

COPY

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20050502
Docket: L030151
Registry: Vancouver

Between:

Richard Frick

Plaintiff

And:

**International Brotherhood of Electrical Workers
Local 213**

Defendant

**Brought Under the *Class Proceedings Act*,
R.S.B.C. 1996, c.50**

Before: The Honourable Madam Justice Gill

Oral Reasons for Judgment

In Chambers
May 2, 2005

Counsel for the Plaintiff:

R.W. Grant

Counsel for the Defendant:

L.B. McGrady, Q.C.
S.S. Deepak
J. Lennox

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** The defendant, International Brotherhood of Electrical Workers Local 213, brings an application which questions the jurisdiction of the court. It is argued that there is an issue as to what collective agreement, if any, was in force and the court does not have jurisdiction to decide that issue.

[2] In this action, the plaintiff alleges that the defendant breached its bylaws and constitution by requiring him to pay electrical industry advancement fund dues when he was not working under the Inside Wiremen's Agreement. In his statement of claim, Mr. Frick alleges that at the time such dues were deducted, he was employed by Highway Constructors Ltd. ("HCL") and the collective agreement between HCL and the British Columbia Highway and Related Construction Council (the "Construction Council") governed his employment. Local 213 asserts that the plaintiff was "working under" the Inside Wiremen's Agreement.

[3] It is necessary to understand the contractual arrangements between certain entities. The British Columbia Transportation Financing Authority ("TFA") is a corporation established by statute and its purpose is to plan, acquire, construct, improve, or cause to be constructed or improved, transportation infrastructure throughout British Columbia. HCL is a wholly owned subsidiary of the TFA. These two entities entered into a labour force agreement whereby HCL was granted sole and exclusive rights to provide the necessary labour force for various projects, including the SkyTrain project on which the plaintiff worked. The Construction Council is an association of trade unions.

[4] One of the affidavits put forward by the plaintiff on this application is from Mr. Morris, who acted for HCL in the negotiation of collective agreements with various trade unions. He has deposed that in April, 1997, HCL entered into a collective agreement with the Construction Council called the Mainland HCL Agreement. That is not in dispute.

[5] Mr. Morris understands that after this agreement was signed, Local 213 became a member of the Construction Council and therefore a party to that collective agreement. Whether he is correct is in dispute and I observe that his evidence could not prove that fact. Although Mr. Morris says that HCL's relationship with Local 213 was not through a separate collective agreement with Local 213 alone, he also acknowledges that he did not have dealings with the SkyTrain project. I would add that there is evidence from others which could support the plaintiff's assertion that the Mainland HCL agreement was in force.

[6] One of the affidavits filed by the defendant is from Mr. Peck, its former business manager, who retired in December 2001. Briefly, his evidence is as follows. As the business manager of Local 213, he was responsible for the handling of its day-to-day affairs and his responsibilities included representing Local 213 members in regard to the work performed on the SkyTrain project. Local 213 has never been a member of the Construction Council and therefore has never been a party to the Mainland HCL agreement. Further, Local 213 has never agreed to become a signatory to that agreement, nor has it agreed to become a member of the Construction Council.

[7] Mr. Peck has deposed that there was an "agreement" between HCL, the Construction Council and the defendant that members supplied to the SkyTrain project would work under the terms of the Inside Wiremen's Agreement. Pursuant to the enabling provision in that agreement, it was modified to mirror all of the Mainland HCL agreement. He says that the "agreement" is reflected in a letter sent to both the Construction Council and HCL.

[8] Only a draft of the letter can be located. The draft does, as Mr. Peck asserts, seem to confirm that Local 213 was not a member of the Construction Council. The letter states that Local 213 wished to continue to supply electrical workers which had been accomplished to that point “on an informal basis.” The letter purports to confirm the “legal basis for this cooperation” and sets out the view of the author that when members are supplied to the SkyTrain project, it is under the standard Inside Wiremen’s Agreement and under its enabling provisions. The Construction Council is described as the agent of Local 213 for purposes of administering the enabled agreement.

[9] The draft letter concludes as follows:

As the position we enumerate above provides an understandable legal basis for our cooperation and has no apparent effect, negative or positive, on the day-to-day operations or liabilities of BCHRCC or HCL, we assume that this understanding will not cause you or HCL any difficulty.

[10] I do not propose to review any of the other affidavits which were filed on this application and turn now to the arguments. The plaintiff says that there is no evidence of any Inside Wiremen’s agreement between HCL and Local 213. Mr. Gall, on behalf of the plaintiff, described the present case as akin to **Mainland Sawmills Ltd. v. Industrial Wood and Allied Workers of Canada**, 2005 BCCA 89. **Mainland** involved an application for leave to appeal from a decision that the court had jurisdiction. It had been found that there was no collective agreement. It was argued that whether or not there was a collective agreement between the parties was a matter for the Labour Relations Board to decide. Ryan J.A. dismissed the

application, stating that a bare allegation that there is a collective agreement in place is not sufficient. There must be something more in the pleadings and the evidence that makes the issue at least arguable.

[11] In my view, there is such evidence in the present case and, specifically, it comes from Mr. Peck. He says that there was an agreement with HCL as evidenced by the draft letter which he says was sent to HCL. It may turn out that Mr. Peck is using the word "agreement" loosely or that he is simply in error when he asserts that HCL is a party to an agreement, but on this application I agree with Mr. McGrady that it is not appropriate to weigh the evidence. I should also add that I do not agree with Mr. Gall's argument that the letter itself makes it clear that there was no agreement with HCL.

[12] I will refer to one brief submission made by Mr. McGrady in reply, when he stated that there was little or no evidence beyond a bare assertion that the Mainland HCL agreement governed, seeming to adopt the same tact as Mr. Gall had attempted. That, too, is an argument which I would not accept. There is more than a bare assertion and, in any event, I do not believe that Mr. McGrady would suggest that the Board ought not to consider that question.

[13] Because of the decision of *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, arguments have been made about the "essential character" of this dispute. The defendant says that its essential character expressly or inferentially arises under the Labour Relations Code. The plaintiff describes its essential character as being a claim against a union for breach of the constitution.

[14] However one describes its essential character, in my view, it is clear that the first issue to be decided is which of the two agreements asserted by the parties was in effect. Section 139 of the *Labour Relations Code* gives to the Board exclusive jurisdiction to decide a number of specific matters, including whether a collective agreement has been entered into, whether a collective agreement is in full force and effect and what persons are parties to a collective agreement. It is my view that the issue should go to the Board for determination. Depending on the answer, the plaintiff's assertion that there is an interpretation issue for the court may be correct. It is for that reason that I order simply that the action be stayed for a period of nine months to permit the Board to rule. I will ask counsel, at the end of these reasons, whether that period is appropriate and whether there should be other terms.

[15] The question is referred to the Board pursuant to s. 139(c), (e) and (g).

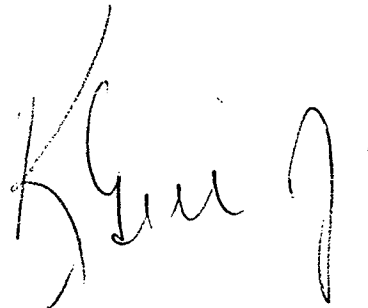
[16] The plaintiff has concerns about the potential for the Board rendering a decision on an issue over which the court has jurisdiction. I do not share those concerns. There is an existing action before the court, albeit which is now stayed, but it remains outstanding and the court simply could not be bound by a decision which goes beyond the jurisdiction of the Board, nor could it have its own jurisdiction ousted by anything the Board might say. If there is an interpretation issue which is within the jurisdiction of the court, I am confident that it will ultimately be dealt with by the court.

[17] Although I question whether it is necessary to do so, I will conclude by briefly referring to the arguments regarding ss. 12 and 16 of the *Labour Relations Code*. I

am not entirely certain that, at the end of the day, the defendant actually placed reliance on s. 16, but if it did, I see absolutely no merit in that position.

[18] As to s. 12, it imposes a duty of fair representation and it is argued by the defendant that the plaintiff could have brought his claim under that section. I agree with his counsel that this argument is without merit. Mr. Frick does not allege that Local 213 failed to represent him fairly and there is nothing in the affidavit evidence which could support the assertion that that is the allegation he makes.

[19] In the end result, I would propose as I have stated to stay the action for a period of nine months, but I will hear further from counsel before I actually make that order.

A handwritten signature in black ink, appearing to read "K. King" or similar, written in a cursive style.