

William Young - - - - - *Appellant*

v.

The Canadian Northern Railway Company - - - - - *Respondents*

FROM

THE COURT OF APPEAL FOR THE PROVINCE OF MANITOBA.

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH
NOVEMBER, 1930.

Present at the Hearing :

VISCOUNT DUNEDIN.

LORD BLANESBURGH.

LORD TOMLIN.

LORD RUSSELL OF KILLOWEN.

CHIEF JUSTICE ANGLIN.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

In this case the appellant, who had been in the employ of the respondents (hereinafter called the railway company) as a machinist, sued the railway company for damages for wrongful dismissal and for other relief. His action was tried in the Court of King's Bench for Manitoba by Dysart J. and was dismissed. An appeal from that judgment to the Court of Appeal for Manitoba was also dismissed. The appellant has now, with the leave of the Court of Appeal, appealed to His Majesty in Council.

The appellant entered the service of the railway company in June, 1920, having a few days before arrived in Canada from England. He left its employ on the 13th June, 1927, pursuant to a notice dated the 9th June, 1927, in the following terms:—
“Your services will not be required after 5 p.m. on the 13th June, 1927, on account of reduction of staff.”

The appellant's claim that this notice operated as a wrongful dismissal was founded upon the allegations : (1) that the railway company was bound contractually to him not to reduce staff by dismissing him while retaining in its service men junior to him, (2) that men junior to him had been retained, and (3) that his "seniority rights" had thereby been violated.

A considerable number of other points were raised, and some of them were argued before the Board ; but all are, in their Lordships' view, subsidiary to the question, whether or not the railway company had bound itself to the appellant in the manner indicated. If in truth there was no such contractual obligation between the parties to this action, none of the other questions call for consideration or decision.

According to the evidence, all that passed when the appellant was engaged was this :—The appellant saw a Mr. Hough and signed a form of application for employment. He was told to start the following morning. He then asked what wages he was going to receive. "Hough's reply was I would receive the going rate, the machinist's rate." There was no written agreement between the appellant and the railway company.

It is evident that the suggested contractual obligation is not capable of being established merely from what happened on that occasion.

The appellant, however, in support of his claim relies on other matters, to which reference must now be made.

There was in existence a document dated the 12th November, 1919, called "Wage Agreement No. 4." The parties to it were, on the one hand the Canadian Railway War Board, on the other hand a body called "Division No. 4, Railway Employees' Department, American Federation of Labour." The document describes itself as an agreement "in respect to rates of pay, work hours, and conditions of service for employees in the locomotive and car department of the several railways as specified herein" : it further states "This agreement shall be effective on the following railways" : the railway company being included under "Canadian National Railways." Then follow "Rules" to the number of 188.

At the date of this agreement, the Canadian War Board represented the railways of Canada, and when the War Board, in course of time, ceased to exist, the railways of Canada had as their representative in negotiations with representatives of the men, a voluntary association called the Railway Association of Canada.

Division No. 4, Railway Employees' Department, American Federation of Labour (hereinafter called Division No. 4), was a territorial division of a labour organisation, whose headquarters were in the United States. Division No. 4 covered the whole of Canada.

At different times variations of the Wage Agreement No. 4 were agreed to between the Railway Association of Canada and

Division No. 4, but for the purposes of this appeal these variations are not material, and Wage Agreement No. 4 need alone be considered.

The appellant alleges that the railway company was contractually bound to him in the terms of Wage Agreement No. 4, and that his dismissal was made in such circumstances that it amounted to a breach by the railway company of certain provisions of Wage Agreement No. 4, more particularly Rules 27, 31, 35, 36 and 37, which he says secured to him his seniority rights and other rights. It does not appear to their Lordships necessary to discuss the question whether the railway company in dismissing the appellant did or did not act in violation of those provisions. For the purposes of this appeal they are prepared to assume this point in the appellant's favour, and to consider this appeal upon the footing that the railway company did, in dismissing the appellant, act in violation of the provisions of Wage Agreement No. 4, assuming them to apply.

The outstanding question for decision is whether the railway company was contractually bound to the appellant in the terms of Wage Agreement No. 4, *i.e.*, whether the contract subsisting between the appellant and the railway company included provisions similar to the provisions of Wage Agreement No. 4. Unless that position can be established the appellant is not in a position to sue the railway company for any alleged breach of those provisions.

The trial judge dismissed the appellant's action upon the ground that, because he was not a member of Division No. 4, he could not claim the benefit of Wage Agreement No. 4.

In the Court of Appeal a variety of opinions combined to defeat the appellant.

Fullerton J.A. (with whom the Chief Justice of Manitoba and Dennistoun J.A., concurred) held that there was no evidence to show that the appellant agreed to work under the conditions fixed by Wage Agreement No. 4, and that any such agreement, if proved, would be unenforceable for want of mutuality.

Trueman J.A. held that the appellant was entitled to enforce against the railway company the provisions of Wage Agreement No. 4, but that under those provisions he had no right at the date of his writ to resort to the law Courts.

Robson J.A. assumed, without deciding the point, that the appellant could enforce against the railway company the provisions of Wage Agreement No. 4. Upon that assumption, he agreed with Trueman J.A. that the appellant had appealed to the wrong tribunal.

Their Lordships feel a doubt whether the true question has really been considered by all the learned judges in the Courts below—*viz.*, whether the appellant has established that the contract for service which existed between himself and the railway company included terms by which the railway company either bound itself to the appellant to observe the provisions of

Wage Agreement No. 4, or bound itself to the appellant to observe provisions similar to those contained therein.

If that question be answered in the affirmative, it is immaterial whether the appellant was or was not a member of Division No. 4 or of any other or of no labour organisation. Further, if that question be answered in the affirmative, there can be no question of the contract being unenforceable for want of mutuality or otherwise. It is simply a contract of employment which embodies special terms.

On the other hand, if the question be answered in the negative, the action, so far as it depends upon the existence of that contractual obligation on the part of the railway company, must of necessity fail, and no further question can arise.

Before their Lordships' Board the appellant's counsel sought to establish the existence of the necessary contractual obligation from the following facts which, as he claimed, the evidence proved:—That the railway company (whose shops were open shops) treated all its employees alike, whether members of Division No. 4 or not; that when the appellant was hired he was promised "the going rate" and was placed as regards salary under "schedule," which meant the Wage Agreement No. 4; that he was placed on the seniority list referred to in Rule 31; that when he was dismissed the railway company gave him the number of days' notice required by Rule 27; that when he complained to various officials of the railway company he was referred to the Committee as provided by Rule 35. From these facts their Lordships were invited to hold that the necessary contractual obligation had been established.

There can be no doubt upon the evidence that in fact, the provisions of Wage Agreement No. 4 were applied by the railway company to all its employees in its locomotive and car department. One extract from the evidence of the general manager (Mr. Tisdale) makes this clear:—

"A.—I understand your question to be this: Is the agreement that was negotiated between the railway companies and Division 4 applicable to all the men in the shop?"

"Q.—Yes?"

"A.—The answer is Yes."

Their Lordships, however, are unable to treat these matters as establishing contractual liability by the railway company to the appellant. The fact that the railway company applied the agreement to the appellant, is equally consistent with the view that it did so, not because it was bound contractually to apply it to him, but because as a matter of policy it deemed it expedient to apply it to all.

If the conduct of the railway company in applying the provisions of the agreement to the appellant could only be explained by the existence of a contractual obligation to the appellant so to do, it would be not only permissible, but necessary to hold that the existence of the contractual obligation had been established.

In the circumstances, however, of the present case, their Lordships find themselves unable so to decide.

But the matter does not quite rest there. When Wage Agreement No. 4 is examined, it does not appear to their Lordships to be a document adapted for conversion into or incorporation with a service agreement, so as to entitle master and servant to enforce *inter se* the terms thereof. It consists of some 188 "Rules," which the railway companies contract with Division No. 4 to observe. It appears to their Lordships to be intended merely to operate as an agreement between a body of employers and a labour organisation by which the employers undertake that as regards their workmen, certain rules beneficial to the workmen shall be observed. By itself it constitutes no contract between any individual employé and the Company which employs him. If an employer refused to observe the rules, the effective sequel would be, not an action by any employé, not even an action by Division No. 4 against the employer for specific performance or damages, but the calling of a strike until the grievance was remedied.

If, in the present case, the appellant has suffered any injustice at the hands of the railway company, it was in the power of Division No. 4 to obtain justice for him had they chosen so to do. It is suggested that Division No. 4 chose not so to do, because the appellant was a member of a rival organisation. Assuming the suggestion to be well founded, the moral thereby pointed would appear to be that in the case of an "open" shop, the protection which an agreement such as Wage Agreement No. 4 affords to a workman who is not a member of the contracting labour organisation, is to be measured by the willingness of that body to enforce it on his behalf.

One more observation remains to be made. Their Lordships have dealt with the case as one in which the wrongfulness of the dismissal depended solely upon the alleged violation of provisions contained in Wage Agreement No. 4. No foundation was laid by the evidence for any claim for damages upon the footing that the length of notice given was insufficient under the actual contract of service which existed between the appellant and the railway company.

In the result their Lordships are of opinion that this appeal should fail and be dismissed with costs; as they have already humbly advised His Majesty.

In the Privy Council.

WILLIAM YOUNG

v.

THE CANADIAN NORTHERN RAILWAY
COMPANY.

DELIVERED BY LORD RUSSELL, OF KILLOWEN.

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