Suit No. 28/87

Trial decision reported at:
[1987] 2 W.W.R. 348

IN THE COURT OF APPEAL OF MANITOBA

Coram: O'Sullivan, Huband and Lyon, JJ.A.

B E T W E E N:

THE SCHOOL DISTRICT OF SNOW LAKE NO. 2309, (Applicant) Respondent,	**M. Myers, Q.C.,** for the Appellant
- and -	**R. A. Simpson,** for the Respondent
THE SNOW LAKE LOCAL ASSOCIATION NO. 45-4 OF THE MANITOBA TEACHERS' SOCIETY, (Respondent) Appellant.	Appeal heard: **May 11, 1987** Judgment delivered: **May 28, 1987**

O'SULLIVAN, J.A.:

In these proceedings we are asked to determine the duty of public school teachers when called upon to supervise students during the noon-hour intermission.

The proceedings originated in Snow Lake, Manitoba. At all material times noon-hour intermission is supervised on a rotating basis by some 38 employees of the school district, including the principal, the vice-principal, teacher aides and teachers. This arrangement has been in effect since the spring of 1984. In December of that year the teachers' association gave notice it would withdraw what it regarded as a voluntary activity by the teachers unless an acceptable arrangement could be agreed. The parties failed to agree. The teachers have continued to comply with the arrangement under protest and filed a grievance which was processed by consent of the parties as an expedient means of determining the extent to which public school teachers in Snow Lake are bound to accept assignments for noon-hour supervision.

It is common ground that the relationship between each teacher and the school division is governed by a statutory form of contract together with the statutory regulations defining teacher duties, and a collective agreement which is entirely silent on the subject of noon-hour supervision.

The grievance was referred to an arbitration board. Mr. John Scurfield, chairman, and Mr. David Schrom joined in a majority decision ruling in favour of the association. Mr. Gerry Parkinson dissented. The school district applied to the Court of Queen's Bench to quash the award. Scollin, J. did so with written reasons. From his decision the association now appeals to this court.

It was agreed between the parties that an issue as to estoppel and past practice would not be pressed by either side.

I think the learned Queen's Bench judge was correct when he said the proper approach to the issue is that set out in the judgment of Laskin, C.J.C. in **Winnipeg Teachers' Association No. 1 of Manitoba Teachers' Society v. Winnipeg School Division No. 1**, [1976] 1 W.W.R. 403 at 418:

> "Almost any contract of service or collective agreement which envisages service, especially in a professional enterprise, can be frustrated by insistence on 'work to rule' if it be the case that nothing that has not been expressed can be asked of the employee. Before such a position can be taken, I would expect that an express provision to that effect would be included in the contract or in the collective agreement. Contract relations of the kind in existence here must surely be governed by standards of reasonableness in assessing the degree to which an employer or a supervisor may call for the performance of duties which are not expressly spelled out. They must be related to the enterprise and be seen as fair to the employee and in furtherance of the principal duties to which he is expressly committed.
>
> "On this view of the matter, and having regard to the provisions quoted above from the Code of Rules and Regulations, I find it entirely consistent with the duties of principals and of teachers that the latter should carry out reasonable directions of the former to provide on a rotation basis noon-hour supervision of students who stay on school premises during the noon-hour; so long as the school premises are kept open at such time for the convenience of students who bring their lunches, or who purchase food at a school canteen, if there be one. It was not suggested in the course of argument that the rotation system was itself unreasonable, nor did the issue of compensatory time off arise in this context.
>
> "Teachers are, no doubt, inconvenienced if they have to supervise students during the common

> lunch-hour, and I should have thought it not unreasonable that consideration be shown to them by way of compensating time off as a quid pro quo. This issue is not before this Court and I say no more about it. . . ."

In the **Winnipeg** case there was a Code of Rules and Regulations which had been incorporated into the collective agreement in force there. The Manitoba Court of Appeal in its judgment in that case relied to some extent on the terms of that Code to come to its conclusion that the rota system in Winnipeg was reasonable and came within the ambit of the duties undertaken by public school teachers. The majority of the arbitration board distinguished the **Winnipeg** case on the ground that no similar Code was in force in Snow Lake. I think the majority award gives too narrow an interpretation to the decision of Laskin, C.J.C. who, although dissenting on another point, had the express concurrence of the other judges in his analysis of the relationship between teacher and school board.

For his part, I think Scollin, J. was not quite correct in treating the matter as one of construing and applying provisions in a statute, regulations or contract. No doubt the questions of construction are relevant to the determination of the issue, but in the end I think that what Laskin, C.J.C. has said should be accepted as a statement of law of Manitoba in regard to employment contracts generally, and that what must be decided is whether the duties sought to be assigned by an employer are reasonable incidents of the employer/employee relationship in all the circumstances of the case.

It seems that the teachers' association have been concerned that, if they do not establish that supervision is a voluntary activity, then the school division will have carte blanche to impose unreasonable assignments. They are concerned also that if the judgment of Scollin, J. stands on the basis of his reasons, the teachers may be required to treat the conditions of supervision as a matter dependent solely on statutory implication and so possibly outside the scope of collective bargaining.

Consequently, there was much discussion during argument about the right of a school division to impose non-teaching functions on teachers. There was argument that although the school day is from 9:00 a.m. to 3:30 p.m., the instructional day omits the noon-hour intermission; it is suggested that teachers cannot be required to supervise since supervision of children is outside the ambit of what teachers may reasonably be called on to do.

In my opinion, the question is not one merely of construing a statute. I accept rather that, as Laskin, C.J.C. said:

> "Contract relations of the kind in existence here must surely be governed by standards of reasonableness in assessing the degree to which an employer or a supervisor may call for the performance of duties which are not expressly spelled out. They must be related to the enterprise and be seen as fair to the employee and in furtherance of the principal duties to which he is expressly committed."

By these tests, I think it is clear that noon-hour supervision is related to the enterprise of education, that it may be fair to require teachers on a rotation basis to supervise during the noon-hour provided each teacher has adequate time off for lunch, and that the supervision of children during the noon-hour is in furtherance of the duty of education to which the teacher is expressly committed.

I deplore any tendency to relegate teachers to the sole function of classroom instruction. Education is much more than merely instructing; it is a process of formation. Teachers are not simply servants of the school division; they are professional persons who function as role models and as inspirers as well as providers of information and work skills.

The essential question for the arbitrators in this case was not to construe law, but to find whether the rota system in force in Snow Lake was or was not reasonable. In determining what is reasonable in the circumstances, no doubt an arbitration board may take into account matters such as the history of teaching in this province, the practices that have grown up not only in this school but elsewhere in the province, the importance of each teacher having an appropriate break during the day for lunch and relaxation, the availability of teacher aides, and so on. In some cases the parties may think it reasonable that an extra stipend or other **quid pro quo** should be given for supervision, although I note that in the collective agreement there is no provision for payment on the basis of time spent or of individual merit, the parties having elected to have pay determined by placement on an annual salary schedule dependent on time spent in education and academic qualifications.

During the course of argument there was some suggestion that noon-hour supervision is a form of baby sitting which is beneath the dignity of a professional. I deplore such a suggestion. Participation with pupils during noon-hour can be an effective method of formation by professional people. I do not say that such work is exclusive to professionals, but I think it would not be in the public interest to say that supervision should be automatically excluded from the teacher's role. I am sure the public is very grateful to the teachers who, acting professionally, devote much time and effort outside the classroom setting to preparation, correcting, coaching, leading and supervising pupils.

I do not think it is our task to decide whether the practice in Snow Lake is reasonable. I think that was the proper task of the arbitrators. They did in fact make this determination when the majority expressly said:

> "It was not seriously argued before us that the rota system developed by the principal in conjunction with the directions of the School Board was unreasonable. Nor do we so find."

That finding should have ended the arbitration in favour of the school division.

To deal briefly with other points that arise in this appeal, I may note that one statement by Scollin, J. does not seem to be justified by the record. He said:

> "For example, only by assignment to individual teachers could the principal carry out his responsibility under section 35 for the supervision of pupils, buildings and grounds during school hours."

In my opinion, the principal can delegate his duties to non-teachers as well as to teachers; in fact, in the case at bar he has delegated some functions to non-teachers and even to volunteers. The learned Queen's Bench judge also said:

> "It is evident from section 37 of Manitoba Regulation 250/80 that the normal or general rule is that the teacher is not on duty over most of the midday recess but, given the clear line of authority established in the contract, the Act and the Regulations, I see no reason whatever for the principal to have to go outside the teaching staff of the school in order to delegate functions which are so closely related to the general teaching vocation."

I would say rather that the normal or general rule is that the teacher is not confined to any time period for carrying out his or her professional role. The hours of instruction are limited and the teacher is normally to have a proper lunch break. The principal must go outside the teaching staff to delegate functions even though related to the general teaching vocation where it is unreasonable to require teachers to give up too much of their lunch break. I repeat, what is reasonable will be governed by all the circumstances.

One test of whether an arrangement is reasonable or not is to see if the parties have agreed upon it, for what is agreed will usually be accepted as reasonable. However, if agreement is not possible, then the school division has the right to impose by assignment the duty of supervision during the noon intermission provided that it does so in a reasonable way.

The responsibility of the school division, of the principal and of the teachers corporatively is not limited to the instructional hours of the day. Parents who entrust their children to the school to act **in loco parentis** are entitled to expect their children will be looked after during the entire school day if the children do not go home for lunch.

In the result, I would dismiss the appeal but without costs.

J. F. O'Sullivan J.A.

I AGREE:

Chas R. Huband J.A.

I AGREE:

J.A.