

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROYAL OAK MINES INC.

(Plaintiff)
Applicant

- and -

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



(Defendants)

- and -

AMOS SIMON

(Alleged Contemnor)
Respondent

Motion to find the respondent in criminal contempt of court for breaches of a labour injunction allowed as to two charges and otherwise dismissed.

Heard at Yellowknife on April 27th 1993

Judgment filed: April 28th 1993

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Petitioner: Virginia Schuler, Q.C.

Counsel for the Respondent
Amos Simon: Austin Marshall, Esq.

Counsel for the Attorney General of Canada: Leslie Rose, Esq.
(watching brief only)

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
BETWEEN
THE ATTORNEY GENERAL OF THE NORTHWEST TERRITORIES
AND
ROYAL OAK MINES INC.



ROYAL OAK MINES INC.

Respondent

- and -

YVESLOK NINAJOL TORHAKUE

CANADIAN ASSOCIATION OF
SMELTERS AND ALLIED WORKERS
LOCAL No. 4, 8th FLOOR
HARRY BERTON, 808 KESTER
RICK CASSIDY, 41 SHEPPARD
and ROBIN JANE

- and -

MARCO ROSITA KOLDEWEY

(The Respondent)

- and -

AMOS SIMON

(Alleged Contaminant)
Respondent

THE ATTORNEY GENERAL OF THE NORTHWEST TERRITORIES

Respondent

Motion to file the Respondent in criminal contempt of court for breaches of a labour
injunction allowed as to two breaches and otherwise denied.

Filed at Yellowknife on April 27th 1993

Judgment filed April 28th 1993

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. DE WERDT



Counsel for the Respondent

Virgin Schaler, Q.C.

Counsel for the Respondent

Astrin Marshall, Esq.

Amos Simon

Counsel for the Attorney General of Canada: Leslie Ross, Esq.

(watching brief only)

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROYAL OAK MINES INC.

(Plaintiff)
Applicant

- and -

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

(Defendants)

- and -

AMOS SIMON

(Alleged Contemnor)
Respondent

REASONS FOR JUDGMENT

The plaintiff, Royal Oak Mines Inc., moves the Court to find the respondent Amos Simon in contempt of court for breaches of the injunction issued in Chambers as consolidated in the order made on June 19th 1992.

The alleged breaches are said to consist of the following:

- (a) watching and besetting in the mill area of the Giant Mine on or about the morning of Tuesday, April 6, 1993;
- (b) entering onto Giant Mine property in the mill area on Tuesday, April 6, 1993 for the purpose of showing disrespect for the spirit and intent of the Injunction Order, namely to provide for peaceable relations at or near the property of the Plaintiff;

- (c) picketing within a distance of three hundred (300) feet of the Muck Crossing on or about the morning of Wednesday, April 7, 1993;
- (d) watching and besetting on the west side of Highway Number 4 on Giant Mine property near the 138 Portal area on or about the afternoon of Wednesday, April 7, 1993;
- (e) entering onto Giant Mine Property on the west side of Highway Number 4 near the 138 Portal area on Wednesday, April 7, 1993 for the purpose of showing disrespect for the spirit and intent of the Injunction Order, namely to provide for peaceable relations at or near the property of the Plaintiff;
- (f) picketing within a distance of three hundred (300) feet of the Muck Crossing on at least five (5) separate occasions on or about the morning of Thursday, April 8, 1993;
- (g) watching and besetting on the east side of Highway Number 4 on Giant Mine property approximately 200 yards south of the Main Gate on or about the afternoon of Thursday, April 8, 1993;
- (h) entering onto Giant Mine Property approximately 200 yards south of the Main Gate on Thursday, April 8, 1993 for the purpose of showing disrespect for the spirit and intent of the Injunction Order, namely to provide for peaceable relations at or near the property of the Plaintiff.

3 It is agreed by the parties, through their counsel, that the orders above mentioned were in force at the material times and were known to the public, and the respondent Amos Simon, to be so. In addition, a map and a sketch of the relevant areas described in the evidence were marked as exhibits, together with a video tape which was viewed during the hearing, all by agreement. The accuracy of the map and sketch, as to the boundaries of the Giant Mine premises of the plaintiff, was not however admitted by the respondent.

4 The plaintiff's submission that the alleged contempt is criminal in nature, being

carried out in a manner constituting public defiance of the Court's orders, is not contested by the respondent. The respondent relies on this for the submission made on his behalf that he is to be presumed innocent of the offences charged and that they must be proved beyond a reasonable doubt if he is to be convicted. He stresses these points in reference to the issue of any identification of himself as the person who allegedly committed any of the offences charged. And he also lays emphasis on these fundamental principles in reference to the location of the boundaries of the plaintiff's Giant Mine premises.

Amos Simon did not testify. The only witnesses called upon to do so were two security guards, Brian Richard Metcalfe and Andrew Ross, on behalf of the plaintiff. No statement of agreed facts was filed. The only agreements between the parties, through their counsel, according to my notes, are as mentioned above. The question of Mr. Simon's qualifications to engage in lawful picketing, as an employee of the plaintiff or an official of the defendant Canadian Association of Smelter and Allied Workers, Local No. 4, was not the subject of any such agreement.

Mr. Simon not having testified, and there being no agreement as to his status to engage in lawful picketing activity at Giant Mine, or any evidence adduced on his behalf in that regard, the only evidence before the Court which touches on that point is to be found in the testimony and the affidavit of Mr. Metcalfe sworn on April 12th 1993. Mr. Metcalfe does not testify to Mr. Simon being either an employee of the plaintiff or an official of the defendant union. He merely identifies Mr. Simon as a member of the union whom he had seen at the Giant Mine site on a regular basis picketing there with others.

Were it not for Mr. Metcalfe's evidence, which I accept as being entirely

credible and fairly presented, there would be nothing in the evidence before the Court to raise a reasonable doubt as to Mr. Simon being at the material times a person duly qualified and entitled, within the limits set out in the injunction order of June 19th 1992, to engage in lawful picketing at the Giant Mine site. That evidence does not go so far as to enable me to find as a fact that Mr. Simon was so entitled. It does, however, raise a reasonable doubt on that point and I must give Mr. Simon the benefit of that doubt since this is, in essence, a criminal proceeding.

8 Mr. Metcalfe's testimony makes references to the plaintiff's Giant Mine premises as "the property" or "the mine site". I understand him to be referring at all times to those premises when using such expressions. He testified that he had been told where the boundaries of those premises lie on the ground and described them, as thus known to him, by referring to lines on the sketch map, Exhibit P-1. This evidence is of course inadequate for purposes of proof as to where precisely those boundaries exist in fact and law. What it shows, however, is where the boundaries appeared to him, and by inference to others such as Mr. Simon, to be at the relevant times. And, among other things, it shows that a fence around an area known as the dog compound went beyond those apparent boundaries, abutting on to public land on the eastern side of the Ingraham Trail, also referred to by the witnesses simply as "the highway".

9 It is not necessary, in my view, that the precise location of the legal boundaries of the Giant Mine premises of the plaintiff be established in evidence for present purposes. That is because the injunction forbids "watching, besetting, picketing or attempting to watch, beset or picket at or adjacent to the Plaintiff's premises known as Giant Mine at Yellowknife" (emphasis added here). The evidence is sufficient in my view,

in the absence of anything contradictory, to allow the Court to draw a reasonable (and not incautious) inference as to certain of the events described by the witnesses (and alleged in the charges) having taken place in fact "adjacent to" those premises if not within the legal boundaries of the premises.

The pertinent words of the injunction, for purposes of the present proceedings, are as follows:

1. IT IS ORDERED that the Defendants, their agents, servants, and any person acting under their instructions or the instructions of any of them, or any other person having notice of this order, be and are hereby commanded to desist and refrain from:

- (a) watching, besetting, picketing or attempting to watch, beset or picket at or adjacent to the Plaintiff's premises known as Giant Mine at Yellowknife in the Northwest Territories, except as herein specifically stated, that is to say:
- (b) picketing merely to obtain or communicate information by no more than five (5) picketers at the main entrance to Giant Mine, all of whom are either employees of the Plaintiff or officials of the Defendant Canadian Association of Smelter and Allied Workers, Local No. 4;
- (c) picketing merely to obtain or communicate information by no more than five (5) picketers at any other entrance to Giant Mine, all of whom are persons as described in paragraph (b) above;

* * *

3. AND IT IS ORDERED that the Defendants, their agents, servants, and any person acting under their instructions or the instructions of any of them, and any other person having notice of this order, be and are hereby commanded to desist and refrain from any and all picketing within a distance of three hundred (300) feet of the Muck Crossing where the public highway intersects the property known as Giant Mine as shown on the mine site plan (attached and marked Appendix "A") with an arrowhead and the words "MUCK CROSSING".

11 Taking the various charges in the order in which they are described in the notice of motion, I find as follows.

(a) and (b): events of April 6th 1993:

12 The video sequence and the testimony of Mr. Metcalfe satisfy me beyond reasonable doubt that Mr. Simon was on the east side of the fence on the east or northeast side of the dog compound on and adjacent to the plaintiff's Giant Mine premises on the morning of April 6th 1993. While Mr. Simon was wearing a parka-type coat or jacket with the hood up, the hood was not shrouded in fur and his face was visible so that he could be identified, and was identified, by Mr. Metcalfe. I have of course reminded myself of the frailties of identification evidence. But the identification took place in broad daylight with no one else around or anything taking place which might have distracted the witness or which could have caused confusion as to the identification. And the camera shows how close Mr. Metcalfe was to Mr. Simon at the fence. Mr. Simon's location was measured later as having been well beyond the limits of the Ingraham Trail as defined in the **Designation and Classification of Highways Order** under the **Public Highways Act, R.S.N.W.T. 1988, c. P-13.**

13 The area in question, as shown in the video sequence, contained piled muck which, as described in the testimony, effectively prevented use of the area as an entrance to the Giant Mine premises. It was argued that since this had been in use as an entrance to those premises at the time that the injunction order was made, it remains a place designated by that order at which lawful picketing is permitted. It is not, however, necessary to deal with that submission here since Mr. Simon's activities can only be

described as "watching and besetting" and not, as his counsel suggests, "picketing". To begin with, nothing has been shown to suggest that lawful picketing, under the terms of the injunction, may take place on the plaintiff's premises. Next, "picketing merely to obtain or communicate information" implies some attempt, at least, to identify the picket as a picket. Mr. Simon carried no sign or placard proclaiming his status as a picketer. Nor was there any other indication made of his being engaged merely in picketing. Plainly he was not there to communicate information. That he was seeking to obtain information is one possible explanation for his presence. It is by no means the only such explanation. I infer that he was instead engaged in testing the perimeter fence around the dog compound for no legitimate purpose connected with picketing. And I infer that he was likewise testing the vigilance of the plaintiff's security services.

On the evidence before the Court, I am therefore satisfied beyond a reasonable doubt that Mr. Simon is in criminal contempt of this Court by disobeying the injunction order, well knowing its terms and requirements, and that he thereby showed public defiance and disrespect for the Court and its order, at the dog compound perimeter fence in the mill area, as charged, on April 6th 1993.

(c): events at the Muck Crossing on April 7th 1993:

The Muck Crossing is very clearly marked on the mine site plan attached to the injunction order and marked as Appendix "A" to that order. It is also clearly marked on the map entered by agreement as Exhibit P-2. As mentioned in the order, as quoted earlier, the Muck Crossing is located at a point on the Ingraham Trail (a public highway) where there is an intersection leading on to the Giant Mine property. The order prohibits

any picketing within 300 feet of that intersection. And it prohibits all watching and besetting other than lawful picketing.

16 The video tape shows Mr. Simon at the crusher gate on the Giant Mine property on April 7th 1993, well within the 300 foot limit where picketing is prohibited. Mr. Metcalfe identified him there at the time. I accept that as an accurate identification given all the circumstances, including the existence of broad daylight, Mr. Simon's clothing similar to the day before, his proximity to Mr. Metcalfe, his facial features, his gait and so on. And there is nothing which throws the slightest doubt on this identification.

17 Mr. Simon walked up and down, but it is perfectly clear that he was not merely passing by as a pedestrian on the highway. He came right up to the crusher gate, for one thing, which as a mere passerby he need not have done. He cannot be heard to say that he was engaged in lawful picketing, however much it might be argued that the plaintiff has changed "the rules of engagement" during the strike by using the crusher gate for access to and from the mine site from the highway, and vice versa.

18 On the evidence before the Court, I infer that Mr. Simon on this occasion, or series of occasions during April 7th 1993 at the Muck Crossing, was again engaged in an exercise intended to test the vigilance of the plaintiff's security services amounting, in fact, to watching and besetting the plaintiff's Giant Mine premises. He was not engaged in lawful picketing as permitted by the injunction order.

19 I am therefore satisfied beyond a reasonable doubt that Mr. Simon is in criminal

contempt of this Court by thereby disobeying the injunction order, well knowing its terms and conditions, and that he thereby showed public defiance and disrespect for the Court and its order, at the Muck Crossing, as charged, on April 7th 1993.

(d) and (e): events near the 138 Portal:

While I do not question the good faith of Mr. Metcalfe's identification of Mr. Simon as the individual seen by him in this area, on the plaintiff's property, on April 7th 1993, and it may well be that it was Mr. Simon who was seen there then by Mr. Metcalfe, I remind myself that the evidence supporting this particular identification is unsatisfactory for purposes of a criminal prosecution, that it gives rise to a reasonable doubt as to the accuracy of the identification, and that Mr. Simon must receive the benefit of that doubt.

I therefore dismiss the charges against Mr. Simon as to events in the area of the 138 Portal to the plaintiff's property on April 7th 1993.

(f): events at the Muck Crossing on April 8th 1993:

The principal witness to the events at the Muck Crossing on April 8th 1993 was the second security guard, Andrew Ross. Mr. Ross was not alone, however, in his observations of Mr. Simon there that day. Both he and Mr. Metcalfe identified Mr. Simon positively as the individual who kept returning there, approaching the crusher gate, and otherwise behaving as he had before. That Mr. Simon continued to do this after he had been clearly warned by Mr. Ross that he was in breach of the injunction order, indicates a deliberate intention to defy the Court and its order. There is no evidence to suggest any

other explanation. The video tape supports the testimony of Mr. Ross and Mr. Metcalfe as to the activities of Mr. Simon on the occasions in question.

23 However, I note that Mr. Simon is charged only with picketing on these occasions, not watching and besetting. As mentioned earlier, his actions cannot be described as picketing. These proceedings being criminal in nature and no amendment of the charge having been sought or made, to include either "watching" or "besetting" in the charge, I have no choice but to dismiss the charge as not having been proved beyond a reasonable doubt as "picketing".

(g) and (h): events south of the main gate on April 8th 1993:

24 Given the nature of the evidence in respect of these last two charges. I remain unsatisfied that it has been shown beyond reasonable doubt that Mr. Simon was engaged in watching and besetting, as alleged, on April 8th 1993 south of the main gate to the plaintiff's mine site. Mere trespassing does not, in itself, constitute watching and besetting. Nor does it, without more, constitute a breach of the injunction order.

25 Granted, Mr. Simon's activities were quite consistent with watching and besetting on this occasion. There is some suggestion that the plaintiff's security personnel may have been goading him to enter on the plaintiff's property even as his activities no doubt served as a goad to them. Were this a mere matter of civil contempt I should have a good deal less difficulty in reaching a finding adverse to Mr. Simon. Since it is being prosecuted as criminal contempt, I find myself sufficiently in doubt to dismiss these last two charges as not having been proved beyond a reasonable doubt.

Conclusion

The Court finds Mr. Simon guilty as above mentioned. In doing so, it is treating the two charges (a) and (b) as one only. The other charge of which Mr. Simon is found guilty is (c). The remaining five charges are dismissed.

A handwritten signature in black ink, appearing to read 'M.M. de Weerd', with a stylized flourish at the end.

M.M. de Weerd
J.S.C.

Yellowknife, Northwest Territories
April 28th, 1993

Counsel for the Petitioner:

Virginia Schuler, Q.C.

Counsel for the Respondent
Amos Simon:

Austin Marshall, Esq.

Counsel for the Attorney General of Canada:
(watching brief only)

Leslie Rose, Esq.

Mr. and Mrs. Simon, Mr. and Mrs. ...

The Court finds Mr. Simon guilty as above mentioned. In doing so, it is

restoring the two charges (at and for as one only. The other charge of which Mr. Simon

is found guilty is left. The remaining two charges are dismissed.

and ...

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ROBERT TAYLOR

ROBERT TAYLOR

- and -

STATE OF CALIFORNIA, Plaintiff, vs. ROBERT TAYLOR, Defendant.



Filed for the Court on April 7, 2003.

Reasons Filed April 10, 2003.

Counsel for the Plaintiff: [Name]
Counsel for the Defendant: [Name]

Richard J. [Name]
[Name]

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NORTHWEST TERRITORIES

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ROYAL OAK MINES INC.

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Applicant

- and -

CANADIAN ASSOCIATION OF SMELTER AND
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HARRY SEETON; BOB KOSTA; RICK CASSIDY;
AL SHEARING and ROBIN JANZ

(Defendants)

- and -

AMOS SIMON

(Alleged Contemner)
Respondent

REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE M.M. de WEERDT

