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Industrial Arbitration in Great Britain

By Sir William Mackenzie*

President Sedgewick: Gentlemen, in these times the relations between employers and employed, between capital and labor, seem to pay very little attention to national boundaries. The ramifications of these relations are beyond and independent of national boundaries. Therefore it is of interest to us here to know what is going on in other parts of the world and particularly in our own mother country in the adjustments between employers and employed. In our guest today we have a gentleman who is peculiarly fitted to speak of those things. Since the beginning of the war his experience has been almost wholly in investigating and settling and testifying to the relations between capital and labor, employers and employed in Great Britain; and during the past six years he has been president of the Industrial Court there. He is, therefore, unusually qualified to give us his views on the relations between capital and labor in England, and particularly with respect to the industrial arbitration end of that question. I have very much pleasure in introducing Sir William Mackenzie.

Sir William Mackenzie: Mr. President and gentlemen, thank you for the invitation you extended to me to attend today, and I thank you also for the opportunity you have given me of telling you what we are doing in Great Britain on the matter of industrial arbitration. I should also say, as part of my story, that we must come to Canada

*Sir William has been President of the Industrial Court since its foundation in 1919. He came to Canada as head of a commission of seven appointed by the British Government to investigate industrial conditions in Canada and the United States.

for an example of what can be attained in the matter of procedure in the settlement of industrial differences. You are perfectly well aware that some years ago the Lemieux Act was passed and that Act has worked satisfactorily, I understand, in Canada for a number of years and our people at home were impressed with it and when an Act was subsequently passed in Great Britain, the Industrial Courts Act, it was founded in part, at least, upon the practise of that particular statute.

Coming to the main point on which I want to say a few words to you, I am afraid that what I have to say will seem very dry and technical, but if you will bear with me I will endeavor to explain what we are doing in the matter of industrial arbitration. To anyone who makes a study of this question it will be evident that in recent years there has been a great change in the attitude of work people to industrial problems. This is due partly to education and partly to the desire of workpeople to improve their standards of living. Our system of elementary, technical and secondary education, has enormously improved and every year there are hundreds of thousands of young people leaving school well equipped. Throughout civilization as we understand it there is a persistent desire on the part of every good citizen to add to his creature comforts and to have more leisure for study, recreation and the enjoyment of the arts.

In England this change of attitude towards industrial problems was slow, but in recent years it has been more rapid—more rapid than some would like. The change began about the year 1889 or 1890 when a great dry dock strike took place in England and from this period may be dated the first almost inarticulate murmurings of the new trade unionism. Hitherto the movement had been industrial—an endeavor to improve the standard of the workpeople both in earnings and working conditions and to protect them by collective bargaining. From the inception of the new trade unionism dates the rise of the political side.

For many years there was practically no attempt to settle industrial differences in the event of failure to agree save by the grim weapon of the strike or lockout. Two

things followed: some people began to think that the only way to settle an industrial dispute, in default of agreement, was by a strike or lockout; next, unions of workpeople became stronger and stronger and employers found it necessary for their own protection to form themselves also into unions, generally called associations. We thus had in industry organizations of workpeople and of employers who endeavored to settle their differences by collective bargaining and in the event of failure to arrive at a collective bargain the side making the claim had either to drop the claim, or, if they wished to force acceptance, they had to resort to the strike or lockout.

A strike or lockout, whether measured in terms of money loss of the parties directly concerned, or in human suffering, or in the matter of the ill-will engendered, or in the evil effect on the trade and industries of the nation is almost incalculable in its injurious incidence. Speaking generally, and I am speaking generally—there may be exceptions—no strike or lockout can benefit any body or any class in the long run. That has been demonstrated time and again and does not appear to be disputed seriously by anyone.

Is there any means by which this difficulty of composing industrial differences may be overcome? I am aware of what you are doing in Canada and if the procedure which has been prescribed in Canada can be carried on with the spirit with which you have imbued this movement good results will follow. I wish to make some observations with regard to England. We have lately, as the president has mentioned, set up an Industrial Court and by this means the Legislature has provided machinery for dealing with all industrial differences whereby a strike or lockout may be avoided. This is by means of conciliation and industrial arbitration. Resort to either can only be made by voluntary agreement between the parties.

It is a strange reflection that industrial arbitration is still regarded by many persons as a novelty and a somewhat doubtful experiment. Those who take this view consist of substantial employers, sober and conservative minded trade unionists and others who would never dream of settling such differences as arise between them and their fellows by

other than peaceable means. If a dispute occurs between two business men, no matter how vitally their interests may be affected, or how great the sum at stake may be, it becomes a matter of perfectly courteous discussion between their legal advisers and in the event of failure to agree is submitted, as a matter of course, to a tribunal which sits with decorum and cold aloofness and gives in the end a decision by which they are required to abide. People do not follow this course merely because it is prescribed by law; they do it because it is sensible. To allow the hundreds of disputes which daily arise and occupy the courts to be settled by a trial of strength between the parties would be to send us straight back to the dark ages. It would end in confusion and it would produce results which no one would pretend were just or equitable. Yet methods which would be looked upon as barbarous for the purpose of settling business differences in general are too often accepted as a matter of course and even of economic necessity when a business difference of a particular kind arises, that is, differences between an employer and his workpeople as to rates of pay and conditions of service; and respectable citizens who abhor the idea of physical force see nothing outrageous in a difference of this character being settled by a strike or lockout with all its attendant loss and suffering.

During the war it was necessary to have all industrial disputes settled quickly and as the war proceeded workpeople working long hours, and harassed employers were not able to give that time and consideration to these disputes which would have been available in time of peace. The Government thereupon devised a means by which all industrial questions could be settled quickly and fairly. They set up arbitration tribunals, chief of which was the Committee on Production. This body, as an arbitration tribunal, settled during the war some thousands of disputes. The Committee of Production on the whole had done its work so well that after the war it was determined to create by statute a permanent tribunal known as the Industrial Court. This was in 1919. The Court is empowered to deal with differences between employers and workpeople. It consists of a president and two or more chairmen or vice-presidents; they

are independent persons; also of members representing the employers in industry and members representing workpeople in industry; and one or more women. The varying interests of the parties who come before the Court are thus represented on the Court. The claims are tried as in a court of law, except that ordinary evidence is not taken on oath. It is thus a new judiciary. The parties to the dispute agree to refer the matter in difference to the Court. The reference is in no sense compulsory. Even after a decision has been given the decision in itself has no binding force. It is for the parties to reject it or accept it.

It speaks volumes for the parties, employers and employes alike, or for the fairness and rectitude of the decisions of the Court, or both, that in very few cases have awards been disregarded. Eight volumes of reports of decisions of the Court have been published containing some 1,200 or 1,300 decisions and with the exception of two or three cases in the hectic year of 1920 the awards have been accepted. Before the war the number of cases that were decided by arbitration, through Government intervention, was small. In one year there were some twelve cases; in another year there were eleven; in another ninety-nine; and so on. There is thus a steady growth in the spirit of industrial arbitration.

More than the mere settlement of differences will result from the practice of arbitration, great as the advantages of a settlement may be. To place a case properly before the Court with date and argument, as well as to defend a case before it, requires that the parties should be well posted in the general aspects in the industry—how far the industry may be affected by competition, domestic or foreign; argument may involve such matters as foreign trade and Imperial preference; the supply of raw material; the state of home, foreign and Dominion markets; freights and the general charges for transport services, and so on. They should be well posted in the special or particular aspects of the claim or of the subject matter under discussion. I assume the employers already know all about these things. The vast majority of workpeople hitherto have known nothing about them and have had little or no interest in them. While in-

dustrial differences have been settled by strikes and lockouts the workpeople have been led further and further away from what directly concerns them and their industry. To assist in marshalling facts and arguments or to learn of the facts and arguments presented at an industrial hearing will give the worker not only a greater interest in his craft or vocation, but also in the industry in which he is employed. He will take a greater pride in his work.

It is too much to expect that there will be a complete and sudden change from the method of the strike and lockout to the peaceful means of industrial arbitration. Our people have for generations been nurtured in the tradition of the strike and lockout as a means of final settlement. That attitude cannot be changed in a day or a year. It will be a slow process and much will depend on the success of the Court itself and the manner in which it discharges its duties. The Court can continue and function only so long as it gives satisfaction; it is thus almost unique among State institutions.

I have spoken hitherto of the Industrial Court. It is the chief industrial tribunal in Great Britain. There are certain other boards aiming at the same good work. The trade boards are creatures of statute and in a sense juridical bodies and have cognisance of certain specific trades where the wages are alleged to be unduly low. The decision of the trade boards may, unlike the decision of the Industrial Court, be enforced by penalties. The National Wages Board for railways is also the creature of statute. This Board consists of seventeen members: six representing the railway companies; six representing the three trade unions that organize railway workers; four persons representing the trading and travelling public; and an independent chairman appointed by the Government. The Board does not deal with all railway employes, but only with those engaged in the manipulation of traffic, such as railway engineers, firemen, guards, porters, and clerks. Men engaged in railway locomotive constructing and manufacturing locomotives and carriages and waggons come before the Industrial Court. These are statutory bodies. There are certain industries which have devised procedure whereby differences may be settled through machinery set up voluntarily by the parties themselves. Examples of this will be found in the boot and shoe industry and in the iron and steel industry. All the various industries are gradually eliminating the method of the strike and lockout and are substituting reason for force, co-operation for ill-will.

I have mentioned that the Industrial Court has issued some eight volumes of decision. The decisions are on sale. Some of them have had a very wide circulation. There were about 35,000 copies of one decision sold. The cases that are referred to the Industrial Court require the consent or agreement of the parties; hence it is that we still have strikes and lockouts in Great Britain. It is sometimes said by those who refuse arbitration that there is nothing to arbitrate about or that their case is so good that they will not submit it to the risk of arbitration or that they would rather have a strike or lockout than have their differences settled by an outside authority. All that is understandable when we bear in mind the tradition in which our industrialists and industrial workers have been brought up. The substitution of reason for force has always been a slow process in every human activity.

The decisions of the Industrial Court have been of the most diverse character. Many, and perhaps most, of the cases have been straightforward claims for alterations in and adjustments of rates of wages, but other questions relating to working conditions, customs and practices of the workshop and of the trade, and the construction or interpretation of industrial agreements, have also been decided by the Court. The decisions cover an immense variety of trades and classes of workers ranging from railway employes to canvas hosepipe makers, and from civil servants, town clerks, and other important officials in local government to bobbin and shuttle workers. The trades that stand out with the greatest prominence with respect to the number of cases brought before the Court, as might be expected in view of their national importance, are the engineering and shipbuilding trades, the building trade, and the transport trade.

In the procedure adopted by the Industrial Court we see

something akin to the beginnings of the old courts of Common Law which sat in Westminster Hall. The early decisions of the Courts are decisions on particular facts rather than on principles of law, for the principles of law had hardly yet been ascertained. Customs local and national are recognised and by and bye rules are propounded and gradually there emerge settled principles which today appear commonplace, so ingrained have they become in our social, everyday life. What we regard as the common law of the land has thus been of slow and gradual growth, but it had a beginning and under whatever verbal guise it may have appeared, the authority for early decisions must have been nothing more than some concept or principle springing from the general social conscience.

It is a recognition of this fact which has led the Industrial Court to move considerably in advance of previous arbitration practice in England. Its decisions in the main are reasoned decisions, not elaborate, but sufficiently explicit to show by what considerations the Court has been moved. In short it has made a beginning in the task of laying down a corpus of industrial common law.