Saskatchewan Court of Queen's Bench
Judicial Centre of Regina

Citation: United Food and Commercial Workers Union, Local 1400 v. Woolworth (F.W.) Co. and McCrea
Date: 1992-12-14
Docket: 1992 Q.B.M. No. 673

Between:
United Food and Commercial Workers, Local 1400 (applicant)
and
F.W. Woolworth Co. Ltd., operating under the business name of Woolco and Robert McCrea (respondents)

Armstrong, J.

Counsel:
D.S. Plaxton, for the applicant
B.J. Kenny, for the respondents
W.R. Pelton (Watching Brief), for the Saskatchewan Labour Relations Board

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Penalty:

[1] Armstrong, J.: One object of contempt of court proceedings in a civil matter is to use it as a means of enforcing performance of a court order by one party for the benefit of another party.

[2] The corporate respondent (Woolco) has been found in civil contempt of this court. It is in relation to something about which this court may not have anything more to do. The contempt is for breach of a particular order of the Labour Relations Board. The breach has been committed. The damage done may continue, but the breach is over. In relation to this particular order there is therefore no point in trying, as stated in Woolworth's brief, to "fashion a remedy that will most effectively ensure that the [Board] order is obeyed" (underlining added).

[3] And so there is no efficacy in a solution, suggested by Woolco, such as in *Simpson Timber Co. (Saskatchewan) Ltd. v. Bonville and International Woodworkers of America, AFL-CLO-CLC, Local 1-184*, (1986), 5 W.W.R. 180; 49 Sask.R. 105 (Q.B.), a decision of Mr. Justice Walker of this court. The respondents in that case were employees of a union. They had blocked a rail line spur leading to the plant of the applicant. This was done in defiance of an injunction granted earlier by the court. Mr. Justice Walker found them in civil contempt of court. He fined them each $250 and sentenced each to jail for a period of three months, but he suspended operation of the sentence to jail of each, "... so long as that individual complies with the interim injunction ..." The suspended sentence imposed in the *Simpson* case was designed to open and keep open the railroad track, that is, to end the continued breach and

keep the sentenced individuals from committing another breach. In the present case the breach consisted of an act now long done.

[4] Nor can this court in the present contempt proceedings seek to enforce directly, compliance generally with other orders of the Board. The finding of contempt is contempt in relation to what is in effect an order of this court, the Board order in question having been converted to such by being filed in this court pursuant to s. 13 of the *Trade Union Act*, R.S.S. 1978, c. T-17. This section reads:

> "13 A certified copy of any order or decision of the board shall within 14 days be filed in the office of a local registrar of the Court of Queen's Bench and shall thereupon be enforceable as a judgment or order of the court, and in the same manner as any other judgment or order of the court, but the board may nevertheless rescind or vary any such order."

[5] But this court can, and should act to ensure compliance in the future with orders of the court generally. Just because the contempt is civil does not mean that the court should be concerned only with the situation as between the parties and ignore any effect on the authority of the court generally. The public has an interest in the authority of the court being respected and maintained even though a matter is a dispute between two private individuals.

[6] There is a further public interest factor to be considered. There is public involvement in this matter not found in an ordinary law suit between private parties.

[7] *Re Mileage Conference Group of the Tyre Manufacturers' Conference's Agreement*, [1966] 2 All E.R. 849; [1966] 1 W.L.R. 1137; 110 Sol. Jo. 483; L.R. 6 R.P. 49 is an English case decided by the Restrictive Practices Court. Certain trade activities of a number of tire companies were declared to be against the public interest. Rather than enjoin the companies from further indulgence in the offending activities, the court accepted the undertakings of the companies to desist. The Registrar of Restrictive Trading Agreements applied to the court later on the grounds that the companies had broken their undertakings to the court. The court found that the companies had indeed broken their undertakings and that the breaches were contempts of court.

[8] Mr. Justice Megaw, president of the court, in giving the decision of the court said, in relation to penalty, at p. 862:

> "We are also of opinion that, just as the court can require, at least, payment of damages, where there has been a breach of an injunction by a party to litigation between two individual citizens, so also where the injunction or undertaking is given in litigation between the registrar, as representing the public interest and an individual or a company, the court, in imposing a financial penalty, may take into account, in addition to other factors, the injury to the public which must be deemed to be involved in the breach."

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[9] The technical contempt in the present case arises out of the relations between the Union and Woolco. It was these relations that resulted in the Board order. The Board in a very real sense represents a public interest in the relationship between the applicant and Woolco. There is, accordingly, an element of damage to the public interest.

[10] The Union filed a number of Board orders going back to the early 1950's in which Woolco is ordered to refrain from engaging in one or another unfair labour practice. If these orders have any relevance at all to assessing penalty in the present case, it is limited to indicating that the Board order in question in the present case is not the first Board order made against Woolco enjoining it from committing an unfair labour practice. There is not even evidence that there was breach of any of these Board orders, let alone any being filed in this court under s. 18 of the *Act* and then breached.

[11] The Union also filed material showing and much emphasized in argument the great magnitude of the corporate respondent, its assets, its gross earnings and its net earnings. The argument of the respondent would have the court be much more concerned with having the penalty suit the offender than the offence. The financial information on Woolco and its size are really only relevant in consideration of two factors. The first is ability to pay. The other factor is that the fine to be effective must come to the attention of the offender. There would not be much point in this case in a fine that could be paid out of petty cash in a local store or treated as another item of overhead. Not only must the penalty come to the attention of Woolco, it must be taken seriously. On the need to have it taken seriously, I have considered the response by Woolco to notice of the application. I consider that the material filed by Woolco was a cynical exercise in sophistry.

[12] After considering the whole of the circumstances I conclude that the appropriate penalty is a fine of $50,000 to be paid on or before the tenth day after the date hereof.

Costs:

[13] The applicant shall have costs. In speaking to costs, counsel for the applicant spoke as if having to have an agent do much in Regina was somehow forced upon the applicant by the *Rules.* The only requirement for an agent is found in rule 8(2) which requires in this case an agent as an address for service within a limited distance of the Court House in Regina.

[14] That the Union engages counsel with offices in Saskatoon to bring an application in Regina is not something for which the respondents should be required to pay even on an award of solicitor and client costs. Furthermore, the respondents should not have to pay for anything done by or for the applicant which is not directly relevant to the case.

[15] The Union suggested the desirability of a lump sum award and counsel was

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helpful in suggesting what he thought solicitor and client costs were to date and what he knew agency costs to be. Woolco simply asked that there be no costs at all awarded.

[16] I do find that this is an appropriate case in which to award costs on a solicitor and client basis. Having considered the application and the legal services required, I fix costs, payable by Woolco, in the lump sum amount of $6,700 including disbursements.

Order accordingly.

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