

18,1951

UNIVERSITY OF LONDON  
W.C.1  
-3 OCT 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

14241

CASE FOR THE APPELLANT

In the Privy Council

No. 1 of 1951

**ON APPEAL FROM THE COURT OF APPEAL FOR  
THE PROVINCE OF BRITISH COLUMBIA**

BETWEEN:

W. L. WHITE, W. SCHWARTZ, J. NUTTALL, W. GEE,  
C. W. CARON and S. JENKINS, sued on behalf of and as repre-  
senting BOILERMAKERS' AND IRON SHIPBUILDERS'  
UNION OF CANADA, LOCAL No. 1 (otherwise known as  
Boilermakers' and Iron Shipbuilders' Union, Local No. 1) and  
IRON AND SHIPBUILDERS' UNION OF CANADA,  
LOCAL No. 1 and THE EXECUTIVE COMMITTEE TO  
WHICH THEY RESPECTIVELY BELONG, and W. REN-  
WICK, W. McGAW and ROY AQUINO, sued as trustees of the  
said BOILERMAKERS' AND IRON SHIPBUILDERS'  
UNION OF CANADA, LOCAL No. 1 and G. FARRINGTON,  
DAVE CLARK, FRED DUNCAN, K. GARRISON, ORVILLE  
BRAATEN, SIDNEY BELT and DAVID PEARSON sued on  
behalf of and representing THE PRESS AND INVESTIGAT-  
ING COMMITTEE of the said BOILERMAKERS' AND IRON  
SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1,

(Defendants) Appellants,

AND:

MYRON KUZYCH,

(Plaintiff) Respondent.

CASE FOR THE APPELLANTS

1. This is an appeal from a judgement of the Court of Appeal

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p. 690  
p. 663

of the Province of British Columbia, dated the 3rd day of May, 1950, which dismissed an appeal by the Appellants from a judgment of the Honourable Mr. Justice Whittaker of the Supreme Court of British Columbia awarding the Respondent damages and other relief.

pp. 1—16

2. The Respondent's action against the Appellants (who represent the Boilermakers' and Iron Shipbuilders' Union of Canada, Local No. 1), was for damages for an alleged wrongful expulsion from the Union, and for an injunction restraining the Appellants from giving effect to the resolution of expulsion passed 10 by the Union on the 19th day of March, 1945.

p. 44 ll. 35—37  
p. 31 ll. 1—14  
p. 105 ll. 31—45  
p. 536 ll. 23—37

3. In November 1942 the Plaintiff obtained employment as a welder with the North Vancouver Ship Repairs. At that time the company had an agreement with the Boilermakers' and Iron Shipbuilders' Union, Local No. 1, which provided for a closed shop. Thus, in order to work at the North Vancouver Ship Repairs, it was necessary for the Plaintiff to become a member of the Union, which he did some few months later. He was and still is opposed to the principle of the closed shop, and, in fact, stated that there is no Trade Union in Canada with whose principles he agrees. 20

p. 100 ll. 3—28  
p. 101 ll. 1—38  
p. 104 ll. 3—43  
p. 114 ll. 21—44

4. From October 1943 until February 1945 the Respondent's career within the Union was a stormy one. Finally, in February 1945, three charges were laid against him by a member of the Union, to the effect:

p. 428 l. 39—  
p. 430 l. 5  
p. 710

- (a) That he assisted in holding an unauthorized public meeting to discuss internal business of the Union, contrary to its By-laws;
- (b) That between October 1942 and December 1944 he was guilty of conduct unbecoming a member in publicly opposing established policies of the Union in campaign- 30  
ing against the closed shop principle; and
- (c) That he violated the obligation oath of a member in failing to repudiate certain radio broadcasts made in his behalf, which contained slanderous statements of a

member and then President of the Union, William Stewart.

5. In conformity with the By-laws of the Union, these charges were heard by a standing committee of the Union known as the "Press and Investigating Committee." The Respondent was given notice in writing of the charges. He had the right to select any member of the Union as his counsel. He had the right to cross-examine the witnesses against him and to call his own witnesses. He also had the right to sum up his case at the conclusion of the hearing. He appeared before the Committee, and while he challenged its jurisdiction without stating his grounds, he took an active part in the proceedings. At a later general meeting of the membership the Committee reported in favor of expulsion. The Respondent was allowed equal time with counsel for the prosecution to address the meeting in his own defence. On the 19th day of March 1945, the meeting by a vote of 454 to 12 passed a resolution expelling the Respondent from the Union. The employer, the North Vancouver Ship Repairs, was notified of this action. In accordance with the closed shop agreement, the Respondent was thereupon dismissed.
6. The By-laws of the Union provide that when a member has been found guilty of a serious offence such as the one in question and he feels the decision is unfair, he shall have a right of appeal to the Executive of the Shipyard General Workers Federation, the body from which this Local received its charter. Under the membership oath each member undertakes that he will not become a party to any suit at law or in equity against the Union until he has exhausted all remedies allowed under the Constitution and By-laws.
7. The Respondent, however, without first taking an appeal as provided in the By-laws, commenced this action for damages and for an injunction.
8. The action first came on for trial before the Honourable Mr. Justice Macfarlane of the Supreme Court of British Columbia, who, on the 20th day of January, 1947, handed down judgment dismissing it. At the trial the Respondent's principal attack was

p. 63 ll. 9—16  
 p. 751  
 p. 167 l. 35—  
 p. 168 l. 37  
 p. 175 ll. 11—28  
 p. 174 l. 20—  
 p. 177 l. 45  
 p. 178 l. 28—  
 p. 179 l. 4  
 p. 236 ll. 40—44  
 p. 237 ll. 1—2  
 p. 173 ll. 26—28  
 p. 146 ll. 1—14  
 p. 181 ll. 9—44  
 p. 182 ll. 1—27  
 p. 180 ll. 30—44  
 p. 181 ll. 1—7  
 p. 748 ll. 19—28  
 p. 52 ll. 21—31  
 p. 806 l. 40—  
 p. 807 l. 5  
 p. 798 ll. 42—46  
 p. 799 ll. 1—43  
 p. 144 l. 10—  
 p. 147 l. 44  
 p. 657 ll. 37—39  
 p. 687 ll. 37—40

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p. 26 ll. 18—40

against the validity of the By-laws under which the expulsion proceedings were held. The learned Trial Judge held that this attack was unfounded. The Repondent then appealed to the Court of Appeal of British Columbia. During the course of argument the then counsel for the Appellants for the first time raised the defense that an action for expulsion from the Union could not lie because it was an illegal association, being in restraint of trade by reason of the closed shop principles. The Court of Appeal thereupon directed that a new trial be held in order that this question could be litigated. 10

p. 649 ll. 32—40

p. 650 ll. 1—44

9. A complete new trial was held before the Honourable Mr. Justice Whittaker, upon pleadings that had been extensively amended.

10. The learned Trial Judge held that the issue of illegality had not been properly pleaded, but even if it had, the Union was not an illegal organization. This finding was not challenged by the Appellants before the Court of Appeal of British Columbia, and it is not in issue before Your Lordships.

p. 655 ll. 30—44

p. 656 ll. 1—45

p. 657 ll. 1—40

11. The learned Trial Judge held, however, that the Press and Investigating Committee was not properly constituted because of certain defects in the election of its members. He therefore held that this Committee had no authority to try the Respondent, and consequently he was not obliged to exercise his right of appeal within the Union before taking civil action. 20

p. 659 ll. 43—46

p. 657 ll. 41—45

p. 658 ll. 1—2

12. The learned Trial Judge further held that the expulsion proceedings were contrary to "natural justice," because of the bias of one of the members of the Committee, and because of certain threats and statements that were made.

p. 662 ll. 4—24

13. The learned Trial Judge further held that the Respondent was entitled to damages in the sum of Five thousand dollars (\$5,000.00), notwithstanding the fact that he refused to accept other employment as a non-union man, although such employment had been open to him. 30

pp. 667—691

14. The Appellants then appealed to the Court of Appeal of British Columbia, and the appeal, having been heard by the full

Court, was dismissed by the majority of three to two members of the Court.

15. The Chief Justice of British Columbia would have allowed the appeal for the reasons given by the Honourable Mr. Justice Bird, viz:

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- (a) The Press and Investigating Committee was properly constituted; p. 686 ll. 22—44  
p. 687 ll. 1—11
- (b) Therefore the Respondent must exercise his rights of appeal within the Union before taking civil action; and p. 688 ll. 6—44  
p. 689 ll. 1—18
- 10 (c) The allegations in respect to the expulsion proceedings being contrary to "natural justice," were matters for consideration on the appeal to the domestic tribunal. p. 689 ll. 19—21

16. The Honourable Mr. Justice O'Halloran dismissed the appeal for the following reasons:

- (a) Assuming the Press and Investigating Committee was properly elected, it was so biased against the Respondent that there was in essence no trial at all; p. 668 ll. 31—42  
p. 669 ll. 1—24
- 20 (b) An appeal to the Shipyard appellate tribunal would have been futile (although this was not pleaded, nor was there any evidence or finding in respect to it at the trial);
- (c) If membership in a Union is a condition attached to working at a trade, a workman in that trade has an indefeasible right to be a member of that Union; and p. 670 ll. 25—27
- (d) The damages awarded could be justified as being punitive damages. p. 672 ll. 11—21

17. The Honourable Mr. Justice Robertson dismissed the appeal for the following reasons:

- 30 (a) While the Press and Investigating Committee was properly elected, nevertheless it was incompetent to hear the charges because one of its members was so biased against the Respondent as to render him unfit to act; p. 674 l. 1  
p. 674 ll. 24—32
- (b) The rule requiring the Respondent to exhaust all his remedies within the Union did not apply where the p. 676 ll. 10—16

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Union failed to hold the conventional investigation, as it did through failure of a proper committee to hear a complaint against the Respondent; and

p. 676 ll. 39—42

- (c) The learned Trial Judge was right in his assessment of the damages.

18. The Honourable Mr. Justice Smith dismissed the appeal on these grounds:

p. 677 ll. 26—36

p. 678 ll. 14—31

- (a) While there was no invalidity in the election of the Press and Investigating Committee, the provisions in the By-laws requiring a member of the Union to exhaust his remedies within the Union, cannot apply when the resolution of expulsion is invalid by reason of the bias of the Committee that tried him, and by reason of the threats and intimidations that preceded the expulsion; and

p. 681 ll. 34—38

- (b) The damages awarded could be justified on a vindictive basis.

19. The Appellants respectfully submit that all the Judges of the Court of Appeal of British Columbia have either expressly or impliedly held that the Press and Investigating Committee (which was a standing committee and not simply elected to hear the charges against the Respondent), was properly elected. Therefore, the basis on which the Trial Judge held that there was no trial has been rejected. Assuming that the expulsion proceedings were contrary to "natural justice" and that there was bias and intimidation, such facts would form the basis of an appeal to the Executive of the Shipyard Federation. However, until such an appeal is taken, an action in law or at equity will not lie.

p. 784 l. 20

20. The Appellants also respectfully submit that the facts found by the learned Trial Judge and the majority of the Judges of the Court of Appeal in respect to bias and threats do not constitute a ground for failing to give effect to the Union's By-laws.

21. The Appellants respectfully submit that the judgments of the Court of Appeal of British Columbia and the Trial Judge

are wrong and should be reversed, and in the result the action should be dismissed for the following among other

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### REASONS

- (1) Because the Press and Investigating Committee which tried the Respondent was properly constituted;
- (2) Because the expulsion proceedings were not contrary to "natural justice";
- (3) Because, assuming the proceedings to be contrary to "natural justice," this fact would form a ground of appeal to the domestic tribunal;
- 10 (4) Because, unless and until the Respondent has exhausted his remedies within the domestic forum, no action at law or in equity will lie;
- (5) Because a member of a Union who has been found guilty of serious offences against the Union's Constitution and By-laws, does not have an indefeasible right to be a member of that Union;
- (6) Because the Respondent, having refused to accept other available employment, was not entitled to damages; and
- 20 (7) For the reasons contained in the judgments of the Chief Justice of British Columbia and the Honourable Mr. Justice Bird.

p. 78 ll. 10—44  
p. 79 ll. 1—21

JOHN L. FARRIS

N. T. NEMETZ

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL  
FOR THE PROVINCE OF BRITISH COLUMBIA

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B E T W E E N

W.L. WHITE and others. Appellants

and

MYRON KUZYCH - - - - - Respondent

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CASE FOR THE APPELLANTS

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Gard, Lyell & Co.,  
47, Gresham Street,  
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