

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20070518
Docket: S073400
Registry: Vancouver

Between:

Canadian Pacific Railway Company

Plaintiff

And:

**Teamsters Canada Rail Conference – Maintenance of Way Employees’
Division, and its members, servants, agents and persons acting or purporting
to act on its behalf; John Doe, Jane Doe, and all other persons unknown to the
Plaintiffs trespassing, picketing or watching and besetting, or obstructing at
or near the premises of the Plaintiffs**

Defendants

Before: The Honourable Madam Justice Ross

Oral Reasons for Judgment

In Chambers
May 18, 2007

Counsel for the Plaintiff

D. Wotherspoon
D. Wong

Counsel for the Defendants

L. McGrady, Q.C.
G.J. Baugh
C. Foy

Place of Trial/Hearing:

Vancouver, B.C.

***Canadian Pacific Railway Company v. Teamsters Canada Rail
Conference – Maintenance of Way Employees' Division***

Page 2

[1] **THE COURT:** This is an application by the plaintiff, Canadian Pacific Railway Company ("CP"), for an interim injunction. The plaintiff asserts that it requires the court's assistance to restrain illegal picketing and related unlawful acts in relation to a lawful strike commenced on May 15, 2007, by its employees, who are members of the defendant Teamsters Canada Rail Conference – Maintenance of Way Employees' Division Union (the "Union").

[2] CP alleges that the illegal acts in question include: repeatedly blockading the driveway of the Vancouver Intermodal Facility in Pitt Meadows to impede lawful access; surrounding trucks planning to enter that facility; telling the drivers they were not allowed to enter; calling them scabs; warning drivers that "you better not cross the picket line"; threatening to smash the windows of anyone who entered the facility; threatening to put something into the fuel tank of a truck that entered the yard; causing companies to no longer dispatch trucks to the facility for fear of the risk involved; trespassing onto private property to blockade a truck from passing along a private road; and pulling out a pickaxe handle and brandishing it in a threatening manner.

[3] CP submits that these acts constitute trespass, harassment, intimidation, interference with contractual relations, and breaches of sections of the ***Criminal Code***, R.S.C. 1985, c. C-46. CP submits that it is a legal right to continue to work during a strike and that those decisions should not be influenced by fear for one's safety when exercising a legal right; such decision should be made free of intimidation, harassment and other illegal actions. CP submits that it respects the

**Canadian Pacific Railway Company v. Teamsters Canada Rail
Conference – Maintenance of Way Employees' Division**

Page 3

right of its employees to engage in a lawful strike and to picket in a lawful manner and seeks only to enforce appropriate limits that restrain the legal conduct.

[4] In response, the Union submits first, that this is very early into the dispute. Indeed, the dispute is but a few days old. Second, that the affidavit evidence relied upon in support of the plaintiff's application is riddled with inadmissible double and triple hearsay and other inadmissible content, including opinion, speculation and reference to sources that are not identified. When this material is weeded out, the Union submits, there remains no basis upon which the relief sought can properly be granted. The Union submits further that the courts are to exercise caution and restraint in interfering in labour cases, and, finally, that the order the plaintiff seeks is far too broad.

[5] The appropriate legal principles to guide the exercise of the court's discretion in this matter include that picketing involves constitutionally protected expressive action that is particularly critical in a labour relations context, see **Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.**, 2002 SCC 8, [2002] 1 S.C.R. 156 [**Pepsi Cola**]. The next principle is that picketing that breaches the criminal law or specific torts such as trespass, nuisance, intimidation, or inducing breach of contract will, however, be impermissible, see **Pepsi Cola** at paragraph 103.

[6] The test to be applied is the normal test for injunctive relief, with the proviso that greater scrutiny may be required where an applicant seeks to restrain picketing: **Fletcher Challenge Canada Ltd. (MacKenziePulp Division) v. C.E.P., Local 1092**

**Canadian Pacific Railway Company v. Teamsters Canada Rail
Conference – Maintenance of Way Employees' Division**

Page 4

(1998), 155 D.L.R. (4th) 638 at para. 13 per Donald J.A. (B.C.C.A.) [*Fletcher Challenge*]; *Prince Rupert Grain Ltd. v. Grain Workers' Union, Local 333*, 2002 BCCA 641 at paras. 28 -30.

[7] Where the applicant establishes that there has been unlawful activity, the unlawful acts will be enjoined whether or not irreparable harm has been established. For reference to that proposition; see *Pacific Western Airlines v. UAW* (1986), 43 Alta. L.R. (2d) 289 (C.A.).

[8] Turning to the allegations in the case at bar, counsel for the plaintiff submits with respect to the objections to the evidence that much of the disputed evidence is not put in for a hearsay purpose but rather as proof of the fact that it was said. Counsel submits that the court must be sensitive to the requirements and necessary limitations of evidence that is brought in such an urgent and dynamic situation. Reference is made, for example, to the fact that the court had excluded an affidavit filed by CP in response to an objection made by the Union on the basis that the affidavit was served too late.

[9] Turning to the evidence, it is clear that the incidents described in the affidavits of the plaintiff are significantly disputed. It cannot be said that it has been established that there has been illegal activity; hence this is not a case such as *Blue Tree Hotels Investment (Canada) Ltd. v. Hotel, Restaurant and Culinary Employees' & Bartenders' Union, Local 40* (July 17, 2000), Vancouver S003828 (B.C.S.C.) per Boyd J. or *BHP Billiton Diamonds Inc. v. Public Service Alliance of Canada, Union of Northern Workers, Diamond Workers Local X3050*, 2006

***Canadian Pacific Railway Company v. Teamsters Canada Rail
Conference – Maintenance of Way Employees' Division***

Page 5

NWTSC 29, where unlawful activity was proven. On the other hand, it is my conclusion that, even taking into consideration the frailties of the affidavits relied upon by the plaintiff, there is a serious question to be tried with respect to the possibility of tortious and illegal conduct.

[10] I turn then to the balance of convenience analysis. In this regard the plaintiff submits that interference with the business as a going concern amounts to irreparable harm; that it is virtually impossible to determine the impact of legal picketing as compared with illegal picketing; that the activities of the Union and its members have harassed, intimidated and threatened CP's employees and contractors, causing them to fear for their safety; and that a refusal to grant relief will adversely affect CP's interests and the safety of its employees and others in privity of contract with it.

[11] CP submits that, considering the above factors, it is clear that if the order is not granted CP will suffer irreparable harm. Conversely, if the injunction is granted, the defendants will not suffer harm. The order sought does not preclude lawful picketing; it simply protects the safety of individuals who are being threatened, harassed and intimidated by the defendants' illegal activities. It also addresses the public interest in ensuring public roads and other areas accessed by the public remain free from hazards. Relevant as well, in CP's submission, are the interests of those people who want to ship and receive goods.

[12] In response the defendant notes that applications for injunctions affecting the right to picket in the course of a legal strike must be treated as a special class of

***Canadian Pacific Railway Company v. Teamsters Canada Rail
Conference – Maintenance of Way Employees' Division***

Page 6

cases requiring a particular degree of care on the part of the court not to go farther than it should. The defendant submits that a strong *prima facie* case is required, that the order, if granted, should not restrict picketing more than is necessary to prevent the continuance or repetition of tortious conduct, and that the courts are to intervene in labour disputes as little as possible, see ***Fletcher Challenge***.

[13] The defendant submits further that the courts may intervene to protect the interests of third parties or the struck employer only where picketing activity crosses the line and becomes tortious or criminal. Because the purpose of picketing is to assist the union in its economic struggle by persuading others not to engage in economic relations with the employer, it is necessary to show some act other than peaceful picketing, which is *per se* lawful, in order for the picketing to be enjoined. It is within the picketers' freedom of expression to endeavour to persuade drivers not to cross the picket line. The defendant makes reference to the decisions of our Court of Appeal that have commented upon the fact that the court should be slow to put the sword of contempt over the heads of workers who are exercising these lawful activities.

[14] CP submits with respect to the status quo that it is the Union that has disrupted the status quo by committing unlawful acts. The Union, as earlier noted, denies much of what has been asserted with respect to these acts, and, in addition, Larry Sergeant, business representative for the Teamsters Local 31, deposes that 80 percent or more of the trucking that goes in and out of the Vancouver Intermodal Facility is performed by unionized workers who are members of Teamsters Local 31. He deposes further that the Teamsters Local 31 collective agreements with the

***Canadian Pacific Railway Company v. Teamsters Canada Rail
Conference – Maintenance of Way Employees' Division***

Page 7

companies that do business in and out of the facility have language recognizing that it is not a violation of the collective agreement or cause for discipline for an employee to refuse to cross a legal picket line.

[15] CP submits that its case is strong. I, however, am not in a position in the application before me, and on the state of the evidence before me, to draw any conclusion with respect to the strength of the case on the merits.

[16] Turning then to the issue of public interest. CP submits that there is no public interest in allowing illegal acts. The Union reiterates the public interest in restraint with respect to labour relations matters and relies on ***Eurocan Pulp & Paper Co., a Division of West Fraser Mills Ltd. v. Communications, Energy & Paperworkers Union of Canada, Local 298***, 2003 BCSC 1332 at para. 24 per Brooke J.

reconsidering an earlier application before Fraser J. [***Eurocan***]:

I agree with what Mr. Justice Fraser said in his oral Reasons of June the 10th, referring to the words of Madam Justice Southin in an article written before she became a judge, that before the court exercises its jurisdiction in granting an application for injunctive relief there must be something serious and weighty before it ties the donkey in the road.

[17] The Union and its members have the right to strike and the right to picket. In exercising those rights, the members are at liberty to persuade. They do not have the right to intimidate, to threaten, to coerce, to obstruct, to trespass, or to commit nuisance or other tortious or criminal acts. They can persuade persons who approach the picket line not to cross, but they cannot prevent passage. Such conduct can and will be enjoined by the court.

**Canadian Pacific Railway Company v. Teamsters Canada Rail
Conference – Maintenance of Way Employees' Division**

Page 8

[18] I have concluded that the appropriate course to be adopted in the case at bar given the state of the evidence and the considerations relating to the balance of convenience I have just reviewed is to follow the course adopted by Mr. Justice Fraser in the *Eurocan* case. I direct that the Union and its officers be informed of these reasons and that, when transcribed, these reasons be provided to each person who serves as a picket captain in this matter. CP is at liberty to revive this application in the event of any unlawful acts, including any continuation or repetition of the acts alleged in relation to this application. The costs with respect to this application will be costs in the cause.

[Handwritten signature]
for Ross J.