

Newfoundland Assn. of Public Employees v. Drake

Between
Newfoundland Association of Public Employees, appellant, and
Joseph Drake, first respondent, and
James Stockley, second respondent, and
Fred Brown, third respondent

[\[2002\] N.J. No. 25](#)

Docket: 1996 G.B. No. 91

Newfoundland and Labrador Supreme Court - Trial Division Orsborn J.

Judgment: filed January 21, 2002.
(35 paras.)

Labour law □ *Unions* □ *Legal status or capacity* □ *As party to an action* □ *Discipline of members* □ *For failure to strike or picket* □ *Courts* □ *Provincial courts* □ *Newfoundland* □ *Small Claims Court* □ *Jurisdiction, civil debt or damages.*

Appeal by the Newfoundland Association of Public Employees from the dismissal of its action to enforce fines imposed on its members. When the Association called a legal strike, the respondents Drake, Stockley and Brown refused to participate. They crossed the picket line to work their regularly scheduled hours. They were disciplined pursuant to the Association's constitution and were fined. When they refused to pay the fines, the Association commenced an action to enforce payment. The Provincial Court judge found that a trade union had no authority, statutory or otherwise, to sue its members to collect disciplinary fines, and that such lawsuits would be contrary to public policy. The judge also held that the fines were neither debts nor liquidated damages within the meaning of the Small Claims Act, such that there was no jurisdiction to entertain the claims for their payment.

HELD: Appeal dismissed. The Provincial Court judge erred in concluding that there was no statutory authority for the action. Under the Labour Relations Act, a trade union had an unfettered and unqualified status as a legal entity for the purposes of suing and being sued. However, the judge correctly concluded that the fines were not debts. Although the Association's constitution considered the fines to be debts, there was no fixed amount or any agreed method of quantification. The fines were financial penalties, and were not intended to compensate the Association for loss. Therefore, there was no jurisdiction under the Small Claims Act. There was no determination of the public policy issue.

Statutes, Regulations and Rules Cited:

Labour Relations Act, R.S.N. 1990, c. L-1, ss. 141(1), 142(1).

Small Claims Act, R.S.N. 1990, c. S-16, s. 3(1).

Counsel:

Stephanie Newell, for Newfoundland Association of Public Employees.
Joseph Drake, James Stockley and Fred Brown, on their own behalf.

APPEAL FROM REFUSAL OF PROVINCIAL COURT JUDGE TO ENFORCE
PAYMENT OF UNION-IMPOSED FINES UNDER SMALL CLAIMS ACT

ORSBORN J.: □

INTRODUCTION

6 1 The Newfoundland Association of Public Employees (NAPE) is a trade union. The respondents Drake, Stockley and Brown are members of the union. In 1994, the respondents refused to participate in a legal strike called by NAPE, and crossed the picket line in order to work their regularly scheduled hours. The respondents were disciplined pursuant to the NAPE Constitution and were fined \$500, \$1100 and \$300 respectively. They refused to pay the fines, and NAPE commenced an action in Provincial Court to enforce payment.

6 2 The Provincial Court judge dismissed the claim, saying:

In conclusion, the Plaintiff's claim is dismissed for the following reasons:

1. a trade union does not have authority by statute, or otherwise, to sue its members to collect fines levied against them as a matter of internal discipline.
2. it is contrary to public policy to permit trade unions to sue their members to collect fines levied against them as a matter of internal discipline.
3. the fines levied against the Defendants were neither "debts" nor "liquidated damages" within the meaning of the Small Claims Act and it is outside of the jurisdiction of this court to entertain a claim for their payment.

(Reasons for judgment p. 13).

6 3 NAPE has appealed.

LABOUR RELATIONS ACT, RSN 1990 c.1-1

141. (1) Each trade union and each council of trade unions is a legal entity for the purposes of prosecuting and being prosecuted and for the purpose of suing and being sued.

142. (1) A trade union shall file with the minister

- (a) a copy, certified by its proper officers to be correct, of the constitution, rules and by-laws of the trade union and a branch or local within the province; ...

- 3.(1) A judge has jurisdiction to try and adjudicate upon a claim for debt, whether payable in money or otherwise, or for damages, including damages for breach of contract, where the amount claimed does not exceed \$3000, including claims within that amount for the recovery of taxes or charges under the City of St. John's Act, the City of Corner Brook Act, the City of Mount Pearl Act, the Municipalities Act or the School Tax Act, or under regulation, order or by-law made under those Acts.

THE UNION CONSTITUTION

8. (a) Every member is guilty of an offence against the Constitution who: ...
- (xiii) refuses to respect a picket line during a legal Union strike. ...
- 8.(b) (f) The Discipline Committee may reprimand, fine or remove from office; suspend or expel any member who it rules has committed an offense against this Commission. These penalties may be assessed in any combination.
- ...
- (j) Any fine imposed hereunder shall constitute a debt to the Union and shall be enforceable by civil process.

THE JUDGMENT APPEALED FROM AND ANALYSIS

6 4 I will set out each conclusion reached by the trial judge and discuss it as appropriate immediately thereafter.

6 5 Neither the facts giving rise to the imposition of the fine nor the disciplinary process followed by NAPE were in issue. The respondents did not dispute the quantum of the fines, which were established by reference to the monies earned by them, in excess of what would have been their strike pay, while their colleagues were on strike. Representing themselves at trial, as they did on appeal, the respondents essentially took the position that it was simply wrong for the union to fine them for going to work.

Legal status of trade unions (p. 5 ff)

6 6 After referring to subsection 141(1) of the Labour Relations Act and to the decision of K. Barry, J., of this court in *I.A.M. v. Hearn*, [\[1986\] N.J. No. 261](#) (Quicklaw), the trial judge said, at pp. 6-7:

As a consequence of my reading, it became readily apparent that actions of this kind are of questionable standing. Questions arise for a number of reasons. On the one hand, there are the doubts I have alluded to above about the legal status of unions, whether they are corporate entities, voluntary associations, contractual relationships, or bodies vested only with an inchoate, "quasi corporate", status.

On the other hand, there is a sense of aloofness which prevails: trade unions should be accorded such rights as are necessary to do what they were intended for, to represent employees collectively in their dealings with employers, but as to internal matters they should

be left to their own devices. Discipline of members is one matter which is open to some debate.

Analysis

6 7 These comments do not contain any specific legal conclusion and require no further comment.

Actions barred by statute (p. 7 ff)

6 8 The trial judge noted that, unlike the federal legislation under consideration in Hearn, the Newfoundland Labour Relations Act contains no provision prohibiting a union from enforcing disciplinary action in the courts.

Analysis

6 9 No comment is necessary.

Actions not expressly authorized by statute (p. 8 ff)

6 10 The trial judge concluded that the absence of a specific statutory prohibition did not, in and of itself, allow the conclusion that legal action for unpaid fines was permitted. He said, at p. 8:

It is clear from the reasoning of the court in Hearn, supra, that a union "can act in its own name in its dealings with others and in regulating its internal affairs to the extent permitted under that statute". (Emphasis mine). It is less clear that a union can do something which is not expressly permitted by statute. It is to be recalled that unions are entirely creatures of statute and were not recognized as legitimate entities at common law.

6 11 His conclusion was shortly stated - at pp. 8-9:

I do not regard the right of a union to sue its members for non-payment of fines levied against them as necessarily incidental to "regulating its internal affairs". There is no such power conferred by the Labour Relations Act. In the absence of express statutory authority to do so, it does not have the right.

6 12 This was the first of the three reasons given for dismissing the union's claim.

Analysis

6 13 As the trial judge noted, there is no statutory provision barring a union from access to the courts to enforce a disciplinary fine imposed upon any of its members.

6 14 Subsection 141(1) of the Labour Relations Act gives a trade union the status of a legal entity "for the purposes of prosecuting and being prosecuted and for the purpose of suing and being sued". Insofar as this grant of legal status relates to the capacity to bring or defend a legal action, it is unfettered and unqualified. See *U.F.C.W. v. Cashin, et al* (1987), [66 Nfld. & P.E.I.R. 181](#) (Nfld. S.C.,T.D.); *U.F.C.W. Local 1252 Fishermen's Union v. Cashin et al* (1996), [149 Nfld. & P.E.I.R. 112](#) (Nfld. S.C.,T.D.).

6 15 Whether there are policy or other considerations that would preclude a particular litigant - in this case a union - from maintaining an action is not the same question as whether that litigant has the legal authority or capacity to institute the proceeding. The issues are separate and require separate analysis.

6 16 NAPE had the necessary statutory authority to bring an action in Provincial Court to enforce payment of disciplinary fines. The trial judge erred in concluding otherwise. Whether the proceeding could not be pursued in Provincial Court either due to a lack of statutory jurisdiction in the small claims court or on broader public policy grounds are different issues.

Fines not debt or liquidated damages (p. 9 ff)

6 17 The trial judge said, at pp. 10 - 13:

"Debt" is not defined in the Small Claims Act. It was, however, the subject of much discussion by Mr. Justice Barry in the Hearn case, *supra*. He concluded that the fine being claimed in that case was neither debt, nor liquidated damages. He had this to say:

While there are circumstances in which parties to an agreement may pre-determine a penalty to be paid by a defaulting party, and the penalty will be enforced by action in court as a debt or liquidated damages, a penalty which is to be determined after the breach by the party claiming to be wronged, cannot be so classified. It cannot be said that the fine imposed in this case was an amount agreed upon by the parties to the appellant's constitution since it was not specified therein, or otherwise made known to the respondents prior to the alleged breach. For these reasons alone, it is clear that the fines cannot be regarded as debts within the meaning of the Small Claims Act.

Of the case at hand the following may be said:

1. there was no pre-determined amount which the defaulting party would pay to the aggrieved party in the event of a breach.
2. it was open to the Plaintiff to fix the amount which union members would pay after an alleged breach, and it did so with respect to the Defendants.
3. there is no stipulation in the Plaintiff's constitution as to the amount that would be paid by a member in the event the member is found to be in breach of the constitution.
4. no evidence was led to show the manner in which the amounts of the fines levied against the Defendants were calculated, nor was any effort made to link the fines in any way to a measurement of damages the Plaintiff may have suffered by reason of the alleged breaches, assuming there were damages.

In respect of this issue, this case differs from the Hearn case, *supra*, to a limited extent. Paragraph 8(j), of Article III of the Plaintiff's constitution provides as follows:

- 8.(j) Any fine imposed hereunder shall constitute a debt to the Union and shall be enforceable by civil process.

There is no indication there was any provision of this kind, or similar to it, in the constitution of the union in the Hearn case, *supra*.

I do not accept, however, that this provision in the Plaintiff's constitution changes the situation materially. Aside from the public policy considerations which I have discussed above, a

provision such as this does not perforce render what is clearly a fine, a "debt", to make available the civil process for its collection.

In the Hearn case, *supra*, Mr. Justice Barry cited with approval the following passage from the judgment of Lord Dunedin in *Dunlop Pneumatic Tyre Co. Ltd. v. New Garage & Motor Co. Ltd.*, [1915] A.C. 79:

Though the parties to a contract who use the words "penalty" or "liquidated damages" may *prima facie* be supposed to mean what they say, yet the expression used is not conclusive. The court must find out whether the payment stipulated is in truth a penalty or liquidated damages.

There is no pretence at maintaining that the fines imposed on the Defendants are liquidated damages, nor could any be sustainable. I have no hesitation in concluding that the fines levied against the Defendants are penalties, imposed by the Plaintiff, in the words of Lord Dunedin, "in terrorem of the offending party", for the sole purpose of punishing the Defendants and as a deterrent to them and others from further violations of the constitution. By that reasoning, they could not possibly be considered "debts", regardless of how they are called in the constitution.

Analysis

6 18 NAPE relies on the fact that, unlike in Hearn, the union constitution here contains a specific recognition, and agreement, that any fine imposed "shall constitute a debt to the union". NAPE further points out that, contrary to the comments of the trial judge, there was evidence led which established the basis upon which the fines were levied - essentially the net financial gain that accrued to the respondents by being in receipt of salary rather than strike pay. (Transcript pp. 60 - 63, 164). Also, as noted earlier, the respondents did not question the quantum of the fines.

6 19 Simply by agreeing to classify a fine as a debt, parties to an agreement cannot give to a court jurisdiction it does not otherwise possess, nor require it to exercise a jurisdiction it would otherwise decline to exercise.

6 20 Courts will not enforce the payment of what is in truth a contractually-imposed punishment for breach of contract, even though the parties themselves may have agreed that the amount in question is a 'genuine pre-estimate of liquidated damages'.

6 21 Similarly, the fact that the parties may classify a fine as a debt does not convert it, without more, into a debt as that term is used in the Small Claims Act.

6 22 Are the fines in question "debt" or "damages" within the meaning of the Small Claims Act?

6 23 In my view, the Small Claims Act contemplates that damages able to be recovered under that Act, if proven, are compensatory damages. The small claims court is a creature of statute and enjoys no inherent jurisdiction. Jurisdiction must be expressly conferred - see *Popular Shoe Store Limited v. Simoni* (1998), [163 Nfld. & P.E.I.R. 100](#) (Nfld.C.A.). Damages are normally considered as compensatory, and I would not extend the small claims jurisdiction beyond this in the absence of specific wording in the legislation. Here there was no evidence of any loss suffered by the union which could be said to relate to the fines levied. The fines were assessed at the level they were in order to extract from the respondents the financial benefits derived from their going to work. They cannot be considered as compensatory.

6 24 In asserting that the fines are debts, within the meaning of the legislation, NAPE refers to *CIBC v. International Brokers' Co.* (1994), [114 D.L.R. \(4th\) 641](#) (Sask. C.A.) at p. 644:

A useful definition of the term debt appears in *Dunlop on Creditor-Debtor Law in Canada* (Toronto; Carswell, 1981), where the author says at pp. 19-20:

One can say that the most common use of the word "debt" is to describe an obligation to pay a sum certain or a sum readily reducible to certainty. The obligation may or may not depend on an express or implied contract, depending on the context in which the word is used, but to this writer the essence of the term is that, if there is an obligation to pay a certain or ascertainable sum, the courts should tend not to concern themselves with the precise nature of the cause of action. Claims for unliquidated damages will generally not be describable as debts unless the context suggests otherwise.

6 25 However, comments taken from a commercial case involving loan guarantees and garnishment may not be readily transferable to a situation involving fines and an express statutory jurisdiction.

6 26 In *Hearn, K. Barry, J.*, said at pp. 15 - 16 (Quicklaw):

The word debt, in the legal sense, when used in the context of defining jurisdiction of summary courts to deal with matters of indebtedness, is defined in "*Halsbury's Laws of England*", (3rd) Vol. 25 at page 183 as follows:

"Various statutes render sums of money recoverable as civil debts. A magistrates' court has power to make an order on complaint for the payment of any money recoverable summarily as a civil debt; and any sum payment of which may be ordered by a magistrates' court is so recoverable except a sum recoverable on complaint for an affiliation order or an order enforceable as an affiliation order or a sum that may be adjudged to be paid by a summary conviction or by an order enforceable as if it were a summary conviction."

See the definition of 'debt' in "*Strouds Judicial Dictionary*" (4th) Vol 2, page 696:

"A 'debt' is a sum payable in respect of a liquidated money demand, recoverable by action (*Rawley v. Rawley*, 1 Q.B.D. 460; see *Seldon v. Wilde* (1910) 2 K.B. 9, cited JUDGMENT); the word can but seldom be construed to include damages for breach of covenant (*Wilson v. Knubley*, 7 East. 128, cited SPECIALTY: see *Varlo v. Faden*, 1 D.G.F. & J. 211, cited DEBTS; *Westcott v. Hodges*, 5 B. & Ald. 12). See LIQUIDATED DEMAND."

And civil debt, vol. 2, page 470:

""A 'civil debt' (Summary Jurisdiction Act 1879 (c. 49), s. 6) was 'a sum of money claimed to be due' before the commencement of the proceedings to recover it, and does not include a fine or penalty not due to anybody until the magistrate has adjudged its amount (*R. V. Paget*, 8 Q.B.D. 151; see also *Mellow v. Denham*, 5 Q.B.D. 467; *R. v. Steward* (1899) 1 Q.B. 964, cited SHIP). See CLAIMED, Cp. JUDGMENT DEBT."

I am of the view that the concept of actionable debt considered by the framers of the Small Claims Act is that expressed in the above definitions.

6 27 I agree with these comments.

6 28 The proceeding to recover a debt in small claims court is meant to be speedy, inexpensive and informal. The debts contemplated by the Act are those which arise in the normal activities of daily living, debts which are fixed and ascertainable at the time of their incurrence and for which valuable consideration is given. Where the jurisdiction of the small claims court is to extend beyond that, specific provision is made - see the reference in subsection 3(1) to the recovery of municipal taxes or charges.

6 29 Here, NAPE and his members have agreed that "any fines imposed shall constitute a debt...". However, in the constitution, there is no reference to any amount, nor to any agreed method of quantifying the fine. The member has simply agreed that any future financial punishment imposed by the union pursuant to the constitution will be considered as money owing to the union.

6 30 The punishment is not ascertainable until fixed by the Discipline Committee of NAPE. It is not a levy placed in return for membership, nor a fee charged for some other service or consideration. It is simply a financial penalty, imposed and quantified by one party to the agreement, to punish the member or members in question and influence their future conduct and the conduct of others.

6 31 Absent specific legislative direction, the fines imposed are not debts for the purposes of the Small Claims Act. The trial judge was correct in so concluding.

Public policy (p. 9)

6 32 The trial judge's comments, in full:

There is another reason to deny the Plaintiff the right of recovery against the Defendants; it would be contrary to public policy to do so. Again I defer to the reasoning of Mr. Justice Barry in the Hearn case, supra. After debating at length whether a fine levied by a union against one of its members is a "debt" he had this to say:

In my view, apart from any consideration of the question whether a penalty imposed by a trade union could qualify as a debt, it would be contrary to public policy to require the courts to enforce payment of a monetary penalty whose limits are not fixed. In such a case as this, it was open to the appellant through the procedure in its constitution to set the fine at any amount it chose and in cases where the fines imposed would be inordinately excessive, the court would be required to enforce unjust penalties without having the right or power to review or adjust them.

6 33 The extract reproduced from Hearn is the full extent of the public policy discussion.

6 34 In view of my conclusion that the trial judge was correct in concluding that the fines were not "debts" within the meaning of the Small Claims Act, it is not necessary to consider the broader question of whether there are public policy grounds that would persuade any court not to assist a trade union in enforcing a fine duly imposed pursuant to the union constitution.

DISPOSITION

6 35 The appeal is dismissed with costs.

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