

Court of Appeal

Maz Tudor Inns Ltd. v. Cndn. Assn. of Smelter and Allied Workers

Date: 1985-12-23

I. Donald, for appellants.

A. E. Thiele, for respondents.

(Vancouver No. CA003916)

23rd December 1985. The judgment of the court was delivered by

[1] HUTCHEON J.A.:— This appeal is by the defendants from an interlocutory injunction order [[1985] B.C.W.L.D. 1488] and the main issue is whether, because of the provisions of the Labour Code, there was jurisdiction to make the order.

[2] The plaintiffs Maz Tudor Inns Ltd. and Calypso Dining Room Inc. operate two restaurants in the city centre of Kitimat. Together they employ approximately 12 employees. On 4th September 1984 the manager of one of the restaurants dismissed the defendant Jennifer Law from her employment as a waitress and three other employees quit work in protest. Those three are the defendants Wendy McKay, Tracy Reynolds and Marti Dieter.

[3] The four defendants went for help to the defendant Canadian Association of Smelter and Allied Workers. On 25th October the union passed a motion recommending a boycott of the restaurants and a month later issued a bulletin. The explanations given in the bulletin for the motion to boycott were the unfair treatment by management of its employees and “their refusal to rehire the recent employees who were unjustly terminated”.

[4] On 6th December 1984 a second longer bulletin was handed out to members of the public near the entrance to the restaurants. This was done by the four individual defendants I have mentioned and the defendants Ross Slezak and Wiho Papenbrock. The latter are the president and business agent respectively of the union. The plaintiffs allege that as a result of that distribution, among other things, 9 or 10 reservations and 14 other functions were cancelled with a loss to the restaurants of approximately \$26,000. The plaintiffs sued for damages for injury suffered by the plaintiff by:

(a) wrongfully and without lawful authority inducing or procuring breach or breaches of a contract or contracts and attempting to interfere with the performance of a contract or contracts between the Plaintiffs and their customers and suppliers; and

(b) unlawfully conspiring to injure the Plaintiff in its business.

The plaintiffs also claimed damages for defamation, libel and slander.

[5] The formal order restrained the defendants from

- (a) wrongfully and without legal authority interfering with the contractual relations between the Plaintiffs and its customers and others doing business with the Plaintiffs by encouraging a boycott of the Plaintiffs' businesses;
- (b) unlawfully conspiring to injure the Plaintiffs in its business by encouraging a boycott of the Plaintiffs' businesses;
- (c) persuading or endeavouring to persuade any employee of the Plaintiffs or any other person not to enter the premises of the Plaintiffs by means of watching, besetting, leafletting or picketing at or near the Plaintiffs' premises at 236 City Centre, Kitimat, in the Province of British Columbia, or by declaring or encouraging a boycott of the Plaintiff's business.

[6] The jurisdiction of the Labour Relations Board is spelled out in this way:

31. Except as provided in this Act, the board has and shall exercise exclusive jurisdiction to hear and determine an application or complaint under this Act and to make an order permitted to be made. Without limiting the generality of the foregoing, the board has and shall exercise exclusive jurisdiction in respect of

- (a) a matter in respect of which the board has jurisdiction under this Act or regulations;
- (b) a matter in respect of which the board determines under section 33 that it has jurisdiction; and
- (c) an application for the regulation, restraint or prohibition of a person or group of persons from
 - (i) ceasing or refusing to perform work or to remain in a relationship of employment;
 - (ii) picketing, striking or locking out; or
 - (iii) communicating information or opinion in a labour dispute by speech, writing or other means.

[7] The restrictions on the jurisdiction of the court, so far as material, are found in s. 32:

32.(1) Except as provided in this section, no court has or shall exercise any jurisdiction in respect of a matter that is, or may be, the subject of a complaint under section 28 or a matter referred to in section 31, and, without restricting the generality of the foregoing, no court shall make an order enjoining or prohibiting an act or thing in respect of them.

[8] MacKinnon J., in making the order, held that the jurisdiction to determine the claims made by the plaintiffs remained with the court because:

Here, there is no collective agreement between the plaintiffs and their employees. The union does not have status as a certified bargaining agent. There are no complaints made under the Labour Code or the regulations. The claim is for damages and can be resolved independently of finding a breach of the Code, a collective agreement or the regulations.

[9] He also endorsed the language of Finch J. in *Westminster Credit Union v. United Brotherhood of Carpenters & Joiners of Amer.*, Loc. 1251 (1984), 55 B.C.L.R. 369 (S.C.). That language includes this sentence:

On the other hand, where there is no labour dispute, and no violation of the Labour Code, regulations, or a collective agreement, but the conduct complained of is otherwise unlawful, the courts' jurisdiction continues unimpaired.

I take the judge to have decided there was no labour dispute because there was no collective agreement between the plaintiffs and their employees and the union lacked status as the certified bargaining agent. With respect, that approach to the Labour Code is not correct. It is not in keeping with the definition of "dispute" or the stated purposes of the Code.

[10] A labour dispute may be one between the employer and the employees as this definition makes clear:

1.(1) ...

"dispute" means a difference or apprehended difference between an employer or group of employers, and one or more of his or their employees or a trade union, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done;

I find reinforcement for the view that a dispute between an employer and employees is the concern of the board in these stated purposes of the Code:

Purposes and objects

27.(1) The board, having regard to the public interest as well as the rights and obligations of parties before it, may exercise its powers and shall perform the duties conferred or imposed on it under this Act so as to develop effective industrial relations in the interest of achieving or maintaining good working conditions and the well being of the public.

For those purposes, the board shall have regard to the following purposes and objects;

(a) securing and maintaining industrial peace, and furthering harmonious relations between employers and employees ...

(c) promoting conditions favourable to the orderly and constructive settlement of disputes between employers and employees or their freely chosen trade unions. [The italics are mine.]

[11] For these reasons, I cannot agree with the judge that the jurisdiction to determine the matters raised by the application for an injunction remains with the court. There was a "dispute" between the employer and four individual defendants "as to matters or things ... relating to terms or conditions of employment". Those four defendants enlisted the union in an effort to get their jobs back and to improve what they alleged to be unsatisfactory working conditions. The legislature has allocated the initial jurisdiction over that dispute to the Labour Relations Board.

[12] I have confined my remarks to the matters raised by the application for an injunction and I note that the allegations of libel and slander did not form any part of the injunction application. In respect of those allegations, the jurisdiction of the courts has not been affected in any way by the provisions of the Labour Code.

[13] We heard extensive submissions that the injunction was not a justifiable limit on the freedom of expression of the defendants. Because of the conclusion I have reached on the question of jurisdiction, I have not found it necessary to deal with the second issue.

[14] For these reasons, I would allow the appeal and set aside the interlocutory injunction.

Appeal allowed.