Docket: CA 159750
Date: 20000531

NOVA SCOTIA COURT OF APPEAL

[Cite as: Canada Post Corporation v. Canadian Union of Postal Workers, 2000 NSCA 72]

Glube, C.J.N.S.; Freeman and Cromwell, JJ.A.

BETWEEN:

CANADA POST CORPORATION

Appellant

- and -

CANADIAN UNION OF POSTAL WORKERS

Respondent

REASONS FOR JUDGMENT

Counsel:	Terry L. Roane, Q.C. and Roy Filion, Q.C. for the appellant Raymond R. Larkin, Q.C. and David J. Roberts for the respondent
Appeal Heard:	May 31, 2000
Judgment Delivered:	May 31, 2000
THE COURT:	Appeal dismissed per oral reasons for judgment of Cromwell, J.A.; Glube, C.J.N.S. and Freeman, J.A. concurring.

CROMWELL, J.A.: (Orally)

[1] Canada Post dismissed seven employees and suspended two others as a result of their conduct at a union-organized demonstration during a legal strike. The demonstration, which took place at the premises of a Canada Post customer was, to use the words of the arbitrator whose awards give rise to this appeal, "... raucous and unseemly", and as well "affronted the customer", put Canada Post's " ...reputation at risk and jeopardized its relationship with the customer."

[2] The union grieved the imposition of discipline and all the grievances were submitted to S. Bruce Outhouse, Q.C. for arbitration under the Collective Agreement between the parties.

[3] In a preliminary award, the arbitrator found that four of the grievors were full-time union officers on leave from Canada Post and being paid by the union. He ruled that Article 9.103 of the Collective Agreement required him to find that these employees could not be disciplined in the circumstances. Article 9.103 states that a "... final decision rendered by an arbitrator binds the Corporation, the Union and the employees in all cases involving identical and/or substantially identical circumstances." The arbitrator found that the circumstances in three previous arbitration awards between the parties, two of which had been upheld on judicial review, were substantially identical. Those awards decided, in essence, that employees on full time leave for union business could not, in general, be disciplined. Accordingly, the four grievances (those of Furlong, Mapp, Woodhall and Vandersteen) were allowed and the four grievors were ordered to be reinstated as employees on leave of absence without pay.

[4] In his final award, the arbitrator addressed the merits of the grievances of the remaining five employees, three of whom had been dismissed and two suspended. He

found the employer did not have just cause to discipline in one case (that of Beazley). In the case of the others (Dicks, Hiltz, Snow and Macdonald), he found that just cause for discipline existed, but that the penalties imposed were excessive. Reduced penalties were substituted by the arbitrator.

[5] The employer applied to the Supreme Court of Nova Scotia to quash both awards. The consolidated applications were heard and dismissed by Davison, J. in a reserved judgment. The employer now appeals.

[6] In considering the preliminary award, the chambers judge concluded that the arbitrator's decision was not patently unreasonable. In our view, the chambers judge identified the appropriate standard of review.

[7] The arbitrator, in the preliminary award, interpreted and applied Article 9.103, a task at the heart of his jurisdiction and expertise. Contrary to the submission made by the appellant, the arbitrator was not applying more generally applicable legal principles or a jurisdiction limiting provision. The fundamental question before the arbitrator was not whether, in his opinion, the four grievors whom he found to be full-time union officials were immune to discipline but whether he was required by Article 9.103 to so find. In interpreting and applying this provision of the Collective Agreement, the decision of the arbitrator may only be set aside if it is patently unreasonable.

[8] The arbitrator concluded that the application of Article 9.103 depends on whether the circumstances of the case are substantially identical with a previous award between the parties, not on the similarities of arguments. This is an interpretation which the words of the Article reasonably bear and it was applied to the facts in a manner that was not patently unreasonable. It is argued that the arbitrator erred because there was evidence before him that the four union officials exercised various rights under the

Collective Agreement and that such evidence was not present in the earlier awards which he followed. However, it is clear that the grievors in the previous awards and the grievors in the present case had similar rights. The arbitrator did not commit reviewable error by finding that this evidence did not take the case out of the operation of Article 9.103.

[9] We also agree with Davison, J.'s conclusion that the arbitrator did not reach a patently unreasonable result in finding that the alleged acts could not be characterized as "...totally individualistic acts" done outside the scope of their union duties or capacity. The Arbitrator addressed this issue in a reasonable manner at pages 37 and 38 of his preliminary award.

[10] The employer has made submissions to the effect that the awards followed by the arbitrator are wrong in law or did not involve the interpretation or application of the Collective Agreement. These submissions are, with respect, irrelevant to the application of Article 9.103 where, as here, the previous awards have not been set aside and, in two cases, upheld on judicial review. We are also advised that at least two collective agreements have been negotiated since the three awards issued in 1988 which the arbitrator followed and no changes relevant to this issue have been made.

[11] In relation to the final award, it is argued that the arbitrator deprived himself of jurisdiction by taking into account an irrelevant consideration and failing to take account of a relevant consideration. We do not think he did either. The arbitrator did not reduce the punishment imposed on the grievors in the final award because the union leaders were found to be immune as the appellant submits, but for reasons including that the

grievors were not the leaders of the demonstration and that they were, in his view, "relatively minor players." These are relevant considerations. The arbitrator also concluded that, while deterrence is always a consideration in disciplinary matters, it was not a compelling factor in this case. He considered the question of deterrence and assigned it the weight he thought appropriate. He did not commit jurisdictional error in doing so and Davison, J. was correct not to quash his award.

[12] The appeal is dismissed with costs fixed at $500 plus disbursements.

Cromwell, J.A.

Concurred in:

Glube, C.J.N.S.

Freeman, J.A.