

CV 03864
SC CIV 93 005

IN THE SUPREME COURT
OF THE NORTHWEST TERRITORIES

ROYAL OAK MINES INC.

(Plaintiff)
Applicant

- and -

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

(Defendants)
Respondents

- and -

DAVID MADSEN

(Alleged Contemnor)
Respondent



Transcript of Judgment and Sentencing given by The
Honourable Mr. Justice J.E. Richard, at
Yellowknife, Northwest Territories, on the 30th
day of December A.D. 1992.

PL CIV 88 402

IN THE SUPREME COURT

OF THE NORTHERN TERRITORIES

ROYAL CAR ...

(Respondent)

(Respondent)

BY ...

(Plaintiff's Counsel)



Transcript of evidence and proceedings given by the
Honourable Mr. Justice ...
...
day of ...

1 APPEARANCES:

2 V. Schuler, Ms., Q.C., Counsel for the Applicant
3 A. Marshall, Esq., Counsel for the Respondents
4 D. Miller, Esq. Appeared for the Crown
5 Cheryl Mendryk, Ms., Court Reporter

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7 THE COURT: In giving my decision, on
8 this application, I want to first of all repeat
9 something that I said earlier today on the Simon
10 hearing. Mr. Madsen wasn't present at that time.

11 The Court's function is to keep the peace and
12 to prevent unlawful acts from occurring. The
13 purpose of the Court's injunction order, when it
14 was issued back in May, was simply to stabilize the
15 very volatile situation which was present at the
16 mine site. The union was on lawful strike, the
17 company was continuing to operate the mine, the
18 Court's order simply laid out in fairly clear
19 terms what could or could not happen at the mine
20 site where emotions and anxieties were high on
21 both sides.

22 The Court expected its order to be obeyed.
23 The community of Yellowknife and society generally
24 expects court orders to be obeyed.

25 Notwithstanding Mr. Madsen's opinion of the
26 injunction order, that order represents a minimal
27 interference with the civil rights of anyone

Gabe's

APPEARANCES
V. [Name], [Address]
[Name], [Address]
[Name], [Address]
[Name], [Address]

THE COURT: In giving my decision, on this application, I want to first of all repeat something that I said earlier today on the first hearing. The matter was heard at that time. The Court's intention is to hear the parties and to give a decision on the application. The purpose of the Court's intervention here is to give a decision on the application and to give a decision on the application. The Court's intention is to hear the parties and to give a decision on the application. The purpose of the Court's intervention here is to give a decision on the application and to give a decision on the application.

The Court considered the matter to be settled. The objectivity of the Court is not being questioned. The Court's decision is final and binding. The Court's decision is final and binding. The Court's decision is final and binding.

Justice

1 involved in the labor dispute, but had as its
2 purpose, as I've said, the maintenance of peace in
3 this community.

4 The evidence at this hearing indicates
5 clearly that Mr. Madsen on this occasion, in the
6 early evening hours of October 10th, deliberately
7 and unlawfully entered onto the mine property.
8 This was just three weeks after an underground
9 explosion occurred at the mine site, when nine men
10 were killed, and at that time, Mr. Madsen was well
11 aware that the mining company and its security
12 personal were quite concerned, and understandably
13 so, about any unauthorized intrusions onto the
14 mine property. Mr. Madsen's answer to this is, in
15 effect, that he was just walking his dogs, and
16 that it was open to him to do so on the mine
17 property adjacent to the public highway.

18 This case is very similar to the cases that
19 the Court heard on earlier hearings involving Tim
20 Bettger and Amos Simon, and as much as I am
21 satisfied on the evidence that Mr. Madsen was
22 playing games with the Pinkerton security
23 personal, putting the best light on this incident
24 in favor of Mr. Madsen, it might be said that he
25 was testing or challenging the limits of the
26 Court's injunction order, or it might be said he
27 was playing games with the Court.

Gabe's

involved in the labor dispute, but not in the
purpose, as I've said, the stipulation of goods in
this country.

The evidence at this hearing indicates
clearly that the labor on this occasion in the
early stages of the dispute, as I've said,
and especially referred to in the report.

This was that there were other an agreement
exists, as reported in the report, when also an
was involved, as I've said, Mr. Nelson was well
known to the laboring community and his authority

report was very high, and he was generally
well known and respected in the industry. The
laboring community, as I've said, was well
known to the laboring community, and his authority
was high, and he was generally well known and
respected in the industry.

That it was of a high order, as the same
property, as I've said, in the industry.
The laboring community, as I've said, was well
known to the laboring community, and his authority
was high, and he was generally well known and
respected in the industry.

Settled and that was the result of the
action of the laboring community, as I've said,
was high, and he was generally well known and
respected in the industry.

in fact of the laboring community, as I've said,
was high, and he was generally well known and
respected in the industry.

1935

1 Well now, Mr. Madsen will have his ruling.

2 What he was doing on October 10th, 1992, was
3 "watching and besetting" at the mine site,
4 contrary to the expressed terms of the Court's
5 injunction order. And any similar behavior by him
6 in the future will in all likelihood result in a
7 jail term.

8 For the record, I'm satisfied beyond a
9 reasonable doubt that on October 10th, Mr. Madsen
10 was well aware of the provisions of the injunction
11 order and specifically that he was not to enter on
12 to the mine property, that his conduct clearly
13 constituted watching and besetting, that he defied
14 or disobeyed the Court's order in a public way,
15 with the knowledge that this public disobedience
16 would tend to depreciate the respect and authority
17 of the Court, and accordingly, I find him to be in
18 contempt, criminal contempt of court.

19 (BRIEF ADJOURNMENT)

20 THE COURT: I'd like to hear from Mr.
21 Madsen. Do you have anything to say, Mr. Madsen? I
22 want to particularly hear you address what your
23 lawyer has just said about future compliance with
24 this Court's injunction order.

25 MR. MADSEN: Well, I believe that I've
26 demonstrated that compliance. Since I've been
27 allowed back out on the line there's been no

Gabe's

Well now, Mr. Madson with your testimony.

What he was doing on October 20th, 1951, was

"working and handling" at the time.

contrary to the expressed intent of the Court's

injunction order. And any slight deviation by him

in the future will in all likelihood result in a

full term.

For the record, I'm satisfied beyond a

reasonable doubt that on October 19th, Mr. Madson

was well aware of the provisions of the injunction

order and intentionally that he was not to enter on

to the site property, that was and is clearly

confronted with and he knew, that he failed

to obeyed the Court's order in a definite way,

with the knowledge of this public dissemination

would tend to demoralize the respect and authority

of the Court, and accordingly, I find him to be in

contempt, civil and criminal.

(THE COURT:)

THE COURT: (The do hear from Mr.

Madson. Do you have anything to say, Mr. Madson? I

want to put you on the record that your

lawyer has failed to bring you compliance with

this Court's injunction order.

MR. MADSON: Yes, I believe that the

demonstrated that compliance since I've been

allowed back on the site there's been no

Exhibit

1 deviations in the path, and I intend to comply --
2 continually comply with it.

3 THE COURT: And you understand that means
4 no trespassing on to the property?

5 MR. MADSEN: Yes, sir.

6 THE COURT: Thank you, Mr. Madsen. I'm
7 not going to impose any particular sanctions on
8 you. You have your ruling and it should be
9 abundantly clear that the Court expects compliance
10 with the order to the letter, and there's very
11 good reason for that, and I think you can figure
12 out why. It's necessary in the circumstances of
13 this strike.

14 I've heard evidence in this Court -- we have
15 had many hearings of colleagues of yours pointing
16 fingers at the Pinkertons, the bad guys, escalate
17 things with their behavior, and evidence that I
18 accept. Fortunately, the two that confronted you,
19 Pike and the other fellow, Bazinet, didn't behave
20 that way.

21 MR. MADSEN: May I say something --

22 THE COURT: Just a moment. The danger of
23 you or anyone else going on to the property, even
24 for a walk with your dogs, peaceful though that
25 is, as Mr. Marshall says, it's going to incite an
26 incident where perhaps there is not the best
27 behavior on the other side of the line, and that's

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deviations in the past, and I intend to comply --
continually comply with it.

THE COURT: And you understand that means

no trespassing on to the property?

MR. MADSEN: Yes, sir.
THE COURT: Thank you, Mr. Madsen. I'm

not going to impose any particular sanctions on
you. You have your ruling and it stands as

abundantly clear that the Court expects compliance
with the order in the letter, and there's very

good reason for that, and I think you can figure
out why. It's necessary in the circumstances of
this strike.

I've heard evidence in this Court -- we have
had many hearings of colleagues of yours pointing
fingers at the laborers, the bad guys, essential
things with their behavior, and evidence that I

accept. Fortunately, the two that confronted you,
like and the other fellow, Balmer, didn't behave
that way.

MR. MADSEN: May I say something --

THE COURT: Just a moment. The danger of
you or anyone else going on to the property, even

for a walk with your dogs, successful though that
is, as Mr. Marshall says, it's going to incite an

incident where perhaps there is not the best
behavior on the other side of the line, and that's

Palmer

1 why the Court's order has to be obeyed and
2 complied with to the letter to avoid those
3 incidents, and I'm going to take you at your word
4 that you're going to comply with that order and
5 not impose any particular sanction, and I hope we
6 don't see you back here in connection with this
7 strike. Thank you. Close court.

8 (PROCEEDINGS ADJOURNED)

9 -----

10 I, Cheryl Mendryk, C.S.R.(A), hereby certify
11 that I attended the above Proceedings and took
12 faithful and accurate shorthand notes and the
13 foregoing is a true and accurate transcript of my
14 shorthand notes to the best of my skill and
15 ability.

16 Dated at the City of Calgary, Province of
17 Alberta, this 13th day of January, A.D. 1993.

18
19
20 Cheryl Mendryk per [Signature]
21 Cheryl Mendryk, Ms.
22 Court Reporter.

why the Court's order has to be obeyed and
complied with to the letter to avoid those
incidents, and I'm going to take you at your word
that you're going to comply with that order and
not impose an particular situation. I hope we
don't see you back here in connection with this
situation. Thank you. Class dismissed.

(PROCEEDING TO COURT)

The Court's order is to be obeyed and
complied with to the letter to avoid those
incidents, and I'm going to take you at your word
that you're going to comply with that order and
not impose an particular situation. I hope we
don't see you back here in connection with this
situation. Thank you. Class dismissed.

~~_____~~

10/10/10