

TAB 10

C A N A D A

ARBITRATION TRIBUNAL

PROVINCE OF QUEBEC

BEFORE: ANDRÉ SYLVESTRE, Arbitrator

BETWEEN:

CEP LOCAL 145

-AND-

RITA BLONDIN ET AL.

-AND-

MONTREAL GAZETTE GROUP INC.

-AND-

ERIBERTO DI PAOLO AND
RITA BLONDON.

APPEARANCES:

PIERRE GRENIER
COUNSEL FOR THE UNION

RONALD McROBIE
DOMINIQUE MONET
COUNSEL FOR THE EMPLOYER

RITA BLONDIN and
ERIBERTO DE PAOLO
REPRESENTING THEMSELVES

HEARING HELD ON:

JULY 28, 2008, at Montreal
BRUNO PELLAND, OFFICIAL STENOGRAPHER

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LIST OF OBJECTIONS

OBJECTION 1:

... in your bundle of documents, which were produced earlier, but in any event, as I told you, we object generally to the production of those documents, so I invite you to take them under objection, but ...

58

OBJECTION 2:

Obviously, we object, and we will be making ...

61

ON July 28, 2008, the following persons appeared:

THE CHAIR:

So we will begin. This is the damages claim. I imagine that you agree to assume the burden of proof?

PIERRE GRENIER,

Counsel for the union:

Yes. There is a ...

THE CHAIR:

So, it is an initial point? Yes?

PIERRE GRENIER:

Yes, there is part of the evidence to present.

I had said that I would be checking the documents that were filed.

In fact, I do have two documents to file to complete the evidence.

Essentially, that is an excerpt from agreement 93-96. We were at

S-68, so S-69, if I'm not mistaken.

THE CHAIR:

S-69.

S-69: Excerpt from agreement 93-96

DOMINIQUE MONET,
Counsel for the employer:
69 or 68?

RONALD McROBIE,
Counsel for the employer:
69.

PIERRE GRENIER:
69. 68 is the factum from The Gazette.

RONALD McROBIE:
Yes, 69.

PIERRE GRENIER:
On appeal.

THE CHAIR:
Okay.

RONALD McROBIE:
So this is an excerpt that is already in the record?

PIERRE GRENIER:
I don't have the reference for the exhibit, I think it is in the record,
but I don't ...

RONALD McROBIE:
Yes, yes.

PIERRE GRENIER:

... I haven't found it ...

RONALD McROBIE:

Yes.

PIERRE GRENIER:

... but it will be simpler for argument.

RONALD McROBIE:

It's P, that's the collective agreement, the last one before ...

PIERRE GRENIER:

It's 93-96.

RONALD McROBIE:

It's S-1.

THE CHAIR:

The Leboeuf one?

PIERRE GRENIER:

S-1? Okay.

RONALD McROBIE:

The first exhibit in the record.

DOMINIQUE MONET:

Yes, yes, yes.

PIERRE GRENIER:

I don't have it in my exhibits, so that's why ...

RONALD McROBIE:

No, no, but we ...

PIERRE GRENIER:

... I wasn't sure whether that was it.

RONALD McROBIE:

... what we did, if ...

PIERRE GRENIER:

That's fine.

RONALD McROBIE:

... we ever need those exhibits, we amended the Court of Appeal factum in 99, so we have ...

THE CHAIR:

Fine.

PIERRE GRENIER:

Okay.

RONALD McROBIE:

... all the exhibits.

ERIBERTO DI PAOLO:

Mr Arbitrator, I have a lot of evidence to deposit, I'd like to know how we're going to proceed.

THE CHAIR:

well, the Union will go first, then you will go...

ERIBERTO DI PAOLO:

Okay.

THE CHAIR:

... and the employer will respond.

ERIBERTO DI PAOLO:

Because I'd like to have exhibit numbers of all my evidence.

THE CHAIR:

Yes, o.k.

ERIBERTO DI PAOLO:

Okay?

PIERRE GRENIER:

Well, if you prefer, we can not number it, whatever you like, I don't want to introduce ...

THE CHAIR:

No, no ...

PIERRE GRENIER:

No?

RONALD McROBIE:

No, no, we can number it ...

PIERRE GRENIER:

That's alright?

THE CHAIR:

... S-69, it's o.k.

RONALD McROBIE:

... that's fine.

PIERRE GRENIER:

The second document is a letter from Mr. McRobie sent to me on April 3, '98, regarding the stay order by Justice Israël Mass.

RONALD MCROBIE:

S-70?

THE CHAIR:

S-70, yes.

S-70:Letter dated April 3, 1998, from Ronald McRobie to Pierre Grenier relating to the stay order by Justice Israël Masse.

That concludes the filing of exhibits?

PIERRE GRENIER:

For the exhibits I wanted to introduce, yes. Now, before we

go any further, I would like the situation to be clarified. At the last session we discussed cases we had to argue before you and you did not make a formal decision on that, so the employer's position was that we were arguing only the question of damages in the case referred back by the Court of Appeal on the issue, essentially, of the lock-out from '96 to 2000.

We had asked to also argue the grievance of July 2000 that related to the aftermath of the lock-out following the exchange of best offers in January 2000. I understand there was argument on that issue, the employer argued that it had evidence to present, but you did not make a decision, so I would like to know where that stands.

RONALD McROBIE:

But on that point, there is nothing to argue, Mr. Chair, because you have a separate case before you on the disagreement of July 14, 2000, a whole

case before you that started in 1996 and resumed in 2000, 2004, and now relates to the case that the Court of Appeal referred back to you in response to the declinatory exception filed by the union regarding the employer's claim, the one for unjust enrichment.

The other case is a case that was commenced on July 14, 2000, where you were appointed as arbitrator, but where the hearings have never started. In your decision, you decided to defer the hearing, or not the hearing, but your decision on the employer's unjust enrichment claim and join it with another case.

Now that the Court of Appeal is telling us that we have to dispose of the original issue, it seems clear to me that we are dealing with the case concerning the damages that may be claimed by the employees and the employer's claim for

unjust enrichment.

The other case, that is still before you, subject to the employer's objections, but we have never commenced that case. In fact, in that case, we have a request for production of documents and particulars that was served on the union in 2000, and they have not been produced. So it is very clear that that case, if we postpone dealing with the case that is before you at present, it seems to me that it is not in the interests of the parties, but in any event, the question is moot because we have not started that case.

THE CHAIR:

Listen, I think we should first dispose of the issue of damages, even if it means going into the issue of unjust enrichment a second time and the issue of the disagreement of July 14, 2000. So we have two days to dispose of that, to at least try to dispose of the issue of damages definitively. So I think it is wise

to limit ourselves to deciding that issue today and tomorrow, even if it means coming back later to the two other points.

PIERRE GRENIER:

So I note the limit on argument, but I would make the additional comment that those cases, that is, the issue of unjust enrichment and the issue of the grievance of July 2000, are in evidence before you and I am going to use them in argument.

THE CHAIR:

Fine.

RONALD McROBIE:

I would say, just on that point, we will abide by your decision, obviously, but the distinction is that the unjust enrichment was referred to you in the context of the first case, clearly, if you look at Justice Lemelin's judgment, she says that you may not decide one without deciding the other, but we as well, so, we will present argument on that.

On the other one, I would just like to say that it

is not accurate that the evidence has been presented on everything relating to the claim of July 14, 2000. The claim was filed and that is all. Even the documents I was talking about a moment ago are not before you, that is, the requests for particulars and the requests for production of documents, there is nothing in the record concerning the claim of July 14, except the claim itself, and if you recall, it was produced at our request since we had argued that it was one of the arguments for limiting the claim to January 21, 2000, since that claim related to this later period.

THE CHAIR:

But there is evidence that Mr. Grenier ...

RONALD McROBIE:

It is there.

THE CHAIR:

... may be able to use if ...

RONALD McROBIE:

What is in the record is in the record, I

agree with that.

THE CHAIR:

... if he thinks it is important.

PIERRE GRENIER:

Now, second question to be clarified, in my opinion, before we start the evidence. There is an issue between the parties, perhaps my colleagues will say there is no issue, but in my opinion there is an issue that is not yet clear: what is the amount of the wages being claimed by the employees.

I raise this question because I think it would be preferable to clarify this situation at the outset of the hearing. I am obviously not talking about calculating the interest that will eventually have to be paid once the amount is determined, but that amount, I have a document, it is in front of me, that had been prepared by the employees, that was filed in the document by Mr. Caisse who was representing Mr. Di Paolo at the time, that reflected their position on the wage claim, there were documents that were filed in the record by Mr. Duggan ...

THE CHAIR:

Yes.

PIERRE GRENIER:

... the amounts are not the same, the employer is saying there was an agreement as to the amount in question, and I am speaking solely about the wages claimed as damages. I would like this situation to be clarified to avoid launching into argument on this in response to a decision by the Court.

So I know that at the last meeting my colleagues submitted that there were passages of transcript or supplementary documents that had been filed or discussed between the parties. Because I did not take part in those discussions myself at the time, it was Mr. Duggan with Mr. McRobie and Mr. Money was there as well, and there were other discussions around that when Mr. Caisse came in, at the hearing in 2004, I would like it to be clarified to know where we are on that.

RONALD McROBIE:

So we made representations on that

point at the pre-hearing conference in June and you received, everyone received, the letter from my colleague, Mr. Monet, on July 15. So in that correspondence and in our representations before you, we pointed out that the question of the amounts claimed by the employees was the subject of your decision in October 2000.

If we recall, there were four elements in your decision, the fourth being your order that the complainants had to provide a detailed statement of what they were claiming as wages and benefits, as soon as possible, and also showing any income received as medication [*sic* – mitigation? – Tr.]. So it was in response to that order, and I would point out, Mr. Chair, that although your order was challenged on other points, that aspect was never challenged by anyone at all before the Superior Court or before you. So that order that you made in October led to the correspondence between myself and

counsel for the complainants. I am referring to Exhibits E-14 to E-17.

So if you look at E-14, in E-14 you have, from each of the complainants, a table which is the table that was produced by the complainants, there is one for each of the 11, and it is entitled [TRANSLATION] "Table representing the amounts claimed as lost wages and benefits for the period ...". And it refers to the period that you ordered in your decision, June 1996 to January 2000.

When, so there was a disagreement between the two parties on the calculation because the employer had another calculation, and when the parties resumed the hearings before you in October 2000, Mr. Duggan called Mr. Di Paolo to testify. And Mr. Di Paolo had the same document in front of him, in his case it was in E-14, which had been produced as Exhibit S-65. And in S-65, Mr. Di Paolo claimed, did a calculation with interest that was in the amount of

\$208,371.97.

At your invitation, there were discussions between the parties because at that point there was a disagreement as to whether quantum was to be proved or not, and we had submitted that at the pre-hearing conference in February 2000, it had been agreed to postpone any issue of quantum to the end, if necessary. But given the complainants' insistence on calling evidence on quantum, on wages and benefits, and I stress that it was at their request, we said: [TRANSLATION] "Postpone it to the end, if necessary." Ultimately, you asked us to cooperate and so the hearing was suspended and cross-examination of Mr. Di Paolo was suspended, we went away to confer, you were involved, Mr. Grenier was there, Mr. Duggan was there, I was there, Mr. Money was there, and we agreed on the amounts if the employees' claim was allowed in full, and I do say in full, so we said, because at the time, the people were claiming

the entire period from June '96 to January 2000, so we said:
[TRANSLATION] "As a mathematical exercise, the maximum that can be claimed, and we divided it into five periods, it would be so much." And I, I produced excerpts from the transcript, you already have them, but I am showing you an excerpt from the transcript, if you want to give a copy to Mr. Di Paolo and Ms. Blondin?

So after the suspension, we came back before you. I then gave you an excerpt where we see, at page 31, that, well, I, it was understood that the complainants were insisting on putting it in the record right away, so we had already agreed on the amounts outside, then Mr. Duggan wanted to revisit it, so at page 31, I said:

[TRANSLATION] "Well, we are interrupting, we are suspending Mr. Di Paolo's testimony."

And you said:

[TRANSLATION] "Yes."

And so we took S-65 which was the specific claim in the case of Mr. Di Paolo, for

wages and benefits, which was for 208,371.97, and we identified on the following pages the five periods, because we will recall that the wages were adjusted in the summer of each year, on June 30 or July 1 of each year, so we took all the periods and we gave you the maximum amount that could be claimed per period.

And I will spare you all the figures for the moment, but we can look at them if you are interested, period by period, we did it for the five periods, and on page 36, at the top of the page, we agreed that the calculation of the principal for the five component figures was 163,611.51.

Then Mr. Duggan asked for copies of the tables for everyone and we suspended to be sure that everyone had copies of it, and even, after that, Mr. Duggan, given that we corrected the figures for

periods 3 and 4, he even produced the tables we had submitted, that I have copies of here, as Exhibits S-65 and S-67. These are exhibits already in the record and Mr. Duggan wanted to produce the tables as we showed him with his clients outside because we were correcting the figures he had calculated for periods 3 and 4, and so that is part of the record and it was Mr. Duggan who produced them as Exhibits S-65 and S-67. And at page 38, I said: [TRANSLATION] "We made those admissions to show that when we say something out in the hallway, we say the same thing before you, but that has nothing to do with the evidence that is before you, it will be useful only if we eventually get there ..."

Obviously because we were not admitting liability, which is still the case today. Then we went back to a request to produce a document concerning four people's pension plan. I announced at the bottom of page 38 that we were going to object, there was argument on that, and you upheld that objection ...

PIERRE GRENIER:

On what page, please?

RONALD McROBIE:

Page 43, at the bottom of the page. And then why did you uphold the objection? It was, there were two aspects, obviously there was a desire to enter in evidence an application to join the plan that was after the period that was before you because it was an application made in January 2000, but more importantly, what we argued was: [TRANSLATION] "Listen, we have just produced the admissions, and now they are trying to introduce evidence of other benefits", when the document produced by the complainants themselves was entitled [TRANSLATION] "Table representing the amounts claimed as wages and benefits".

So the 163,000 figure from which the 208 derives was, everyone understood, it was the exercise that had just been done and it was as a result of that argument that Mr. Duggan said that he did not have much to add to

what he had said earlier and you upheld the objection.

So for our part, the fact that it is now eight years later does not mean we can revisit a decision that has already been made on the question of the maximum quantum that can be claimed and on the admissibility in evidence of other claims, apart from the ones that were provided by the complainants in accordance with your order in October 2000. The order was made, it has been complied with, as a result of that, there was an agreement on the maximum amounts and that is an end of it.

ERIBERTO DI PAOLO:

Good, I'd like to get my two cents in too.

THE CHAIR:

Is that all?

RONALD McROBIE:

Yes, I have, yes, that is all.

THE CHAIR:

Mr. Di Paolo?

ERIBERTO DI PAOLO:

Mr Arbitrator, why are we here today? The reason we're here today is that the Court of Appeal said

that we have to do the evidence based on nineteen ninety-nine-two thousand o three (1999-2003). So now, we're putting the cart before the horse. He's talking about money. First of all, the money that he's talking about has been annulled, because that was in a hearing of October nineteenth (19th), which was after the tenth (10th) of October hearing and the Court of Appeal has annulled the decision that you gave on two thousand o five (2005), in March, and that goes all the way back to that hearing.

The amounts of money that he's talking about, if we're talking about money, we have to wait till we do the evidence. There's a lot of evidence that the Court of Appeal wants us to produce so that we can come to exactly what it is of money that we're talking about, what's the amount?

And on another note too, at the beginning, I didn't understand very well, am I to understand that the grievance of July fourteenth (14th), you will not take that in consideration? you're not going to take that grievance? The grievance of July 14 ...

THE CHAIR:

That means ...

ERIBERTO DI PAOLO:

... is it ...

THE CHAIR:

Not at this moment. Not at this moment. I want to set up the question of the damages, claim of damages...

ERIBERTO DI PAOLO:

Okay.

THE CHAIR:

... to decide on that definitely...

ERIBERTO DI PAOLO:

But...

THE CHAIR:

... so I'll ask you to produce the papers, the documents you want to produce.

ERIBERTO DI PAOLO:

That's right. I not only want to produce documents, but I want to speak of what I produce...

THE CHAIR:

Yes, of course...

ERIBERTO DI PAOLO:

... but...

THE CHAIR:

... but first, produce these documents.

ERIBERTO DI PAOLO:

Well, that's what I initially wanted to know at the beginning, but...

THE CHAIR:

It's your turn.

ERIBERTO DI PAOLO:

... but they're bringing back what has been annulled.

THE CHAIR:

Produce your documents now and you will argue...

ERIBERTO DI PAOLO:

O.k., so then...

THE CHAIR:

... later.

ERIBERTO DI PAOLO:

... I will give you a copy...

PIERRE GRENIER:

Before ...

THE CHAIR:

Yes?

PIERRE GRENIER:

... we start producing the documents, I would like to finish the

question that we are arguing ...

THE CHAIR:

Fine.

PIERRE GRENIER:

... to be sure of ...

THE CHAIR:

Okay.

PIERRE GRENIER:

... of what we are doing. My understanding, correct me if I am wrong, colleague, is that you have arrived at a total amount?

RONALD McROBIE:

Total after examining five periods. So if you look in the transcript, you have a total per period, I can give you them, the five components, but for the period from June 4 to June 30, 1996, it was \$3,180; for the period from July 1, 1996, to June 30, 1997, it was a maximum of \$55,041; and so on, so

period 3, it was, that is, for the period of July 1, 1997, to June 30, 1998, it was 34,175.23 ...

PIERRE GRENIER:

What page are you on? I'm sorry, I'm trying ...

RONALD McROBIE:

At the bottom of page 33.

PIERRE GRENIER:

33?

RONALD McROBIE:

Then it is after what Mr. Duggan said: [TRANSLATION] "Right, for period 3, so we are going to produce your table 3", which is Exhibit S-66. Then at the bottom of page 34, period 4, which was July 1, 1998, to June 30, 1999, it was a mathematical calculation that was 38,571.84 ...

PIERRE GRENIER:

Excuse me, so on page 33 ...

RONALD McROBIE:

33, yes.

PIERRE GRENIER:

... when the amount is established at 34,000, it was already reduced by an amount paid by the employer?

RONALD McROBIE:

Yes.

PIERRE GRENIER:

So that is not the full amount of the wages ...

RONALD McROBIE:

No, because it is ...

PIERRE GRENIER:

... not paid?

RONALD McROBIE:

... the way that they had done the calculation, is that they had taken the entire period, applied interest to it, and then, only, deducted the employer's principal. So that was not the right way to do it because then, with those figures, the argument about interest on the principal was being disregarded ...

PIERRE GRENIER:

No, what I mean, from July 1, '97, to June 30, '98, the amount is not 34,000, it is really 56 ...

RONALD McROBIE:

Yes, yes, that's right ...

PIERRE GRENIER:

... 56,000 or ...

RONALD McROBIE:

... it is, the exercise had been done by deducting for each period because of not knowing whether there was a period at all there. So the periods do not correspond to anything other than the wage increase periods in July of each year.

And then period 4 is the period from July 4 to 30, 1998, to June 30, '99, and it is 38,571.84 and ...

PIERRE GRENIER:

And again, it was reduced ...

RONALD McROBIE:

... it was taking into account what had in fact been paid as wages and benefits. And for the fifth period, it was 32,643.44, that is the period from July 1, 1999, to January 20, 2000. So periods 3 and 4 take into account the wages and benefits actually paid by the employer in the two periods, which overlap in the two periods.

PIERRE GRENIER:

The specific amounts were not established without taking into account the wages paid for period 3 and period 4.

RONALD McROBIE:

That means that in their claim, they had made the claim ...

PIERRE GRENIER:

So I have 56,958, and 57,857 ...

RONALD McROBIE:

If you look at E ...

PIERRE GRENIER:

I am on S-65 ...

RONALD McROBIE:

... S-65 ...

PIERRE GRENIER:

Yes.

RONALD McROBIE:

... what they did was calculated ...

PIERRE GRENIER:

56, 58 ...

RONALD McROBIE:

... a figure of 50 ...

PIERRE GRENIER:

... 57 ...

RONALD McROBIE:

It was ...

PIERRE GRENIER:

... 57, which would be the right amount.

RONALD McROBIE:

Fine, not far off. If you look, you would have to compare it with S-1, I think the right amounts are 66, S-66 and S-67, if you look at the

documents you were given.

PIERRE GRENIER:

But then, we don't have the same periods, you have to add, and

...

RONALD McROBIE:

Yes, it is the same periods, periods 3 and 4, it's 56,958.72 according to S-65 and 57,857.80 for period 4. That is according to their claim ... Ah! According, you mean according to us, but you have them in S-66 and S-67.

PIERRE GRENIER:

So it's the same amount, but in S-65.

RONALD McROBIE:

Yes, the gross amount because you have the annual wages for each year, which is higher than our calculations.

PIERRE GRENIER:

On that question, Mr. Arbitrator, I disagree with my colleague, not on that, on the calculation of the wages claimed, but on the question of the pension plans, which I will come back to in my argument.

RONALD McROBIE:

I just wanted to mention, Mr. Chair, that this admission was made in open court, in front of everyone, Mr. Di Paolo was a witness and after that there was, and I am going to produce, at the same hearing, there was an admission by both sides that the evidence would be to the same effect with respect to the other 10 complainants. We refer you specifically to pages 137 and 138 of that same hearing day. So that was done with the full knowledge of everyone.

PIERRE GRENIER:

I had announced the week, at our last meeting, on the question of the pension plans, I asked the Court, in the event that it denied our claim on that item, for the quantum to be calculated after the decision was made.

THE CHAIR:

Okay. That ...

PIERRE GRENIER:

I think that concludes ...

THE CHAIR:

... that is fine?

PIERRE GRENIER:

... the preliminaries.

THE CHAIR:

We will hear ...

RC:

But Mr. ...

THE CHAIR:

... Mr. Di Paolo.

RONALD McROBIE:

... Mr. Di Paolo, then I will respond.

RITA BLONDIN:

Mr. Arbitrator, I would like to urge you to make a comprehensive ruling because by severing your decision like that, we will have, we will have, for another 20 years longer, I have, no one is going to get there, please. It's the same principle, it's the same dispute, it's just because it is so delayed that we have costs, enormous costs, but it is still the same dispute. Even though in 2004 the Court of Appeal said that the prejudice had not ended, it continued, it continued after January 2000. So I would urge you, please, to revisit your decision, and make a

comprehensive ruling so we can live our lives quietly, in peace, please.

ERIBERTO DI PAOLO:

Mr Arbitrator, I object to everything that Mr McRobie said, because we are not coming, he's not coming off from the position of...

THE CHAIR:

Yes, but you'll...

ERIBERTO DI PAOLO:

... two thousand o eight (2008).

THE CHAIR:

... you'll have the opportunity to argue later, I want now you to...

ERIBERTO DI PAOLO:

Now... O.k.

THE CHAIR:

... file your documents.

ERIBERTO DI PAOLO:

O.k. I have a lot of stuff in here, so...

THE CHAIR:

Show them to Mr McRobie and Mr Monet.

ERIBERTO DI PAOLO:

I have copies for them also, but I need an exhibit number for these...

THE CHAIR:

Yes, o.k.

ERIBERTO DI PAOLO :

... so I'm bringing documents that I'm, these, they're just letters that they sent us, so, I just want you to table that too, so I'll need an exhibit number for everyone.

MONSIEUR LE PRÉSIDENT :

O.k.

Me RONALD McROBIE :

We need to see what they are...

MONSIEUR LE PRÉSIDENT :

Yes, first.

Me RONALD McROBIE :

We need to have copies.

ERIBERTO DI PAOLO :

Well, these ones, I didn't take...

Me RONALD McROBIE :

Do you have our copies there?

ERIBERTO DI PAOLO :

Of everything else, except this, because these are the letters that Mr Monet sent us, so what went back and forth for the last few months.

Me RONALD McROBIE :

Well, these are letters from you to Mr Sylvestre?

ERIBERTO DI PAOLO :

Yes.

Me RONALD McROBIE :

Not a letter from Mr Monet.

ERIBERTO DI PAOLO :

No, no, there's, they're in there too.

Me RONALD McROBIE :

But are we going to get copies of what you're presenting?

ERIBERTO DI PAOLO :

Well, that's the only ones. I did not have copies of, because it was letters that he sent us or I sent Mr Sylvestre, but you obviously, you all have a copy of it too.

MONSIEUR LE PRÉSIDENT :

This... Show them to...

ERIBERTO DI PAOLO :

Well, I'll get them their copies. This has been tabled and this here, I'd like to produce this, table it, please? And this here, I'll just need an exhibit number, because I don't have another copy, it was presented to you...

MONSIEUR LE PRÉSIDENT :

By Maître Caisse?

ERIBERTO DI PAOLO :

Yes.

MONSIEUR LE PRÉSIDENT :

Yes, I have, o.k.

ERIBERTO DI PAOLO :

You have? You have?

MONSIEUR LE PRÉSIDENT :

In the office, yes.

ERIBERTO DI PAOLO :

But I need an exhibit number, because I don't have another one, so I'm keeping this, it's just to show you...

MONSIEUR LE PRÉSIDENT :

Well...

ERIBERTO DI PAOLO :

... they had it also, because in two thousand o four (2004), they got a copy, because this is the story of the damages, this is not the real damages.

MONSIEUR LE PRÉSIDENT :

Yes, it was produced in...

Me RONALD McROBIE :

It was produced...

ERIBERTO DI PAOLO :

It was...

Me RONALD McROBIE :

... and they ended ruled inadmissible.

ERIBERTO DI PAOLO :

Yes, but now, the Court of Appeal, what did they do in two thousand o eight (2008)? They annulled the decision of two thousand o five (2005) and bringing it back in.

Me RONALD McROBIE :

Do you want me to make my representations on that right away or...

MONSIEUR LE PRÉSIDENT :

Yes...

Me RONALD McROBIE :

... or wait?

MONSIEUR LE PRÉSIDENT :

... yes, please? Yes.

RONALD McROBIE:

Okay. In English or in French?

THE CHAIR:

In English, yes, yes.

RONALD McROBIE:

As to the first group of documents, I understand that it's a correspondence relating to this case since April of two thousand eight (2008), that Mr Di Paolo wants to produce. It's already in the file, but I have no particular objection to having it produced as an exhibit. I don't know

if it's...

MONSIEUR LE PRÉSIDENT :

So...

Me RONALD McROBIE :

... complete...

MONSIEUR LE PRÉSIDENT :

... it will be DP-1? is that o.k. with you?

ERIBERTO DI PAOLO :

Sure.

MONSIEUR LE PRÉSIDENT :

DP-1...

Me RONALD McROBIE :

Just to complete...

MONSIEUR LE PRÉSIDENT :

... correspondence...

DP-1 : Correspondence relating to the case since
April of 2008.

Me RONALD McROBIE :

... it, however, Mr Chairman, there's one piece
of correspondence that's not there, which is, if
we can add to it, which is the letter to
Mr Di Paolo of July twenty-fifth (25th)...

ERIBERTO DI PAOLO :

I had that in my other...

Me RONALD McROBIE :

But it's not in...

MONSIEUR LE PRÉSIDENT :

But you didn't put it in your...

Me RONALD McROBIE :

... it's not in the...

Me DOMINIQUE MONET :

It's the letter to...

ERIBERTO DI PAOLO :

No, because I wanted to...

Me DOMINIQUE MONET :

... it's the letter to the Arbitrator.

ERIBERTO DI PAOLO :

... I wanted to talk about that.

MONSIEUR LE PRÉSIDENT :

I already have it.

Me RONALD McROBIE :

Yes, you already have it, but since he's
reproducing all of the correspondence...

MONSIEUR LE PRÉSIDENT :

It will be complete.

Me RONALD McROBIE :

... to you...

ERIBERTO DI PAOLO :

But I wanted to speak about this letter.

MONSIEUR LE PRÉSIDENT :

This one here, o.k.

ERIBERTO DI PAOLO :

Yes, this one here.

MONSIEUR LE PRÉSIDENT :

July the twenty-fifth (25th), o.k.

Me RONALD McROBIE :

Yes, so, add it to the file there and...

MONSIEUR LE PRÉSIDENT :

So I, all of you have a copy of this letter.

ERIBERTO DI PAOLO :

Already has.

Me RONALD McROBIE :

And I would ask for a copy of what has been produced as DP-1 just so that we know exactly what was in DP-1, because there's various letters in there, but not all, anyway...

Me DOMINIQUE MONET :

And...

Me RONALD McROBIE :

... so we'll get subsequently a copy of DP-1?

Me DOMINIQUE MONET :

But we...

Me RONALD McROBIE :

with the addition of July twenty-fifth (25th), two thousand and eight (2008) letter.

Me DOMINIQUE MONET :

well, I'd like July twenty-fifth (25th), two thousand and eight (2008) letter to be an E exhibit, not a DP-1 exhibit.

Me RONALD McROBIE :

well, o.k., fine, we can produce it then as our exhibit which would then be 78, so, produced as E-78, that's your copy, Mr Di Paolo and I have a copy for Mr Grenier, si vous pouvez remettre à maître Grenier, s'il vous plaît?

E-78 : Letter to Mr Di Paolo of July 25th, 2008.

Now, as for...

THE CHAIR:

That is the photocopy? Ah! Okay, okay ...

RONALD McROBIE:

Yes, that's right.

THE CHAIR:

It's here, o.k.

RONALD McROBIE:

Now, Mr Chairman, there's another document that Mr Di Paolo has put beside you there, where

I see «Cour d'appel», that yellow page, is that a document that he wishes to produce?

ERIBERTO DI PAOLO :

Yes.

Me RONALD McROBIE :

Yes?

THE CHAIR:

Factum of the appellants/applicants Rita Blondin and Eriberto Di Paolo, but I have that already.

RONALD McROBIE:

Well, you received it ...

ERIBERTO DI PAOLO:

Already received.

RONALD McROBIE:

... at one point, I think it was served on you?

THE CHAIR:

Yes.

ERIBERTO DI PAOLO:

Can you give me a number, if you have it, I would like to have some evidence, because ...

THE CHAIR:

Well, it's already in the record.

ERIBERTO DI PAOLO:

It's in the record, but ...

THE CHAIR:

Okay, okay, so DP-2.

RONALD McROBIE:

So the appeal factum of Mr. Di Paolo and Ms. Blondin is being produced as an exhibit ...

THE CHAIR:

Yes.

RONALD McROBIE:

... in the Court of Appeal?

THE CHAIR:

Yes.

DP-2: Appeal factum of Rita Blondin and Eriberto Di Paolo in the Court of Appeal

RONALD McROBIE:

I think, Mr. Chair, I don't object formally, but if you do refer to that factum, obviously, you have the others from Mr. Grenier for the other complainants and our factum ...

THE CHAIR:

I have all that, yes.

RONALD McROBIE:

... but it hasn't been given a number formally, so

it's ...

ERIBERTO DI PAOLO:

That is why I am bringing it ...

RONALD McROBIE:

If you do refer to that appeal factum, you have ours as well, even though they have not been produced ...

THE CHAIR:

That's right.

RONALD McROBIE:

... formally before you.

ERIBERTO DI PAOLO:

Here, I only have one copy, because that's all they sent me.

PIERRE GRENIER:

That is DP-2?

ERIBERTO DI PAOLO:

This is the answer to our factum by the company and I only have one copy, but I want an exhibit number.

THE CHAIR:

DP-3.

ERIBERTO DI PAOLO:

And that could be for your file, that's for you.

RONALD McROBIE:

Subject to the same objection, obviously.

THE CHAIR:

Yes.

PIERRE GRENIER:

That's the reply of?

THE CHAIR:

That's the reply of the employer, it's, in fact it's the outline of the argument of the respondent The Gazette, the response to the factum of Rita Blondin and Eriberto Di Paolo.

DP-3: Outline of argument of the respondent The Gazette, response to the factum of Rita Blondin and Eriberto Di Paolo.

ERIBERTO DI PAOLO:

Can you give me a number, please?

THE CHAIR:

DP-3.

ERIBERTO DI PAOLO:

DP-3. Now, it's because Rita, are you taking down the numbers?

RITA BLONDIN:

Yes, and yes.

ERIBERTO DI PAOLO:

You are taking down the numbers, okay,

[English]so you'll take the numbers. After that, I have that, and

then, I'll the others, I'll go get the others.

THE CHAIR:

Wait, show it to ...

ERIBERTO DI PAOLO:

I'll go get the ...

THE CHAIR:

Ah! You have copies?

ERIBERTO DI PAOLO:

Yes.

PIERRE GRENIER:

What is that? Excuse me.

THE CHAIR:

It's correspondence sent to me, to Mr. Brunet, and excerpts from the Labour Code and a copy of the agreement ...

RONALD McROBIE:

Is it ...

THE CHAIR:

... from April 13, '90...

DP-4: Bundle of documents. (under objection)

RONALD McROBIE:

I have several couple of documents twice.

RITA BLONDIN:

Excuse me, perhaps each page should be given a number because we are going to get lost in this.

ERIBERTO DI PAOLO:

That was harder to do because it was letters.

RITA BLONDIN:

We will take them again one by one, we will number them one by one.

RONALD McROBIE:

Perhaps, Mr. Chair, we should have just produced them in a bundle, subject to my objections as to relevance, to expedite the conduct of the hearing. There are a lot of those documents that were already produced, others that are of no relevance, but I don't know whether you want us to present argument, perhaps it would be ...

THE CHAIR:

No.

RONALD McROBIE:

... simpler, simply to produce them in a bundle, subject ...

THE CHAIR:

No, as ...

RONALD McROBIE:

... to other objections ...

THE CHAIR:

... Mr. Di Paolo is proposing, we will enter them in a bundle and you will come back to ...

RITA BLONDIN:

Enter them all?

THE CHAIR:

... to each of the documents.

ERIBERTO DI PAOLO:

I thought it was better to enter it all at once ...

THE CHAIR:

Fine, that's right, exactly, you agree with Mr. McRobie on that.

ERIBERTO DI PAOLO:

That's right, I don't have a lot to do.

THE CHAIR:

No, no.

ERIBERTO DI PAOLO:

Another three (3) or four minutes (4 min).

RITA BLONDIN:

So that is DP-4?

THE CHAIR:

Yes, DP-4. I could have put DPB-4. Excuse me, Ms. Blondin.

RITA BLONDIN:

That's fine.

THE CHAIR:

So we will suspend for five minutes, time for Mr. Di Paolo ...

ERIBERTO DI PAOLO:

Yes, yes, yes, time ...

THE CHAIR:

... to be able to identify his exhibits.

PIERRE GRENIER:

Are we suspending?

THE CHAIR:

Yes, five minutes.

HEARING SUSPENDED

HEARING RESUMED

RITA BLONDIN:

What is happening is that we don't have the list of the

things ...

RONALD McROBIE:

No ...

RITA BLONDIN:

... that were produced ...

RONALD McROBIE:

... there are ...

RITA BLONDIN:

... so ...

RONALD McROBIE:

... a lot of things, Ms. Blondin, that are ...

RITA BLONDIN:

Yes, but we don't know, we ...

RONALD McROBIE:

OBJECTION 1:

... in your bundle of documents, which have already been produced, but in any event, as I said, we object generally to the production of those documents, so I urge you to take them under objection, but ...

THE CHAIR:

Okay. So **DP-5 will be collective agreement**

between The Gazette and Le Syndicat québécois de l'imprimerie, May eighty-seven (87) to April ninety (90), DP-5.

DP-5 : Collective agreement between The Gazette and Le Syndicat québécois de l'imprimerie, May 87 to April 90. (under objection)

PIERRE GRENIER:

What is DP-4?

THE CHAIR:

DP-4 is the bundle of documents.

PIERRE GRENIER:

The bundle here, okay.

THE CHAIR:

Okay?

RONALD McROBIE:

Well there was another pile that he, I don't know whether it's in, the second pile there is part of DP-1.

THE CHAIR:

Wait a minute. I have a document here that is dated today, that is dated July 28, 2008. This

will be DP-6, it's a document dated July the
twenty-eight (28).

DP-6 : Document dated July twenty-eighth (28th).
(under objection)

ERIBERTO DI PAOLO :
The twenty-eighth (28th).

THE CHAIR:

Yes, o.k.

PIERRE GRENIER:

It's another one, I have the decisions here.

THE CHAIR:

No, but ...

RONALD McROBIE:

There is ...

THE CHAIR:

... it's just that document.

RONALD McROBIE:

Oh.

THE CHAIR:

Okay?

RONALD McROBIE:

Okay.

PIERRE GRENIER:

Excuse me.

THE CHAIR:

So DP-7 will be the actuarial report ...

RONALD McROBIE:

Wait, you don't have the same order as us.

THE CHAIR:

Oh, right.

RONALD McROBIE:

OBJECTION 2:

Obviously, we object and we will be making ...

THE CHAIR:

Under objection.

RONALD McROBIE:

... representations, but you can assume that we object ...

THE CHAIR:

Okay.

RONALD McROBIE:

... to the filing in general.

THE CHAIR:

So DP-7 will be the actuarial report dated June 26, 2008.

DP-7: Actuarial report dated June 26, 2008.
(under objection)

PIERRE GRENIER:

Excuse me, DP-6, you say it is a letter dated July 28?

THE CHAIR:

It's a document dated July 28 that is not signed.

RONALD McROBIE:

I think it's the pleading by ...

PIERRE GRENIER:

Okay, I have it, that's fine.

RONALD McROBIE:

... Mr. Di Paolo and ...

PIERRE GRENIER:

That's fine.

RONALD McROBIE:

... Ms. Blondin.

PIERRE GRENIER:

That's fine.

THE CHAIR:

Okay?

PIERRE GRENIER:

Yes.

THE CHAIR:

This document here.

ERIBERTO DI PAOLO:

This, well, this is your copy.

THE CHAIR:

Yes.

ERIBERTO DI PAOLO:

... and...

THE CHAIR:

What is it?

ERIBERTO DI PAOLO:

I'll speak about it after. Well, answer to questions (a)...

THE CHAIR:

O.k., it's...

ERIBERTO DI PAOLO:

... (b) and (c); (a), (b) and (c).

THE CHAIR:

It's a summary of your argument?

ERIBERTO DI PAOLO:

Yes, it's... That's right.

THE CHAIR:

O.k., that's o.k.

ERIBERTO DI PAOLO:

The evidence that I have to make.

THE CHAIR:

DP-8 will be the, Leboeuf's arbitration award...

RONALD McROBIE:

Again...

THE CHAIR:

It's...

RONALD McROBIE:

... it's an English translation that's not, we don't even know who's produced it, but...

THE CHAIR:

Under objection.

RONALD McROBIE:

... it's not Leboeuf's award which has already been produced, it's someone's English translation of Leboeuf's award that's already been produced, but again, under reserve.

THE CHAIR:

Under objection.

DP-8 : English translation of Leboeuf's arbitration award. (under objection)

DP-9 is the appellants' factum submitted to the Court of Appeal by Ms. Blondin and Mr.

Di Paolo ...

RONALD McROBIE:

It isn't DP-2?

THE CHAIR:

No, no, DP-2 is ...

RONALD McROBIE:

I had ...

DOMINIQUE MONET:

Yes, yes.

THE CHAIR:

These are the exhibits, wait, no, it's the second volume, DP-2, his

...

RONALD McROBIE:

Ah, DP-2, that's volume II?

THE CHAIR:

That's right, yes.

RONALD McROBIE:

Okay. So that's DP-9, the appeal factum?

THE CHAIR:

D-9, yes.

DP-9: Appellant's factum submitted to the Court of Appeal by Ms. Blondin and Mr. Di Paolo. (under objection)

PIERRE GRENIER:

I don't have that.

RITA BLONDIN:

No, because there was one copy short ...

PIERRE GRENIER:

Okay, that's fine, that's good, DP-9?

THE CHAIR:

DP-9, yes. DP-10 is the transcript of the hearing, the hearing on June 16, 2008, before the Court of Appeal.

DP-10: Transcript of hearing on June 16, 2008, before the Court of Appeal. (under objection)

RONALD McROBIE:

That is the contempt of court issue?

THE CHAIR:

Yes. DP-11 is the decision of the Court of Appeal dated August 6, 2003.

DP-11 Decision of the Court of Appeal dated August 6, 2003.
(under objection)

DP-12 is the decision of the Court of Appeal dated December 15,

1999.

DP-12: Decision of the Court of Appeal dated December 15,
1999. (under objection)

RONALD McROBIE:

It's an ...

DOMINIQUE MONET:

It's an English version.

RONALD McROBIE:

... English version, I don't know where it came from, but it's an
English version ...

THE CHAIR:

Wait a minute, no ...

ERIBERTO DI PAOLO:

You have, I have read it in English, it's easier for me, but you
have, the version in French ...

THE CHAIR:

Wait, I have the decision in French. What I have is the decision in
French.

RONALD McROBIE:

Ah! What I have is the English version, I don't know ...

ERIBERTO DI PAOLO:

Yes because I gave it to the Arbitrator in French, what I had, and I did not have a lot in French ...

DOMINIQUE MONET:

There is no English version of the judgment, it isn't in the Supreme Court of Canada, but in any event ...

THE CHAIR:

But I am bound by DP-12, that is the French version.

DOMINIQUE MONET:

Yes, and it is already in the record.

THE CHAIR:

Yes, yes, it is already in ... DP-13, the applicants' motion for a special order to appear on a charge of contempt of court.

DP-13: Motion by the applicants for a special order to appear on a charge of contempt of court. (under objection)

DP-14 is an arbitral award made between

the parties by Claude Foisy ...

RONALD McROBIE:

Already in the record.

THE CHAIR:

Already in the record, dated April 25, '96.

DP-14: Arbitral award made between the parties by Claude Foisy
on April 25, '96. (under objection)

DP-15 is the decision of the Court of Appeal dated March 17,
2008

DP-15: Decision of the Court of Appeal dated March 17, 2008.
(under objection)

DP-16 is a decision of the Court of Appeal dated September 16,
'96, between the Journal de Montréal, François Hamelin and
Local 41M.

DP-16: Decision of the Court of Appeal dated September 16, '96,
between the Journal de Montréal, François Hamelin and
Local 41M. (under objection)

DP-17 is a letter dated January 21, 2002, 2000, that is,
January 21, 2000 ...

DOMINIQUE MONET:

It is the final best offers of The Gazette, already in the record.

THE CHAIR:

... that reiterates the final best offers of The Gazette, to the union,
Local 145, and each of the 11 complainants, by Mr. Tremblay, on
January 21.

DP-17: Letter dated January 21, 2000, which reiterates the final
best offers of The Gazette, to the union, Local 145, and to
each of the 11 complainants, by Mr. Tremblay. (under
objection)

RONALD McROBIE:

That is the French version of S-58.

THE CHAIR:

And DP-18 is a, it seems to be an article published in The Globe
and Mail in '93 and written by Harvey Enchin, E-N-C-H-I-N.

DP-18: Article published in The Globe and Mail in '93 and written by Harvey Enchin.

So that completes the tour, oh, no ...

ERIBERTO DI PAOLO:

Other ...

THE CHAIR:

... no, there are others ...

ERIBERTO DI PAOLO:

I brought you a whole bunch.

THE CHAIR:

Oh! I see. DP-19 is the summary of a judgment on lawyers' fees claimed as damages.

DP-19: Summary of a judgment on lawyers' fees claimed as damages. (under objection)

DP-20 is an article published in The Gazette on Thursday, Tuesday, April 30, 1991.

DP-20: Article published in The Gazette on April 30, 1991. (under objection)

DP-21 is an article from The Gazette dated April 23, 2002 ...

RONALD McROBIE:

April 23 ...

THE CHAIR:

February, excuse me.

DP-21: Article from The Gazette dated April 23, 2002. (under objection)

DP-21 is an article ...

PIERRE GRENIER:

DP-22, eh?

THE CHAIR:

22, yes, an article, it seems to be, from The Gazette, entitled "Financial CIBC, Court Told", there is no date.

DP-22: Article, it seems to be, from the Gazette, entitled "Financial CIBC, Court Told". (under objection)

DP-23 is a summary of a recent decision by, written by Mr. Rhéaume-Perrault, lawyer, entitled "Condamnation à payer des dommages-intérêts" [award of damages].

DP-23: Summary of a recent decision by, written by Mr. Rhéaume-Perrault, lawyer, entitled "Condamnation à payer des dommages-intérêts". (under objection)

I think the other documents, we can produce them in a bundle, so DP-24, relating to the proceedings underway.

PIERRE GRENIER:

What do you have in there?

THE CHAIR:

There is an article from The Gazette dated February 5, '98, an article from the National Post dated July 13, 2007 ...

RONALD McROBIE:

All that is going under 24?

THE CHAIR:

Yes. An article from The Gazette dated Tuesday, March 18, a letter from Mr. Tremblay to

Ms. Blondin dated May 27, '96, a letter, ah, right, we have that one already ...

RONALD McROBIE:

It's E-78 already.

THE CHAIR:

Yes, E-78, we can set it aside, and last, the decision I made on October 11, 2000.

PIERRE GRENIER:

I have another document here, with the amounts.

DP-24: Documents in a bundle, article from The Gazette dated February 5, 1998, article from the National Post dated July 13, 2007, article from The Gazette dated Tuesday, March 18, decision made by André Sylvestre on October 11, 2000, and a document with the amounts.
(under objection)

ERIBERTO DI PAOLO:

I gave you a copy of that.

PIERRE GRENIER:

Pardon me?

ERIBERTO DI PAOLO:

I gave you a copy.

PIERRE GRENIER:

Yes, is it to file?

ERIBERTO DI PAOLO:

He's got...

THE CHAIR:

No, I don't have this cover.

ERIBERTO DI PAOLO:

I thought I had...

THE CHAIR:

I don't have it.

ERIBERTO DI PAOLO:

Now, this is for you.

PIERRE GRENIER:

Now, there's two (2) copies, one for the...

ERIBERTO DI PAOLO:

There you go, he's got to have it, I'm not over.

Peut-être j'ai mélangé les photocopies. You didn't get a copy of this?

THE CHAIR:

No, well, I have, but, I had a copy of this one...

ERIBERTO DI PAOLO:

Yes.

THE CHAIR:

... but not of this one here.

ERIBERTO DI PAOLO:

Well, it's probably behind it.

THE CHAIR:

Oh! o.k. o.k., I've got it.

ERIBERTO DI PAOLO:

o.k.?

THE CHAIR:

It's o.k. It was attached to the actuarial report, DP-7, okay.

RONALD McROBIE:

Are there other documents?

PIERRE GRENIER:

What is that?

RITA BLONDIN:

Other documents.

PIERRE GRENIER:

Eh?

DOMINIQUE MONET:

That's, that' still argument.

PIERRE GRENIER:

Other documents?

RITA BLONDIN:

To enter, yes.

ERIBERTO DI PAOLO:

That is DP-7.

THE CHAIR:

Fine, so DP-25 ...

RONALD McROBIE:

DP-25?

THE CHAIR:

Yes. Ms. Blondin, I'm asking you, is that your outline of argument?

RITA BLONDIN:

Yes, yes ...

THE CHAIR:

With the exhibits?

RITA BLONDIN:

... it will be part of my evidence, do you want to give them separate numbers ...

THE CHAIR:

No, we will put it in a bundle.

RITA BLONDIN:

In a bundle?

THE CHAIR:

Yes, DP-25.

DP-25: In a bundle, outline of argument of Rita Blondin with exhibits. (under objection)

Does that conclude the entering of your exhibits?

ERIBERTO DI PAOLO:

For me, yes.

RITA BLONDIN:

Yes.

THE CHAIR:

Okay? Right. So Mr. Grenier, your exhibits have also been entered?

PIERRE GRENIER:

Yes.

THE CHAIR:

Mr. Monet, Mr. McRobie ...

RONALD McROBIE:

But listen, we are ...

DOMINIQUE MONET:

We have one exhibit, yes.

RONALD McROBIE:

... just going to produce a document that would be E-79, just to complete, the last time, in 2004, we did not have the benefit of the decision, I'm going to give a copy to Mr. Di Paolo and Ms.

Blondin, it's the decision of the Superior Court dated February 15, 2005, by Judge Wagner, Mr. Justice Richard Wagner.

THE CHAIR:

February 15, 2005.

RONALD McROBIE:

Yes, so that would be E-...

THE CHAIR:

79.

RONALD McROBIE:

79.

E-79: Decision of the Superior Court dated February 15, 2005,
by Mr. Justice Richard Wagner.

With respect to all the documents produced by Mr. Di Paolo and Ms. Blondin, also, there were some documents that were produced in duplicate, that's fine. With respect to the other documents, given, rather than go through an exercise that would be very lengthy and proceed document by document, we invited you to take the documents under objection, but I would like to point out that we are proceeding in that way simply to expedite argument and I am giving you an example of the impermissible way this is being done.

In Dp-4, they are producing, in the bundle of documents, the same document that you refused to allow to be produced in October 2004, that is, concerning the application to join the pension plan retroactively, so it's an illustration of how they are trying to do indirectly what they can't do directly, but I will make my representations on the documentation as a whole, if necessary, in argument.

PIERRE GRENIER:

On Mr. McRobie's comments, particularly in relation to that document, I was going to produce it for the purpose of argument. I understand that you rejected it at the hearing, but to understand what happened at the hearing, I was going to produce it, I ...

THE CHAIR:

Under objection?

PIERRE GRENIER:

Yes.

THE CHAIR:

Fine. S-...

RONALD McROBIE:

70?

THE CHAIR:

70.

PIERRE GRENIER:

71.

THE CHAIR:

71?

RONALD McROBIE:

Yes.

THE CHAIR:

71, that's right.

S-71: Application to join the pension plan retroactively. (under objection)

So you have a copy of it?

PIERRE GRENIER:

Yes, it was in DP-4.

THE CHAIR:

Ah, okay.

PIERRE GRENIER:

You have it in DP-4, but ...

THE CHAIR:

No, that's right. So we ...

PIERRE GRENIER:

... I can give it to you.

THE CHAIR:

S-71. So does that conclude the entering of exhibits, by both sides?

RITA BLONDIN:

Yes.

THE CHAIR:

Okay?

RITA BLONDIN:

Yes.

THE CHAIR:

That's okay, Ms. Blondin? That's okay, Mr. Grenier?

PIERRE GRENIER:

Yes.

THE CHAIR:

That's okay, Mr. Monet, Mr. McRobie?

RONALD McROBIE:

Yes.

THE CHAIR:

So Mr. Grenier, do you have witnesses to call or is your evidence ...

PIERRE GRENIER:

I have no witnesses.

THE CHAIR:

... complete? That's okay? Mr. McRobie?

RONALD McROBIE:

No, our evidence is complete.

THE CHAIR:

Evidence is complete?

RITA BLONDIN:

I would like to start by ...

THE CHAIR:

No, no, no, wait ...

RITA BLONDIN:

No?

THE CHAIR:

... we are talking about evidence, is your evidence complete with the entering of those documents?

RITA BLONDIN:

We may have witnesses, but ...

ERIBERTO DI PAOLO:

We may have witnesses, why ...

THE CHAIR:

But precisely, the union and the employer have no witnesses, do you have any witnesses?

ERIBERTO DI PAOLO:

Certainly we are going to have witnesses, **we're going to have...**

THE CHAIR:

Witnesses?

ERIBERTO DI PAOLO:

Yes, witnesses pertaining to my damages.

THE CHAIR:

Well, are you ready to present them or...

ERIBERTO DI PAOLO:

I would like to testify on behalf of my damages, and then if you then want a witness, obviously, I will produce a witness, but we didn't foresee that we had to have a witness today...

RITA BLONDIN:

Or even tomorrow...

ERIBERTO DI PAOLO:

... because...

RITA BLONDIN:

... it's impossible for tomorrow.

ERIBERTO DI PAOLO:

... because if it's an expert witness, I will need a couple of dates so that I could have him choose which day he would be able to...

THE CHAIR:

We're talking about the actuary?

ERIBERTO DI PAOLO:

Yes, we're talking about some of the damages that we're claiming and the reason why we're claiming

those damages.

RONALD McROBIE:

Mr. Chair, we have tried to expedite matters by producing the documents under objection, but for the testimony as to damages, the Court of Appeal did not refer the case back to you for testimony on damages, the Court of Appeal referred the case back to you to do an analysis concerning liability and so on.

So the question of damages was dealt with by the 2003 decision of the Court of Appeal, after which, so we proceeded on the rest, but the question of damages, I referred to that this morning ...

ERIBERTO DI PAOLO:

On the contrary, **two thousand o three (2003) decision sent it back to you, Mr Arbitrator, so that you could do "le fond" on what was not done in two thousand (2000).**

RONALD McROBIE:

That's correct and that's what we did in two thousand and four (2004) and now, the Court of Appeal says: «If you have any further proof on

points relating to (a), (b) and (c), do the proof», it has nothing to do with damages.

ERIBERTO DI PAOLO:

It does, because we never were heard on what the Court of Appeal said in two thousand o three (2003), my damages were never heard in two thousand o four (2004) and the Arbitrator, he overturned the decision of two thousand (2000), we were never heard and that's still outstanding, that issue of the damages, that we have to be heard, nobody has been heard here and since you bring up letters going back to October of two thousand (2000), there was a letter by Duggan, it says that he sent you a letter on the seventeenth (17th) of October saying that on the nineteenth (19th), we were going to be heard...: «My clients were going to be heard on the damages», we never were heard. Since you want to bring back things that I said was annulled, we never were heard then and we never were heard in two thousand o four (2004), so as far as damages is concerned, that the Court of Appeal states, we have never been heard.

RONALD McROBIE:

Mr. Chair, the fact that,

and I said this in my last letter, the fact that the complainants don't understand the meaning of the 2003 order does not mean that they can call evidence that has already been decided and that is of no relevance.

If we revisit the question of damages, that was decided by you in 2000, it was confirmed by the Court of Appeal in 2003, we had the same debate when Mr. Caisse was in front of you in 2004, they tried to produce an application for Mr. Di Paolo, which was over a million dollars.

After the pre-hearing conference in June, he submitted a claim to us totalling five or six million dollars. We can see that this covers the periods of the first lock-out, the second lock-out, after January 2000, we have had that debate, so we are in favour of continuing on this forever, we are in favour ...

ERIBERTO DI PAOLO:

I . . .

RONALD McROBIE:

... of arguing the question that the Court of Appeal has submitted to you, full stop.

ERIBERTO DI PAOLO:

... I'd like to know what this meaning of the, this is a decision of two thousand o three (2003), since I don't understand what I'm reading. In paragraph 5:

«... quashes the judgment annulling in part the October eleventh (11th), two thousand (2000) arbitration award of Arbitrator André Sylvestre, dismisses with costs the Respondents' motion for annulment served on November tenth (10th), two thousand (2000)...»

And returns the case to the Arbitrator, that's why we're here today, for this, because it was never done...:

«... so that he can continue to hear the disagreement between the Appellant and the Respondents with a view of disposing of it completely on its merits...»

When was that done? I never remember being interviewed on my damages, so, when was it done?

THE CHAIR:

Well, anyway, today and tomorrow, you won't be

ready to have witnesses testify on other damages than wages and, your wages and "avantages sociaux" which, lost wages and "avantages sociaux"? [benefits]

ERIBERTO DI PAOLO:

Well, I can testify upon my damages, other damages, she can do the same, except where we, obviously, would need an expert witness to back up our claim that could be for another time, o.k., just that portion for...

THE CHAIR:

But today, I would like to hear you only on your lost wages and "avantages sociaux".

ERIBERTO DI PAOLO:

So, today, you're saying, o.k., so...

THE CHAIR:

Monetary damages.

ERIBERTO DI PAOLO:

Monetary damages? Well, I gave you my report and it's not the report that Mr Monet and McRobie gave you, I gave you the updated version of the monetary damages that are due by...

THE CHAIR:

But when we're talking about monetary damages, we're talking about lost wages.

ERIBERTO DI PAOLO:

Yes, lost wages in a form of damages...

THE CHAIR:

Yes.

ERIBERTO DI PAOLO:

... that's the report I also sent you a copy, that was prepared by an actuary and that was what the Court of Appeal said was due.

THE CHAIR:

Yes, but I will have previously to decide about the objection presented by Maître McRobie, I will have to look again at the Court of Appeal's judgment to see if you may be heard on these other damages and lost wages or not.

ERIBERTO DI PAOLO:

well, I have it right here and...

THE CHAIR:

well, it's your interpretation, but...

ERIBERTO DI PAOLO:

No, not my interpretation, it's exactly what it says...

THE CHAIR:

Yes, well...

ERIBERTO DI PAOLO:

... and in the last letter that I sent to Maître

Monet there...

THE CHAIR:

Well, here, there are at least two (2) interpretations, yours and Maître McRobie's.

ERIBERTO DI PAOLO:

This, to me, is, when I read it, it's not my interpretation, it is exactly what it says. If I read you paragraph 46, it's not me interpreting here, I'm going by the result, the specific conclusions of the Arbitrator in the Sylvestre number 2 award:

«... it is impossible to conclude that that question decided then by the Arbitrator had no connection with the disputes submitted to him. Much to the contrary, it is at the very heart of the dispute between the parties...»

The salary was already set aside, so what was he talking about, what is the dispute submitted to them that is at the heart of the dispute between the parties, what is it? That's what we, when we annulled the part where you didn't want to hear our damages, our total damages.

THE CHAIR:

But anyway, we'll have to go forward if we don't want to lose this day and tomorrow, so I will ask

Maître Grenier to argue about the damages, then Maître McRobie and you'll see what to do after hearing these two (2) lawyers.

ERIBERTO DI PAOLO:

Before we go on any further, Madam Blondin has something that she, I think, should have started very early, but we couldn't do it, so, she'd like to set things aside.

RITA BLONDIN:

I would like to be sure we are in the right legal framework. So I just wrote you a letter yesterday, signed by Eriberto also, and it's under, in a bundle under number 25. Right, it's, it talks about confirmation [?] of the arbitration agreement.

The arbitration agreement is in writing. It is in each of the tripartite agreements that attest to its existence. On several occasions, we have stated, by letter and orally, but it's like whistling in the wind. We are challenging the arbitration procedure as it has been used in the past and refuted on several occasions.

We have not acquiesced in or consented to you acting as conciliator or to a private civil arbitration process, whether commercial, administrative or other. We have an arbitration procedure that is provided, and the contractual framework agreed to between all the parties is still in force in the same way as the tripartite agreements are in force.

If one party or another does not agree, let them prove it to me by showing that I have signed a document showing a change of arbitration. Personally, I have proved my claim by entering the, each of, a copy of each of my agreements.

In 2003, the Court of Appeal, in section 44, quoted:

[TRANSLATION] "Subsection 4 of article 944.4, 946.4, refers to the arbitration agreement, which here must mean section 9 of the 1987 agreement. This provision of the contract provides that in the event of a disagreement with respect to the interpretation, application and/or alleged

violation of the disagreement [*sic*-Tr.], the case in question will be determined as if it were a grievance. In so far as the respondents' claim relates to the prejudice suffered because of the employer's delay in submitting its final offers to arbitration very certainly relate to the interpretation, application and/or alleged violation of the '82 and '87 agreements and more specifically section 11 of the '87 agreement. It therefore cannot be seriously argued that this is a dispute ..."

That is what they said in 2003. And in 2007, 2008, on March 17, 2008, in sections 10 and 11, the Court of Appeal established the legal framework in which you acquired jurisdiction. The arbitrator's original jurisdiction therefore derives from the tripartite agreement, in the '87 version, and a notice of disagreement submitted to The Gazette by the union and by the 11 typographers on June 4, '96.

The scope of the, and the legal consequences of the documents in question were defined by this Court in '96, and so it cannot be said, generally speaking, that the decision made at that time circumscribes the arbitrator's jurisdiction, under which the arbitrator made the award against the union and the typographers.

That is what the Court of Appeal, in 2008, it told you that we must refer back to the judgment of the Court of Appeal in '99. So we refer back to the analyses by the judges of the Court of Appeal, Thérèse Rousseau-Houle, Chamberland and Forget, and the employer, in argument, at page 21, said:

[TRANSLATION] "The employer has never recognized that the arbitrator has jurisdiction other than the jurisdiction of a grievance arbitrator under the Labour Code and appointed under the 93-96 collective agreement."

It formally reiterated the basis of the arbitrator's jurisdiction. At the hearing before him, it objected to our presence.

The analysis by the Court of Appeal on December 15, at page 23, it stated:

[TRANSLATION] “The disagreement of June 4 stated: this disagreement is submitted under the collective agreement and each of the tripartite agreements signed on November 12, '82 and November 12, '87.”

The tripartite agreements provided, in the clause relating to the grievance resolution procedure, in the event of a disagreement regarding the interpretation, application and/or alleged violation of this agreement, the matter would be dealt with as if it were a grievance and would be submitted and resolved in the way provided in the grievance resolution procedure for arbitration under the collective agreement, and that is stressed by the Court of Appeal.

Arbitrator Sylvestre was appointed by consent to dispose of the disagreements between the parties. The specific grievance resolution procedure mechanism set out in each of the tripartite agreements from '82 to '87

constitute, in my opinion, a perfect arbitration clause that requires the parties to perform the agreements under the common law rules.

The grievance procedure set out in the collective agreement, to which the arbitration clause refers, is used only as a procedural framework for implementing the agreement. If we examine all of the provisions of the agreements, they clearly show that the parties intended that the procedure set out in the collective agreement be used to compel the performance of the obligations mutually contracted by the three parties in the agreements.

Here we have the sections, in the '82 agreements, in section 7, I don't have to reiterate, and the same sections in the '87 agreements, in section 9, if, which is the grievance resolution procedure.

But given provisions this clear and lucid,

it is impossible to compel us to use a different arbitration process from the one agreed to by our agreements ...

THE CHAIR:

Ms. Blondin, listen, it is very well written, I promise that I will read all the rest of it.

RITA BLONDIN:

I would like to be certain that we are indeed in an arbitration clause, but governed by the ...

THE CHAIR:

The Labour Code.

RITA BLONDIN:

... the Labour Code, because ...

THE CHAIR:

That is the actual intention of the parties that was expressed repeatedly in the collective agreements and the individual agreements.

RITA BLONDIN:

Yes, but I, I am not certain that I am in the right arbitration because on June 15, I read, at number 6, and it is marked: [TRANSLATION] "... an arbitration clause agreed to between the parties ...".

THE CHAIR:

Yes, that's right. That's right, an arbitration clause, normally, is agreed to between the parties.

RITA BLONDIN:

But still, the legal framework, still, it's the Labour Code ...

THE CHAIR:

Yes, yes.

RITA BLONDIN:

... it's grievance arbitration, and there are no other kinds of arbitration, there has to be compliance ...

THE CHAIR:

Listen ...

RITA BLONDIN:

... with the law ...

THE CHAIR:

... that ...

RITA BLONDIN:

... in the Labour Code.

THE CHAIR:

... what the Court of Appeal is asking me to do is to rule on the damages owing to you ...

RITA BLONDIN:

Yes, but what I want to know ...

THE CHAIR:

... so ...

RITA BLONDIN:

... what legal framework I am in.

THE CHAIR:

Well, you are in the legal framework created by the Court of Appeal. But the important thing, the important issue, is that you argue on the damages owing to you.

RITA BLONDIN:

Yes, but if I am not ...

THE CHAIR:

... so it is the ...

RITA BLONDIN:

... in the right framework ...

THE CHAIR:

Listen, we are in a hearing room and the purpose of the hearing is to allow the parties to argue on the damages that are owing to each of the 11 typographers.

RITA BLONDIN:

Right. But can you confirm for me that we are in the Labour Code and that it has been commuted into an arbitration clause? but the

procedural framework is still the Labour Code?

THE CHAIR:

Yes.

RITA BLONDIN:

Fine.

THE CHAIR:

And I, all that remains for me to do, is to obey the instructions given to me by the Court of Appeal. I think we all agree on that.

RITA BLONDIN:

Okay.

THE CHAIR:

Mr Di Paolo, could you now testify, this morning, only on the lost wages and certain benefits that you lost during the period specified by the Court of Appeal?

ERIBERTO DI PAOLO:

The lost wages...

RONALD McROBIE:

Subject to our position that it has already been done, there is already a legal admission in the record, Mr. Arbitrator.

THE CHAIR:

Well, you've read Mr Monet's letter about the admissions that Maître Duggan had made in...

RONALD McROBIE:

October...

THE CHAIR:

... the hearing of October nineteen

RONALD McROBIE:

Two thousand (2000).

THE CHAIR:

... two thousand (2000).

ERIBERTO DI PAOLO:

Say, could you please repeat that again? the letter that, which date was the letter?

RONALD McROBIE:

It's not a letter, a testimony.

DOMINIQUE MONET:

No, the letter is July fifteenth (15th).

THE CHAIR:

July fifteenth (15th), yes.

ERIBERTO DI PAOLO:

You hear them?

THE CHAIR:

Yes, yes, July fifteenth (15th), you've got it?

ERIBERTO DI PAOLO:

Yes, I have it.

THE CHAIR:

Look at paragraph (b).

ERIBERTO DI PAOLO:

So...

THE CHAIR:

Paragraph (b).

ERIBERTO DI PAOLO:

Paragraph (d), (b)?

THE CHAIR:

Yes.

ERIBERTO DI PAOLO:

[TRANSLATION] "Second, claims ..."

So, as I said before, and I'll say it again, the nineteenth (19th) of October two thousand (2000) hearing goes with the position that you gave on March eighteenth (18th), two thousand o five (2005) and we didn't even get that money. Did any of you people get a hundred and sixty-three thousand (163 000)?

THE CHAIR:

No...

ERIBERTO DI PAOLO:

So we never got that hundred...

THE CHAIR:

The answer is no. No, but what I'm asking you, do you agree with what Mr Monet said, wrote in

his letter?

ERIBERTO DI PAOLO:

No, I don't agree.

THE CHAIR:

No?

ERIBERTO DI PAOLO:

No, because it, first of all, I don't agree, but it's been annulled, what he wrote in his letter has been annulled, we have new figures today.

THE CHAIR:

well, this is your interpretation.

ERIBERTO DI PAOLO:

It has been annulled and...

THE CHAIR:

According to you?

ERIBERTO DI PAOLO:

I beg your pardon?

THE CHAIR:

According to you?

ERIBERTO DI PAOLO:

Not according to me, according...

THE CHAIR:

According to...

ERIBERTO DI PAOLO:

... to the evidence that, according to you, Sir,

too, according to you and your decision of two thousand (2000), October eleventh (11th), you said that the damages ran until two thousand (2000), January twenty-first (21st) and according to you, the decision of nineteen ninety-eight (1998), backed up by the Court of Appeal said that the annexes came into effect specifically when there's a lockout and that you could recognize the validity of the working conditions as soon as the collective agreement came to an end. So this amount does not represent the time. It does not represent the time frame of the damages, of the salary damages, according to you, sir. I have it here and I was going to testify

THE CHAIR:

But I'm bound by what the Court of Appeal recently wrote.

ERIBERTO DI PAOLO:

Yes, you're bound by what the Court of Appeal recently wrote and that's exactly what I'm saying. They said you have to do the, you have to go and, back and you have to look at the nineteen ninety-nine (1999) decision and the two thousand o three (2003). You have to

comply with those decisions, and I have the evidence in front of me, I have the evidence on what you said and what they said was right and what you said and what they said was right was not what Maître Monet says over here. So, if we do it that way, then we have a problem, because I don't agree with what he wrote here, because then I'd be going against your decision and the Court of Appeal's.

THE CHAIR:

Well, if you don't mind, I would like to hear what Maître Grenier has to plead, to argue about the damages due to your confrères?

ERIBERTO DI PAOLO:

Mm hmm.

THE CHAIR:

And then to hear what Maître Monet and Maître McRobie will answer, will respond to these arguments, and then I will hear you and Mrs Blondin.

ERIBERTO DI PAOLO:

Okay.

THE CHAIR:

Is that o.k. with you? o.k. would you like a recess, a five minute recess? you're ready?

PIERRE GRENIER:

It will be ...

THE CHAIR:

Are you ready?

PIERRE GRENIER:

... it will be very brief on the quantum of damages. You made an initial decision that was reversed on the issue of the wages and benefits set out in the collective agreement in '99 by the Court of Appeal which referred the matter back for the damages to be, damages caused by the use of the lock-out, the lock-out, be determined by the tribunal.

You made a decision, initially, that the damages could not relate to the wages and benefits set out in the collective agreement, as I understand it. That decision was challenged in the Superior Court on judicial review. The Court set aside your decision and referred the matter back to you to hear all of the damages including damages other than those identified in your first award.

That decision of the Superior Court was appealed and the Court of Appeal set aside or quashed the judgment of the Superior Court and decided that the arbitration tribunal established under an arbitration clause, under the provisions of the Code of Civil Procedure, the Court of Appeal decided not to set aside your decision, so your decision of October 2000 was upheld by the Court of Appeal.

More recently, you made a decision in 2005 ruling that there were no damages owing to the employees in the bargaining unit, a decision that was recently set aside, in March 2008, by the Court of Appeal, and the Court of Appeal referred the case back to you, excuse me, I would just like to have the Court of Appeal, I'm not finding it, it was right here two seconds ago ...

DOMINIQUE MONET:

Are you looking for the judgment of the Court of Appeal?

PIERRE GRENIER:

I'm looking for the judgment of the Court of Appeal, yes.

DOMINIQUE MONET:

I'll give you a hand.

THE CHAIR:

Here you are.

PIERRE GRENIER:

So the Court of Appeal decided, and I will read it:

[TRANSLATION] "... sets aside the judgment of the Superior Court, allows the applicant's motion to set aside the arbitral award, and more specifically, orders that the matter be referred back to Arbitrator Sylvestre for him to comply with the decisions of the Court of Appeal on December 15, '99, and August 6, 2003 ..."

In the judgment, more specifically, the judge states:

[TRANSLATION] "... from this perspective, it is the evidence ..."

And I am at paragraph 37:

[TRANSLATION] "... to be introduced before the arbitrator in relation to the three questions I identified earlier as (a), (b) and (c) ..."

From which the solution to the problem before you can be determined, those are my comments.

RONALD McROBIE:

Mr. Chair, essentially we agree with Mr. Grenier that your decision in October 2000 settled four points: the union may not claim damages, that was point 1; point 2, the period covered ends on January 21, 2000; point 3, the damages that can be claimed are limited to wages and benefits; and 4, that the complainants have to provide a precise breakdown of their wage and benefits claims, including any income earned in mitigation.

So that decision was challenged, as I mentioned earlier, on two points, the period covered and the type of damages that could be claimed. At the hearing before the Superior Court, Madam Justice Nicole Duval-Hesler, the complainants and the union withdrew their challenge regarding the period covered. So they then pursued their challenge concerning only the part of your decision that related to the heads of damages that must be claimed.

The Superior Court found in their favour on that point and the Court of Appeal reversed the decision of the Superior Court and upheld your decision of October 2000 in its entirety, and the reasons for that judgment were that you had disposed of a portion of the merits when you made your decision. So those four points were decided and we are resuming the case as it stood after the 2003 judgment.

So we have got to 2003, the four points have been decided, and we know that on the question of the nature of the wages and benefits, the amounts of the wages and benefits, you held hearings and the amount was discussed and agreed to as a mathematical exercise, with no admission of liability.

So all that remains, we seem to have some confusion on the part of the two complainants, who are representing themselves, between a decision being set aside and the evidence that has been introduced being set aside. All the evidence that has been introduced in the case since

1996 is still there and what remains to be done, and only remains to be done, is all evidence, if there is any, concerning points (a), (b) and (c), as Mr. Grenier has just said.

So just as Mr. Di Paolo tried to increase his claim in 2004 and that was rejected and held to be inadmissible, it is very clear that it is as inadmissible in 2008 as in 2004.

So what remains to be done, in our view, since the union's case is closed and the case for the nine other complainants is closed, if there is evidence to introduce from Mr. Di Paolo and Ms. Blondin concerning points (a), (b) and (c), is that we proceed with that evidence, but that that evidence not relate to the heads of damages that may be claimed or even the calculations of the wages and benefits. That is all.

PIERRE GRENIER:

Before Mr. Di Paolo replies,

I would like to note that I do not agree with the position that, the position of The Gazette that the breakdown of the damages has been decided. What has been decided is that the damages could relate only to wages and benefits. The question of benefits was not definitively decided in your previous arbitral awards.

THE CHAIR:

Mr. Di Paolo, it's your turn.

ERIBERTO DI PAOLO:

Yes. My global damages and Madam Blondin's global damages are receivable, because the Court of Appeal said that you have to conform to nineteen ninety-nine (1999) and two thousand o three (2003) in these hearings and it's not what Maître Monet says. What Maître Monet says was that that was taken away, that was annulled, because you didn't give us anything in two thousand o five (2005), you didn't give the salary, you didn't give global damages, you gave us nothing, so that's all scrap. So that's why the Court of Appeal says you have to abide by nineteen ninety-nine (1999) and two thousand o

three (2003).

And if you look at what's in those decisions, there's a lot, it's not just salary, they're talking about damages. Nineteen ninety-nine (1999) specifically says no salary, but damages, "s'il y a lieu".

And it's not that I don't understand, like, the letter that I got there from, twenty-fifth (25th), vingt-cinq (25), ah! here, the twenty-fifth (25th), I got, well, I got a copy, you got a letter on the twenty-fifth (25th) of July, this was sent to you and I got a copy of it, it says:

«We have received a copy of the letter addressed to you by Mr Di Paolo and Mrs Blondin on July eighteenth (18th), two thousand o eight (2008). It is manifest from their correspondence that unfortunately, both Mr Di Paolo and Mrs Blondin have fundamental misunderstandings of the decisions and judgments rendered in the present matter...»

Before I go any further, I would like to state that because we don't have representation today,

it doesn't mean that we have not consulted, we have consultation. And they don't say the same thing as what Maître McRobie and Maître Monet are saying.

And then I'll go on to the second paragraph, that's where Maître Monet contradicts himself. In that paragraph, there's two (2) sentences, one says the opposite of the other:

«In particular, and most basically, these Complainants along seem to believe that your decision of October eleventh (11th), two thousand (2000) actually awarded damages to them rather than simply establishing the maximum period for which the damages may be claimed...»

So he's saying that the only thing that was awarded then was the maximum period of where damages could be claimed. Then in the next sentence, he goes on to say:

«Secondly, they also purport to believe that they are entitled to claim not only salary and benefits as decided in your October eleventh (11th), two thousand (2000) decision, maintained by the Court of Appeal...»

So now, the second sentence says that: «Yes, you have decided on salary in your October eleven (11) decision, backed up by the Court of Appeal», but the first part of the sentence says that...: «No, no, no, you haven't come to the conclusion of the damages yet, it's only the established time», so he contradicted himself in the same paragraph and he's telling me what I don't understand.

THE CHAIR:

Listen, I think the problem is precisely that, Ms. Blondin and Mr. Di Paolo. It's really a dispute over interpretation that you have, you, Mr. Monet and Mr. McRobie. It's a dispute over interpretation regarding the meaning of the '99 and 2008 decisions.

I think I will have to rule on that and determine which of you two, the two parties, is right, you or The Gazette. So, because if I find for you, at that point, you will be able to call your witnesses, the actuary, testify yourself as to damages other than pecuniary losses and benefits,

Ms. Blondin will be able to do the same. But if I find against you, on the other hand, then you will not have to call that evidence.

ERIBERTO DI PAOLO:

To find for us, yes or no, **you, it says that you have to conform, now, to nineteen ninety-nine (99) and two thousand o three (2003).** Now, if you're going to listen to what they're saying, you're certainly not going to be able to conform. They're saying the opposite of what the Court of Appeal is telling you what to do.

THE CHAIR:

That is your interpretation.

ERIBERTO DI PAOLO:

Well...

RITA BLONDIN:

But if you have to decide on the evidence, we have to have the opportunity to present our evidence. To date, we have never been able to. And the Court of Appeal refers the case back, precisely, gives us rights so you could hear our ...

THE CHAIR:

Listen, according to the employer, rightly or wrongly, I will have to review the judgments,

in a decision I made, I think in 2000, when you were represented by Mr. Duggan, I, who, Mr. Duggan had claimed at that time, I don't know, I think 12 heads of damages ...

ERIBERTO DI PAOLO:

Fourteen.

THE CHAIR:

... 14, so I had decided that you were entitled only to the lost wages and lost benefits. It went to the Superior Court which found against me and said I had to open, allow, allow you to call evidence of the full range of all those damages and the Court of Appeal said, finally: "No...". At least, that is my interpretation: "No, the arbitrator was right to rule that the damages were limited to lost wages and benefits."

ERIBERTO DI PAOLO:

It was the Court of Appeal that said that? Can you point out where exactly?

THE CHAIR:

Well, it's ...

RONALD McROBIE:

But ...

THE CHAIR:

... it's submitted by counsel for the employer.

ERIBERTO DI PAOLO:

Well I have not seen a direct, **a direct link from the Court of Appeal saying that...**

THE CHAIR:

No, no, but what I want you to understand is that ...

ERIBERTO DI PAOLO:

... that's it, them, they said it, they said it, yes, Mr. Monet, he said it ...

THE CHAIR:

They say, wait, they say the opposite of what you are claiming. Maybe you're right, maybe the employer is right. But in any event, you aren't ready, today and tomorrow, to call evidence on damages other than lost wages and benefits. So if you want, I will make a decision on your respective positions on that question and a decision on the pecuniary losses suffered in terms of lost wages and benefits.

ERIBERTO DI PAOLO:

Can I say something?

THE CHAIR:

Yes, yes.

ERIBERTO DI PAOLO:

Even for that, we have to call evidence, the wages as damages, we have to present our evidence that it is not 15 months, 18 months, 22 months, what is it? What are the damages regarding wages? It's, it's what, our contract, what, and **what did the Court of Appeal say about our contract? This is what they're giving it, the ball back to you and the answers (a), (b) and (c), I have it here, it's all in the decisions of nineteen ninety-nine (1999) and two thousand o three (2003).**

I mean, you're going to do a decision on the monetary aspects of damages, but we have to find out, but what does it say? what do they say? what did they say about your contracts? what your contracts give, when do they start, when do they finish, when does it come into effect? Does it come into effect only after an arbitrator has

come with a decision or does it come into effect after article 2 kicks in, because you have no more collective agreement?

THE CHAIR:

Mr. Monet?

DOMINIQUE MONET:

Mr. Arbitrator, it is always the same thing when we argue and re-argue and argue and re-argue and argue and re-argue, it could go on for eternity, I mean, it isn't ...

First, there is a difference when a court sets aside a decision, when the Court sets aside a decision, the Court does not cancel out all the hearings that were held, the Court does not order that all the exhibits be withdrawn, the Court does not set that aside, this is a basic principle, Mr. Arbitrator, it is plainly not understood, so that is why Mr. De Paolo chooses to say that everything that was done in the past, that is against his interests, does not exist.

So Mr. Di Paolo reiterates that there was

No hearing on October 19, 2000, that the admissions were not made, that Ms. Blondin is telling us she was not represented, she has had several lawyers who represented her, we have it all in writing, more than once, and we are re-hearing it again today and if we continue like that we are set to re-hear it. We have already wasted the morning ...

THE CHAIR:

No, but wait ...

DOMINIQUE MONET:

... we are going to waste the entire afternoon ...

THE CHAIR:

No, no, no, no ...

DOMINIQUE MONET:

We are going to waste the entire day tomorrow and that will certainly not be ...

THE CHAIR:

No, Mr. Monet, I made the following proposal to Mr. Di Paolo: that I rule on the pecuniary damages and benefits. Obviously, there is a position taken by Mr. Grenier who says that the evidence is not complete on that, but we will come back to that.

But will also rule on the contrary position that you and Mr. Di Paolo and Ms. Blondin have on what mandate the Court of Appeal has given me in its previous decisions. May I, is it asking me to reopen the entire question of damages other than pecuniary losses and benefits? Or not? I would like to rule on that, so in any event the session today could be oddly shortened.

PIERRE GRENIER:

Now, Mr. Arbitrator, to avoid any future problems, because you are rejecting the request by Mr. Di Paolo and Ms. Blondin to call evidence on damages other than those associated with the collective agreement, the agreements ...

THE CHAIR:

Well, I am not rejecting it definitively, I will have ...

PIERRE GRENIER:

No, no, I understand ...

THE CHAIR:

... to rule on it.

PIERRE GRENIER:

... you are rejecting it for the moment and you will rule on it and if you agree with them, ultimately you will allow them to call that evidence.

THE CHAIR:

Exactly.

PIERRE GRENIER:

Now that you are taking that position, to avoid problems in future, I think the tribunal, if Ms. Blondin and/or Mr. Di Paolo want to be heard specifically on the application of the collective agreement, the wages and benefits, if they want to be heard as witnesses and not parties presenting argument, I think you should hear them.

THE CHAIR:

No, well, that is what I asked Mr. Di Paolo and Ms. Blondin. You don't agree with the admission that Duggan made in 2000 on the amount of 60,000-something, for the period covered, you don't agree with that?

ERIBERTO DI PAOLO:

No.

RITA BLONDIN:

No.

THE CHAIR:

Are you able to testify, and we are talking about within that period, that the wages and benefits are higher than the amounts admitted by Duggan?

RITA BLONDIN:

In answer to questions (a), (b) and (c)?

THE CHAIR:

Yes.

PIERRE GRENIER:

Excuse me, perhaps to be more precise for Mr. Di Paolo and Ms. Blondin, we are not calling specific evidence on the final quantum here, we have an interest calculation to be doing ...

THE CHAIR:

No, no, no.

PIERRE GRENIER:

... et cetera.

THE CHAIR:

No, but I want to know whether there are ...

PIERRE GRENIER:

But for the period covered ...

ERIBERTO DI PAOLO:

What I ...

PIERRE GRENIER:

... what we submit is that there ...

THE CHAIR:

Is there evidence ...

PIERRE GRENIER:

... was a specific agreement ...

THE CHAIR:

... important evidence that Duggan neglected to consider when he admitted the \$63,000 figure?

RONALD McROBIE:

Mr. Chair, I think that is exactly what I was saying in our last letter, they are being given more rights than if they were represented by counsel. It is totally unacceptable to be allowing them to do whatever they like before you because they do not have counsel, it was decided, so listen, you are in charge, obviously ...

THE CHAIR:

Subject to ...

RONALD McROBIE:

... of the procedure ...

THE CHAIR:

... subject to what is in the record, I imagine that that evidence should not take too long?

DOMINIQUE MONET:

But we may be surprised.

ERIBERTO DI PAOLO:

I stand maybe to be corrected, but I don't believe that I have to testify against an amount of money that Duggan said at the time was one sixty, whatever the amount was, that was taken away from you, you annulled the decision, it's scrap, so, like, why do we have to talk about that if it's been scrapped?

And it's like Maître Monet says: «Hey! not everything is annulled». Of course, he's going to take what was good between two thousand (2000) and two thousand o five (2005), but it was annulled. It, we go back to two (2) things the Court of Appeal said, nineteen ninety-nine (1999), two o three (2003).

THE CHAIR:

No, this isn't the same problem now. No, what

I'm asking you is that in, at this hearing of, in two thousand (2000), Duggan made an admission that you had lost one hundred and sixty thousand dollars (160 000\$). So what I'm asking you is that, and there's an objection that you should not go further, but anyway, I'll take your testimony under advisement, under reserve, do you have something to add to the amount that...

ERIBERTO DI PAOLO:

I have the full amount...

THE CHAIR:

... that Duggan...

ERIBERTO DI PAOLO:

Yes, I have the full amount, because I'm backed up by what you said, Mr Arbitrator. If I may be permitted...

THE CHAIR:

Where is it the full amount?

ERIBERTO DI PAOLO:

Well, not in quantum, the full amount, I didn't say you gave an amount, but you said, this is what you said, so, then we're taking this from the Court of Appeal, this is what you said, so, if that's what it is, it's not their amount, it says the arbitral award, the Arbitrator accepted

the proposals made by the Union and the eleven (11) employees according to which the two (2) agreements signed in eighty-two (82) and eighty-seven (87) had survived the expiration of the collective agreement in nineteen ninety-six (1996) and the declaration of a lockout.

You have to, you, what you said there is that the collective agreement ended, but the annexes survived...

THE CHAIR:

No, no, I know what I said, I wrote.

ERIBERTO DI PAOLO:

well, so, then what it's, what I'm trying to say is that these decisions, they talk about no loss between the end of a collective agreement and the beginning of another one, because you have a mechanism that's supposed to work, if you apply it, there's quite a few articles that say: «You're protected.»

And when we were in front of you, in two thousand o four (2004), and then you gave your decision in two thousand o five (2005), you said: «No». So we went to the higher Court and we got a decision

from the Court of Appeal that sends it back to you...

THE CHAIR:

And the Court of Appeal said that I was wrong and I was wrong, o.k.?

ERIBERTO DI PAOLO:

O.k. So...

THE CHAIR:

But so, today, I have to hear you about the damages owed to you and your confrères...

ERIBERTO DI PAOLO:

So...

THE CHAIR:

... so, Mr Grenier and Maître McRobie and Maître Monet said everything was, they argued that everything in their case is closed, so...

ERIBERTO DI PAOLO:

Not...

THE CHAIR:

I will repeat myself...

ERIBERTO DI PAOLO:

... not for us, it's not.

THE CHAIR:

I know. I will repeat myself. According to you, the Court of Appeal told me that I had to

consider other damages than lost salaries and lost social benefits. According to the opponents, according to Maître McRobie and Maître Monet, this question was, has been already decided, so, I will have to settle about who is right and who is wrong.

ERIBERTO DI PAOLO:

well, you settle it, but...

THE CHAIR:

O.k.? But I will also have to decide about the damages due to you and your confrères, the lost wages and lost social benefits. According to The Gazette, this thing is already, this question is already settled, has already been settled by Maître Duggan's admission in October two thousand (2000).

ERIBERTO DI PAOLO:

October nineteenth (19th), two thousand (2000).

THE CHAIR:

Yes.

ERIBERTO DI PAOLO:

I disagree that you can hold somebody responsible for that admission back then when we never got the money for it. We were told: «You get no salary», so, what was done then doesn't count,

because, no, because...

RONALD McROBIE:

It was a calculation that was done...

ERIBERTO DI PAOLO:

... because you took it away.

RONALD McROBIE:

... it was very clear, it was a mathematical

ERIBERTO DI PAOLO:

Because you...

RONALD McROBIE:

... only if...

ERIBERTO DI PAOLO:

... took it away from us...

RONALD McROBIE:

... anything...

ERIBERTO DI PAOLO:

... and now that you took it away and the years went by and the Court of Appeal, in nineteen, and the Court of Appeal in two thousand o eight (2008)...

THE CHAIR:

And the Court of Appeal said that I was wrong.

ERIBERTO DI PAOLO:

Not, I'm pointing to another one now. They said

in paragraph 31, they said that by the 2003 decision, the 2000 decision became final, **you got my amounts, those are the amounts, I'm not going to bring you back amounts that you said: «No, I'm not going to give it to you.»**

DOMINIQUE MONET:

But that is precisely it, Mr. Adjudicator, if I may? Once again, Mr. Di Paolo, he thinks you ordered The Gazette to pay the amounts in October 2000, when you, it was simply decided, perhaps because it was thought that it would expedite matters, (a) what the period is, (b) what the amounts are, all that work was done.

ERIBERTO DI PAOLO:

No way.

DOMINIQUE MONET:

... so Mr. Di Paolo thinks that you made an order against The Gazette, he says: **«You awarded us that amount of money, it was never paid». You never awarded that amount of money.** So it's obvious, as I just said, that this is going to continue, this, that kind of argument, it is going

to continue tomorrow and it may continue this afternoon,
Mr. Di Paolo is still going to believe that, what he believes, so it is
not possible to get out of this.

THE CHAIR:

No, no, but what I am offering Mr. Di Paolo is to ...

DOMINIQUE MONET:

But ...

THE CHAIR:

... to rule on that question.

ERIBERTO DI PAOLO:

The 2003 decision ...

DOMINIQUE MONET:

We don't, Mr. Chair, we don't have to listen to Mr. Di Paolo all
day.

THE CHAIR:

No, no, no, I am trying ...

DOMINIQUE MONET:

You know, when he, when Mr. Di ...

THE CHAIR:

I am trying to shorten ...

DOMINIQUE MONET:

... I was there when ...

THE CHAIR:

... I am trying to hear argument.

DOMINIQUE MONET:

We are too. When, I was there when Mr. Di Paolo and Ms. Blondin went to the Court of Appeal, you know, they got five minutes, so it was not, in any event ...

RITA BLONDIN:

We got five minutes in the Court of Appeal?

DOMINIQUE MONET:

Ten minutes.

RITA BLONDIN:

We have the tape recording here.

THE CHAIR:

No, no, no, we are not going ...

DOMINIQUE MONET:

Well, five to ten minutes, Ms. Blondin, you had in the Court of Appeal ...

ERIBERTO DI PAOLO:

Another case ...

DOMINIQUE MONET:

... I was there.

ERIBERTO DI PAOLO:

... while we're at it, like, you know, I don't know what I'm talking about, eh? This is the CD

from the Court of Appeal...

THE CHAIR:

Yes, yes.

ERIBERTO DI PAOLO:

... on December tenth (10th) and there is, the voice is Judge Pelletier and he says that...; [TRANSLATION] "We simply referred the matter back to the arbitrator." He never said that he had limited damages as Mr. Monet is saying.

I have it right here, would you like a copy, sir?

THE CHAIR:

No, no, thank you. Listen, I think I have, I have enough to decide. I have enough to decide, particularly from the opposing views between you regarding what interpretation to give to the various decisions of the Court of Appeal, to know whether I have to hear you on damages other than lost wages and lost benefits and decide on the wages and benefits you were deprived of.

If I find for you on the damages other than lost wages and benefits, we will agree on another date or

other dates to hear you on the question, here, obviously, not just you, other witnesses and your actuary.

ERIBERTO DI PAOLO:

You say that you heard enough, but the questions, the answers to questions (a), (b) and (c) haven't been addressed, I have it here, I mean...

RONALD McROBIE:

well, we're going to make the argument...

ERIBERTO DI PAOLO:

... I have a copy...

RONALD McROBIE:

... on that, that's coming next, that's what we're going to argue, that's the point of the hearing today and tomorrow.

THE CHAIR:

Okay, so listen, it's noon, we can suspend for lunch and resume at one o'clock?

PIERRE GRENIER:

At what time?

THE CHAIR:

One o'clock? Is that suitable? So at that time, Mr. Grenier, you will be presenting argument?

PIERRE GRENIER:

Yes.

THE CHAIR:

And you will be replying?

RONALD McROBIE:

Well, I don't know whether, they are going to reply to both, I presume?

THE CHAIR:

I would really like you to reply ...

RONALD McROBIE:

Right, I will reply.

HEARING SUSPENDED

HEARING RESUMED

THE CHAIR:

Yes?

PIERRE GRENIER:

But in fact, I am going to divide my argument ... Well, a preliminary remark before beginning, we already argued the case before you, in October 2004, if I recall correctly, we had started in August as well, so I refer you, of course, to the argument we submitted at that time.