

1982

S.N. No. 38448

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION

BETWEEN:

VILLA SAINT-JOSEPH-du-Lac, a body
corporate

INTENDED PLAINTIFF/
APPLICANT

- and -

CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 835, DAN MacLEAN, Local
Representatives of the Canadian Union
of Public Employees, Local 835,

INTENDED DEFENDANTS/
RESPONDENTS

HEARD: At Yarmouth, Nova Scotia, on the 25th and 26th
of June, A.D. 1982.

BEFORE: His Honour Judge Peter Nicholson, A Local Judge

COUNSEL: Anthony L. Chapman, Esq., for the Applicant.
N. Blaise MacDonald, Esq., for the Respondents.

Subsequent to the commencement of these proceedings, an Application was made to Chief Justice Glube of the Trial Division of the Supreme Court of Nova Scotia for an Interim Injunction to restrain certain activities being carried on by pickets of the Respondent, Canadian Union of Public Employees, Local 835 and Dan MacLean, the Local Representative of that Union, who were in a strike situation in respect of their employment at the Villa Saint-Joseph-du-Lac, in the Town of Yarmouth.

Chief Justice Glube had before her, Affidavits prepared by the Solicitor for the Applicant, which were based on information given to him, in good faith, by two of the officials of the Villa. With that information before the Honourable Chief Justice, she proceeded to make an Interim Injunction with the usual terms, restraining the Respondents and their Representatives from doing certain acts, matters and things that are set out in the Injunction and limiting the number of persons permitted on the picket lines to two persons at the front entrance of the Villa as it borders on Provincial Highway Number One, and one person at the front exit and three persons at the back entrance on what is known as the Tin Pot Road.

Madame Justice Glube's Order further provided that the Interim Injunction would remain in force and effect until

evidence could be taken in the matter before me at Yarmouth.

Evidence was lead before me on the 25th and 26th of June at the Court House at Yarmouth and it quickly appeared that, without question there were certain irregularities and indeed illegal acts, which occured on the picket line, mainly on the 8th and 9th of June, 1982. These acts were summed up by the evidence of Mr. MacLean, the Agent of the Union, who frankly admitted that there was a rather mob-like scene that took place on those two days and that there was an element of loss of control. He pointed out that these people involved in the picket lines were neophytes inthe labour business and that they didn't know or understand the limitations the law imposes on pickets. It appeared from the evidence that he had tried and succeeded in a large measure in getting a hold of the situation by establishing picket captains and properly instructing them as to what they could and could not do. I was satisfied after listening to Mr. MacLean that he was professional labour man who understood precisely what the limitations of and the rights bestowed under the Trade Union Legislation that this Country provide. I got the impression that he had control of the Union membership. That was bolstered by the fact that the conduct of all persons attending at the Court Room was exemplary and their deportment was excellent.

As evidence was lead, it became clear that while there were isolated acts of impropriety and indeed illegality, and I refer particularly to the evidence of Mrs. Chipman whose evidence I accept without reservation, that a motor vehicle that she was driving in was kicked as it went through the picket lines, exiting from the Villa where she was acting as a volunteer nurse.

There were some suspicious circumstances in the discovery of galvanized shingle nails in a couple of the vehicles that had been in and out of the Villa premises. And there were some other isolated acts. The evidence showed that the situation became more and more under control after a couple of days, and even more so subsequent to the Interim Injunction. The control obviously became tighter because there was no evidence that the Union picketers had exceeded the numbers called for and provided in Chief Justice Glube's Interim Injunction. I got the impression that the danger period was over, perhaps by the end of the first week of the strike.

I have to take into account the rights, and they were hard won rights too, of people in the labour force to proceed to picket and disseminate information publicizing their cause to the communities in which they live. It would be useless to have such legislation on the books unless the Union was permitted to have a

reasonably high visibility in the community where they were seeking to improve or otherwise alter their working conditions. I have also to take into account that an Injunction is a really extraordinary remedy which sets aside in emerging situations and in situations where damage to property or illegal interference with the rights of citizens may occur unless the restraints are applied.

The evidence as I heard it, showed that there were a bunch of high strung amateurs who got into a strike situation, with no prior or proper instructions having been given to them. They exhibited, for two or three days, a scene of irresponsible behaviour, which can only be condemned.

However, I am satisfied that there is a good element of control now evident and that, on certain terms, the Injunction ought to be lifted. I am bearing in the mind the influence that I expect Mr. MacLean to exert in this matter and I have been advised that he, of necessity, has to be away from the community until next Tuesday at least but that he would be returning by Wednesday to take up his permanent position as Director of the Union activities in this area.

Therefore, I think it just and proper to continue

the existing Interim Injunction until 0800 on Wednesday, the 30th of June, 1982. And that simply means that the picket lines will be restrained to the terms of the Injunction set out by Chief Justice Glube. On certain advice I got from Counsel, it became apparent to me that Counsel for the Respondent was in a position to be able to give an undertaking to this Court that there should be some limitation on the number of pickets, without the necessity of an Injunction being applied. I accept that invitation because I do feel there ought to be a limitation for the following reasons. First of all, the total work force is not a large one in number. The nature of the community must be taken into account. This is an area where strikes are infrequent and the visibility of a strike at all is such that you don't need vast numbers of people to get the message across.

However, balanced against that, I have to take into account that the laws of this Country give the people the right to operate as pickets, so long as they don't in any way interfere with the rights of their fellow citizens and to their obligations under the law. I am proposing that, effective on the hour of the Injunction being lifted, that the Union make an undertaking to maintain a picket force of not more than four persons at the front entrance of the Villa, four persons at the front exit and three persons at the rear entrance. And if those undertakings can be met and

delivered, I don't see that the Court ought to interfere further in the situation, except to say this, and I say this particularly because I know that present in the Courtroom are a very large percentage of the Union members involved here. Your rights are precious ones and if you abuse them, you will be doing a great disservice to the Labour Movement. You must be very careful to abide by the terms of the law, which are very simple terms, and that is that you are free to patrol on your picket lines, to wear your signs, to club together in any peaceful way and to disseminate information about your situation to the public at large. You are not under any circumstances, to participate in infringements on the rights of other people for peaceful passage, the rights to pursue their employment if they wish to. Those restraints are reinforced now by the provisions of the Canadian Constitution under the Charter of Rights.

So, if Mr. MacDonald, you can give me those assurances I think that we can conclude the matter. I can settle with Counsel now if there is any Order required. I don't know about costs at this juncture but if you want to speak to me about that, we can accommodate you.

So that is the conclusion of the matter. The Interim Injunction is continued until 0800, Wednesday, the 30th of

June and thereafter the Injunction is lifted. I will be expecting an undertaking to the court regarding the size of the picket line.

BY MR. MAC DONALD

I give you the undertaking on behalf of the Union here now, on the record. Is there any need for something in writing?

BY THE COURT

Well, I would think that you could exchange a letter with Mr. Chapman and send a copy of it to the Prothonotary here. And I will get a transcript of my remarks here now and send it to both of you. I think if I am extending the Order thought I have to put something down in writing.

BY MR. CHAPMAN

That is what I was thinking My Lord. I don't know the Order.

BY THE COURT

I can.

BY MR. MAC DONALD

The Order is there My Lord and hasn't been removed, so.

BY THE COURT

Well, I am just pronouncing that it is maintained until 0800 on Wednesday. I have jurisdiction to do that and it will be part of the record that that is so. And people acknowledge themselves so bound?

BY MR. MAC DONALD

Yes, My Lord.

BY THE COURT

Fine then, you can close the Court.

A LOCAL JUDGE