**COURT OF APPEAL FOR BRITISH COLUMBIA**

Citation: ***Brazeau v. International Brotherhood of Electrical Workers,*** 2004 BCCA 333

Date: 20040603

Docket: CA031704

Between:

**Wayne Brazeau**

Plaintiff (Respondent)

And

**International Brotherhood of Electrical Workers**

Defendant (Appellant)

Before: The Honourable Mr. Justice Low (In Chambers)

**Oral Reasons for Judgment**

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| A.E. Black, Q.C.<br>N.J. Hain | Counsel for the Appellant |
| F.G. Potts<br>C. Martin | Counsel for the Respondent |
| Place and Date: | Vancouver, British Columbia<br>3 June 2004 |

((A) stay pending appeal; (R) appeal dismissed)

[1] **LOW J.A.**: In this appeal there are two applications before me today. The first is a motion by the plaintiff respondent for dismissal of the appeal for failure of the appellant to comply with the rules as to the filing of transcripts of the 12-day trial that was conducted by Madam Justice Neilson. The second motion is by the defendant appellant for a stay of execution on the judgment of just over $200,000 in damages for wrongful dismissal pending disposition of the appeal.

[2] The purpose of the first motion, in reality, is to compel compliance with the rules. Rule 20 of the ***Court of Appeal Rules*** requires, within 60 days after the bringing of the appeal, that the appellant obtain and file a transcript of the oral testimony, or an electronic copy of the oral testimony. The parties can agree under this rule to exclude from the transcript portions of the testimony, and if they do not so agree and one party wants portions excluded, they can apply to the Registrar to settle the content of the transcript. Rule 27 provides for transcript extracts to be available to the members of the panel hearing the appeal, and there is also a practice direction that provides for bringing an application before a chambers judge with respect to the extent of transcripts to be filed.

[3] Instead of making an application before the Registrar with notice to the respondent, or an application to the judge in chambers for directions, counsel for the appellant simply took the position that no transcripts are necessary because all findings of fact in the 100-page trial judgment are accepted by the appellant.

[4] Counsel took all other steps to perfect the appeal in a timely way. The appeal record is now filed, as is the appellant’s factum. I think directions ought to have been obtained before

proceeding without transcripts, but the issue of whether transcripts are necessary is now squarely before me and I must deal with it.

[5] In most appeals the panel members hearing the appeal will wish to have the evidence given by the witnesses available to them. In the present case the appellant argues that no transcripts are necessary because the basis of the appeal is that the trial judge erred in applying the law as to the facts that she found and which are now undisputed. Although this position is attractive in the interests of lessening the volume of the record, I am not persuaded that the court will not need the transcripts.

[6] I confess that I am approaching the issue cautiously, but this is a fact-rich case, and I can foresee that members of the panel hearing this appeal will likely wish to have access to the evidence to learn the context in which significant findings of fact were made, notwithstanding that those findings of fact are not in dispute.

[7] It is not enough, in my opinion, to dispense with transcripts simply because it is not contended that the trial judge made any factual errors by misapprehending the evidence or disregarding important evidence therefore making a palpable and overriding error.

[8] Accordingly I order that the appellant obtain the transcripts in compliance with R. 20. This ruling does not preclude some agreement between the parties to exclude some of the evidence. Nor do I intend to dictate that all the evidence must be before the panel hearing the appeal. Rule 27 with respect to extracts will still be operative.

[9] I now turn to the motion for a stay of execution. The parties agree that the order ought to go upon certain terms except with respect to one matter. They agree that there will be a stay of execution pending the hearing of the appeal on three terms:

1. That the appellant file a letter of credit or bond to secure the judgment in the usual form required by this court;

2. That there be an early hearing date. Counsel advise that August 17th and October 18th are available for commencement of the hearing of this appeal which, it is agreed, should be fixed for one and one half days. In view of the fact that transcripts must now be ordered it is conceded by counsel for the respondent that the wise course would be to fix the matter for October 18th, and I fix the hearing of the appeal for that date.

3. The third condition agreed to is that the stay of execution not impede the plaintiff respondent in taxing his costs in the Supreme Court action, only that collection of those costs will be stayed.

[10] The area of dispute is a condition proposed by the respondent concerning the level of pension benefits to which the respondent is entitled. The order appealed from grants to the respondent increases in his pension payments that he would have been entitled to if he had received two years' notice of termination of his employment that the trial judge found was appropriate in the case, having found that as the employer had not made out a case for dismissal for cause.

[11] The amounts of the increases are expressed as arrears and as a monthly amount from now until the hearing of the appeal. The total is some $20,000. If the appellant is successful in the appeal, the respondent will not be entitled to those monies.

[12] I have considered the principles set out in ***Coburn v. Nagra*** (2001), 96 B.C.L.R. (3d) 327, and I am of the opinion that the balance of convenience between the parties favours the appellant. If the additional pension monies are paid to the respondent pending the hearing of the appeal and the appellant is entitled to their recovery following success on the appeal, recovery of the monies from the respondent would be problematical given his pension income of about $6,000 per month, his lack of assets, and his substantial debt for legal expenses arising out of this action. On the other hand, the respondent presents no reason for needing these monies at his disposal during the few months that will elapse before the appeal is heard.

[13] Accordingly, I decline to include the payment of these additional pension monies as a condition of the stay of execution. The order for the stay of execution will go on the other terms I have mentioned.

[Discussion with counsel]

[14] If the respondent is successful in the appeal he will recover the costs of his motion to dismiss the appeal, and if the appellant is successful in the appeal it will recover its costs of the motion for a stay of execution.

"The Honourable Mr. Justice Low"

**Correction**: June 16, 2004

Counsel for the Appellant is N.J. Hain, not N.J. Neil.