

IN THE SUPREME COURT
OF THE NORTHWEST TERRITORIES

ROYAL OAK MINES INC.

(Plaintiff)
Applicant

- and-

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

(Defendants)
Respondents

- and-

AMOS SIMON

(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.

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IN THE SUPREME COURT

OF THE NORTHWEST TERRITORIES

AND THE NORTHWEST DISTRICTS

(Applicant)
Respondent

- 2 -

CANADIAN ASSOCIATION OF NURSES AND ALLIED

WORKERS LOCAL NO. 1, INC. v. E. L. SPAN, HARRY

ELKOW, BOB BOSTON, JOHN GORDON, JOE BARNETT,

and Mrs. J. J. JAMES

(Respondent)
Applicant

AND FIRST

(Applicant)
Respondent



Transcript of evidence and testimony given by the

deponent at the hearing on the 25th day of

January, 1958, at Yellowknife, Northwest Territories, in the 25th

day of December, 1957.

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: On this application, the
8 employer, Royal Oak Mines, alleges that one of the
9 striking employees, Amos Simon, breached the
10 Court's injunction order on June 22nd, 1992, a
11 date which was about one month into the strike.

12 The Court's injunction order restricted the
13 type of activity which the striking employees
14 could engage in at the mine site. Informational
15 picketing with up to five picketers was permitted
16 at each of several entrances to the mine
17 property. All other forms of picketing and all
18 other watching and besetting was prohibited by the
19 Court's injunction order. The Court's order also
20 prohibited any interference with persons entering
21 or leaving the mine site on unlawful business.

22 The Court's function is to keep the peace and
23 to prevent unlawful acts. The purpose of the
24 Court's injunction order was simply to stabilize a
25 very volatile situation at the mine site. The
26 union was on lawful strike, the company was
27 continuing to operate the mine. The Court's order

Gabe's

APPEARANCES:
V. [Name], O.C., Counsel for the Respondents
A. [Name], Esq., Counsel for the Respondents
O. Miller, Esq., Counsel for the Union
[Name], Esq., Counsel for the Union

THE COURT:
[The text of the court's opinion follows, which is extremely faint and largely illegible. It appears to be a legal opinion discussing a dispute between an employer and a union, possibly involving a strike or a grievance procedure. The text is mirrored across the page, suggesting a bleed-through from the reverse side.]

Filed

1 simply laid out in fairly clear terms what could
2 or could not happen on the picket line where
3 emotions were high on both sides. The Court
4 expected its order to be obeyed. The community of
5 Yellowknife and society generally expects court
6 orders to be obeyed.

7 Early in the strike, there were numerous
8 allegations that striking employees were openly
9 breaching the Court's order. A number of these
10 employees were brought before the Court; for
11 example, Mr. Simon here, to answer allegations
12 that they were acting in contempt of the Court's
13 order.

14 The purpose of the Court entertaining
15 contempt of court proceedings is simply to ensure
16 compliance with the Court's order. Any confusion
17 or misunderstanding about what activity is or is
18 not allowed by the injunction order can be
19 clarified and the alleged contemnor and others can
20 govern themselves accordingly in the future.

21 This purpose of contempt proceedings is, of
22 course, virtually defeated when there is an
23 unreasonable delay in having an adjudication of
24 the alleged contempt of the Court's order. I'm
25 aware that the main parties to this litigation,
26 the company and the union, have been engaged in a
27 very bitter dispute. I do not know what

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simply laid out in fairly clear terms what could
or could not happen on the market. The terms
conditions were high on both sides. The courts
expected the order to be entered. The community of
Yellowside and society generally expects merit
orders to be obeyed.

Early in the order there were numerous
allegations that sitting judges were openly
preaching the Court's order. A number of these
employees were brought before the Court for
example, the Union Board, the several...
that... in contempt of the Court's
order.

The purpose of the Court's proceedings
contends to court proceedings in order to ensure
compliance with the Court's order. Any violation
or non-compliance about which... in or to
not allowed by the... order can be
disturbed and the alleged... and others can
govern... accordingly in the future.

The purpose of... proceedings is to
course, virtually... when...
... in...
the alleged... of the Court's order. It is
sworn that the... in this...
the company and the... engaged in a
very bitter dispute. I do not know what

Exhibit

1 motivation either side might have to delay these
2 contempt proceedings, but I will state once again
3 for the record that I find the delays that I have
4 seen unreasonable and unacceptable.

5 In the present application, the allegation
6 against Amos Simon is not a gravely serious one,
7 all the more reason to have the allegation against
8 him dealt with in expeditious fashion. The
9 allegation against him is not a gravely serious
10 one as I say, at least in comparison with some of
11 the other matters that the Court has had to deal
12 with in these many hearings.

13 The company's witnesses, Chris Morton and
14 Karl Tettenborn, gave eyewitness testimony to the
15 effect that Amos Simon left the area of the picket
16 line in the late morning of June 22nd and entered
17 well onto the mine property up onto an area of a
18 rock outcropping that is above and somewhat behind
19 some of the mine's buildings.

20 One of the security officers went to that
21 area and confronted Amos Simon and advised him to
22 leave the mine property. Although Mr. Simon did
23 not leave the mine property immediately, he did
24 eventually leave, and the duration of his trespass
25 on to the property was short, perhaps 15 to 20
26 minutes. The second trespass, which was described
27 by the Plaintiff's witnesses, was of much shorter

Gabe's

motivation either side might have to delay these
concept proceedings, but I will raise concerns
for the record that I think the delay that I have
seen unnecessarily and unnecessarily.

In the present application, the allegation
against Simon is not a merely serious one,
and the more reason to have the allegation against
him dealt with in expeditious fashion. The

allegation against him is not a merely serious
one as I say, at least in comparison with some of
the other matters that the Court has had to deal
with in these many hearings.

The company's witnesses, Colin Nelson and
Karl Patterson, give evidence concerning the
effect that Jack Birt had on the area of the mine
line in the fact that of Jack Birt and answered

well onto the mine property on onto an area of a
rock outcrop that is to be and somewhat behind
some of the mine's buildings.

One of the resulting matters was to that
area and controlled area Simon had advised him to
leave the mine property. Although Mr. Simon did
not leave the mine property immediately, he did

eventually leave, and the duration of his trespass
on the property was about, perhaps 15 to 20
minutes. The second trespass, which was described
by the Plaintiff's witnesses, was of a much shorter

Page 1

1 duration.

2 Mr. Simon himself testified on this hearing,
3 but I regret to say that I have serious concerns
4 about the credibility of his testimony. He
5 persistently gave evasive answers to fairly
6 straight forward questions. He clearly colored
7 his evidence, and for that reason, I simply have
8 difficulty accepting as credible any of his
9 testimony; but on his own evidence, he was on the
10 mine property without authorization in
11 circumstances which amount to trespass, and more
12 importantly, amount to watching and besetting,
13 contrary to the Court's order.

14 I am satisfied that by June 22nd, 1992, Mr.
15 Simon was well aware of the provisions of the
16 injunction order, and specifically, was well aware
17 that he was not to enter onto the mine property.
18 His conduct clearly constitutes watching and
19 besetting that is prohibited by the court order.

20 I'm satisfied beyond a reasonable doubt that
21 Mr. Simon defied or disobeyed the Court's order in
22 a public way, with the knowledge that this public
23 disobedience would tend to depreciate the respect
24 and authority of the Court, and I accordingly find
25 him to be in criminal contempt.

26 (BRIEF ADJOURNMENT)

27 THE COURT:

Now, Mr. Simon, is there

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duration
Mr. Simon himself testified on this hearing
but I regret to say that I have not had a chance
about the credibility of his testimony. He
persistently gave evasive answers to fairly
straight forward questions. He persistently confused
his evidence, and for that reason I simply have
difficultly accepted as credible any of his
testimony. In his own evidence, he was on the
one property without substantiation in
circumstances which showed to be false, and were
in fact, shown to be untruthful and beneficial
contrary to the public interest.
I am satisfied that by June 30, 1951, Mr.
Simon was well aware of the provisions of the
Injection Act, and specifically, that he well knew
that he was not to enter into the territory.
His conduct clearly constituted a violation and
breach of the prohibition by the court order.
It is noted beyond a reasonable doubt that
Mr. Simon failed or neglected to comply with the order in
a public way, with knowledge that this public
disobedience would be a violation of the law.
and authority of the court, and accordingly find
him to be in criminal contempt.

THE COURT:

Simon

1 anything, sir, that you wish to say in addition to
2 what Mr. Marshall has said on your behalf?

3 MR. SIMON: No, Your Honour, I have
4 nothing to say.

5 THE COURT: Mr. Simon, do you now
6 understand, sir, that you can't go on to that
7 property when you're on picket duty?

8 MR. SIMON: (No response)

9 THE COURT: I want to know, Mr. Simon,
10 whether you are agreeing to obey the terms of this
11 court order, because I have to decide whether it's
12 necessary for me to impose any particular sanction
13 in order to ensure the Court's order is obeyed to
14 the letter by you and by the others. Now, do you
15 continue to have a problem with that, or not?

16 MR. SIMON: No, Your Honour, I have no
17 problem with keeping off the mine property, Your
18 Honour. It's a -- it's a simple thing to do, it's
19 just that, like, mine property comes right to the
20 ditch of the road, and it's only six or seven feet
21 over the ditch, so if you're, you know, five feet
22 past that into the company property, then you're
23 trespassing -- you know, it's true, we're in a big
24 land here, and I guess -- if I could see it, Your
25 Honour, if it was fenced and somebody jumped the
26 fence or something, but, you know, to go in five
27 feet on company property or whatever it is --

Gabe's

1 THE COURT: But, Mr. Simon, let me just
2 follow up on something --

3 MR. SIMON: Your Honour, I think that
4 it's sad when the courts today -- that you can sit
5 there and you can say that I'm in -- that I have
6 criminal charges against me because I went in a
7 few feet. So I used the washroom because we never
8 had proper washroom facilities, and now you hold
9 me guilty of this charge, you have now the risk of
10 my job in jeopardy, because now we have two
11 arbitrators in Ottawa waiting to have judgment on
12 the 45 workers. We want extradited arbitration.
13 Well, yes, we will get extradited arbitration. An
14 extradited arbitration is rapid arbitration, and
15 in order to have rapid arbitration, you must have
16 in our society rapid justice. So you are a part
17 of the rapid justice, you are providing the ground
18 work for the two arbitrators in Ottawa, which is
19 waiting their faith on the 45. It lays in your
20 hands, Your Honour. It's your hands. You see fit
21 to do as you do as a judge.

2 I asked you the other day, could I have judge
3 and jury, you explained to me quite frequently. I
4 believe in your heart and sole as a judge when I
5 ask for judge and jury. If you believed in the
6 justice that you're supposed to believe in, you
7 would have elected me to have judge and jury, but

Gabe's

1 you defied my right to be judged by my peers, so I
2 feel today I'm not judged by my peers, but give us
3 judge and jury, let the people decide what
4 happened in Yellowknife, but you're afraid of the
5 truth, and the law is afraid of the truth, and I
6 believe that this strike has become what we call
7 big, but bigger than big. I think there's so much
8 corruption by the justice and the law system and
9 the court system and all of them that was in the
10 bag together, that I believe that they must hide
11 the truth from the public and that's why I was
12 denied judge and jury, because we're under
13 pressure, I believe, from maybe the big brother,
14 maybe Ottawa has got pressure over this, that
15 makes these decisions fast, and we'll find the
16 faith of the 45, but I hope some of the people in
17 the justice system, when they go home tonight, if
18 that's the attitude they're going to have, that
19 they can sleep a good night. That's all I have to
20 say, Your Honour.

1 THE COURT: In considering the
2 circumstances of the type of breach committed by
3 Mr. Simon and all of the other submissions that
4 have been made to me, it's my view that an
5 appropriate sanction is one similar -- similar to
6 the one that was imposed on Mr. Bettger.

7 I'm going to reduce the period to two months

Gabe's

1 keeping into -- taking into consideration the fact
2 that Mr. Simon was under virtually the same type
3 of condition for four months while he was awaiting
4 this hearing. So in the matter of Amos Simon, I
5 hereby suspend the passing of sentence for a
6 period of two months. During that time, Mr.
7 Simon, you'll be allowed to go free, but you will
8 be bound by the order of this Court to keep the
9 peace and be of good behavior, to refrain from
10 being within one kilometre of the property of
11 Royal Oak Mines at the Giant Mine site, and to
12 appear before this Court again when you're
13 required to do so.

14 Mr. Simon, as your lawyer will no doubt
15 explain to you if you do keep the peace and obey
16 the orders of this Court within the next two
17 months, no further sanction or penalty will be
18 imposed on you. On the other hand, if you breach
19 the peace or you disobey any order of this Court
20 within the next two months, you will be brought
21 back before this Court for judgment and for the
22 imposition of a sentence for your contempt.

23 Once again, just so that it is clear, at any
24 time during the next two months for whatever
25 reason, if the strike is over, and for whatever
26 reason you are permitted to and you want to return
27 to your employment at the Giant Mine, you can make

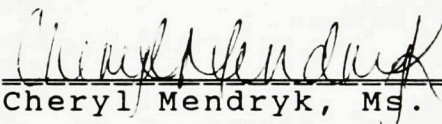
Gabe's

1 application to the Court for any necessary
2 variations in this order. Once again, I'm going
3 to ask the representative of the Attorney General
4 of Canada to prepare the necessary order and
5 arrange for it to be served on Mr. Simon
6 personally, but the order will take effect from
7 today's date and Mr. Simon will be free to go
8 under those terms. Court is adjourned.

9 (PROCEEDINGS ADJOURNED)
10 -----

1 I, Cheryl Mendryk, C.S.R.(A), hereby certify
2 that I attended the above Proceeding and took
3 faithful and accurate shorthand notes and the
4 foregoing is a true and accurate transcript of my
5 shorthand notes to the best of my skill and
6 ability.

7 Dated at the City of Calgary, Province of
8 Alberta, this 13th day of January, A.D. 1993.
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2 Cheryl Mendryk, Ms.
3 Court Reporter.
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Gabe's

application to the Court for any necessary
 variations in this order. Once again, I'm going
 to ask the representative of the Attorney General
 of Canada to prepare the necessary order and
 arrange for it to be served on Mr. Simon
 personally, but the order will take effect from
 today's date and Mr. Simon will be free to go
 under those terms. Court is adjourned.
 (PROCEEDINGS ADJOURNED)

I, Cheryl Hendryk, C.A.S. (A), hereby certify
 that I attended the above proceeding and took
 faithful and accurate shorthand notes and the
 foregoing is a true and accurate transcript of my
 shorthand notes to the best of my skill and
 ability.
 Witness at the City of Calgary, Province of
 Alberta, this 15th day of January, A.D. 1982.

Cheryl Hendryk
 Cheryl Hendryk, M.A.
 Court Reporter

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