

CV 03864

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

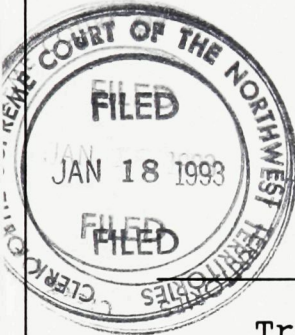
IN THE MATTER OF:

ROYAL OAK MINES INC.

- and -

CANADIAN ASSOCIATION OF SMELTER AND ALLIED WORKERS LOCAL NO.4, AND BILL SCHRAM, HARRY SEETON, BOB KOSTA, RICK CASSIDY, AL SHEARING, AND ROBIN JANZ.

1. KURT LEHNIGER



Transcript of the Reasons for Judgment delivered by the Honourable Mr. Justice J. E. Richard, sitting at Yellowknife, in the Northwest Territories, on December 21, A.D. 1992.

APPEARANCES:

MR. S. DUKE	On behalf of the Applicant
MR. A. MARSHALL	On behalf of the Respondent
MR. D. MILLER	On behalf of the Attorney General

2004 03 04

IN THE SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF

JOHN C. WILLY, JR.

OF THE SUPREME COURT OF THE UNITED STATES
AND THE SUPREME COURT OF THE DISTRICT OF COLUMBIA
AND THE SUPREME COURT OF THE STATE OF MARYLAND
AND THE SUPREME COURT OF THE STATE OF VIRGINIA



THE SUPREME COURT OF THE UNITED STATES
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AND THE SUPREME COURT OF THE DISTRICT OF COLUMBIA
AND THE SUPREME COURT OF THE STATE OF MARYLAND
AND THE SUPREME COURT OF THE STATE OF VIRGINIA

1 THE COURT: Mr. Lehniger is one of the members of
2 the CASAW union who were on lawful strike at the Giant
3 minesite. The company alleges that on October 27th of
4 this year Mr. Lehniger breached the Court's injunction
5 order in a deliberate way, and that he should be found
6 to be in contempt of court.

7 This strike commenced on May 23 of this year and
8 shortly thereafter Mr. Justice deWeerdts of this court
9 issued an injunction order with a view to stabilizing
10 a very volatile situation at the minesite. The
11 injunction order specified or restricted the type of
12 activity that the striking miners could engage in at
13 the minesite. Essentially the only type of activity
14 that is permitted is picketing, with no more than five
15 picketers at a time at a number of the mine entrances
16 in order to communicate information or obtain
17 information. All other picketing, and all other forms
18 of watching and besetting are prohibited by the court
19 order.

20 Mr. Lehniger has worked at the minesite for over
21 20 years. He is now 60 years of age. He has been
22 engaged in lawful picketing activity throughout the
23 duration of this seven-month strike. On the evening
24 of October 27 he was on picket duty at Gate #1, which
25 is the entrance to the Giant townsite. One of the
26 company security officers who was on duty near that
27 entrance noticed a taxicab drive into the townsite

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1 with passengers, and when the taxicab was leaving the
2 mine property through the entrance at Gate #1, the
3 security officer saw Mr. Lehniger stop the taxicab and
4 speak to the driver. After the taxicab left, the
5 security officer, Carl Tettenborn, radioed to his
6 colleagues his concern that the taxi driver may have
7 been threatened by Mr. Lehniger. It does appear that
8 shortly thereafter someone representing the company
9 did contact the taxi driver to inquire whether he had
10 been threatened.

11 As it turns out, Mr. Tettenborn's concern was
12 unfounded. Mr. Lehniger did not make any threat to
13 the taxi driver. Having heard the sworn testimony of
14 Mr. Lehniger and of the taxi driver, I have no
15 difficulty in finding that Mr. Lehniger did not breach
16 the Court's order when he had the discussion with the
17 taxi driver. In essence, Mr. Lehniger told the taxi
18 driver that it might be better, given the fact of the
19 strike and the state of emotions on each side, that it
20 might be better if the taxi driver dropped off his
21 passengers on the highway outside of the mine entrance
22 rather than driving them all the way into the
23 minesite. The taxi driver responded that he was just
24 doing his job. The words of Mr. Lehniger were not
25 spoken in any intimidating or threatening manner. This
26 is the type of communication of information that is
27 expressly permitted by the court order. So I find

1 with passengers, and after the fact, the driver of the
 2 vehicle properly followed the entrance to the bus
 3 security officer and Mr. [Name] [Name] and
 4 speak to the driver, Mr. [Name] [Name], the
 5 security officer, and the driver's reaction to his
 6 colleague's statement that the car driver had
 7 been directed by Mr. [Name] [Name] to drive away
 8 shortly thereafter without any explanation of why
 9 did not enter the taxi driver's reaction whether he had
 10 been instructed.
 11 As is shown, Mr. [Name] [Name]'s conduct was
 12 improper. Mr. [Name] [Name] did not ask any questions
 13 the taxi driver, but instead, during the very beginning of
 14 Mr. [Name] [Name]'s testimony, he stated that he
 15 did not know that Mr. [Name] [Name] did not know
 16 the taxi driver was being directed to exit with the
 17 car. Mr. [Name] [Name] also stated that he did not
 18 know that Mr. [Name] [Name] was the taxi of the
 19 station and that he was not on each side, that is
 20 when he entered the station, he was trapped off his
 21 passenger side, and that he was at the side entrance
 22 rather than the main entrance. Mr. [Name] [Name] also
 23 stated that he did not know that he was just
 24 doing his job. The words of Mr. [Name] [Name] were not
 25 spoken in any hostile or antagonistic manner. This
 26 is the type of conduct that a taxi driver would be
 27 expressly authorized by the contract to do.

1 that no breach of the court order occurred at the time
2 of the taxicab incident.

3 Unfortunately the matter did not end there.
4 Within the next hour or so Mr. Lehniger learned from
5 his colleagues that at one or more of the locations on
6 the picket line that there had been a report of the
7 taxicab incident, and Mr. Lehniger was satisfied that
8 he had been accused by one of the company security
9 officers of threatening the taxi driver. Mr. Lehniger
10 was quite upset and disappointed upon learning this as
11 he considered himself to be a peaceable person and
12 that the accusation was unfounded. Mr. Lehniger then
13 got in his vehicle and drove it onto the company
14 property and approached the security officer
15 Mr. Tettenborn, and this confrontation resulted in a
16 very unfortunate incident, and it is this unfortunate
17 incident which is the reason for this court hearing.

18 I have heard different evidence characterizing
19 Mr. Lehniger's entrance onto the mine property.
20 Mr. Lehniger says he was simply going to the security
21 guard house to ascertain the identity of the person
22 who accused him and no more. Mr. Tettenborn indicated
23 that he had heard Mr. Lehniger say over the radio to
24 his fellow strikers that he was going in to get Mr.
25 Tettenborn. Mr. Tettenborn and another witness, Jim
26 Gauthier, testified that Mr. Lehniger approached the
27 security guard house and Mr. Tettenborn in an

that no breach of his duty had occurred at the time
of the various incidents.

Unfortunately the matter has become
with the suit now at the Michigan...
his colleagues that at one point of the...
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1 aggressive fashion and not simply in the nature of a
2 fact-finding mission.

3 Upon my consideration of all of the evidence on
4 this point, I am satisfied that Mr. Lehniger
5 deliberately entered on the mine property with the
6 intention of confronting Mr. Tettenborn who he felt
7 had accused him of something that he had not done. I
8 also find that Mr. Lehniger announced to his fellow
9 strikers on the radio that he was going onto the mine
10 property for this purpose.

11 Although Mr. Lehniger's reaction might be
12 construed as a human reaction in the circumstances,
13 the fact is he had no lawful reason for being on the
14 company's property at that time, and he was clearly
15 acting outside of the activity that was permitted by
16 the court order.

17 Mr. Tettenborn, the security officer, for his
18 part, felt it necessary to arrest Mr. Lehniger for
19 trespass and for breach of the injunction order, and
20 this decision led to a physical altercation between
21 Mr. Tettenborn and Mr. Lehniger. Mr. Lehniger was
22 wrestled to the ground and handcuffed. Mr. Lehniger,
23 who has an asthmatic condition, was quite shocked at
24 this, and in the course of the struggle, he had some
25 difficulty breathing. Other strikers and other
26 security officers gathered around shortly thereafter,
27 and the police arrived, and fortunately this incident

1 did not escalate any further.

2 On this evidence I find that Mr. Lehniger's
3 conduct in driving onto the mine property and
4 confronting the security officer constituted a clear
5 breach of the court's injunction order, an order of
6 which Mr. Lehniger was well aware. I am satisfied
7 beyond a reasonable doubt that Mr. Lehniger defied or
8 disobeyed the court's order in a public way with the
9 knowledge that this public disobedience would tend to
10 depreciate the respect and authority of the court, and
11 I accordingly find him to be in criminal contempt of
12 the court.

13 The purpose of any finding of contempt of court,
14 and in imposing any punishment or sanction for
15 contempt of court is deterrence, that is, to ensure
16 the court order is obeyed in the future. The court in
17 exercising its power regarding contempt of the court
18 simply seeks to uphold the rule of law, and the
19 dignity and respect of the court. The person who
20 committed the contempt of the court's order in this
21 instance, which is Kurt Lehniger, strikes me as a
22 person who made a mistake on a one-time basis and is
23 not likely to again breach the court's order. Mr.
24 Lehniger strikes me as one who wishes to see peace on
25 the picket line and not violence. I am of the opinion
26 that it's not necessary to impose any particular
27 sanction against Mr. Lehniger as a result of his

did not escalate any further.

On this evidence, the court in *Hammer*

conducted its review of the case and

concluded that the evidence was sufficient to

establish that the defendant was guilty of

the crime charged.

Beyond a reasonable doubt, the evidence

established that the defendant was guilty of

the crime charged.

Therefore, the court in *Hammer*, and

the court in *Hammer*, are in agreement.

The court in *Hammer* found that the

evidence was sufficient to establish

beyond a reasonable doubt that the

defendant was guilty of the crime

charged.

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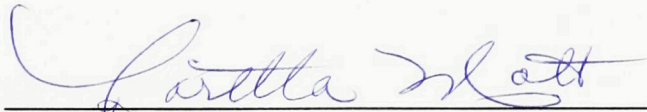
the court in *Hammer*, are in agreement.

1 action, which constituted a contempt of this Court's
2 order. The resulting arrest of Mr. Lehniger and these
3 court proceedings in my view should be sufficient in
4 themselves to bring home to Mr. Lehniger that his
5 conduct was unlawful and should not be repeated.

6 Mr. Lehniger you have been found guilty of
7 contempt of court, and I have decided that I should
8 not impose any particular penalty against you. So you
9 are free to go now, and Mr. Lehniger I hope that we
10 don't see you back here again charged with a breach of
11 the court's order.

12 (AT WHICH TIME THIS MATTER WAS ADJOURNED)

13
14 Certified a correct transcript,
15

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Loretta Mott
18 Court Reporter
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action which constituted a violation of the Code
of Ethics. The resulting loss of honor and
credit to the individual is a matter of
consequence to the individual and the
organization. The individual is
responsible for his own actions and
the organization is responsible for
the actions of its members. The
organization is responsible for the
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