

THEODORE VAILLANCOURT .....SUPPLIANT;

1926

June 29, 30.  
Oct. 12.

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Master and servant—Dismissal—Notice—Wrongful dismissal—Summary dismissal*

*Held*, that when under Rules and Regulations in force on the Canadian Government Railways relating to the conduct and discipline of its employees, it is provided that "employees will . . . be subject to *summary dismissal* for insubordination, drunkenness," etc., any employee guilty of a breach thereof may be forthwith legally dismissed without notice.

2. *Held* further, that in any event, where the dismissal of an employee is for cause, he is not entitled to any notice.  
(*Lévesque v. C.N.R. Q.R. 39, K.B. 165*, referred to and distinguished.)

PETITION OF RIGHT to recover \$13,630 for wages since the alleged illegal dismissal.

Rivière du Loup, P.Q., June 29 and 30, 1926.

Action now tried before the Honourable Mr. Justice Audette.

*L. P. Lizotte* for suppliant.

*Louis Saint-Jacques* for respondent.

The facts are stated in the reasons for judgment.

AUDETTE J., now this 12th October, 1926, delivered judgment (1).

The suppliant seeks, by his Petition of Right, to recover the sum of \$13,630, an amount representing his wages as locomotive engineer since his alleged "unjust and illegal dismissal," as averred by paragraph 32 of the petition.

On the 11th September, 1920, the suppliant was on the "spare list" of locomotive engineers of the C.N.R. at Rivière du Loup, P.Q., That is, there was no special engine assigned to him. The names of those on that list change from month to month (see Rule 29 of Exhibit No. 2).

Victor Saindon, the locomotive foreman of the Round House at that point, under whose direction trains move out, having been under the obligation, at about 7 o'clock on the evening in question, to discharge from duty an engineer under the influence of liquor, directed his employee Dumas

(1) An appeal has been taken to the Supreme Court of Canada.

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to telephone to the suppliant to come down immediately and take charge of that train.

It was, as conceded by all parties, a case of emergency. (See again Rule 29 of Exhibit No. 2.)

The suppliant answered that it was correct and that he would go immediately. It is at this stage well to bear in mind that Vaillancourt testified that it takes from four to five minutes to walk from his home to the Round House and that on that day he went down running.

However, Foreman Saindon seeing, about twenty minutes after this first telephone call, that Vaillancourt was delaying, asked witness Dumas to call him up again, and Saindon then spoke on the telephone and contends he spoke to Vaillancourt himself (notwithstanding some evidence to the contrary), and

found out he was not fit, that he was not in normal state, that he was not speaking distinctly,—his tongue was rolling in his mouth, and that he then, on the occasion of this second telephone message, told him to stay home. Saindon thereupon placed his train in the hands of another engineer. The train had been retarded by the delayed appearance of Vaillancourt.

Notwithstanding Saindon's direction to stay home, Vaillancourt arrived at the Round House between 15 to 20 minutes after the second telephone message. That would be in all between 35 to 40 minutes after the first call.

Now the evidence in respect of the second telephone call is conflicting and it may be well to dispose of that point at once. Vaillancourt contends, and in that he is corroborated by his wife, that when Saindon telephoned the second time he had left his house and that it was his wife who answered. It is quite impossible to reconcile that latter contention with the other facts. Indeed, if the second call was made 20 minutes after the first call and that it takes 4 to 5 minutes to walk from Vaillancourt's house to the Round House,—and Vaillancourt testified he ran down on that day—and he only arrived at the Round House 15 to 20 minutes after the second call, he must have been at home at the time of the second telephone call—confirming thereby Saindon's testimony that he spoke to Vaillancourt on the second call and recognized his voice.

On arriving at the Round House, Vaillancourt said to Saindon, how comes it that I do not board my train and

Saindon told him I told you to stay at home. Then addressing this superior officer, Saindon, the foreman, Vaillancourt began swearing and cursing at him, adding blasphemy thereto, telling him (*mon petit Christ noir*) my little black Christ, you will pay both my time "and my voyage" and entering the shops he pitched his dinner pail into a pit, when Saindon told him to go home that he was not in a state to go out on a locomotive.

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Now Saindon testified that Vaillancourt, on that occasion had taken intoxicating liquor (*il avait pris de la boisson*), that he smelt liquor, adding, "upon my oath *il était en boisson*," he was not in a normal state. Witness Dumas confirms Saindon, and testified that when they went in the office he then perceived that Vaillancourt smelt liquor and was swearing. Witness Filion says Vaillancourt was swearing in face of Saindon and witness Guy said he heard him blaspheme, using towards Saindon, his superior officer, offensive language, and further that Vaillancourt appeared to him to be under the influence of liquor.

On this question as to whether or not Vaillancourt had taken intoxicating liquor and smelt liquor the evidence is conflicting. We have the negative evidence adduced by the suppliant's wife who testified that *she had no knowledge that her husband had taken any liquor*, and the evidence of a number of other acquaintances of the suppliant who casually met him in the street or on the gallery of his dwelling, who testified in a rather vague manner they had not noticed Vaillancourt had taken any liquor. Now this evidence based on observation from a casual meeting resulting in this negative opinion cannot stand in face of the evidence of those whose duty it was to observe and decide it, and moreover to do so in a building as compared to in the open air. Moreover, it is a rule of presumption that in the estimation of the value of evidence of equal credibility, in ordinary cases, the testimony of a credible witness who swears positively to a fact should receive credit in preference to that of one who testifies to a negative. *Magis creditur duobus testibus affirmantibus quam mille negantibus. Lefeunteum v. Beaudoin* (1).

(1) [1897] 28 S.C.R. 89 at 93.

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I have also had the advantage of seeing the witnesses and to observe their demeanour in the witness box. Without hesitation, and attaching very little credit to Vaillancourt's testimony of doleance, I give full credit to the testimony of witnesses Victor Saindon and Dumas corroborated as it is by Vaillancourt's conduct at the shops.

Now, on the 11th September, Foreman Saindon suspended Vaillancourt upon the ground of being under the influence of liquor, of using offensive language to him and of being guilty of insubordination, until the investigation of his case would take place, and witness Mitchell, Assistant Master Mechanic, came to Rivière du Loup on the 14th September, 1920, to investigate the complaint made against Vaillancourt.

Vaillancourt was advised to come and be heard and he came and was heard. (See Rule 46, Exhibit 2.) Witness Mitchell testified he took Vaillancourt's statement in reporting for duty, in emergency, and appearing while under the influence of liquor and using abusive language to the locomotive foreman. Mitchell says Vaillancourt denied intoxication, but admitted using abusive language to locomotive foreman and of having talked too much. Several witnesses were heard and the decision was given within ten days, as provided by Rule 46 above cited. Vaillancourt under that rule had the right to be present and to have a fellow employee appear for him. He made no request or demand to that effect. Re: *Low Hong Hing* (1).

Witness Mitchell then suspended Vaillancourt until further orders for violation of Rule G of exhibit No. 1 which says that the "use of intoxicants" by employees, while on duty, is prohibited and also for abusing locomotive foreman (exhibit A). Moreover, exhibit B, a regulation in due force, provides and decrees that employees will, as heretofore, be subject to *summary dismissal* for insubordination . . . or using intoxicating liquor when on duty . . . and I find that Vaillancourt has been guilty of insubordination and of having used liquor.

At the time witness Mitchell suspended Vaillancourt, the latter asked when he would resume duty and Mitchell told him that he was afraid *he would not resume duty*

under the circumstances. Mitchell recommended dismissal and that was effected by Exhibit A.

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What does suspension mean, if not suspension of work which carries with it suspension of the right to wages? Vaillancourt was suspended and told he would not resume duty for cause. Does this not amount to dismissal? How can he now claim?

And when Regulation, exhibit B, provides for *summary dismissal* in case of insubordination and of using intoxicating liquor, this word "summary" which connotes of an immediate and speedy dismissal, means nothing else, that in such cases the dismissal is without notice.

Exhibit No. 2 contains, as admitted, an understanding between the Brotherhood of Locomotive Engineers and the C.N.R. and is signed by both parties, and under art. 53 thereof the right to make and interpret contracts, rules, rates and working agreements for locomotive engineers is vested in the regularly constituted Committee of the Brotherhood.

The suppliant rests his claim upon these rules. However, the Brotherhood did not find fault with the suspension and dismissal of Vaillancourt and refused to interfere on his behalf. Vaillancourt himself, about 15 days after Mitchell's investigation, came to Saindon's office and told him that the Brotherhood was unable to do anything in his case. Their chairman himself said he would not intercede for Vaillancourt. And witness Sharpe says that Vaillancourt's case was not referred to him by the Brotherhood.

Furthermore, E. Ouellet, heard on behalf of the suppliant, testified he was President of the Brotherhood and that he had nothing to do with the Committee of Complaints (Comité des Griefs) when he went to Mr. Moraison, not in his official capacity but on his personal initiative, to ask for some work for Vaillancourt,—but *not to reinstate* him in his position. He further added that if any engineer has any grievance he comes to the meeting and makes a report in writing. No such steps were taken.

Vaillancourt claims under exhibit 2, which, he says, amounts to a contract between himself and the C.N.R. However, this exhibit 2, as admitted by the parties at trial, contains an understanding between the Brotherhood and

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the C.N.R. and the Brotherhood has refused to interfere with Mitchell's finding, after his having made an investigation as provided by art. 46 thereof. (See also Rule 53 thereof.) How can the suppliant assert that there has been any breach of contract by the respondent, as resulting from the understanding contained in Exhibit 2? If any breach of contract exists, the shoe is on the other foot, and it is Vaillancourt who is guilty of breach of contract in both using intoxicating liquor and by being guilty of insolence and insubordination towards his superior officer.

Then exhibit "A," already referred to, which bears on its face the absolute dismissal of the suppliant, is signed by all the high officials who finally had anything to do with it. But the suppliant lays great stress on the contention that he was never notified of such dismissal.

Witness Mitchell testified that dismissal may be verbal or in writing.

Now the question arises as to whether or not a notice was necessary under the circumstances of the case,—the dismissal being for *good cause, legitimate grievance*,—I answer that in such a case, as distinguished from wrongful dismissal, no notice is required. See Beaudry-Lacantinerie—*Du contrat de louage*, vol. 21, pp. 600, 620 and 624. Damages or wages may be claimed only when the dismissal is made without cause, *sans motifs légitimes* (Idem, p. 598.) See also p. 606 where the author deals with the case in which the employee *commet des actes d'indiscipline, par exemple en insultant son chef*. Idem pp. 613, 615, 616.

The appointment of all servants of the Crown is an engagement at pleasure (*à bon plaisir*) which resorts from the object itself for which they are so appointed, which in the administration of things form part of the public domain. This right is inherent to the good administration of the State. *Samson v. Syndic Chemins à Barrières, etc.* (1).

*Dakley v. Norman* (2) is also authority for the dispensation of notice of dismissal.

La conduite grossière d'un serviteur vis à vis des maîtres est cause suffisante pour le renvoyer du service sans avis préalable.

L'insolence et l'insubordination d'un gérant d'une compagnie incorporée vis à vis des directeurs ou du président de la Cie justifient les directeurs de le renvoyer sans avis préalable.

(1) [1880] 6 Q.L.R. 86.

(2) [1886] 9 L.N. 213.

*Dick v. Canada Jute Co.* (1).

Art. 1667 C.C. enacts that the lease or hire of personal service can only be for a limited term. See *Beaudry-Lacantinerie*, vol. 21, p. 666.

However, Guillaud (3rd ed., vol. 2, p. 293) says que la durée du louage de service soit ou non limitée, chaque partie peut y mettre fin sans s'exposer à des dommages-intérêts, si l'autre partie manque elle-même à ses engagements. De même le maître ou le patron auquel le domestique ou l'employé refusent d'obéir, ou qui peut leur imputer *un manquement grave à leurs devoirs professionnels*, a le droit de les congédier immédiatement et sans indemnité, quelles que soient les stipulations du contrat qui les lie.

All of this is in confirmation of the *summary dismissal* provided by Regulation Exhibit B.

The imputation set up at bar that Vaillancourt was dismissed *without cause* is quite erroneous and without foundation. Insubordination and the use of intoxicating liquors were proved. They are both forbidden by the Rules governing the case, and were it not so provided it would be still a justifiable reason for dismissal. It is a fundamental rule that the authority administering a railway must be free from such insubordination.

Therefore, let it be well understood that the case of the *Can. National Rys. Co. v. Lévesque* (2) and other cases cited at bar by the suppliant, have no analogy with the present case, because these cases deal clearly with dismissal *without cause* as is distinctly set out in the reasons for judgment. The present case is a dismissal for *good cause*.

Railroading and booze like the East and the West in Kipling's poem are things that can never meet if the operation of trains is to be carried on with safety.

One must bear with and give a rigorous and efficient support to the authority in the administration of a railway, the want of which would tend to destroy that control and management which have for object to protect the public and the life of passengers. All employees owe loyalty and obedience to their superior officer acting within the scope of his duties and mandate.

Having found that Vaillancourt was rightly suspended and dismissed for good cause as having been guilty of in-

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(1) [1889] 18 R.L. 555; 30 L.C.J. 185; 34 L.C.J. 73.

(2) [1925] Q.R. 39 K.B. 165.

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subordination, and having used intoxicating liquor when on duty in contravention to exhibit No. 2,—the alleged contract between the parties—and made liable to summary dismissal in such case by exhibit B, there will be judgment declaring that the suppliant is not entitled to the relief sought by his Petition of Right.

*Judgment accordingly.*