EVASKOW v. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, etc., et al., [1969] M.J. No. 74

Manitoba Judgments

Manitoba Court of Appeal
Freedman, Monnin, Dickson, JJ.A.
Judgment: November 24, 1969

[1969] M.J. No. 74 | 9 D.L.R. (3d) 715

(28 paras.)

Counsel

W. S. Martin, Q.C., and *L. N. Mercury*, for defendants, appellants.

D. H. Ringstrom, for plaintiff, respondent.

FREEDMAN, J.A.

1 This is an internal labour dispute involving the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers Union. The plaintiff, whose membership in the union extended over a period of 14 years, had been appointed business manager and secretary-treasurer of Local 555 of the union. Approximately four months after his appointment to that office certain events arose which led to the formulation of charges against him and ultimately to his dismissal. He brought action against the union as well as against several named officers and members of the union for damages for conspiracy to deprive him of his office. The action was heard by Matas, J., who found in favour of the plaintiff. This is an appeal from his decision.

2 There is no doubt that in carrying out his duties the plaintiff encountered some degree of dissension in the local. This is not surprising, since unanimity of feeling is seldom a feature of organized bodies, unions or others. Mr. Ringstrom, counsel for the plaintiff, contended that the real source of the dissension was the misuse by the defendant Jubinville, president of the local, of the out-of-work list. The practice prescribed and normally followed by the local with regard to this list may here be simply described. A member of the union, on finding himself unemployed after the completion of a job, would place his name on the out-of-work list which was kept in the business office of the local. His name would go at the bottom of the list. When a job became available the person whose name appeared at the top of the list would be called to take it. Thereupon the name which had previously been second on the list would automatically move to first place. By this sequence or rotation method the man who was at the bottom would in due course move to the top. That was how the matter should have worked. But the plaintiff strongly contended that the defendant Jubinville from time to time subverted the normal operation of the

list. Ignoring the rights of the man at the top of the list he would select for the available job one of his friends whose name appeared lower down on the list. Coupled with this contention was the allegation that the office secretary, Mrs. Stanger, who had been with the local for 13 years, was co-operating with and assisting the defendant Jubinville in this misuse of the out-of-work list.

3 I think it only fair to say that there is evidence on the record to support these contentions of the plaintiff. It is against that background that the subsequent events must be considered.

4 On August 2, 1967, the defendants McKay, Lohr and Wiens laid formal charges against the plaintiff of violations of the constitution. The charges were filed as ex. 14 at the trial and are here reproduced, as follows:

> We, the undersigned members in good standing of Lodge 555, do herewith charge you, Walter Evaskow, Register #1372416, with violation of subsections (a) (e) and (k) of Section 1 of Article XVII of the International Brotherhood Constitution which are quoted herewith:
>
> (a) "violation of any provision of the Constitution of the International Brotherhood or the By-Laws of a subordinate body or failure to perform duties or functions specified therein;
>
> (e) "engaging in any activity or course of conduct contrary or detrimental to the welfare or best interest of the International Brotherhood or of a subordinate body;
>
> (k) "engaging in or fomenting any acts or course of conduct which are inconsistent with the duties, obligations and fealty of the members of a trade union and which violate sound trade union principles or which constitute a breach of any existing collective bargaining agreement;"
>
> The specific acts that constitute the aforementioned Constitutional violations are that on Thurday, June 22nd, 1967, at approximately 4:30 P.M., you were found sleeping in the office of Lodge 555, thus failing to carry out your duties and responsibilities as Business Manager.
>
> On Thursday, July 16th, 1967, you did, after giving Mrs. Edith Stanger, the office secretary of Lodge 555 for approximately thirteen (13) years, five (5) minutes to vacate the office, call the Winnipeg Police Department to evict her, thereby engaging in conduct contrary to and detrimental to the welfare and best interests of this Brotherhood and Lodge 555.

5 It was agreed that the date Thursday, July 16, 1967, above referred to, was an error and that the correct date should have been Thursday, July 13, 1967.

6 It will be observed that two specific charges were formulated and relied upon. The learned trial Judge did not regard them as weighty nor as being the real reason for the ouster proceedings. He came to the conclusion that the defendants had determined to get rid of the plaintiff and then invoked the charges in question as the most convenient instrument for that end. In that connection three specific findings made by the learned trial Judge are very significant. He says [4 D.L.R. (3d) 684 at p. 692, 68 W.W.R. 415]:

> Actions of the defendants were malicious and were not taken to further the legitimate interests of the Union and the Local by the doing of a lawful act.... Unable to carry out their intent by proper means, the individual defendants, members of the Local, with the guidance of Whan, used the method of filing misleading charges.

7 (It may be pointed out that the defendant Whan is a vice-president of the international union with jurisdiction over all locals of the union in Western Canada, including Local 555.) [At p. 688]:

> I do not accept the evidence of the defendants as to their reasons for their actions.

8 These are strong, clear and specific findings. It is true that they were made upon conflicting testimony. But that does not make them less formidable in the eyes of an appellate Court. To resolve conflicts in testimony and to reach conclusions thereon is peculiarly the task of a trial Judge. An appellate tribunal will be slow to reverse such findings. Here I am bound to say that these findings have ample support in the record. Moreover, in my view they are reasonable. I perceive no adequate reason to disturb them.

9 A glance at the charges is illuminating. The first charge arises from the fact that two members, on entering the business office at approximately 4:30 p.m., found the plaintiff sitting at his desk asleep. He admitted that he had momentarily dozed off after a very hard day following on a hard evening spent on business of the union. The triviality of the alleged offence is apparent on its face. It is hard to take it seriously. It has all the appearance of being a mere makeweight to pad out the indictment against the plaintiff.

10 Concerning the dismissal of Mrs. Stanger, it was made clear in the evidence that under the constitution the plaintiff was in charge of the office staff and that he had the legal right to fire her if he chose to do so. In the last analysis the defendants relied not on the fact of Mrs. Stanger's dismissal but on the manner of it. Specifically, their complaint was that when Mrs. Stanger refused to leave, the plaintiff had called the police to assist him in getting her out.

11 It was urged in argument on behalf of the defendants that the very presence of police around a union hall is contrary to the best interests of labour and unionism. Accordingly, for the plaintiff to have summoned the police was to have done an act inimical to the welfare of the local, if not indeed to labour as a whole. Mr. Ringstrom in reply asked us rather to accept the view that labour and unionism had reached a stage of maturity in which there was no place for regarding the police as an enemy. The plaintiff had been confronted with a difficult situation. The office secretary whom he had dismissed, and to whom he had handed a written notice of dismissal, had deliberately torn up the letter in his presence and thrown it into the wastepaper basket, adding "You can't fire me." What should he have done? To bodily eject this dismissed employee was unthinkable in the case of a woman. Accordingly he did what seemed to him to be best. He sought the assistance of the police, as guardians of law and order, to aid him in the circumstances.

12 It is not irrelevant to point out that at a meeting of the local held two days after Mrs. Stanger's dismissal the subject of her dismissal was aired. Following discussion, a motion was introduced to treat the subject as closed. That motion carried. None the less the defendants later revived this matter and made it the basis of a charge against the plaintiff.

13 It is a matter of some surprise that both charges against the plaintiff were upheld by the hearing officer at the inquiry which followed the laying of the charges. The hearing officer in his

report recommended that the plaintiff be removed from his office of business manager and secretary-treasurer of Lodge 555, that he be suspended from the right to run for office or represent the lodge in any manner, and that he be suspended from the right to attend meetings of the lodge for a period of two years. The report of the hearing officer was accepted by the members of the executive council of the union and the decision was put into effect.

14 The learned trial Judge came to the conclusion that the inquiry conducted by the hearing officer violated the principles of natural justice. He reviewed the relevant facts in detail. It is unnecessary for me to restate them here. I merely cite the following passage [at pp. 691-2] from the reasons for judgment summing up his conclusion on the point:

> The absence of a sincere effort to resolve the dispute; the altercation on the evening prior to the Union trial; Whan's comment to Carroll that same evening about Evaskow's actions; admission of evidence relating to an alleged breach of the Constitution, without notice to the accused; and restrictions on the right of the accused to cross-examine witnesses, resulted in a Union trial which was contrary to natural justice.

15 (Carroll, a vice-president of the international union having jurisdiction over the locals in eastern Canada, was the hearing officer who dealt with the charges against the plaintiff.)

16 The learned trial Judge accordingly declared that the decision in question was invalid. Here again I am in agreement with his finding and conclusion.

17 The main issue in the appeal involved that very point -- namely, whether the learned trial Judge was correct in holding that the decision of the international council of the union was invalid and that accordingly the plaintiff had been wrongfully dismissed from his office. I have already said enough to make it plain that in my view Matas, J., was correct on this point. So far accordingly as the main thrust of the appeal is concerned, it must fail.

18 But there were two subsidiary points raised. One concerned damages, the other concerned costs. The defendants claimed that the plaintiff was disentitled to damages. The plaintiff, on the other hand, by his own cross-appeal asked that his special and general damages be increased. On the matter of costs the learned trial Judge had directed that the plaintiff recover his full costs on a solicitor-and-client basis without regard to the limit fixed by Queen's Bench Rule 630. The defendants appealed against this direction, particularly so far as it awarded costs on a solicitor-and-client basis.

19 I deal first with the question of damages. Special damages were assessed at $2,138. I would not disturb this award. In addition an award of general damages in the sum of $1,000 was made. In my view this latter figure was inordinately low.

20 It is the law, as is pointed out in *Mayne & McGregor on Damages*, 12th ed., p. 944:

> ... that pecuniary loss is necessary to ground the action for conspiracy, but, once pecuniary loss is proved, damages may be awarded in addition for the non-pecuniary loss to feelings and perhaps even exemplary damages may be given.

21 I would not award exemplary damages. But for the very serious wrong done to the plaintiff, not least of all in the form of damage to his status and prestige as a union officer, he is entitled

to substantial damages. These I would fix at $2,000. I would allow the cross-appeal to that extent accordingly.

22 Concerning costs, I am bound to say that it must be a rare and most exceptional case in which costs will be awarded on a solicitor-and-client basis rather than on a party-and-party basis. In my view this is not such a case. The defendants must already bear the burden of paying costs without regard to the limit set out in Queen's Bench Rule 630. I do not believe that they should assume the additional burden of paying such costs on a solicitor-and-client basis.

23 The learned trial Judge based his very unusual order on the theory that the award of damages to the plaintiff should reach him intact. No doubt every plaintiff would like to receive his damages intact, without at all assuming any portion of the costs of the litigation which he instituted. Perhaps in an ideal system (for plaintiffs), such a hope might be realized. But in the process it would result in the imposition of intolerable burdens upon defendants. Our system accordingly seeks for a just compromise or balance by requiring, or at least expecting, that the costs of litigation will be shared or distributed between the parties. Since costs normally follow the event, the heavier burden will be upon the loser. But the victor will not usually emerge without some contribution to the solicitor-and-client bill.

24 In my view the learned trial Judge erred in directing that the costs, already raised beyond the normal limit under the Rule, should also be on a solicitor-and-client basis. I would delete from para. 5 of the judgment roll the words "on a solicitor and client basis".

25 In the result the plaintiff's cross-appeal will be allowed by the increase in damages as above, with the usual costs in this Court. Except for the deletion of the words "on a solicitor and client basis" from the judgment the appeal of the defendants is dismissed, but without costs.

26 MONNIN, J.A., concurs with FREEDMAN, J.A.

DICKSON, J.A. (dissenting in part)

27 I am in agreement with my brothers Freedman and Monnin on the main point in this appeal. There was evidence upon which the trial Judge could find that the defendants combined for the purpose of causing damage to the plaintiff, the predominant purpose being to cause such damage and not to further or protect the lawful interests of the individual defendants or the lawful interests of the union. I regret, however, that I do not find myself in agreement with my brothers on the two subsidiary points, damages and costs. The Judge awarded the plaintiff special damages of $2,138 to recompense him for the difference between the amount he received as a mechanic and the amount he would have received as secretary-treasurer and business manager from date of dismissal to June 30, 1969. The award of general damages was $1,000. In considering the adequacy of this latter award it is important, it seems to me, to bear in mind (i) the special damages were intended to compensate for monetary loss, (ii) the plaintiff was not without fault, (iii) he had only been in office some four months prior to the incidents giving rise to the charges leading to his dismissal, (iv) the action taken by defendants did not bar him from membership in the union nor deny him the right to earn his living in his chosen trade of mechanic. I am unable to say that the award of $1,000 is inordinately low.

28 As to costs. The Judge lifted the bar imposed by Queen's Bench Rule 630. In explanation he referred to the difficulty and importance of the case, the complexity of the proceedings and the public interest aroused. These are proper grounds for lifting the bar. The Judge also awarded costs on a solicitor-and-client basis. In explanation he referred to the hubristic attitude of the defendant union towards the plaintiff, the conduct of the defendants being calculated to harm the plaintiff and in fact harming him, the unreasonable conduct of the defendants compounding the complexity of the proceedings. These are proper grounds for ordering costs on a solicitor-and-client basis. In further support of such order the Judge stated that the plaintiff should not be out of pocket. I agree with my brothers that the Judge erred in deeming this a valid reason for directing costs on a solicitor-and-client basis, but, as I have said, there were other grounds mentioned by the Judge, which were unassailable, upon which he could and did rely. For these reasons and because the matter of costs is peculiarly within the discretion of a trial Judge, a discretion not to be disturbed unless manifestly wrong, I would dismiss the appeal with costs and dismiss the plaintiff's cross-appeal without costs.

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