SUPREME COURT OF NOVA SCOTIA

Citation: Robertson v. Annapolis Valley Regional School Board
2013 NSSC 262

Date: 20130820
Docket: Ken No. 405726
Registry: Kentville

Between:

Mark Robertson

Plaintiff

v.

Annapolis Valley Regional School Board

Defendant

DECISION

Judge: The Honourable Justice Gerald R. P. Moir

Heard: December 13, 2012

Last Written Submissions: January 3, 2013

Counsel: Mark Robertson, on his own
G. Grant Machum and Michelle A. Black, for defendant

Moir J.:

Introduction

[1] Mr. Robertson was a substitute teacher with the Annapolis Valley Regional School Board. He substituted for one high school teacher from September 2008 until January 2009. He was "replaced" or "asked if you would finish the first semester", before dismissal on January 26, 2009.

[2] Mr. Robertson sued. The board responds with a motion for summary judgment. The motion is based on deference to grievance procedures under collective agreements that provides little protection for substitute teachers.

[3] I will summarize the claim as I am able to understand it from homemade pleadings and affidavit evidence. I will refer to the terms in the collective agreement. Then I will provide my logic, which leads to the unsatisfying conclusion that Mr. Robertson's interests as a substitute teacher are very restricted.

Evidence

[4] The board filed an affidavit of a vice-principal, James Gushue. Mr. Robertson filed his affidavit, but he also provided written submissions objecting to some of Mr. Gushue's evidence.

[5] The issue is whether Mr. Robertson's claim is precluded by the exclusive jurisdiction principle, not whether the statement of claim is true. In other words, I must assume for the purposes of this motion Mr. Robertson's pleaded facts are not disputed.

[6] Mr. Gushue's affidavit exhibits excerpts from the collective agreements. The whole agreements are included in the board's book of authorities. I am treating them as evidence.

Employment and Dismissal

[7] The Annapolis Valley Regional School Board regularly hired Mr. Robertson to substitute for various teachers for several years. In the 2006/2007 and

2007/2008 school years he served for over 330 days. He was hired as a substitute for a grade twelve class at the beginning of the 2008/2009 year.

[8] Mr. Robertson aspired to serve full-time in his profession. He was made a long-term substitute for the grade twelve class in October of 2008. It appeared that the permanent teacher for whom he had been substituting would be on sick leave until the end of the school year and would then retire. This could present Mr. Robertson with an opportunity to be considered for a permanent teaching position.

[9] In January of 2009, the permanent teacher gave notice that he would retire after using up his sick leave. Under Article 33.01 of a provincial collective agreement, Mr. Robertson would be entitled to become a "term contract" teacher if he continued to teach as a long-term substitute until the end of the school year. Under Article 29.2 of a local collective agreement, a term contract teacher who has substituted for 390 days or more in two years "will be considered" for an available permanent position.

[10] However, at the end of January the board terminated Mr. Robertson's contract and replaced him with a different substitute teacher. He lost the opportunity for advancement to a term contract and, from there, to a permanent position.

[11] Mr. Robertson was given the bad news by the school principal on January 26, 2009. Teaching days for the first semester had ended, and the students were about to write exams. So, the next day a disappointed Mr. Robertson cleaned out his desk and turned in his keys.

[12] The board says that Mr. Robertson was to serve until the exams were finished. The principal and Mr. Robertson have conflicting evidence to give on this. However, on the 26th, Mr. Robertson had requested the principal put her position on his termination in writing. She responded in an e-mail "I am not required to put anything in a written format in relation to the substitute work."

[13] The board struck Mr. Robertson from the list of substitutes. It claims this was done because:

> ... Mr. Robertson did not carry out the remainder of his duties as a substitute teacher; specifically, he did not present at MRHS to invigilate the exam in January, nor did he mark the exams or provide final marks for the students.

The principal did put this much in writing on the day she terminated the long-term substitute contract:

> I had asked if you would finish the first semester for Calvin Eddy … . We do not have further work for you at this time.

The questions are what was meant by finishing the first semester and what further conversation there was in light of the principal's request. The refusal to put things in writing leaves me in the dark. It would have to be sorted out by the trial judge, if there is to be a trial.

[14] There is no suggestion of cause for this dismissal. The board's co-ordinator of employee and labour relations made that clear when the unemployment insurance people questioned records of employment her department had prepared:

> [T]here was absolutely no misconduct involved whatsoever. It was just a matter that they had other people they wanted to do substituting.

The other person obtained a permanent position.

[15] The statement of claim is a homemade document with 158 paragraphs that are more concerned with the evidence and provisions in the *Education Act* than with making clear the factual underpinnings of causes of action. It would have to be improved, if the case is to go forward. It seems to raise claims in simple negligence, negligent misrepresentation, breach of statutory duty, and breach of a contractual duty of good faith performance. There is also some reference to fiduciary duty.

[16] A finding that the board dismissed Mr. Robertson from his long-term substitute position in order to prefer another for a permanent contract would be central to these causes. The evidence is open to such a finding.

Collective Agreement

[17] The Nova Scotia Teachers Union negotiates a collective agreement with the province and collective agreements with local school boards.

[18] The provincial agreement in place when Mr. Robertson was hired as a substitute, and when he was fired from that position, contains "Article 32

Substitute Teachers". This is augmented by "Article 36 Substitute Teachers" in the agreement with the Annapolis Valley Regional School Board that applied at that time. With exceptions about availability of substitutes and operational constraints, the board is required to hire a substitute whenever a regular teacher is absent: 32.20 to 32.22 of the provincial agreement, 36.1 to 36.3 of the local agreement.

[19] The board is bound to "carry out" the provincial agreement "in a reasonable manner": 3.01. Article 5.1 of the local agreement expands on this requirement:

> The Board and the Union shall exercise their rights under this Agreement fairly and reasonably, in good faith and without discrimination, and in a manner consistent with the provisions of this Agreement.

[20] Article 32.01 of the provincial agreement defines "substitute teacher" to mean one who is "engaged on a day to day basis". This contrasts with "Article 20 Tenure" by which other teachers are hired under written permanent, probationary, or term contracts. See also, Article 5.02.

[21] Article 32 provides certain benefits for substitute teachers who remain in their positions for a time. After twenty days, sick leave accumulates (32.07) and

computation toward the next milestone, 175 days, is protected against some interruptions (32.05 and 32.06). After 175 days the benefits include credit toward probationary service if the substitute obtains a permanent position (32.13), entitlement to group insurance (32.15), and a right to pay when school is cancelled (32.19).

[22] There are problems with the definition of substitute as one engaged only on a day-to-day basis. The provisions for sick leave, computation of the 175 day period, and the right to pay on days when school is cancelled seem to contradict the definition. So does Article 32.10, which ensures continuous service in one circumstance.

[23] There is a requirement for the board to keep a list of substitutes "who make application", but this provision leaves the board in control of who gets on the list ("and are accepted for substitution"): 32.23. There is no express provision for removing names from the list.

[24] There are no express provisions that control the hiring of substitutes other than the general obligation to fill absences and the duties of reasonableness, good

faith, and fairness. There is nothing in the collective agreements that gives any special consideration for a substitute who taught at length in a position that comes up for permanent replacement. Indeed, there are no provisions for a substitute's tenure.

[25] There are no significant provisions giving any job security to a substitute. The only express protection against termination is in Article 32.10 of the provincial agreement:

> A School Board shall not break a substitute teacher's teaching service for the purpose of interrupting consecutiveness in order to minimize the cost of a substitute teacher's daily rate of pay … .

Otherwise, there are no provisions about cause for termination. There are no provisions about notice or manner of termination.

[26] Both collective agreements provide for grievance and arbitration. However, the agreements do not permit a substitute teacher to initiate that process.

[27] Substitutes are not "teachers" under the collective agreement. Article 1.08 of the provincial agreements reads:

> "Teacher" means a person holding a teacher's certificate or a vocational teacher's certificate or a vocational teacher's permit pursuant to the *Education Act* of Nova Scotia and employed by a School Board in Nova Scotia under a probationary, permanent or term contract pursuant to Article 20 Tenure.

A "probationary, permanent or term contract pursuant to Article 20 Tenure" is a full-time teacher holding a written contract. No substitute holds such a written contract under either collective agreement.

[28] Thus, Article 1.08 attempts to provide that a substitute is not a "teacher" in any provision that uses the word outside Article 32. This effect is confirmed by Articles 3.01 and 3.02 of the provincial agreement. The agreement as a whole "applies to and is binding upon … the teachers" (3.01) and "Article 32 Substitute Teacher applies to and is binding upon … teachers defined as Substitute Teachers" (3.02).

[29] Article 42.02 of the provincial agreement permits a "teacher", union, employer, or a designate of the Minister of Education to lodge a grievance. In the usual fashion, Article 42 allows for resolution at various stages and, failing resolution, arbitration. However, nowhere does it permit a substitute to start the process. Nothing in Article 32 does so either.

[30] Article 7.4 of the local agreement limits the grievance process to "a dispute arising between the Board and a teacher or the Board and the Union". By virtue of the definition of "teacher", the process is not available for a dispute between the board and a substitute, unless the union takes up the dispute as its own. This is reiterated by article 7.6(a), which requires "the signature of the teacher" to initiate an individual grievance.

[31] In the event that a substitute convinced the union to take up the substitute's cause and the grievance went to arbitration, the arbitrator would be confined to the collective agreements (42.01 and 7.4), the arbitrator would give effect to the provisions of the agreements (42.05 and 7.14), and the arbitrator's decision would be final (42.05 and 7.13).

The Principle of Exclusive Arbitral Jurisdiction

[32] The principle was expressed simply by Cromwell J.A., as he was at the time, in the opening words of *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)*, 2007 NSCA 38, para. 1:

> Disputes which, in their essential character, arise out of a collective agreement must be resolved through the grievance and arbitration process provided for in the agreement. They cannot be the subject of a law suit.

[33] The principle of exclusive arbitral jurisdiction emerged clearly with the decision of McLachlin J., as she was then, in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, but its underpinnings are seen in the dawn of judicial recognition that judicial interference in labour relations was offensive to legislated policy in cases such as *Canadian Union of Public Employees Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227.

[34] Justice Cromwell, at para. 18 of *Cherubini*, said this about determining whether the principle applies:

> To carry out the required analysis, the court must address two main questions. The first concerns the ambit of the dispute resolution scheme and the second concerns whether the dispute falls within it. The court must look at the essential character of the dispute, determined according to its full factual context, and not at the legal characterization which the parties have chosen to place on it ... . Any other approach would leave it open to innovative pleaders to evade the dispute resolution process established by the legislation and the collective agreement. This would undermine the purposes of the legislative scheme and the intention of the parties … .

Then he quoted from *Weber* at para. 43:

> ... the analysis of whether a matter falls within the exclusive arbitration clause must proceed on the basis of the facts surrounding the dispute between the parties, not on the basis of the legal issues which may be framed. The issue is not whether the action, defined legally, is independent of the collective agreement, but rather whether the dispute is one "arising under [the] collective agreement." Where the dispute, regardless of how it may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal and the courts cannot try it. [Emphasis in original]

And, he summarized authorities about the implicit inclusion of subjects within arbitral jurisdiction by saying at para. 20:

> The collective agreement need not deal with a matter explicitly, provided that the essential character of the dispute arises implicitly from the interpretation, application, administration or violation of the agreement.

[35] Those remarks in *Cherubini* stake out the law that governs the present determination. However, there are two additional subjects discussed in the authorities that touch upon the present case. The first involves an observation in a Supreme Court of Canada decision about the grievance process being in the control of the union rather than the employee. The second concerns what is either a residual power of the courts or a special consideration for a court called upon to determine whether a dispute is within a collective agreement.

[36] The majority in *Vaughan v. Canada*, 2005 SCC 11 determined that the exclusive jurisdiction principle may apply to a comprehensive scheme of grievance without binding arbitration. The minority were of the opinion that it would take an express legislative grant of exclusive jurisdiction to exclude the courts when the comprehensive scheme does not contain provisions for independent adjudication.

[37] In the course of his reasons for the majority in *Vaughan*, Justice Binnie made an observation that may be important to this case. He said that the exclusive jurisdiction principle applies no matter that the grievance process can only be initiated by the union rather than an individual employee: para 25.

[38] I turn finally to the subject that is either an exception to the exclusive jurisdiction principle, separate from the "two main questions", or a consideration to be taken into account in answering these questions. At para. 54, *Weber* says that courts of inherent jurisdiction "possess residual jurisdiction based on their special powers". This is stated as an exception to exclusive jurisdiction. The whole of para. 54 reads:

> This approach does not preclude all actions in the courts between employer and employee. Only disputes which expressly or inferentially arise out of the collective agreement are foreclosed to the courts: *Elliott v. De Havilland Aircraft Co. of Canada Ltd.* (1989), 32 O.A.C. 250 (Div. Ct.), at p. 258, per Osler J.; *Butt v. United Steelworkers of America, supra*; *Bourne v. Otis Elevator Co., supra*, at p. 326. Additionally, the courts possess residual jurisdiction based on their special powers, as discussed by Estey J. in *St. Anne Nackawic, supra.*

[39] At para. 57, *Weber* refers to this exception for cases of wrongs without remedy:

> It might occur that a remedy is required which the arbitrator is not empowered to grant. In such a case, the courts of inherent jurisdiction in each province may take jurisdiction. ..... What must be avoided, to use the language of Estey J. in *St. Anne Nackawic* (at p. 723), is a "real deprivation of ultimate remedy".

(*St. Anne Nackawic Pulp & Paper Co. Ltd. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704 confirmed the jurisdiction of courts to issue injunctions affecting labour disputes to augment arbitration.)

[40] Our Court of Appeal expressed the view that *Weber* recognized "two categories of cases in which courts may retain jurisdiction."

> The first includes actions which do not expressly or inferentially arise out of the collective agreement. ... The second category includes cases in which courts have a residual jurisdiction to ensure effective redress.

Canada (Attorney General) v. Pleau, 1999 NSCA 159 at para. 92.

[41] The second category seems to have been rolled into the first in para. 22 of *Vaughan*:

> In the course of his reasons, however, Cromwell J.A. deduced from *Weber* the principle that "the capacity of the scheme to afford *effective redress* must be considered. Simply put, the concern is that where there is a right, there ought to be a remedy" (p. 391 (emphasis in original)). I agree (as did Evans J.A. in the courts below) that this feature is a factor for consideration, but I do not agree with the appellant that the absence of independent adjudication is conclusive. The task of the court is still to determine whether, looking at the legislative scheme as a whole, Parliament intended workplace disputes to be decided by the courts or under the grievance procedure established by the PSSRA.

The Statement of Claim and Submissions

[42] The pleaded causes are novel, but that does not matter for the present issue. For this motion, we must assume that there are causes in tort under which the board could be liable to Mr. Robertson on his complaints. Let us take a closer look at these complaints.

[43] Mr. Robertson's pleading asserts that the board owed him a duty of care when "working with a long term substitute teacher" (para. 8). It alleges that the

standard of care includes "fairness, reasonable care and skill expected of Human Resource and professional educators" (para. 6). Put another way, the standard of care is such that a board must avoid actions or omissions that could, with reasonable foresight, "damage the professional career of a substitute teacher" (para. 15). This includes "responsibilities for overseeing the career opportunity available to the Plaintiff" (para. 97 and see para. 101).

[44] One wants to see the alleged breach. The statement of claim complains about failings of the board that made Mr. Robertson's work more difficult: see e.g. paras. 20, 26, 30, 33, 42, 50, 56, 57 to 59, 63, 69, 85, 92, and 94. These complaints concern alleged failures:

- to supply a lesson plan and resources

- to inform students and parents of the situation of the teacher who was being substituted for

- to allow for planning in light of the long absence

- to inform Mr. Robertson in a timely way about "resource or modified students in his classes"

- to take remedial action against cheating by students

- to investigate and advise whether Mr. Robertson or the principal had certain obligations to telephone parents

- to defer to the teacher's method of pedagogy

- to deal with computer software

- to provide direct observation by a supervisor

- not to improperly use a letter concerning teacher practices that Mr. Robertson adopted

- to follow a practice under which a long-term substitute finishes out the school year

- to adequately investigate concerns expressed by Mr. Robertson's principal

- to consult Mr. Robertson before replacing him.

Presumably, these alleged failures allegedly had an adverse impact on Mr. Robertson's professional career, the subject of the alleged duty of care.

[45] More directly relevant to the alleged duty of care are allegations to the effect that the board was careless in its handling of Mr. Robertson's career opportunities. The allegations include paras. 53, 63 to 67, 91 and 92, 97, 100, 102 to 107, and 113. In summary:

> The board did not require the substituted teacher to clarify his absence.
>
> The board entered upon a flawed exercise in assessing and directing Mr. Robertson's teaching skills and duties that reflected poorly and wrongly on his abilities.
>
> The letter about teaching practices was misused to reflect poorly and wrongly on Mr. Robertson's teaching skills.
>
> The principal failed in her duties to the board and Mr. Robertson, but the board failed to make any independent inquiry into this problem.

> The board became dissatisfied with Mr. Robertson without validating the principal's reports or consulting with Mr. Robertson concerning her allegations.
>
> The board ignored Mr. Robertson's pleas for reconsideration of the decision to replace him.

[46] From para. 118 onward, the statement of claim cites evidence toward the proposition that the manner of termination and the removal from the substitute list were unfair and high-handed. The evidence includes:

- termination
- refusal to give reasons in writing
- mischaracterization of Mr. Robertson's action in cleaning out his desk and leaving the premises
- removal from the substitute list
- failure to consult with Mr. Robertson.

The statement of claim relates this evidence to the loss of opportunity under Article 29 of the local collective agreement to become a permanent teacher, which goes to both liability for alleged negligence and damages.

[47] At various points, the statement of claim pleads the collective agreement, particularly the contracted duties of reasonableness and fairness. I am prepared to determine this case apart from these pleadings, which more clearly attract exclusive jurisdiction. Also, it is sufficient to think of the claims in terms of simple (but novel) negligence. There is no need to discuss negligent misrepresentation, breach of statutory duty, or breach of fiduciary duty since the issue of exclusive jurisdiction turns on the pleaded facts rather than the cause.

Submissions

[48] The board acknowledges that "the rights of substitute teachers under the Collective Agreements are not extensive." However, it argues that the collective agreements, in conjunction with the applicable legislation, "establish a scheme to address the employment of substitute teachers". This includes the grievance provision under which the union can initiate a grievance on behalf of a substitute.

[49] According to the board, "the essential character of the claims brought by the Plaintiff [arises] from the interpretation, administration or violation of the Collective Agreements". Therefore, exclusive jurisdiction to determine the claims belongs to the grievance process and, ultimately, the arbitrator.

[50] The meagreness of protections for substitute teachers under the collective agreements is central to the main argument made by Mr. Robertson. The dispute resolution process in the agreements might capture claims of the kind made by Mr. Robertson, if they were claims of a teacher as defined in the agreements. A "teacher" obtains comprehensive rights under the collective agreement. A substitute does not.

[51] Mr. Robertson writes:

> There is no substitute hiring policy or just cause termination protection for substitute teachers. The legislation gives no special preference for a dispute resolution process for substitutes or any access to a remedy beyond those provisions provided for in Article 32.

He cites *Nova Scotia Teachers Union v. Nova Scotia (Minister of Finance)*, [1995] N.S.J. 305 (S.C.) for the proposition that "the grievance process cannot be used beyond the jurisdiction of Article 32 for substitutes".

[52] The rights asserted by Mr. Robertson's claims are beyond the collective agreements. In that sense, "Robertson does not plead that there was a violation of the Agreement." Rather, the agreements do not include a "right to grieve specific practices utilized by the Board when employing substitutes … in addition to those sub-clauses addressed in Article 32."

[53] Mr. Robertson provides this assessment of the essential character of the dispute, the subject at the heart of the two questions required to be answered in *Weber*:

> The essential character of this dispute arises from this reliance of substitute teachers on their Principals and their Boards when they decide how to employ substitute teachers; it arises not out of the Agreement articles, in particular not out of Article 32, but rather out of the subordinate relationship and the mentoring or professional development (or lack thereof) of the career of a substitute teacher under the jurisdiction of the Board … from that day-to-day position through to a term contract, probation and the eventual obtaining of a permanent contract which *only then* gives the teacher … the employment relationship which includes all of the benefits of the Collective Agreement.

Elsewhere, "For the purposes of this motion Robertson is simply asking the court to recognize that his issues with the Board do not fall within the realm of Article 32 ...". And, "Robertson … only has the right to grieve transgressions of Article 32 of the Agreement."

[54] Mr. Robertson also argues that this court should exercise its residual jurisdiction to grant relief not available through the grievance process. He refers to the notion that legislation that is open to two or more interpretations should be interpreted to avoid absurd results citing *Ontario v. Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031 at para. 65. He says "The Provincial Collective Agreement was never intended to 'bar' ... teachers injured and without remedy ...".

[55] Finally, he says that the board repudiated the agreement.

Disposition

[56] In my assessment, the essential character of the dispute is the termination of Mr. Robertson's employment as a substitute teacher. This characterization has a narrow aspect and a broad aspect. Narrowly, it refers to the decision to end his

service as a long-term substitute. Broadly, it embraces his treatment as an employee leading up to the termination, the manner of the termination, the removal from the substitute list, and the damage to his career prospects.

[57] Termination of a substitute's employment is within the ambit of the dispute resolution schemes under both the provincial and the local collective agreements. This follows even if one assumes that Article 32 holds all the terms of employment for a substitute teacher, as Mr. Robertson's main argument posits. But, the truth is that there is more to the collective agreements' treatment of substitutes than Article 32's provisions. Viewed more broadly, the ambit of the agreements more clearly embrace termination of a substitute's employment.

[58] The fact that Article 32, with one exception, provides nothing explicit for job security to a substitute does not mean that the subject is not covered. Confining ourselves strictly to Article 32, it implies something about job security. The possibilities include:

- the one exception aside, management may fire the employee at will

- common law on reasonable notice and fairness in the manner of termination is undisturbed.

[59] An arbitrator would be in a position to decide what Article 32 implicitly provides on termination. This court may not. This court must, however, recognize that termination of a substitute's employment is implicitly dealt with in Article 32. That is to say, "the essential character of the dispute arises implicitly from the interpretation, application, administration or violation of the agreement": *Cherubini*, para. 20.

[60] Turning to the agreements broadly, I have pointed out some examples where the technique chosen in the collective agreements to exclude substitute teachers does not work. There are provisions that use the defined word "teacher" yet are clearly intended to include substitutes. This rather technical observation is a preface to saying that the agreements require study to see what outside Article 32 applies, and what does not apply, to substitute teachers.

[61] Articles that do not use the word "teacher" are the first candidates for including substitutes. Article 3.01 of the provincial agreement and Article 5.1 of

the local agreement come to mind. They seem to provide that, whatever is implied for a term in Article 32 about terminating a substitute's employment, the implied term is subject to an obligation to act "in a reasonable manner" and to act "fairly and reasonably, in good faith and without discrimination".

[62] Article 32 does explicitly require the board to keep a list of teachers who "are accepted for substitution". It does not provide for removal from the list. Such a term would likely be implied. Implied conditions for notice, or other terms for reasonableness and fairness, could attach to the implied term.

[63] The decision in *Nova Scotia Teachers Union v. Nova Scotia (Minister of Finance)* does not assist Mr. Robertson. It does not stand for the proposition that, for substitutes, the grievance process is restricted to Article 32.

[64] In that case, the union argued that "by virtue of Article 32, the Board cannot, in an effort to save costs, circumvent a substitute teacher's rights by terminating his/her services after nineteen (19) consecutive days" (para. 11). Arbitrator Merrick Q.C. "recognized, as the Union submitted, that the rights of substitute teachers are dictated by Article 32" (para. 14). The learned arbitrator

decided that Article 32 did not give a right to the twentieth day, and the benefits that comes with it. On judicial review, Justice Michael MacDonald, as he was then, found this "not an unreasonable interpretation of Article 32".

[65] There is no suggestion in this authority that terms are not to be implied in Article 32. Nor could there be. Implied terms are necessary to contract law. There was no discussion in this authority about terms outside Article 32 that apply to substitutes or to the interpretation of express or implied terms within that article. Nor would there be. The union's argument was restricted to Article 32.

[66] In its narrow, and in its broad, application, termination of a substitute teacher is within the ambit of the dispute resolution processes under both collective agreements. Termination is the essential complaint in Mr. Robertson's claims. Therefore, the claims are precluded by the exclusive arbitral jurisdiction principle.

[67] It remains for me to respond to some of Mr. Robertson's other arguments.

[68] I do not see how the residual jurisdiction could be invoked in this case. I think the argument may be that since we are long past the time for initiating a grievance, a remedy is no longer available from an arbitrator. The residual jurisdiction is for a remedy that is necessary, but that the contracted process does not provide. Generally speaking, arbitrators actually have more remedies than courts in cases of termination.

[69] There is no absurdity in applying the exclusive jurisdiction principle. People speak of a wrong without a remedy. Sometimes we say there can be no right without a remedy. The breach of a legal right must have a remedy. That does not mean that a person can claim the remedy despite missing the limitation period or otherwise failing to engage the process for redress.

[70] The exclusive jurisdiction principle is an important part of labour law. Fundamentals of government are engaged in its formulation, including rule of law and supremacy of the legislature. There is nothing absurd about being faithful to the principle of exclusive jurisdiction even in cases of individual merit.

[71] Finally, nothing suggests repudiation of the collective agreements.

Conclusion

[72] There is something troublesome about this case. We expect labour agreements that well protect the unionized worker. Mr. Robertson had no explicit rights on hiring, he had almost no explicit protection for job security despite years of service, and the school board believed, perhaps rightly, that he could have his employment terminated and future employment blocked without a hearing or reasons.

[73] It is arguable that the common law would have protected Mr. Robertson better than did the collective agreements. Despite his casual, day-to-day employment he might have been entitled to notice. His years of service, the number of days he served in those years, and his last assignment as a long-term substitute might well have entitled him to notice at common law.

[74] Mr. Robertson's age, professional position, chances of re-employment, and length of service might have entitled him to lengthy notice. The manner of his termination, including the refusal to provide reasons in writing and the removal of

his name from the substitute list, might have led to an award of *Wallace* damages at common law.

[75] The principle of exclusive arbitral jurisdiction does not make allowances for such considerations. As discussed, the principle is too important for such individualized considerations, except perhaps on the subject of costs if the board seeks an award.

[76] I will grant an order dismissing Mr. Robertson's case.

J.