

CANADA / JUDGMENT

Western Construction and Lumber Co. Ltd. v. Jorgensen

[1974] SCR 826

COURT

Supreme Court of Canada

DECIDED

29 June 1973

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Western Construction and Lumber Co. Ltd. v. Jorgensen Collection Supreme Court Judgments
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[1974] SCR 826 Judges Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Laskin, Bora On appeal from Yukon Subjects Labour law Decision Content Supreme Court of Canada Western Construction and Lumber Co. Ltd. v. Jorgensen, [1974] S.C.R. 826 Date: 1973-06-29 Western Construction and Lumber Co. Ltd. and Freeway Construction Northern Ltd. (Plaintiffs) Appellants; and Derek Jorgensen, R. Bonar, A. Medley, H. Mulrooney and International Union of Operating Engineers, Local 115 (Defendants) Respondents. 1973: March 13, 14, 15; 1973: June 29. Present: Martland, Judson, Ritchie, Spence and Laskin JJ. ON APPEAL FROM THE COURT OF APPEAL FOR THE YUKON TERRITORY Labour Relations—Procuring or causing unlawful strike—Industrial Relations and Disputes Investigation Act, R.S.C. 1952, c. 152. The appellant companies were engaged in road construction contracts. The individual respondents were four members of a committee established at a joint meeting of the Prince George Building Trades Council and the Allied Hydro Crafts Council and charged to visit construction jobs and camp sites in the Yukon and Northern British Columbia and to report to the Councils. They visited the appellants' project and met with various employees at which time inequities in pay and poor working conditions were discussed. The union respondent applied for certification as bargaining agent for the construction workers on the project. Intermittent work stoppages ensued and the employees participated in an unlawful strike. The appellants took action not against the employees but against the respondents alleging that the respondents (1) had used threats and/or intimidation thereby inducing, coercing and/or procuring the employees to stop work and (2) had, by their wrongful acts, caused the employees to strike and picket unlawfully, causing work stoppages. The trial judge found on fact that the respondents did not use threats or intimidation and that the evidence did not show that any of the respondents exhorted any employee to stop work. The Court of Appeal went further in absolving the respondents of persuading, urging, advising or encouraging the employees to strike. Held: The appeal should be dismissed.

Mingling with the employees and alerting them to inequities in pay and to poor working conditions did not, in all the circumstances establish a basis of liability. No actionable interference by any of the respondents with the appellants' contract was established. The appellants' argument based on the principle of liability derived from *International Brotherhood of Teamsters v. Thérien* [1960] S.C.R. 265, that the violation of a statute (*Industrial Relations and Disputes Investigation Act*, R.S.C. 1952, c. 152), constituted illegal means, even in the absence of conspiracy, failed on two counts: first that only the respondent who was a business agent of the respondent union could have been within the scope of this cause of action and second that that case was very different both on its facts and in the party-relationships involved. APPEAL from a judgment of the Court of Appeal for the Yukon Territory dismissing an appeal from a judgment of Morrow J. Appeal dismissed. T. Mayson, Q.C., for the plaintiffs, appellants. R. Martin, for the defendants, respondents. The judgment of the Court was delivered by LASKIN J.—The appellants in this case are two companies which were engaged in road construction in the Yukon under a contract with the federal Department of Public Works. Between August 13 and August 18, 1967, the employees on the project engaged in intermittent work stoppages, affecting portions of some shifts and the whole of other shifts during that period. It is common ground that the employees participated in an unlawful strike under the *Industrial Relations and Disputes Investigation Act*, R.S.C. 1952, c. 152. The Appellants sought to recover such damages as they suffered by reason of the strike not from any of the employees but from the four individual respondents and from Local 115 of the International Union of Operating Engineers which had applied for certification as bargaining agent for the construction workers on the road project. The individual respondents were four of seven members of a committee which had been established at a joint meeting of the Prince George Building Trades Council and the Allied Hydro Crafts Council in early August, 1967, and charged to visit construction jobs and camp sites in Northern British Columbia and in the Yukon and to report on conditions there so as to enable the Councils and their affiliated unions to determine what union organizing activities were feasible in those areas. In the course of their travels, they became aware of the appellants' project and visited the camp site where they talked with various employees about their wages and working conditions. It appears that where union conditions prevailed on construction jobs in the Yukon, the rates of pay were considerably higher than those paid to appellants' employees, and some of them had expressed their dissatisfaction with their wage rates and certain other conditions before the respondents chanced upon the appellants' project. Two causes of action were pleaded to engage the liability of the respondents. They were charged with (1) wrongfully threatening and/or intimidating the servants and workmen of the appellants with violence and loss and thereby inducing and/or coercing and/or procuring them to leave the appellants' employ and to cease working on the road project; and (2) by their wrongful acts, causing such servants and workmen to strike and picket unlawfully, thereby causing the cessation of the work being performed by the appellants. There are concurrent findings of fact that the respondents did not threaten or intimidate as alleged in the first cause of action; and there

are also concurrent findings of fact that the evidence does not show that any of the respondents exhorted any employee to go on strike or to stop work. Indeed, the Court of Appeal went farther than the trial judge in absolving the respondents of any complicity in the strike either by persuading or by urging or by advising or by encouraging. On this view, the judges of the Court of Appeal disagreed with the trial judge that three of the respondents (to use the trial judge's words) "certainly contributed by their acts to what became a work stoppage" and that they incurred liability accordingly. (The trial judge had dismissed the action against the respondent Bonar and against Local 115.) As Robertson J.A. put it, "no inference could properly be drawn from the evidence that the ... respondents 'contributed by their acts to what certainly became a work stoppage' if by the words used it is intended to say that anything done was done with the intention of bringing about a work stoppage". In short, mingling with the employees and alerting them to inequities in pay and to poor working conditions did not, in all the circumstances, establish a basis of liability. I agree with the Court of Appeal on its conclusions of fact and agree with it also that no actionable interference by any of the defendants with the appellants' construction contract with the federal Department of Public Works was established. In this Court, counsel for the appellants put his case not simply on actionable interference with or procurement of breach of contract (which was the issue of law chiefly considered by the Court of Appeal) but also and mainly on what I may, for convenience, call a "Therien" cause of action, relying on the principle of liability laid down by this Court in *International Brotherhood of Teamsters v. Therien*[1]. The contention was that there was a violation of the Industrial Relations and Disputes Investigation Act, that this constituted illegal means, within the Therien case, through which the respondents interfered with the appellants' construction contract and that liability attached although there was no allegation of conspiracy. Only the respondent Jorgensen, who was a business agent in Prince George of the respondent union could, in my view, be possibly aimed at by this formulation of the appellants' cause of action. In Therien, there had been a threat by a union of a breach of its binding collective agreement with a construction company in proposing to picket the company if the plaintiff, an independent contractor who supplied trucking services to the company, did not join the union. Being himself an employer, it was not open to the plaintiff under the relevant statute to be a member of a union. As a result of the union's illegal threat, the company dispensed with the plaintiff's services. That case is far removed from the present one on its facts and on the party-relationships involved in each. The concurrent findings of fact in this case that there was no wrongful threat of a strike and that Local 115 was not involved in any of the respondents' activities at the appellants' camp site exclude any basis of reliance on the Industrial Relations and Disputes Investigation Act to support the contention of resort to illegal means in the alleged interference with the appellants' construction contract. I would dismiss the appeal with costs. Appeal dismissed with costs. Solicitor for the plaintiffs, appellants: Tom Mayson, Edmonton. Solicitor for the defendants, respondents: W. Robert Martin, Vancouver.

[1] [1960] S.C.R. 265.

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