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# The Canadian Industrial Disputes Investigation Act

By HOWARD S. ROSS, K.C.<sup>1</sup>

## *I. Analysis of the Act. General Scope*

Wherever any dispute exists between an employer and any of his employees either of the parties may make application to the Minister of Labor for the appointment of a Board of Conciliation and Investigation. Except when the dispute is between a railway company and its employees, when it may be investigated under the provisions concerning railway disputes in the Conciliation and Labor Act, the Minister, whose decision shall be final, shall, within fifteen days establish a Board of Conciliation and Investigation, if satisfied that the provisions of the act apply. The act applies to any person, company or corporation employing ten or more persons and owning or operating any mining property, agency of transportation or communication, or public service utility, including, except as hereinafter provided, railways, whether operated by steam, electricity or other motive power, steamships, telegraph and telephone lines, gas, electric light, water and power works and, since March 23, 1916, all classes of war work.

The board of three members are appointed by the Minister, one on the recommendation of the employer, one on the recommendation of the employees (the parties to the dispute) and the third on the recommendation of the members so chosen. Each party may, at the time of making application or within five days after being requested by the Minister to do so, recommend the name of a person as a member of the board. If either of the parties neglects to make a recommendation within said period or such extension as the Minister, on cause shown, grants, the Minister shall appoint a fit person and such person shall be deemed to be appointed on the recommendation of the party who neglects to make a recommendation. If the persons chosen neglect to make a recommendation, the Minister shall appoint a fit person. Persons other than British subjects shall not act as members of the board.

### *Procedure for Reference of Disputes to Boards*

The application is accompanied by a statement of the facts and as provided by Chapter 29, assented to May 4, 1910, a statutory

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<sup>1</sup>Of the Montreal bar.

declaration setting forth that, failing an adjustment of the dispute or reference thereof by the Minister to a board, to the best of the knowledge of the declarant a lockout or strike will be declared, and (except where the application is made by an employer in consequence of an intended change in wages or hours proposed by the said employer) that the necessary authority to declare such lockout or strike has been obtained; or where a dispute directly affects employees in more than one province and such employees are members of a trade union having a general committee authorized to carry on negotiations in disputes between employers and employees and so recognized by the employer. There shall also be a statutory declaration by the chairman or president and by the secretary of such sub-committee setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a board, to the best of the knowledge and belief of the declarant a strike will be declared, that the dispute has been the subject of negotiations between the committee and the employer, and that all efforts to obtain a satisfactory settlement have failed, and that there is no reasonable hope of securing a settlement by further negotiations. Application for the appointment of a board is made by post by registered letter to the other party to the dispute who shall, without delay, send by registered letter or personal delivery to the registrar and to the party making application, a statement in reply.

#### *Powers and Procedure of Boards*

No reference to a board can be made if the employees affected by the dispute are fewer than ten. Where a settlement is not effected, the board makes to the Minister a complete report (avoiding as far as possible all technicalities) and recommends a course of action by the parties to the dispute, and copies of such report and recommendations are sent to the parties concerned and published without delay in the *Labor Gazette* which is published by the Department of Labor.

Any party to the procedure may be compelled to give evidence. When the dispute is between a railway company and its employees, any witness summoned by the board shall be entitled to free transportation over any railway. The board, may, with the consent of the Minister, employ experts. The board may, at any time, enter and inspect any building, mine, shop, factory or premises of any kind which is or are the subject of a reference.

Any party may be represented by three or less than three persons. Every party appearing by a representative shall be bound by the acts of such representative. No counsel or solicitors shall be entitled

to appear or be heard, except with the consent of the parties to the dispute and, notwithstanding such consent, the board may decline to allow counsel or solicitors to appear. Proceedings are in public unless otherwise determined by the board.

The decision of the board shall be binding.

### *Strikes and Lockouts*

Strikes and lockouts are prohibited prior to or pending a reference, but (except where the parties have entered into an agreement to be bound by the terms of the board's decision) the act does not restrain any employer from declaring a lockout, or any employee from going on a strike in respect of any dispute which has been duly referred to a board and which has been dealt with by the board, or in respect of any dispute which has been the subject of reference under the provisions concerning railway disputes in the Conciliation and Labor Act.

Employers and employees shall give at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours; and in every case where a dispute has been referred to a board, until the dispute has been finally dealt with by the board, neither of the parties nor the employees affected shall alter the conditions of employment with respect to wages or hours, or on account of the dispute do or be concerned in doing, directly or indirectly, anything in the nature of a lockout or strike or a suspension or discontinuance of employment or work; and if, in the opinion of the board, either party uses this or any other provision of the act for the purpose of unjustly maintaining a given condition of affairs through delay, such party shall be guilty of an offence and liable to a fine of not less than \$100 nor more than \$1000 for each day or part of a day that such lockout exists.

Any employee who goes on strike contrary to the provisions of the act shall be liable to a fine of not less than \$10 nor more than \$50 for each day or part of a day. The penalty for inciting, encouraging, or aiding is not less than \$50 nor more than \$1000. The procedure for enforcing penalties is Part XV of The Criminal Code relating to summary convictions.

### *Special Provisions*

Either party to a dispute may agree in writing to be bound by the recommendation of the board in the same manner as parties are bound by an award made pursuant to a reference to arbitration on the order of a court of record. This agreement is sent to the registrar who sends it to the other party. When both have agreed, the recom-

mentation shall be made a rule of the said court on the application of either party and shall be enforceable by either party.

If a dispute arises in any industry or trade other than such as may be included under this act, likely to result in a lockout or strike, or resulting in a lockout or strike, either of the parties may agree in writing to refer such dispute to a board and, if both parties agree, the recommendation of the board shall be binding.

### *Miscellaneous*

Courts shall not recognize reports of or testimony before a board, except in the case of a prosecution for perjury.

The Governor in Council may make regulations which shall go into force on the day of publication in *The Canada Gazette* and they shall be laid before Parliament within fifteen days after such publication or within fifteen days after the opening of the next session.

### *II. Practical Operation of the Act*

Up to the end of 1916 there were 215 applications for boards, involving about 350,000 employees. Of the 215 applications 193 were received from employees, 19 from employers and three from employers and employees together. In 183 cases boards were granted, the remaining cases being settled without the necessity of a board. There were only 21 cases in which strikes were not either averted or ended by a reference of the dispute under the act.

The employers support the act, but the labor organizations have not supported it, though some prominent labor men feel the act has some good features. It is significant that, as it is extended to new trades, the men of those trades disapprove and call for the repeal of the act. The Trades and Labor Congress of Canada which met at Toronto in September, 1916, voted unanimously for the repeal of the act.

The following comments made in this Congress during the discussion on the Thetford Mines dispute will give some idea of the attitude of leading labor leaders towards the act.

Chairman Rigg said he was pleased to notice the Minister of Labor had arrived to hear the indictment against his department. The Committee on Resolutions had come to the unanimous conclusion that the resolution of the miners should be adopted but that before doing so the Minister of Labor should be heard. "There are five companies controlling the asbestos mines at Thetford", said Chairman Rigg. "There are really only three controlling companies. After

the miners made an application for a board under the Industrial Disputes Investigation Act they were informed, through a letter from the department, that the industry in which they were employed came under the Industrial Disputes Investigation Act and that it would be a criminal act on their part to go out on strike. The letter stated that there was not the slightest doubt as to the act applying to the Thetford Mines, and the inference was that the provisions of the act dealing with penalties for violations would be rigidly enforced, if a strike was declared. While that attitude was assumed by the Minister of Labor, the men were prevented from taking any further action in their own interests, other than complying with the law. Suddenly, however, the department switches and points out that there are five companies controlling the mines at Thetford, in which the applicants for a board were employed, and that, because the owners of the mines could not agree upon a representative for the board, under the Industrial Disputes Investigation Act a board could not be appointed. We find, therefore, that, while the men were informed that a strike would be a criminal offence, a Board of Investigation and Conciliation was refused because the employers refused to agree upon one representative to sit upon the board. The next feature of the situation is not entirely a matter for the Labor Department but involves all the members of the federal cabinet. This refers to the releasing of interned aliens from the internment camp at Spirit Lake and transporting them under armed guards into the Thetford mining district. There is no doubt that these interned aliens were specifically brought into the mining camp to intimidate the miners in their fight for a better economic condition and to take the strength out of their spine. The understanding was that these interned aliens would be paid at the rate of \$2.00 per day, but in many cases the envelopes in which their wages were supposed to be enclosed on pay day had nothing in them at all. In the envelope of one of these men there were no wages, but there was an intimation that he had eaten so much of the food supplied by the company that he was actually in their debt to the extent of \$6.20. Another peculiarity in the situation was that in the final settlement of the trouble the division of representation was entirely upon the side of the miners and the singleness of representation was on the side of the mine operators. We find that a lawyer from Montreal represented the companies in determining the conditions which were accepted by the men, but that it was not one representative of the men who agreed to those conditions, but that it was two representatives from each of the mines controlled by the different companies, so that, while the board could not

be appointed because the companies refused to agree upon one representative, while the men could, in the final adjustment the companies had agreed upon one representative and the men were compelled to accept a settlement reached after representation from the different mines had been made a necessary condition of negotiation. This was all done by the jockeying with the provisions of the Industrial Disputes Investigation Act. I never heard of a case that assumed such a position of serious importance as the one now before this convention. I am sure that we shall listen with the keenest interest to the defence offered by the Minister of Labor and have not the slightest hesitation in saying that, if the facts as submitted to your committee are substantiated, it is the most serious indictment that has ever been made against the Department of Labor and proves that the act is a colossal farce in every sense of the word. It means that through the caprice or whim of the Minister of Labor clauses can be interpreted entirely in the interests of the employers. That is the reason why I have picked out the salient features of the situation to present to this convention."

Hon. T. W. Crothers, Minister of Labor, in reply, said: "At Thetford Mines there were two unions, the local union being there before the local of the Western Federation of Miners." "That is not so;" interjected Delegate Foster. "I was informed", continued Mr. Crothers, "that the local union had 1000 members. The other organization was only formed last Fall and it was difficult for the employers to deal with two organizations, when one says it is dissatisfied with the course of the other union. I have refused to appoint boards before when there were two unions quarreling among themselves as to what should be done. There were five companies to deal with when the request to appoint a board was made. I hold that the act does not lend itself to the condition where there are several employers not agreeing. Each employer has a right to name a man. That would give five when the act calls for three. We had a case in Cobalt where there were forty-two companies and I refused to grant a board when application was made by the miner's union. I would refuse to-day."

Delegate Foster, president of the Montreal Trades and Labor Council, said, "We always thought the act was passed to obviate strikes. We know that 1000 men did strike after doing all in their power to prevent a strike. A representative of the Labor Department went into the Thetford district to adjust the dispute (before Mr. Blauchet of Ottawa was sent there), but he incurred the displeasure

of the mine owners and was sent away to Nova Scotia to draft a fair scale schedule."

Delegate Moore asked the Minister of Labor if the men had the "legal right to strike after a board had been refused because the five companies at Thetford Mines could not agree upon a representative." The Minister answered that the men could not legally strike, but were compelled to resort to the provisions of the act and apply for the appointment of a board to deal with one company. Delegate Simpson asked the Minister if a board would have been granted each group of employees in each mine, if they had applied separately. The Minister replied that he would not answer the question, because such a situation had not arisen.

Delegate Arcand, who had been sent to Thetford Mines as representative of the Labor Department, said that "after a short time, for some reason I received instructions to leave, an Ottawa lawyer having been appointed a commissioner to adjust the dispute. When I saw that someone was pulling strings harder and stronger than the government of this country, I did not wish to occupy the position of fair wage officer any longer and I sent my resignation to the department, and, even though I had my wife and nine children to support and my position meant their bread and butter, I left the position with a conscious satisfaction that I had been true to the labor movement."

Delegate Angus McDonald of Pictou, Nova Scotia, said that unionism had been crushed in Nova Scotia and nothing had done more to crush it than this act. He said he had been blacklisted for seven years.

Delay in the appointment of boards is complained of and it is suggested that a board should be organized within one week and that one day be given instead of three for agreement upon a chairman for the board.

Labor organizations would like to prevent the effort by appealing to the courts to restrain the Labor Department from enforcing the act, as in the case of the dispute with the Montreal Street Railway employees. At present if employees are laid off on the ground that inventories of stock are being made, the burden of disproving this contention is upon the employees.

There is much difference of opinion in connection with the interpretation of the act where reference is made to trade unions and other organizations, and it is claimed it should be made clear so that employers would be placed in the same position as labor organizations in interpreting the act.



It is claimed that there is too much red tape in the procedure in applying for a board, particularly the provision calling for the taking of votes among the employees before an application can be made for a board. It is thought that provision should be made so that applications may be made by a committee of the men. It is urged that provision should be made for the reorganizing of the board, when doubt arises as to the meaning of the award, and that it should be made clear as to what are the rights of workmen, in the event of their application for a board being refused. It is suggested that ten days instead of thirty should be allowed for the party upon whom a demand is made after an award to reply as to whether, the demand not being acceded to, application for a board may be made.

An amended act was presented to the labor congress by Mr. John G. O'Donoghue of Toronto, solicitor for the congress. The amended act provided that the penalty on the employer for locking out his men unlawfully should be on the *per capita* basis for all the employees locked out, just the same as it would be on the *per capita* basis, if the employees were penalized for going out on strike in violation of the act.

The delegates to the Toronto congress did not wish any action they took towards repealing the act to imply that they repudiated the principle of arbitration. They would still resort to arbitration to settle disputes.

Further critical comment was made as follows: Delegate Rees said he noticed that some of the men who were at Vancouver and Montreal when the act was discussed had been brought under its provisions since and were now opposing it as vigorously as those who had been under its provisions for a number of years. He said that under the amended draft of the act it would be just as difficult as ever to prove that men had been locked out and just as easy to prove that men had gone out on a strike. Delegate Anderson contended that the act was not so far wrong itself, but when put into the hands of the government, controlled by capitalists, it was impossible to get proper enforcement. Delegate McCutcheon asserted the American railway managers said they had nothing to arbitrate, but, when the brotherhoods forced the issue, the managers wished to have an act like ours to help them out. The twenty-five men engaged in negotiations with the Canadian Pacific Railroad for improved conditions on the Western lines were of the unanimous opinion that, if this act had been utilized, they would not have received the increases asked for. Delegate McVety claimed that whenever an organization is able to take care of itself the board is invoked, but when the organization is weak the board is not granted. He did not think the Liberals could con-

gratulate themselves, if the convention condemned the Tory administration of the act because the act was the gift of a Liberal government and had been drafted by W. L. McKenzie King, who was then Minister of Labor and is now the representative of the Rockefeller Endowment Fund and busy organizing unions of miners in opposition to the United Mine Workers of America. He noticed that there was not one member of the executive council in the trades covered by the act. Delegate Bancroft said he voted for the repeal of the act at Calgary and had been present at a conference of the representatives of International Unions in Philadelphia when the act was the chief topic of discussion. He had also given his advice at the San Francisco convention and expressed the opinion that the convention would not only be a party to hoodwinking the people of Canada but also the people of the United States, if the Convention did not stand for the repeal of the act. He said the argument was being used in other countries that, if the Trades and Labor Congress of Canada had never asked for the repeal of the act, it must be a good act. He also elaimed that the powerful labor organizations who were able to help themselves had their hands tied. "Let the big organizations do their own fighting and let us strengthen the organizations that are now weak," he said. He said it was quite clear that both of our political parties have made up their minds not to repeal the act. Delegate Richard Lynch said he was opposed to the act, and that he had been in Australia and New Zealand and other countries where similar acts were in force and they had always failed to satisfy the workers. Delegate Sinclair stated that the officers of the congress had endorsed the act in 1907 without obtaining the consent of the affiliated organizations.

Reference was made to the case of *The King vs. Neilson*<sup>2</sup>. In Nova Scotia a union man was committed to prison for feeding strikers, the court holding that this constituted the offense of "assisting in prolonging the strike".

Labor is taking the position that the right to strike must be unlimited, but the public at large at present does not agree with this contention. The right of a man to leave his work is not objected to; but when he uses that right, not to free himself from his employer, but to cause such general hardship that the public will have to act for its own protection, the question will arise as to whether the action should be for the restraint of employer or employee. When the strike is against a private employer, the public wishes to see fair play. When the strike is against a public service corporation, the public becomes directly interested. If the public asks organized labor work-

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<sup>2</sup>44 Nova Scotia 488.

ing for public service corporations not to strike until an effort has been made to reach a settlement, must not the public do everything possible to establish just working conditions? If the public objects to the exercise of force by organized labor, should it not use its great power to make the use of that force unnecessary?

Individuals have been intrusted with public functions but the public does not have the power of complete regulation, and there seems to be a growing sentiment that no legislation will give justice to capital and to labor, unless it gives complete public control, by public ownership of public utilities.