatures of the provinces the authorities within whose competence the subject-matter of the said draft convention (copy of which is herewith submitted) in whole or in part lies and before whom such draft convention should be brought, under the provisions of Article 405 of the Treaty of Peace with Germany, for the enactment of legislation or other action?
- (3) If the subject-matter of the said draft convention be, in part only, within the competence of the legislatures of the provinces, then in what particular or particulars, or to what extent, is the subject-matter of the draft convention within the competence of the legislatures?
- (4) If the subject-matter of the said draft convention be, in part only, within the competence of the legislatures of the provinces, then in what particular or particulars, or to what extent, is the subject-matter of the draft convention within the competence of the Parliament of Canada?

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The Committee submit the same for approval.

E. J. LEMAIRE,
Clerk of the Privy Council.

Lafleur K.C. and *Donohue K.C.* for the Dominion of Canada.

Geoffrion K.C. for the province of Quebec.

Bayly K.C. for Ontario.

Mathers K.C. for Nova Scotia.

The judgment of the court was delivered by

DUFF J.—The first of the questions submitted concerns the general effect of one of the clauses in Article 405 of the Treaty of Versailles and the corresponding provision in the other treaties of peace. This article is one of those comprised in the Labour Part (Part 13) of the treaties and it defines the undertaking entered into by each of the members respecting recommendations and draft conventions adopted by the general conference of representatives of the members of the League of Nations established as part of a permanent organization for the promotion of the ob-

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jects set forth in the preamble to that part. The pertinent clause is in these words:—

Each of the members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

It seems very clear that the duty arising under this clause is not a duty to enact legislation or to promote legislation; it is an undertaking simply to bring the recommendation or draft convention before the competent authority.

No question is submitted as to the duty of the member arising under the succeeding clauses of the same article in the event of the competent authority or authorities giving its or their consent to the recommendation or draft convention; and upon this no opinion is expressed.

The second, third and fourth questions submitted relate to a particular draft convention, that, namely, adopted by the General Conference of the International Labour Organization of the League of Nations on the 29th of October, 1919, which has for its object the limiting of the hours of work in industrial undertakings as therein defined to eight hours in the day and forty-eight hours in the week.

Under the scheme of distribution of legislative authority in the British North America Act, legislative jurisdiction touching the subject matter of this convention is, subject to a qualification to be mentioned, primarily vested in the provinces. Under the head of jurisdiction numbered 13 in section 92, Property and Civil Rights, or under the sixteenth head, Local and Private Matters Within the Provinces, or under both heads, each of the provinces possesses authority to give the force of law in the province to provisions such as those contained in the draft convention. This general proposition is subject to this qualification, namely, that as a rule a province has no authority to regulate the hours of employment of the servants of the Dominion Government.

It seems questionable whether government employees, in industrial undertakings carried on by the Government,

such, for example, as shipbuilding, are within the scope of the convention. The point was not the subject of argument before us, and concerning it no opinion is intended to be expressed.

It is necessary to observe, also, that as regards these parts of Canada which are not included within the limits of any province, the legislative authority in relation to civil rights generally, and to the subject matter of the convention in particular, is the Dominion Parliament.

It is now settled that the Dominion, in virtue of its authority in respect of works and undertakings falling within its jurisdiction, by force of section 91, no. 29, and sec. 92, no. 10, has certain powers of regulation touching the employment of persons engaged on such works or undertakings. The effect of such legislation by the Dominion to execution of this power is that provincial authority in relation to the subject matter of such legislation is superseded, and remains inoperative so long as the Dominion legislation continues in force. There would appear to be no doubt that, as regards such undertakings—a Dominion railway, for example—the Dominion possesses authority to enact legislation in relation to the subjects dealt with in the draft convention. The only Dominion legislation on this subject to which our attention has been called is to be found in sec. 287 of the Railway Act of 1919, which confers authority on the Board of Railway Commissioners to make orders and regulations concerning the hours of duty of persons employed on railways subject to the jurisdiction of the Board, with a view to the safety of the public and of such employees. It is understood that no orders or regulations have been made in execution of this power; and in view of the fact that this enactment, creating this unexecuted power, appears to be the only Dominion legislation in existence on the subject matter of the draft convention, the primary authority of the province in relation to that subject matter remains, subject to the qualification mentioned, unimpaired and unrestricted.

It follows from what has been said that the draft convention ought to be brought before the Parliament of Canada as being the competent legislative authority for those parts of Canada not within the boundaries of any

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province; and if servants of the Dominion Government engaged in industrial undertakings as defined by the convention are within the scope of its provisions, then the Dominion Parliament is the competent authority also to give force of law to those provisions as applicable to such persons.

The convention should also be brought before the Lieutenant-Governor of each of the provinces for the purpose of enabling him to bring it to the attention of the Provincial Legislature as possessing, subject to the qualification mentioned, legislative jurisdiction within the province in relation to the subject matter of the convention.

The answers to the questions submitted are, therefore:—

To the first question: the obligation is simply in the nature of an undertaking to bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

To the second question: yes, in part.

To the third question: the subject matter is generally within the competence of the legislatures of the provinces, but the authority vested in these legislatures does not enable them to give the force of law to provisions such as those contained in the draft convention in relation to servants of the Dominion Government, or to legislate for these parts of Canada which are not within the boundaries of a province.

To the fourth question: the Parliament of Canada has exclusive legislative authority in those parts of Canada not within the boundaries of any province, and also upon the subjects dealt with in the draft convention in relation to the servants of the Dominion Government.
