CANADIAN PACIFIC RAILWAY COMPANY (*Defendant*) ..... APPELLANT;

AND

ONOFRIO ZAMBRI (*Informant*) .....RESPONDENT.

1962

*Apr. 24
June 25

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Labour—Strike—Threat of dismissal—Refusal to employ—Whether strike a lawful one—Right to strike—The Labour Relations Act, R.S.O. 1960, c. 202, ss. 1(2), 3, 50.

A collective agreement between the appellant company and a union, the latter being the bargaining representative for a unit of employees in an hotel operated by the company, expired on August 16,

PRESENT: Kerwin C.J. and Taschereau, Locke, Cartwright, Fauteux, Abbott, Martland, Judson and Ritchie JJ.

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1960. The parties were unsuccessful in negotiating a new agreement and the matter was referred to a conciliation board. However, no settlement was reached and the union called a strike on April 24, 1961. In a letter dated June 24, 1961, the company informed the striking employees that unless they gave notice by July 15 of their intention either to return to work or to resign they would be dismissed as of July 16, 1961. The employees who refused to so notify the company were advised by a letter of July 18 that they were no longer employees of the hotel. Two complaints were laid by the union, one under ss. 50(a) and 69(1) and the other under ss. 50(c) and 69(1) of *The Labour Relations Act,* R.S.O. 1960, c. 202, charging the company with (1) unlawfully refusing to continue to employ certain of its employees because they were exercising a right under the Act and (2) unlawfully seeking by threat of dismissal to compel certain of its employees to cease their participation in a lawful strike. The magistrate who heard the case dismissed the two charges. This decision was set aside, on appeal, by the Chief Justice of the High Court, and by a unanimous decision of the Court of Appeal the order of the Chief Justice was affirmed with a variation. Pursuant to special leave, the company appealed to this Court.

Held: The appeal should be dismissed.

Per Kerwin C.J. and Taschereau, Cartwright and Fauteux JJ.: The company's contention that the striking employees had to terminate their contracts of employment before they could engage in a lawful strike was rejected. The strike was lawful at common law and was not forbidden by the Act. That being so, the effect of s. 1 (2) was (i) to provide that while the strike continued the employees on strike did not cease to be employees of the appellant, and (ii) to prevent the employer from terminating that employer-employee relationship by reason only of the employee ceasing to work as the result of the strike.

The strike being a lawful activity of the union, it followed that by virtue of s. 3 of the Act, the striking employees, all of whom were members of the union, had the right to participate in that lawful activity. The participation in the strike by the employees was, therefore, the exercise of a right under the Act.

Per Locke J.: The case should be decided upon the assumption, as was found below, that the strike was lawful. By virtue of s. 1(2) of the Act each of the strikers was an employee within the meaning of that term in s. 50(c) and was entitled to the protection afforded by it.

The letters written by the appellant on June 26 and July 18, 1961, were properly construed as a refusal to continue to employ the employees in question from and after July 16, 1961, by reason of the fact that they continued on strike, and the letter of June 26 as a threat of dismissal if they continued such participation.

The contention that the right to strike was expressly given to employees by s. 3 of the Act was rejected. The statute, however, implicitly recognized that employees may lawfully strike by restricting that undoubted right during the period in which conciliation proceedings are being carried on and for a defined period after an award. While the right existed at common law at the time of the passing of *The Labour Relations Act,* that right was limited and controlled in the circumstances mentioned and was expressly recognized after the

expiration of these periods. Striking after complying with the requirements of the statute was exercising a right under the Act within the meaning of that expression in s. 50.

Per Abbott, Martland, Judson and Ritchie JJ.: The statutory requirements having been complied with, the strike was lawful under the Act. That being so, the letter of June 26 constituted an offence under s. 50(c) of the Act and that of July 18 constituted an offence against s. 50(a).

That the strikers must terminate their contracts of employment before there could be a lawful strike under the Act, as argued by the appellant, would make nonsense of an Act which authorizes a certain course of conduct after certain things have been done and which, in addition, expressly preserves the employer-employee relationship by s. 1 (2).

APPEAL from a decision of the Court of Appeal for Ontario, which affirmed with a variation an order of McRuer C.J.H.C.[1] setting aside a decision of Magistrate Elmore whereby he acquitted the appellant on two charges under *The Labour Relations Act*. Appeal dismissed.

W. R. Jackett, Q.C., and *G. P. Miller*, for the defendant, appellant.

David Lewis, Q.C., and *T. E. Armstrong*, for the informant, respondent.

The judgment of Kerwin C.J. and of Taschereau, Cartwright and Fauteux JJ. was delivered by

CARTWRIGHT J.:—This appeal raises questions of importance as to the meaning and effect of certain provisions of *The Labour Relations Act*, R.S.O. 1960, c. 202, hereinafter referred to as "the Act".

The appeal is brought, pursuant to special leave granted by this Court, from a unanimous judgment of the Court of Appeal for Ontario which affirmed with a variation an order of McRuer C.J.H.C.[1] setting aside the decision of His Worship Magistrate Elmore whereby he acquitted the appellant on two charges, one of a breach of s. 50(*a*) and the other of a breach of s. 50(*c*) of the Act.

The order of McRuer C.J.H.C. directed that the matter be remitted to the magistrate to be dealt with according to the law as declared in the reasons for judgment. The Court of Appeal varied this direction to provide that the

[1] [1962] O.R. 108, 31 D.L.R. (2d) 209, *sub. nom. Regina v. Canadian Pacific Railway Co.*

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matter be remitted to the magistrate in order that he may register convictions against the appellant in respect of each of the charges and impose whatever lawful penalties he deems appropriate. No question was raised before us as to the propriety of this variation.

The charges against the appellant were as follows:

(*a*) That the Canadian Pacific Railway Company, on the 26th day of June in the year 1961 at the Municipality of Metropolitan Toronto, in the County of York, unlawfully did seek by threat of dismissal to compel certain of its employees, including Mrs. Laura Job, Mrs. Ann Todd, Robert Boyle, Albert Hetenyi, Raymond Seguin and Charles Ireton, to cease to exercise their right under The Labour Relations Act, R.S.O. 1960, c. 202, to wit: The right of such employees, including the said Mrs. Laura Job, Mrs. Ann Todd, Robert Boyle, Albert Hetenyi, Raymond Seguin and Charles Ireton to participate in a lawful strike at the Royal York Hotel conducted by Local 299, Hotel and Club Employees' Union, AFL-CIO-CLC, of the Hotel and Restaurant Employees' and Bartenders' International Union, contrary to Section 50 (*c*) and 69 (1) of the said Labour Relations Act;
and

(*b*) That the Canadian Pacific Railway Company, on the 16th day of July in the year 1961 at the Municipality of Metropolitan Toronto, in the County of York, unlawfully did refuse to continue to employ certain of its employees, including . . . (the same six persons as named in charge (*a*)) . . . because they were exercising a right under The Labour Relations Act, R.S.O. 1960, c. 202, to wit: The right . . . (the right is described in the same words as in charge (*a*)) . . ., contrary to Sections 50 (*a*) and 69 (1) of the said Labour Relations Act.

The appeal before McRuer C.J.H.C. was brought on a case stated by the magistrate from which the facts appear to be as follows. The appellant is the operator of the Royal York Hotel in the City of Toronto. The respondent is an officer of the trade union described in the charges. This union, as the bargaining representative for a unit of employees in the hotel, had made a collective agreement with the appellant, which expired on August 16, 1960. Within two months before the agreement expired the union gave notice pursuant to s. 40(1) of the Act of its desire to bargain with a view to the renewal of the agreement with modifications. After the appellant and the union had bargained unsuccessfully conciliation services were granted. The union received the report of the conciliation board between March 6 and March 8, 1961. Further meetings were held but no settlement was reached. The prohibition against striking contained in section 54(2) of the Act therefore ceased to operate at the latest on March 15, 1961.

On April 24, 1961, the union called a strike, which was still continuing at the time of the trial before the magistrate.

On June 26, 1961, the appellant sent to each of the six employees named in the charges a letter reciting that on the afternoon of April 24 the employee had withdrawn from the service of the hotel and had not reported for duty since that time, inviting him (or her) either to advise that he wished to return to work in the hotel or to resign, for which purpose appropriate forms were provided, and notifying him that, unless he returned one or other of the forms by July 15, he was "dismissed effective July 16th, 1961".

On July 14 the respondent wrote to the appellant a letter saying in part:

> Our members wish to make clear that they consider themselves employees of the Royal York Hotel who are on a lawful strike and that they will continue to consider themselves to be employees of the Hotel until and after the strike is settled and a collective agreement between the Hotel and the Union is entered into.

On July 17, the appellant wrote a letter to the respondent and, on July 18, the appellant wrote a letter to each of the six persons named in the charges taking the position that the persons to whom the letter of June 26 had been addressed who had not advised that they wished to return to work were no longer employees of the hotel.

On September 29, 1961, the two charges were laid.

At the trial the learned magistrate found the facts set out above and also, that the persons referred to in the charges were at all relevant times members of the union, that the strike was "under the general supervision of the negotiating committee of the Union, the striking members, in addition to the executive of the Union", that Charles Ireton, as vice-president of the union, was in charge of assigning picketers, that meetings of members of the union who were striking employees were held daily, and, latterly, twice a week, in halls and premises rented and paid for by the union, and that throughout the strike the picketers had displayed signs bearing the name of the union and the words "On Strike—Royal York Hotel".

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The grounds on which it was submitted that the learned magistrate erred in law in acquitting the appellant are set out in the stated case as follows:

1. That I was wrong in law in holding that the right to strike is a common law right, and not a right under the Labour Relations Act, Revised Statutes of Ontario, 1960, Chapter 202.

2. That I was wrong in law in holding that no strike could have properly been called nor could the employees in question cease to work unless or until they terminated their individual contracts by proper notice.

3. That I was wrong in law in holding that the law required an employee to terminate his contract of employment for the purpose of participating in a strike.

4. That in the alternative, I was wrong in law in holding that the Labour Relations Act, Revised Statutes of Ontario, 1960, Chapter 202, has not in the circumstances to which these informations relate altered the requirement that an employee shall terminate his individual contract of employment before participating in a strike.

5. That I was wrong in law in holding that the persons referred to in the informations had no right to strike and to cease work as they did.

6. That I was wrong in law in holding that the persons referred to in the informations ceased to be employees of the accused by going on strike and ceasing to work as they did, or that in any event they subjected themselves to being discharged in the manner in which they were by going on strike and ceasing to work as they did.

7. That I was wrong in law in failing to hold that the strike in question in which the employees participated was a lawful activity of a trade union, namely, Local 299, Hotel and Club Employees' Union, AFL-CIO-CLC, of the Hotel and Restaurant Employees' and Bartenders' International Union.

The provisions of s. 50 of the Act under which the charges were laid are as follows:

50. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

(a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;

* * *

(c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to exercise any other rights under this Act.

The learned Chief Justice of the High Court and the Court of Appeal have construed clause (*c*) of s. 50 as if the words "to cease" were inserted immediately before the concluding words "to exercise any other rights under this Act". In answer to a question from the Court Mr. Jackett said that while not agreeing with this construction he did not intend to address any argument against it. Consequently Mr. Lewis was not called upon to deal with the point and, for the purposes of this appeal, I propose to assume that this construction is correct.

In considering the question whether the right to strike which the six persons named in the charges claimed to be exercising is a right under the Act, it must first be decided whether the strike was a lawful one. That the purpose of the employees in going on strike was not to injure their employer but to achieve improvements in their working conditions and monetary benefits has not been questioned. The argument that the strike was unlawful is based on the submission that in ceasing to work each of the employees was committing a breach of contract.

There is the highest authority for the proposition that a strike which would otherwise be lawful at common law becomes unlawful if the cessation of work is a breach of contract. It will be sufficient to refer briefly to the following cases.

In *Denaby & Cadeby Main Collieries, Ltd. v. Yorkshire Miners' Association*[1], it appears that the miners who went on strike were employed under contracts requiring them to give fourteen days' notice of termination. They went on strike without giving any notice. At p. 387 Lord Loreburn L.C. said:

> Inasmuch as the men were all working under contracts which could not be terminated except after fourteen days' notice, it is manifest that the abrupt cessation of work on June 29 involved a breach of contract and was unlawful.

All the other learned Lords agreed in this view.

In *South Wales Miners' Federation v. Glamorgan Coal Co.*[2], the judgment is to the same effect. At p. 253, Lord Lindley said:

> To break a contract is an unlawful act, or, in the language of Lord Watson in *Allen v. Flood*, "a breach of contract is in itself a legal wrong".

[1] [1906] A.C. 384, 75 L.J. K.B. 961.
[2] [1905] A.C. 239, 74 L.J. K.B. 525.

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In *Crofter Hand Woven Harris Tweed Co., Ltd. v. Veitch*[1] the judgments emphasize the fact that the course of conduct of the defendants which was held not to be unlawful did not involve any breach of contract. Lord Wright said at p. 465:

> But there might be circumstances which rendered the action wrongful. The men might be called out in breach of their contracts with their employer, and that would be clearly a wrongful act as against the employer, an interference with his contractual right, for which damages could be claimed not only as against the contract-breaker, but against the person who counselled or procured or advised the breach.

I find nothing in the Act that renders lawful the calling of, or participation in, a strike where the cessation of work is in breach of a term in the contracts under which the employees are working requiring the giving of notice of a prescribed length before ceasing work; clear words in a statute would be required to bring about such an alteration in the law.

In the case at bar the record does not disclose the terms of the expired collective agreement or of the contracts under which the employees were working immediately before the commencement of the strike, nor does it show what notice, if any, was given by the union or by any of the employees of the time at which the employees would cease work. It, at first, occurred to me that the failure to have stated these facts might render it necessary to direct that the case be sent back to the learned magistrate for amendment pursuant to s. 740(1)(*b*) of the *Criminal Code*, but I have concluded that this is not necessary.

Mr. Jackett's real attack on the legality of the strike, if I have correctly apprehended his argument, is based not on the breach of a contractual provision requiring the employees to give a stated length of notice before ceasing work but rather on the view that, to remain within the law, each employee must before or at the moment of ceasing work terminate his contract of employment. It is said that so long as his contract is in existence it is his duty to work and failure to come to work is a breach of contract which

[1] [1942] A.C. 435, 1 All E.R. 142.

renders the strike unlawful. In support of this submission reliance is placed on statements an example of which is that of Lord Davey in the *Denaby* case, *supra,* at p. 398:

> My Lords, the appellants were perfectly within their right in electing to treat the absence of the men from work since June 29 as a rescission of their contracts and requiring them to enter into new contracts of service before resuming work.

That, undoubtedly, would be a correct statement of the position of the parties at common law; the employee cannot have it both ways; if he is still an employee it is his duty to work, and if he refuses to work he is in breach of the contract of employment and the employer can treat it as at an end. But, in my opinion, the position of the parties is altered by the relevant provisions of the Act.

Subsection (2) of s. 1 of the Act is as follows:

> (2) For the purposes of this Act, no person shall be deemed to have ceased to be an employee by reason only of his ceasing to work for his employer as the result of a lock-out or strike or by reason only of his being dismissed by his employer contrary to this Act or to a collective agreement.

It is not necessary to decide the exact nature of the relationship of employer and employee the existence of which this subsection preserves, or creates, during the continuance of a strike; two of the main features of the ordinary relationship are absent, the employee is not bound to work and the employer is not bound to pay wages. Whatever the relationship be, it is obvious that if the employer is entitled to terminate it on the sole ground that the employee refuses to work while the strike continues, the subsection is rendered nugatory.

The Act recognizes that strikes may be lawful or unlawful, (see *e.g.* s. 57); it forbids unlawful strikes, (see s. 55); it appears to me that it leaves it to be determined by the common law whether or not a strike is lawful; it forbids strikes which would otherwise be lawful at common law unless certain conditions have been complied with, (see particularly s. 54). In the case at bar those conditions had been fulfilled when the strike was called. The strike was, in my opinion, lawful at common law and not forbidden by the Act. That being so, it appears to me that the effect of s. 1(2) is (i) to provide that while the strike

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continues the employees on strike do not cease to be employees of the appellant, and (ii) to prevent the employer from terminating that employer-employee relationship by reason only of the employee ceasing to work as the result of the strike.

It is said that the Act does not in terms declare the right to strike, but I find myself in agreement with Mr. Lewis' argument that the right is conferred by s. 3 which reads:

> 3. Every person is free to join a trade union of his own choice and to participate in its lawful activities.

It is clear on the findings of fact made by the learned magistrate that the strike with which we are concerned was an activity of the union; I have already expressed my opinion that it was lawful; it follows that s. 3 confers upon the six employees, all of whom are members of the union, the right to participate in that lawful activity. I conclude therefore that the participation in the strike by the employees was the exercise of a right under the Act.

The letter of June 26, 1961, sent by the appellant to each of the six employees named in the charges, is unambiguous; it threatens each of them with dismissal unless by July 15 he has either applied to return to work or resigned; it also indicates a refusal to continue to employ them after the last mentioned date. It may be that the two charges are really alternative ways of describing the same offence so that a conviction might be properly registered on either but not on both, but that point does not appear to have been raised at any stage of the proceedings. It will be observed that the letter proceeds on the assumption that the six persons to whom it was sent are still employees of the appellant and it gives only one reason for the proposed dismissal, that is that the employees have not reported for duty since April 24; it is not based on any alleged failure on the part of the employee to give a notice required by the terms of his contract of employment; this circumstance serves to confirm the view which I have already expressed that it is unnecessary to send the case back to the learned magistrate for amendment.

For the above reasons it is my opinion that on the facts as found by the learned magistrate he erred in law in acquitting the appellant.

I would dismiss the appeal with costs.

LOCKE J.:—The facts disclosed by the stated case do not include any information as to the terms of the contracts of employment existing between the railway company and the six persons whose rights, it is charged, were infringed, either as of the date of the expiration of the collective agreements on August 16, 1960, or at the time of the commencement of the strike on April 24, 1961.

As the collective agreement was not made part of the record and there is no other information disclosed, we are not in a position to decide whether, at the relevant time, the employees in question committed a breach of contract when, in company with other members of their union, they ceased work on April 24.

In view of the length of time which elapsed between the date of the delivery of the report of the conciliation board and the date the strike commenced and the fact that the parties conducted abortive negotiations during that period, it should not, in my opinion, be assumed that the employer was not informed by the union of the intention of all of the employees to quit their employment. If the six persons in question were employed by the day or simply at an hourly rate, such a notice given at a reasonable time before they quit work would, in my opinion, be effective to terminate such a contract of employment. If it was in law necessary that the contract be terminated before these employees quit their work, such notice might properly be given on their behalf by the union if duly authorized.

In the absence of any further evidence than is afforded by the stated case, we cannot properly, in my opinion, find that taking part in the strike involved a breach of the contracts of employment of these six individuals.

I consider that the case should be decided upon the assumption that the strike of the members of the union, including these six persons, was lawful, as has been found by McRuer C.J.H.C., whose finding has been approved by the Court of Appeal.

The right which the complainants claim to have been infringed is their right to participate in a lawful strike and subs. (2) of s. 1 of *The Labour Relations Act* upon which they rely as defining their legal status must refer to such a strike. It would not, therefore, assist the respondents if their act of quitting work was unlawful.

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That subsection reads as follows:

> For the purposes of this Act, no person shall be deemed to have ceased to be an employee by reason only of his ceasing to work for his employer as the result of a lock-out or strike or by reason only of his being dismissed by his employer contrary to this Act or to a collective agreement.

This subsection does not, in my opinion, continue in force such employment contract as existed as of the date of a strike. It does no more than to declare that, for the purposes of the Act, the relationship of employer and employee continues despite the employee ceasing to work as the result of a strike. Accordingly, each of these six persons was an employee, within the meaning of that term in subs. (c) of s. 50, and entitled to the protection afforded by it.

The language of subsections (a) and (c) of s. 50 under which the two charges were laid, so far as it is relevant, reads:

> No employer
>
> (a) shall refuse to employ or to continue to employ a person . . . because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
>
> * * *
>
> (c) shall seek by threat of dismissal, or by any other kind of threat . . . to compel an employee to . . . cease to be a member or officer or representative of a trade union or to exercise any other rights under this Act.

The letters written by the appellant on June 26, 1961, and July 18, 1961, have been construed, properly in my opinion, as a refusal to continue to employ these six persons from and after July 16, 1961, by reason of the fact that they continued on strike, and the letter of June 26, 1961, as a threat of dismissal if they continued such participation.

I do not agree with the contention of the respondent that the right to strike is expressly given to employees by s. 3 of *The Labour Relations Act*. That section, saying that every person is free to join a trade union and to participate in its lawful activities, and s. 4 giving a similar right to persons to join an employer's organization, are equally meaningless. No statutory permission is necessary to participate in the *lawful activities* of any organization. Furthermore, it is not the union that strikes but the employees.

The statute, however, implicitly recognizes that employees may lawfully strike by restricting that undoubted right during the currency of collective agreements, during the period in which conciliation proceedings are being carried on and for a defined period after an award. Section 57(2) refers in terms to a lawful strike. The objections to the legality of strikes on the ground that they are unlawful conspiracies or in restraint of trade which might formerly be made the subject of criminal charges have long since disappeared by reason of the provisions of the *Criminal Code,* and combinations of workmen for their own reasonable protection as such are expressly declared to be lawful by s. 411 of the *Criminal Code* and the predecessors of that section.

While the right existed at common law at the time of the passing of *The Labour Relations Act,* that right was limited and controlled in the circumstances I have mentioned and it is expressly recognized after the expiration of these periods. Striking after complying with the requirements of the statute is, in my opinion, exercising a right under the Act within the meaning of that expression in s. 50.

While unnecessary for the disposition of this appeal, I wish to express my dissent from the opinion that has been stated that if a strike is never concluded by settlement the relationship declared by subs. (2) of s. 1 continues until the employee has either gone back to work, taken employment with other employers, died or become unemployable. When employers have endeavoured to come to an agreement with their employees and followed the procedure specified by *The Labour Relations Act,* they are at complete liberty if a strike then takes place to engage others to fill the places of the strikers. At the termination of the strike, employers are not obliged to continue to employ their former employees if they have no work for them to do, due to their positions being filled. I can find no support anywhere for the view that the effect of the subsection is to continue the relationship of employer and employee indefinitely, unless it is terminated in one of the manner suggested.

Subsection (2) of s. 1 appeared first in Ontario legislation in c. 34 of the Statutes of 1950. Legislation of this nature appeared at an earlier date in *The Strikes and Lockouts Prevention Act* of Manitoba, being c. 40 of the Statutes of

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1937, and in the *Wartime Labour Regulations* prescribed by the Governor General in Council on February 17, 1944, which were adopted in Manitoba by c. 48 of the Statutes of 1944. Similar legislation was enacted thereafter in the *Industrial Conciliation and Arbitration Act* of British Columbia and *The Alberta Labour Act*.

The idea of creating this artificial relationship appears to have originated in the *National Labor Relations Act* of the United States, commonly referred to as the Wagner Act, passed by Congress on July 5, 1935, s. 2 of which declared that the term "employee" shall include any individual whose work had ceased as a result of a current labour dispute and who has not obtained any other regular and substantially equivalent employment.

I do not construe the decision in *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*[1], and *National Labor Relations Board v. Mackay Radio & Telegraph Co.*[2], as deciding that in the United States the relationship continues indefinitely unless that relationship has been abandoned, as has been said.

In the first of these cases, the employer had refused to bargain with the union which represented its employees on the ground that by striking they had ceased to be such and Parker J. held that this was an unfair labour practice since the strike did not in itself terminate the relationship either at common law or under the *Wagner Act*.

In the second case decided in the Supreme Court, the employer, following the settlement of the strike, had refused to employ five men on account of union activities during the strike, and the finding that this was an unfair labour practice was upheld, reversing the judgment of the Circuit Court of Appeals. Roberts J., who delivered the judgment of the court, said, *inter alia,* that it did not follow that an employer guilty of no act forbidden by the statute had lost the right to protect and continue his business by supplying places left vacant by the strikers and was not bound to discharge those he had thus hired upon the election of the strikers to resume their employment in order to create places for them. That is the law in Canada also, in my opinion.

[1] (1937), 91 F. (2d) 134. [2] (1938), 304 U.S. 333.

I would dismiss this appeal with costs.

The judgment of Abbott, Martland, Judson and Ritchie JJ. was delivered by

JUDSON J.:—The issue in the present appeal is a simple one. The collective agreement between the company and the union had expired. Every procedure required by the Act had been resorted to and every time limit had passed. The case is within s. 54(2), which reads:

> 54. (2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until a trade union has become entitled to give and has given notice under section 11 or has given notice under section 40, on behalf of the employee to his employer, or in the case of a notice under section 40, has received such notice, and conciliation services have been granted and seven days have elapsed after the report of the conciliation board or the mediator has been released by the Minister to the parties or the Minister has informed the parties that he does not deem it advisable to appoint a conciliation board.

This subsection limits the right to strike until its requirements have been complied with. But once the statutory requirements have been complied with, the strike becomes lawful under the Act. The foundation of the right to strike is in the Act itself.

We are concerned in this appeal entirely with an alleged offence against this Act. Whether a common law cause of action exists against the union or the strikers makes no difference. Whatever the common law may say about strikes, this Act says that this strike is lawful because the statutory conditions have been complied with. That being so, the letter of June 26, 1961, constituted an offence under s. 50(c) of the Act and that of July 18, 1961, constituted an offence against s. 50(a). I therefore agree with Cartwright J. in his rejection of the appellant's argument that before there can be a lawful strike under the Act, the strikers must terminate their contracts of employment. Such a requirement would make nonsense of an Act which authorizes a certain course of conduct after certain things have been done and which, in addition, expressly preserves the employer-employee relationship by s. 1(2). I take this to be the ratio of the decision of Cartwright J. and I limit my agreement to that ratio.

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I put this limitation on my agreement because I have the greatest difficulty in understanding why *South Wales Miners' Federation v. Glamorgan Coal Co.*[1], and *Denaby & Cadeby Main Collieries, Ltd. v. Yorkshire Miners' Association*[2], entered into the argument of this appeal. In the first case, a union and its officers were found liable in damages for procuring breach of contracts of employment. In the second case, it was found that those who procured the strike in breach of contract were not authorized to act on behalf of the union with the result that there was no liability. There can be no dispute that breach of contract or inducing breach of contract gives a cause of action but these principles are not involved in this appeal and the extent to which these cases fit in with a *Labour Relations Act* or with collective agreements is better left untouched. When a collective agreement has expired, it is difficult to see how there can be anything left to govern the employer-employee relationship. Conversely, when there is a collective agreement in effect, it is difficult to see how there can be anything left outside, except possibly the act of hiring.

My conclusion in this case is that once it is made to appear that the statutory requirements have been complied with, a conviction as a result of these letters follows as a matter of course and that nothing else need be considered.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitor for the defendant, appellant: G. P. Miller, Toronto.

Solicitors for the informant, respondent: Jolliffe, Lewis and Osler, Toronto.

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[1] [1905] A.C. 239, 74 L.J.K.B. 525. [2] [1906] A.C. 384, 75 L.J.K.B. 961.