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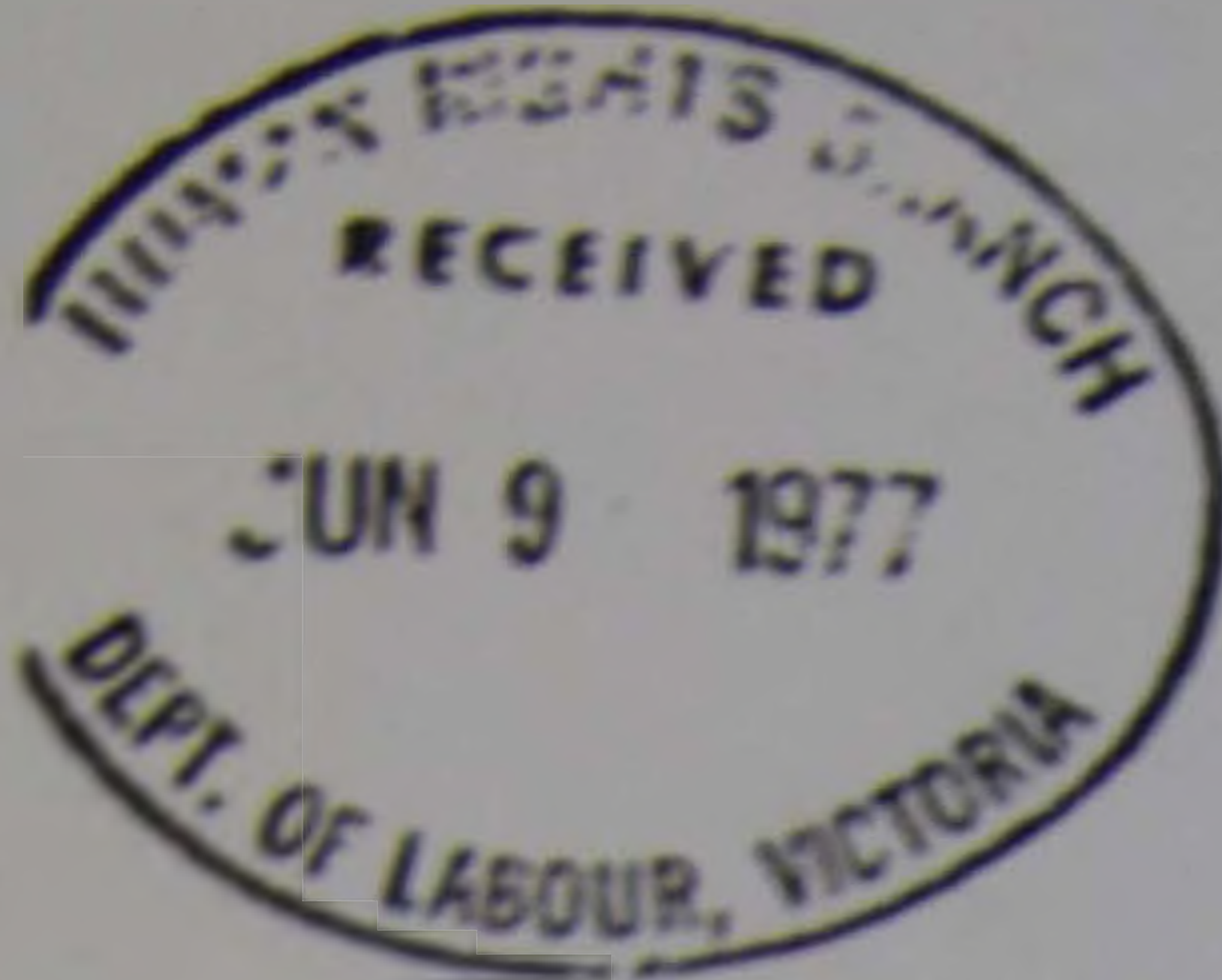
IN THE SUPREME COURT OF BRITISH COLUMBIA

(Before The Honourable Mr. Justice Anderson in Chambers)

No. A770633

Vancouver, B.C.

June 3, 1977



IN THE MATTER OF THE HUMAN RIGHTS CODE OF
BRITISH COLUMBIA R.S.B.C. 1973 AND ANEND-
MENTS THERETO AND

IN THE MATTER OF THE JUDICIAL PROCEDURE
ACT, R.S.B.C. 1976

BETWEEN:

LORNE MINING CORPORATION LTD.,
LOGAN LAKE, BRITISH COLUMBIA

PETITIONERS

AND:

KATHLEEN RUPP, THE DIRECTOR OF
THE HUMAN RIGHTS CODE OF BRITISH
COLUMBIA, PARLIAMENT BUILDINGS,
VICTORIA, B.C. AND OTHERS

RESPONDENTS

P. SHIER, Esq.

Appearing for the Petitioners

J. PRASER, Esq.

Appearing for the Respondents

REASONS FOR JUDGMENT

THE COURT:

(Oral): Judgment. This is a petition pursuant to the provisions of the Judicial Review Act for an order that the Respondents and each of them be perpetually enjoined and that an injunction issue enjoining them from attempting to enquire into or investigate or purporting to enquire into or investigate or cause to be investigated two complaints alleged to have

been made by one JEAN THARP on or about the 18th day of September, A.D. 1975 purportedly pursuant to the provisions of the Human Rights Code of British Columbia, R.S.B.C. 1973 and amendments thereto; AND for an Order prohibiting the Respondent, LEON GETZ, Commissioner of the Board of Inquiry from hearing a complaint or complaints made by one JEAN THARP purportedly pursuant to Sections 6, 8 and 10 of the Human Rights Code and for such relief as to this Honourable Court may deem meet.

The facts upon which the petition is based are as follows:

1. That the Petitioner operates as an open pit Copper Mine located near Ashcroft, British Columbia and at all material times employed approximately 500 people in production and maintenance and some 200 people in office, technical and supervisory capacities.

2. That Jean Tharp became an employee of the Petitioner in or about the month of January, 1974, and at all material times was classified as a Technician II and was employed in the Assay Department.

3. That on or about the 15th day of May, 1975, the said Jean Tharp initiated a grievance pursuant to the provisions of the certain Collective Agreement entered into between the Petitioner and Local 8322 of the United Steel Workers of America, which said Local represented the said Jean Tharp for the purposes of collective bargaining and the administration of the Collective Agreement, and which said grievance refers to matters arising on or about October 7, 1974.

4. That the said grievance was processed by the Petitioner and the said Union, on behalf of the said Jean Tharp, pursuant to the grievance procedure set out in the Collective Agreement up to but not including Arbitration.

5. That the said Jean Tharp voluntarily

left the employment of the Petitioner in or about the month of August, 1975 and by letter dated September 16, 1975 the said Local withdrew the grievance of the said Jean Tharp.

6. That on or about July 15, 1976 LEE WOH-PENG, and Investigator for the Director of the Human Rights Code (hereinafter "the Investigator"), delivered to the mine site a letter signed by the said Director, KATHLEEN RUPP (hereinafter referred to as "the Director"), bearing date of May 20, 1976, which letter was the Petitioner's first knowledge of the matters referred to therein.

7. That the Petitioner instructed its solicitor, Philip Shier, Esq., to reply to the Director's above-noted letter.

8. That the Investigator wrote to J.K. Mahon, Personnel Superintendent of the Petitioner, requesting certain information as set out in her letter dated July 19, 1976.

9. That the Petitioner instructed its solicitor, Philip Shier, Esq., to reply to the Investigator's letter.

10. That Philip Shier, by letter dated July 21, 1976, replied to the Director's letter, and, by letter dated July 27, 1976, replied to the Investigator's letter.

11. That Philip Shier on instructions from the Petitioner, further informed the Director of the Petitioner's position by letter dated July 29, 1976.

12. That the Director replied to the letters of Philip Shier by her own letter dated August 3, 1976.

13. That by letter dated March 4, 1977 from the Honourable Allan Williams, Minister of Labour, to Mr. Leon Getz, one of the Respondents herein, the said Respondent was appointed a Board of Inquiry pursuant to Section 16 of the Human Rights Code. A copy of said letter was received by the Petitioner's solicitor on the 16th of March, 1977.

14. That the Petitioner had not been presented with a copy of either of the complaints alleged to have been filed by the said Jean Tharp until on or about April 5,

1977 when the Director delivered to the Petitioner's solicitor a Notice of Hearing, a report to the Minister of Labour and a complaint pursuant to the Human Rights Code; the complaint, in Form 1, indicated that the date of the offence was October 9, 1974 -- August 29, 1975 and that the complaint was filed on September 18, 1975.

15. That the provisions of Section 15, (1)(a) of the Human Rights Code not having been complied with, the Director has no power to report to the Minister of Labour or to inquire into, investigate or endeavour to effect a settlement of the alleged complaints because the Director failed to proceed "forthwith," and in fact did not proceed until on or about July 15, 1976.

16. That, with respect to the Petitioner's alleged breach of Section 6 of the Human Rights Code, the respondents are purporting to proceed on the same subject matter which was the substance of a grievance lodged by the said Jean Tharp pursuant to the terms of a certain Collective Agreement entered into by the Petitioner and the United Steel Workers of America, Local 8322 (representing, inter alia, the said Jean Tharp), and therefore the said Jean Tharp, having elected to process her claim pursuant to said Collective Agreement, is estopped from seeking a like remedy under the provisions of the Human Rights Code.

17. That, with respect to the Petitioner's alleged breach of Section 10 of the Human Rights Code, namely, alleged discrimination prior to September 1, 1975 against the said Jean Tharp because she had laid a complaint against the Petitioner pursuant to the provisions of said Statute, is without cause inasmuch as she had ceased to be an employee of the Petitioner in the month of August, 1975.

18. That the purported appointment of a Board of Inquiry pursuant to Section 16 of said Statute may only be made where a Director has complied with the other provisions of said Statute.

The relevant provisions of the Human Rights Code Chapter 119, S.B.C. 1973 are as follows:

15. (1) Where the director
(a) receives a complaint alleging that

- a person, whether or not he is the complainant, has been discriminated against contrary to this Act; or
- (b) receives a complaint alleging that a person has contravened this Act; or;
 - (c) alleges, whether or not a complaint is received, that a person has contravened this Act or that a person has been discriminated against contrary to this Act; or
 - (d) receives from the commission an allegation that a person has contravened this Act or that a person has been discriminated against contrary to this Act,

the director shall forthwith inquire into, investigate, and endeavour to effect a settlement of the alleged discrimination or contravention.

(2) The director, or a person authorized in writing by him, may, for the purposes of an inquiry, investigation, or endeavour under subsection (1),

- (a) inspect and examine all books, payrolls, personnel records, registers, notices, documents, and other records of any person that in any way related to the

- (i) wages, hours of labour, applications for employment, or conditions of employment affecting any person;

- (ii) membership of any person in or an application by any person for membership in a trade union;

- (iii) accommodation, services, or facilities customarily available to the public;

- (iv) occupancy of any space under the terms of a tenancy agreement; and

- (v) purchase or acquisition of a commercial or dwelling unit or of land or an interest in land;

- (b) take extracts from or make copies of any entry in those books, payrolls, personnel records, registers, notices, documents, and records;
- (c) require any person to make or furnish full and correct statements, either orally or in writing, in whatsoever form is required, respecting matters referred to in clause (a) and, in the discretion of the director or person authorized, require the statements to be made by the person on oath or to be verified by a statutory declaration;

(d) require any person to make full disclosure, production, or delivery to the director or person authorized, at such time and place as may be specified, of

(i) all records, documents, statements, writings, books, papers, extracts therefrom or copies thereof that the person has in his possession or control; or

(ii) other information, either verbal or in writing, and either verified on oath or otherwise as may be directed,

that may in any way relate to matters referred to in clause (a);

(e) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with;

(f) exercise such other powers as may be necessary for carrying this Act and the regulations into effect; and

(g) administer all oaths and take all affidavits and statutory declarations required or authorized to be made under this section, and to summon any persons to give evidence in connection with any investigations, inquiry, or examination. 1973 (2nd Sess.), c. 119, s. 15; 1974, c. 87, s. 18.

16. (1) Where the director is unable to settle an allegation, or where he is of the opinion that an allegation will not be settled by him, the director shall make a report to the Minister of Labour, who may refer the allegation to a board of inquiry and

(a) appoint a board of inquiry consisting of one or more panel members appointed under section 13; and

(b) fix a place at which and a date on which the board of inquiry shall hear and decide upon the allegation.

(2) A Board of inquiry and every member thereof has, for the purposes of a reference under subsection (1), the powers of a commissioner appointed under the Public Inquiries Act.

(3) For the purposes of a reference under subsection (1), the persons who are entitled to be parties to a proceeding before the board of inquiry are

(a) the director, commission, or person who made the allegation;

(b) the person alleged to have been discriminated against contrary to this Act;

- (c) the person who is alleged to have contravened this Act; and
- (d) any other person who, in the opinion of the board of inquiry, would be directly affected by an order made by it.

(4) A board of inquiry shall give the parties opportunity to be represented by counsel, to present relevant evidence, to cross-examine any witnesses, and to make submissions.

(5) The board of inquiry may receive and accept, on oath, affidavit, or otherwise, such evidence or information as it, in its discretion, considers necessary and appropriate, whether or not such evidence or information would be admissible in a court of law.

(6) The Lieutenant-Governor in Council may, by Order, establish rules governing the procedure of a board of inquiry. 1973 (2nd Sess.), c. 119, s. 16.

17. (1) Where a board of inquiry is of the opinion that an allegation is not justified, the board may dismiss the allegation.

(2) Where a board of inquiry is of the opinion that an allegation is justified, the board of inquiry shall order any person who contravened this Act to cease such contravention, and to refrain from committing the same or a similar contravention, and may

(a) order a person who contravened the Act to make available to the person discriminated against such rights, opportunities, or privileges as, in the opinion of the board, he was denied contrary to this Act;

(b) order the person who contravened the Act to compensate the person discriminated against for all, or such part as the board may determine, of any wages or salary lost, or expenses incurred, by reason of the contravention of this Act; and

(c) where the board is of the opinion that

(i) the person who contravened this Act did so knowingly or with a wanton disregard; and

(ii) the person discriminated against suffered aggravated damages in respect of his feelings or self-respect, the board may order the person who contravened this Act to pay to the person discriminated against such compensation, not exceeding five

thousand dollars, as the board may determine.

(3) A board of inquiry may make such order as to costs as it considers appropriate.

(4) Where an order is made under subsection (3) or clause (b) or (c) of subsection (2), the commission or the person who was discriminated against and in whose favour the order is made may file a certified copy of the order with the Supreme Court or with a County Court, and, thereupon, the order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the appropriate court for the recovery of a debt of the amount stated in the order against the person named in it. 1973 (2nd Sess.), c. 119, s. 17.

The grounds upon which the petition is based are as follows:

(1) The board of inquiry is without jurisdiction because the director of the Human Rights Code did not in accordance with Section 15 (1) of the Code "forthwith inquire into, investigate and endeavour to reach a settlement" of the complaints made by the complainant after receipt thereof and

(2) The complainant elected to pursue her remedies under the Collective Agreement made between the United Steelworkers and her employer and is, therefore, estopped from proceeding under the Human Rights Code.

As to the first ground, I find that the director did not act "forthwith" but that her

failure to do so does not deprive the board of inquiry of jurisdiction. In my view the word "forthwith" is directory only and, in any event, is not for the purpose of prescribing jurisdictional limits but for the purpose of giving the complainant the right to bring proceedings against the director to compel the director to act if she does not proceed to deal with the complaints within a reasonable time after the filing of the complaint.

I cannot believe that if the director was negligent in carrying out her duties or if, for example, she was persuaded by the employer not to make any investigation within a reasonable time (not to act "forthwith") that the Minister would not have the power to refer the complaint to a board of inquiry pursuant to the Section 16 of the Code.

with
There are many authorities dealing with the use of the word "forthwith" and the interpretation of this word differs from case to case in accordance with the circumstances in which it is used. The judgment of the Ontario Court of Appeal in Regina vs. Lane (1973) 13 C.C.C. (2nd) 38 seems to me to be applicable to the facts of the case. The headnote in that case reads as follows:

Section 752(6) (rep. & sub. R.S.C. 1970, c. 2 (2nd Supp.), s. 16) of the Criminal Code, requiring the payment "forthwith" of a fine after serving notice of appeal by way of trial de novo is directory only, and where an accused has taken all other steps

to perfect his appeal the appeal Court is not deprived of jurisdiction to hear the appeal by reason of the non-payment of the fine. The appeal Court can always prevent any abuse of its process and furthermore would in any case require payment of the fine before hearing the appeal. The word "forthwith" is not a precise measure of time, and means any reasonable time. It indicates merely that the obligation to pay the fine imposed is not suspended by appeal.

As to the second ground, the relief sought by the complainant under the Code differs from the relief sought by her pursuant to the Collective Agreement. I point out, moreover, that the evidence to support this ground is sketchy, at best, and is not the sort of evidence on which the court should act in granting relief in cases of this kind.

It was submitted that undue expense and confusion may arise if the complainant is permitted to pursue complaints pursuant to the "grievance" procedures available under the Collective Agreement and to proceed under the Code as well. This may well be so, but these are matters of policy which, it seems to me, are for the Legislature and not the courts. I point out as well that all of these matters, including the matter of delay can be brought forward at the hearing before the board of inquiry. It is presumed that the board of inquiry will act fairly and take all relevant matters of this nature into account.

If the board of inquiry does not act in

accordance with the principles of "natural justice" as enunciated by the courts, the petitioner is not without a remedy.

The petition is dismissed with costs.