

Eugene C. Audet and others - - - - - *Appellants*  
v.  
Eugene Trudel and others - - - - - *Respondents*  
  
Eugene Trudel - - - - - *Appellant*  
v.  
Eugene C. Audet and others - - - - - *Respondents*  
(*Consolidated Appeals.*)

FROM

THE SUPREME COURT OF CANADA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 28TH JUNE, 1926.

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*Present at the Hearing :*

VISCOUNT HALDANE.

LORD SHAW.

LORD WRENBURY.

LORD DARLING.

LORD SALVESEN.

[*Delivered by* LORD WRENBURY.]

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The Banque Nationale was a Bank carrying on business in Quebec. In the year 1915, under Chap. 123 of the Revised Statutes of Canada, 1906, a contributory pension fund for the employees of the Bank was formed and incorporated under the name of La Société de la Caisse de Retraite de la Banque Nationale. This last-named Company is hereinafter called the Society. By a contract dated the 3rd January, 1924, ratified by Order in Council on the 30th April, 1924, all the assets of the Banque Nationale were assigned to La Banque d'Hochelega, and from the date of the Order in Council the Banque Nationale, by virtue of the provisions of section 111 of the Canadian Bank Act, Chap. 32 of the Statutes of 1923, ceased to have a separate and autonomous existence. As a consequence of the Bank ceasing to have existence, an

order was made in the Superior Court on the 5th May, 1924, for winding up the Society. A liquidator was appointed. The funds became distributable amongst the employees of the Bank according to their rights under the Bye-laws of the Society. The question to be determined is as to the rights of the different contributors to the Society's funds in the distribution of the assets upon the true construction of the Bye-laws. There is no other question.

The Bye-laws are far from being clear and unambiguous, and it is no matter of surprise that opinions have differed as to their true construction. Their Lordships proceed to an investigation of the particular clauses upon whose true construction the rights of the parties have to be ascertained.

The fund is a contributory fund. It is now divisible among the contributors according to their rights. There is no question of any one who was a member at the date of the winding-up order being a creditor. Every such member according to his rights is entitled to his proper distributive share of the assets.

As a first and important classification of the members they may be divided into (a) those who have received a grant of or acquired a right to a pension—"pensionnaires" and (b) those who have not done so—"sociétaires." The article upon which it is convenient to dwell in the first instance is article 16. That article is as follows :—

"Tout employé ayant dix ans au moins de participation à ' la Société, et qui serait obligé de discontinuer ses services à ' la Banque,' pour cause d'infirmité mentale ou corporelle dument constatée par un médecin approuvé par les Directeurs de ' la Société,' pourra demander sa mise à sa retraite et faire liquider sa pension ; de même un employé obligé de discontinuer ses services à ' la Banque,' pour cause de suppression d'emploi, après 25 ans de service et de participation à ' la Société,' pourra exercer le même droit. (Par suppression d'emploi, on ne veut pas dire renvoi par ' la Banque,' pour cause de malhonnêteté ou toute autre cause mais suppression de la position occupée par l'employé, fermeture d'un bureau, diminution des affaires, ou tout autre cause du même genre, ne dépendant pas de l'employé, mais de la Banque elle-même.)"

What is in this article the meaning of "suppression d'emploi" ? Does it include an employee's loss of employment by reason of the winding up of the Society ? In their Lordships' opinion it does not. The last sentence of article 16 describes or defines what "suppression d'emploi" is. In every case there mentioned there is predicated the existence of an employer who may or may not do some act or may or may not suffer some loss. The first instance is where the employer dismisses for dishonesty. The second is when the employer abolishes some post. The third is where the employer closes a branch. The fourth is where the employer suffers a shrinkage of business, and the concluding words sweep in any other "cause du même genre, ne dépendant pas de l'employé, mais de la Banque elle-même." Article 16 has, in their Lordships' opinion, no application to the case when the employer ceases to exist. It is an article addressed to the case where the Bank is

continuing and when the cause can be “ dépendant de la Banque elle-même.” The first appellant contends to the contrary. In their Lordships’ opinion his contention on this point fails.

The article upon which it is convenient next to dwell is article 44. It is as follows :—

“ Dans le cas de dissolution de La Banque Nationale, comme en toutes éventualités où cet établissement cesserait d’exister comme institution ayant une vie propre ou autonome, ‘ la Société ’ serait supprimée et liquidée. Toutes les valeurs lui appartenant seraient réalisées et le produit en serait distribué aux sociétaires et pensionnaires ou aux ayant-droits d’iceux, suivant les droits de chacun établis par les présents règlements, comme si, à ce moment, tous les sociétaires étaient alors pensionnaires. Dans ce cas, il ne serait fait aucune réduction aux pensionnaires pour les montants qu’ils auraient retirés de ‘ la Société ’ jusqu’à ce moment ; les sociétaires qui n’auraient pas alors de droits acquis ne retireront que leurs versements avec un intérêt de 4 %.”

This is an article addressed to the case of the winding up of the Society and it is the only article addressed to that case. It provides for the realisation of the assets and the distribution of the proceeds. Every contributor, whether he be “ sociétaire ” or “ pensionnaire,” is to have his distributive share “ suivant les droits de chacun établis par les présents règlements.” So far this is plain enough, but there follow the words “ comme si a ce moment tous les sociétaires étaient alors pensionnaires.” The cross appellant argues that by force of these words every member on winding up becomes a pensionnaire. Their Lordships are not of that opinion. If the proposition were true the following would result. The member who has been less than ten years in the service of the Bank is not entitled to a pension (article 20). His “ droit établi par les présents règlements ” is to have no pension. The next words cannot mean that he is to be treated as if he had a pension, for, if so, they are in direct contradiction to that which immediately precedes. The same is true of every member who at the winding up neither holds nor is entitled to demand the issue of a pension. The true meaning is to be found in other considerations. They are as follows :—Until the winding up the only persons entitled to receive anything out of the funds were the pensionnaires. Every other member stood in a position in which he was always to pay and never to receive until some further event happened. This is not so to continue when a winding up supervenes. There is then to be a distribution—a payment out—made to all according to the right of each under the Bye-laws. Every member is to receive as if he like a pensionnaire was entitled now to receive a payment. The contention of the liquidator (the appellant on the cross appeal), which is to the contrary, results in payment being made in distribution, not according to the rights of the member under the Bye-laws, but according to a new right arising for the first time when winding up supervenes, so that, *e.g.*, the member who under article 20 was not entitled to a pension would be considered as having a pension, and the person not yet entitled to

a pension, *e.g.*, because he was not 60 years of age, would be considered as having a pension. It would create in the young lives a right to the actuarial value of a pension, which in distribution would be attributed to them when the time had not come at which their contributions had entitled them to it. In their Lordships' opinion the words mean "as if they like the pensionnaires were at that moment entitled to draw money from the fund." The contention of the cross appellant on this point fails.

Failing this contention, reliance is placed on the words "droits acquis" in the last sentence of article 44. This sentence is one which provides that the pensionnaire who has already in payment of his pension received money out of the fund shall not be debited with it. It then contrasts with him "les sociétaires qui n'auraient pas alors de droits acquis." The words "droits acquis" here are not correctly translated "vested rights." They mean "present rights," or "matured rights." It might be said that the member (*see* the first part of article 16) who is in good health has a vested right in a future event, *viz.*, if he should suffer from mental or bodily infirmity, to have a pension. He has not a "droit acquis." Again, the contention of the cross appellant, if successful, results in clothing the sociétaire for the purpose of distribution according to his right under the Bye-law with a right which is not his before the winding up and which comes into existence for the first time in and for the purpose of distribution in the winding up. That which the words "droits acquis" do cover is the case in which a sociétaire has acquired a present right to a pension but has not yet received a grant of it; *e.g.*, the employee of ten years' membership who has been forced to give up his work on account of mental or bodily infirmity and to whom a pension is due, but is not yet issued.

Before this Board it has not been disputed that it is the actuarial value of a pension and not its annual value that is to be regarded.

It results that in distribution the only persons who can claim to be paid as pensionnaires and to receive the actuarial value of a pension, are the pensionnaires under article 15, and those who by reason of mental or bodily infirmity were at the winding up entitled under article 16 to pensions—and (if there were any) those who before the winding up had after 25 years of service been forced to give up their work by reason of abolition of their posts by the Bank (acting before winding up) within the meaning of those words as defined in article 16. All others are entitled only to the return of their contributions with 4 per cent. interest, or if they fall within article 29 (1) or (2), to the return of their contributions without interest.

This is the result of the judgment from which these appeals are brought. Their Lordships are of opinion that the judgment of the Supreme Court is right and that the appeals fail and must be dismissed.

As regards the costs, their Lordships greatly regret the heavy costs which must have been incurred and which upon every successive hearing have fallen upon the fund. But inasmuch as the whole difficulty arises not from the fault of any party to the litigation but from the difficult and ambiguous language of the Bye-laws, they think that the costs must be allowed out of the fund. They will humbly advise His Majesty that both appeals be dismissed and that the costs of all parties be paid out of the fund.

In the Privy Council.

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EUGENE C. AUDET AND OTHERS

<sup>vs.</sup>  
EUGENE TRUDEL AND OTHERS.

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<sup>vs.</sup>  
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DELIVERED BY LORD WRENBURY.

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