

Suit No. 86-01-13675

IN THE QUEEN'S BENCH

WINNIPEG CENTRE

IN THE MATTER OF: The Queen's Bench Act, C.C.S.M. Cap. 280.
AND IN THE MATTER OF: The Arbitration Act, C.C.S.M. Cap. A120.
AND IN THE MATTER OF: The Public Schools Act, C.C.S.M. Cap. P250.
AND IN THE MATTER OF: A Collective Agreement between: The
School District of Snow Lake, No. 2039
and the Snow Lake Local Association
No. 45-4 of the Manitoba Teachers' Society.
AND IN THE MATTER OF: A majority award of a Board of Arbitration
composed of John M. Scurfield, Gerald
Parkinson, and David Schrom, dated the
4th day of July, 1986.

BETWEEN:) R.A. Simpson,
THE SCHOOL DISTRICT OF SNOW LAKE) for the applicant,
NO. 2309,)
Applicant,) M. Myers, Q.C.,
- and -) for the respondent.
THE SNOW LAKE LOCAL ASSOCIATION)
NO. 45-4 OF THE MANITOBA) Judgment delivered:
TEACHERS" SOCIETY,) December 11, 1986.
Respondent.)

SCOLLIN, J.

The issue in this case is whether school teachers are bound to supervise students at the noon-hour recess. The sketchy collective agreement is silent on the matter and the majority of a board of arbitration held that the teachers at

Snow Lake School were not bound to carry out such supervision in the absence of express agreement between the bargaining unit and the School District. The School District seeks to quash the award, relying on its construction of the statutory form of contract and the legislation.

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 The Manitoba Teachers' Society v. Winnipeg School Division No. 1 [1976], 1 W.W.R. 403 (S.C.C.) 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 their 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 that case, of course, the issue was whether the duty to provide noon-hour supervision arose from contractual obligation. The significance of the case, however, is that the provisions to be construed and applied in the present case have virtually the same thrust as sections 3.1 and 3.4 of the Code of Rules and Regulations of the Division, which were before the Supreme Court of Canada and which are reproduced at pp.407 and 408 of the report.

By the contract in form 2, which is in issue here, the teacher agrees to perform such duties as may from time to time be assigned in accordance with the statute and the regulations; by section 41(1)(i) of The Public Schools Act, C.C.S.M. Cap. P250, the School Board is empowered, subject to the Act and the regulations, to prescribe the duties that teachers are to perform; and by section 96(c) of the Act, the teacher is under a direct duty to maintain order and discipline in the school. Even more specific are the provisions of Manitoba Regulation 250/80, Part VI of which deals with the duties of teachers. By the general rule in section 29 "the principal is in charge of the school in respect of all matters of

organization, management, discipline and instruction" and by section 35 is "responsible for the supervision of pupils, buildings and grounds during school hours". And by section 40, the principal is required to "exercise disciplinary authority over each pupil of his school from the time of the pupil's arrival until his departure for the day..."

These contractual and statutory provisions provide good authority for the principal to assign teachers to supervise the students during their lunch recess, both within the school building and on the school grounds. It would obviously be quite impossible for the school principal to perform personally every single one of the duties which the statutory scheme imposes upon him. 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. The statutory scheme is workable only by delegation. The principle here is the same as that in Carltona v. Commissioner of Works (1943), 2 All E.R. 560 (C.A.), which has since been applied numerous times to the operations of government departments.

Starting from a different hypothesis from that in the Winnipeg Teachers Association case (supra), the majority of the Arbitration Board considered that the only functions which teachers are obliged to perform are "functions directly

related to their teaching capacity". They apparently then concluded that noon-hour supervision is not so related. As to this, even if their hypothesis is correct, this conclusion does not follow. The supervision of students who remain on the premises to take lunch and who thereafter remain in the building or on the school grounds is surely not so removed from the teaching function that it must be treated solely as the duty of the principal and excluded completely from the duty of the teacher. On the contrary, it may indeed be that the guidance and supervision of the behaviour of pupils during lunch and thereafter at play or leisure may be quite as culturally and educationally beneficial as a formal lesson in social studies.

Considerations such this, however, merely go to support the conclusion which arises from the terms of the contract, the Act and the Regulations. The duties of organization, management and discipline are placed on the principal as his responsibility during school hours for pupils, buildings and grounds. It is almost presumptuous of his subordinates to purport to exclude themselves from any responsibility during the noon break simply on the ground that the supervisory function could be performed by other personnel, such as teachers' aides. 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.

In these circumstances, I have concluded that the majority of the Board was in error in concluding that the school district does not have the right to require its teachers to provide supervision during the noon-hour. On the contrary, the teachers are bound to provide supervision on a reasonable rota system, such as that developed in this case by the principal in conjunction with the directions of the School Board. The motion to quash the award is accordingly granted with costs.

J. A. Scollin J.