



T-167-95

OTTAWA, ONTARIO, THURSDAY, THIS 29TH DAY OF MAY, 1997

BEFORE: THE HONOURABLE MR. JUSTICE TEITELBAUM

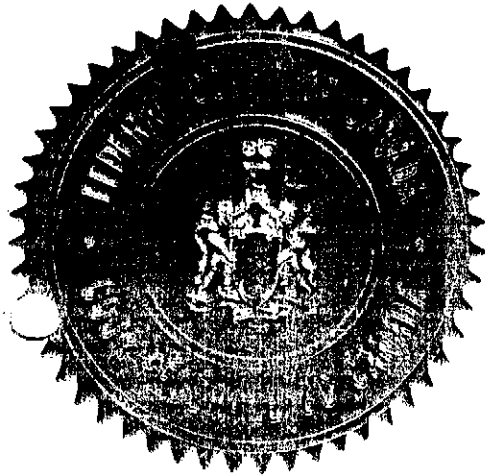
BETWEEN:

DENNIS BLACK

- and -

HER MAJESTY THE QUEEN

Defendant



ORDER

For the reasons given in my Reasons for Order, the present action is dismissed with costs.

"Max M. Teitelbaum"

JUDGE

FILED BY: [Signature] This (pre above captioned) is a
true copy of the original filed of record in the Registry
of the Federal Court of Canada by 29 day

of 29 May 1997

Dated this 29 day of May 1997

[Signature]
WILFRED SCOTT
Registry Officer
Agent du greffe



T-167-95

BETWEEN:

DENNIS BLACK

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER

TEITELBAUM, J:

On September 14, 1994, the plaintiff, Dennis Black, a professional truck driver, was returning to Canada from the United States where he had received a "load" of furniture to transport to Canada. The plaintiff was to return to Canada via the Sarnia, Ontario border crossing. While driving to Canada, the plaintiff received instructions from his dispatcher not to cross the Sarnia border crossing but to cross the Ambassador Bridge border crossing between Detroit, Michigan and Windsor, Ontario. As the plaintiff approached the Ambassador bridge crossing, he became aware of a long line-up of commercial trucks waiting to report to Canadian Customs.

The plaintiff explained, for the benefit of the Court, the procedure to be followed when crossing at a border point and this was for a United States (U.S.) or Canadian crossing. The plaintiff states that the driver of the commercial vehicle would first meet the primary customs officer after lining up in the commercial truck line. The officer would first verify if the driver had a "line release" or if the driver was to be sent to see a customs broker because the "paper

work" was not complete. The "line release" would have a bar code enabling the officer to scan the manifest which describes the merchandise being transported. The primary officer would either allow the driver to proceed or would request that the driver proceed to a secondary area for "inspection".

As I have stated, the plaintiff was returning to Canada at the Ambassador Bridge border crossing and, as he approached the border crossing, he noticed a long line of commercial vehicles waiting to be processed in order to legally cross into Canada. The plaintiff testified that he began to wonder why the line was so long and why it was taking "so long" to approach the primary officer's booth. He states that on that day, he believes there were approximately 50 trucks in the commercial line and that he believes he had to wait approximately 40 minutes until he reached the primary officer's booth. He also states, and this was not contradicted, that there was only one primary officer "one booth" handling all the commercial vehicle traffic and "that it was really slow".

I can well imagine the frustration of plaintiff having to have to wait in line with approximately 50 trucks in front of him waiting to be processed by a single primary customs officer.

Upon arriving at the booth occupied by the primary officer, plaintiff states that he gave the "manifest" to the officer who examined same and was asked why he was at the Ambassador Bridge crossing when the manifest reads the border crossing to be Sarnia. The reason was explained by plaintiff and the customs officer made the necessary correction.

Plaintiff then states that he was asked by the officer his citizenship and how long he was out of the country and if he had anything to declare. Plaintiff states that he declared that he had a 40 oz. bottle of liquor and was told by the officer "this is your lucky day. I am going to charge you duty on the bottle".

As will be seen, the plaintiff had not been out of Canada for 48 hours and thus could only import a 40 oz. bottle of liquor if he paid the necessary duty and taxes, which in this case amounted to \$21.66. The value of the bottle of whisky (rye) is \$25.94 (see Exhibit P-5).

Here too, I can imagine the plaintiff's frustration.

According to the plaintiff, upon being told he would have to pay duty he replied "I said fine no problem! Then I said to him no wonder the line up was so long" (see Exhibit P-6, notes prepared by plaintiff on or about, he states, September 15, 1994). Plaintiff then states that the officer replied by saying "I am doing my job you moron" and then said "if I (plaintiff) was a man I would tell him (the officer) what really was on my mind!" (Exhibit P-6).

In his notes, plaintiff writes "then we had a few words, no swearing or profanity, etc.". Plaintiff then states "from this everything went downhill". Plaintiff was directed to a secondary area, the "auto building" where he parked his truck and went into the building. Plaintiff also states that as he was leaving the primary officer's booth, he saw the primary officer telephone ahead to what he presumed were officers in the secondary area to purposely search the plaintiff and the motor vehicle.

Upon entering the building at the "secondary" area (the auto building), the plaintiff states that he met supervisor no. 10271 (Douglas Bedard). The auto building area is where the plaintiff paid the duty and taxes for the 40 oz. bottle of whisky (rye) he was importing. Upon meeting the supervisor, plaintiff states he was told that "a couple of guys were coming to search me" and that he was left with the impression that he would be bodily searched. The customs officers, he states, searched the cab of his truck and the plaintiff. They stated they were looking for receipts and thus looked at the plaintiff's wallet. They did not do a body search.

The reason for the wallet search was to look for receipts of auto parts found in the truck and purchased in the U.S. As well, a new Citizens Band Radio (C.B. radio) was found in the vehicle. The plaintiff states he purchased the radio from another truck driver in Canada but he purchased the item a couple of months before the September 1994 trip.

In any event, the cab of the plaintiff's vehicle was searched. This meant that the plaintiff's bunk where he sleeps while on the road was disturbed, the sheets were removed or disturbed. It also meant that two officers went into the cab part of the vehicle wearing shoes after being asked to remove their shoes by the plaintiff.

As I have said, two officers who did the search found the auto parts (an air filter and air hose) and the C.B. radio, but did not find receipts for the items.

In any event, plaintiff made a complaint to acting superintendent Bedard about the conduct of the primary officer (Douglas Hudson) and plaintiff states he then drove to the "Customs Building some two or three miles away" to see a customs broker. He also met a customs inspector, Ms. Rose Desjardins, to whom he explained what happened. He was told where to send a complaint regarding the treatment received by the plaintiff from primary officer Hudson.

Plaintiff filed a complaint. As a result, a letter of apology was sent to the plaintiff, it was not filed as an exhibit, in December 1994 wherein it is allegedly stated that if in fact plaintiff was called a moron, it should not have happened and for this, Canada Customs, I assume, apologized.

Plaintiff also complained that the primary officer told him to no longer cross at the Ambassador Bridge Customs crossing.

In cross-examination, plaintiff states he had crossed the Ambassador Bridge, at that point in time, 35 to 50 times. His cab had been inspected 2 or 3 times and his "load" inspected "maybe only 10 times". In the "2 or 3 times" that the cab of his truck was inspected "it was quite possible he declared liquor".

The plaintiff states that he does not know why the primary officer was calling him names (such as previously stated) and that he felt threatened when he was told that he should only cross the border at the Sarnia crossing in the future.

Since the September 14, 1994 incident, the plaintiff has crossed the Ambassador Bridge crossing "about 10 times" without incident.

The plaintiff states that he was not impolite to the primary officer, did not call the primary officer any names nor did he use any obscenities except used the word "bullshit" to the supervisor Bedard and this because the plaintiff was called a "liar".

The plaintiff states he did not declare the air filter and air hose because he was of the belief this was not necessary because "it was part of the truck" and had he used the parts (installed them) he would not need to declare them. The auto parts were in their original packaging.

With regard to the C.B. radio, plaintiff states he was accused by one of the two inspecting officers of purchasing the radio in Tennessee (where it was manufactured) and of lying.

The plaintiff is an African Canadian. He states that he does not recall if he said that the search was being done "because I am black". Plaintiff states "I said the bullshit part, I don't remember I said this is being done because I am black. I might have said that at that time."

Plaintiff also states "on this occasion, I only thought this happened because I was black (and this) because the primary officer said those words".

The plaintiff called no other witnesses. I can understand that the plaintiff could not call any other witnesses relating to what happened during the primary interview and at the subsequent search incident. He was alone. The plaintiff failed to call any witnesses to prove damages. More of this later.

David MacRae is employed by the defendant as acting chief of traveller operations, Customs border services at the Ambassador Bridge since November 1994.

He knows nothing of the incident. His evidence only went to the procedure one must go through to come into Canada from a foreign country. He states, all persons must report (Section 11 of *Customs Act* (Act)) all goods, all commercial "goods" must have a "manifest" (Section 12 of the Act) and the "goods" must be available for inspection.

He also states that permanent customs officers receive 14 weeks training, including sensitivity training, culture differences training and a knowledge of Canadian Charter Rights.

He gave evidence that there are approximately 5000 commercial vehicles (trucks crossing at the Ambassador Bridge crossing and that a target of 3% of these 5,000 vehicles "are targeted for customs inspection" and that it is the primary officer who may determine if such an inspection is warranted. This decision may and is made "up to the time of release of the goods".

I take this to mean that a customs inspection can be requested by any customs officer at any time up to the time the goods are released from the customs area.

He also states that it is normal to inspect the cab of any truck.

This witness states that it is inappropriate to caution an individual not to use a particular border crossing.

William Hudson is the individual who was the "primary" officer on duty at the time of the incident. He denies the facts as they were stated by the plaintiff in all material aspects of the claim.

Hudson had been employed by the defendant in the Department of Veterans Affairs. As of June 6, 1994 and up to September 29, 1994, Hudson was seconded by Canada Customs and was working as a customs inspector at the Ambassador Bridge. He had been given a two-week training course as well as approximately one week on-the-job training.

Hudson recalls being on duty on September 14, 1994 at the primary inspection area at the Ambassador Bridge. Bedard was the acting supervisor on duty. Hudson's job was twofold, as a primary officer, the first to determine, on the commercial aspect, if the individual has any goods to declare. After verifying the commercial manifest and being satisfied it is in order, and, secondly, if the individual has any personal goods to declare. After verifying the commercial manifest and being satisfied it is in order, to ask the driver his citizenship and if Canadian, to ask how long he has been out of country and what if anything to declare.

Hudson states that if a Canadian is not out of the country (Canada) for at least 48 hours, that person cannot import into Canada any liquor without duty and taxes.

Hudson also states that it is often that he refers "cargo" for examination and this after looking for verbal and non-verbal signs, such as nervousness of the driver, etc. that may indicate

an individual may be attempting to import goods into Canada without declaring that he or she was doing so.

On the 14th of September 1994, Hudson states that he was working in one of the commercial primary booths when the plaintiff "pulled up to the booth at approximately 5:45 p.m.". He states that the plaintiff handed his Canadian Customs Manifest to him at which time he noticed that it referred to a Sarnia border crossing. He states he questioned plaintiff if it was his intention "to cross at Windsor or indeed be at Sarnia". Hudson was advised by plaintiff that he was advised by his dispatcher to cross at Windsor. Hudson states he then verified the rest of the document, was satisfied and "gave the code to have the load cleared".

Hudson, after being satisfied with the commercial aspect of the customs clearing, asked the personal questions to the plaintiff, citizenship, residency, how long out of Canada, and was told, sarcastically, that he was not out of Canada as long as he had to wait on the bridge (I assume for custom clearance).

The plaintiff declared that he had a bottle of liquor but failed to declare the truck parts. Hudson states that upon being told of the liquor, he began to complete a form E-67, a referral slip to pay duty and taxes for the liquor and that he explained this to the plaintiff. Hudson states that the plaintiff told him that at the Sarnia crossing he never had to pay the duty and taxes, to which Hudson replied "today you are going to pay. If the officers at Sarnia let you go you were lucky, but today you are going to pay".

To this, plaintiff replied "no wonder this is why (the) line is so slow, having everyone to pay". Hudson states plaintiff continued to protest, plaintiff used profane language, said "this was bullshit and said I was a fucking asshole for making him pay for the bottle". Hudson goes on to state that the plaintiff was very angry and was told by the plaintiff "if you were any kind of a man you would say what you have on your mind right now" as well as asking Hudson to

come out of his booth. Hudson states that upon being told by plaintiff to "come out of his booth" he called the plaintiff a moron as a result of fear for his well-being. Hudson states he felt the plaintiff gave every indication the plaintiff "was going to come after me".

As a result, Hudson states he used his intercom to call (to the secondary area) to say a large vehicle "was coming in and was to pay duty and taxes on a bottle of liquor and that the driver "was not happy" and that he was threatened with physical violence.

At 6:00 p.m., Hudson's shift in the primary booth was over, he went to the secondary area and saw Bedard who informed him that plaintiff lodged a verbal complaint. He was asked what had transpired. The plaintiff was at his vehicle which was being examined by the flexible response team (F.R.T.).

Hudson, in cross-examination, states he had heard sarcastic remarks like that of plaintiff's before and he went on to say "comments such as those are not directed at me personally. I let them in one ear and out the other". He confirmed in his cross-examination that the plaintiff became most upset when he learned he was to pay the duty and taxes on the liquor being imported to Canada "and it was then the conversation took a nasty turn, sending him in (to pay the taxes and duty) was bullshit and I was a fucking asshole for doing so".

Hudson states he is of the belief that the plaintiff was trying to bait him so as to get Hudson into using derogatory words in order to file a complaint.

Plaintiff was obviously successful, Hudson called the plaintiff a moron, but this after Hudson felt threatened.

In a number of aspects as to what happened, Hudson is corroborated by Douglas Bedard, the acting superintendent and the two members of the F.R.I. who inspected the plaintiff's vehicle, Todd Bondy and James Tweedle.

Bedard was on duty on September 14, 1994 at the secondary area, for car and truck inspections. He explained that if a call is received from a primary inspection officer that a person is upset or angry because taxes and duties are to be paid, an inspection is requested. "A phone call was enough to generate an inspection."

One of the two officers who were to do the inspection of plaintiff's vehicle asked Bedard to speak to the plaintiff who wished to make a complaint. It appears that plaintiff spoke to someone in the office and was complaining of paying taxes and duty as he did not pay such tax and duty in Sarnia. Plaintiff complained to Bedard that the officer called him a moron and a "fucking asshole".

As a result, Bedard states he called Hudson and was told by Hudson that the plaintiff was confrontational, that Hudson was asked to get out of his booth, he was being rude, he said let us settle this man to man and as a result, called the plaintiff a moron.

With regard to the truck inspection, Bedard states plaintiff objected to the officer's wearing shoes into the truck's cab area but was told that if the cab area became dirty, it would be cleaned.

Bedard states an inspection was made and that the questionable items found were discussed and it was decided not to impose duty and taxes on the truck parts or the C.B. radio.

Todd Bondy, one of the two officers who was assigned to inspect the plaintiff's vehicle states that the plaintiff seemed very agitated, hostile and nervous and that these characteristics are signs that the individual would be importing undeclared goods.

Bondy testified that when he first met the plaintiff, after the plaintiff came into the secondary area with his truck and as he was getting out of the truck, plaintiff said to Bondy that the primary officer is a "fucking asshole" and that he (plaintiff) wished to complain to a superintendent.

Bondy then waited for the plaintiff to begin his inspection. Plaintiff asked Bondy to remove his shoes whereupon Bedard said this could not be done for health and safety reasons.

Bondy examined the cab area and while there was told by Tweedle, the other officer inspecting the vehicle, that he found undeclared auto parts under the bunk area of the cab which could only be accessed from the outside of the vehicle. Bondy "observed" as he states, a brand new Cobra C.B. radio and asked plaintiff when he purchased the radio. Bondy states plaintiff said he purchased the radio in September 1993. After inspecting the radio, it indicates that the radio was manufactured in Tennessee, U.S.A. Plaintiff informed Bondy the radio was purchased by him in Toronto - that he has no receipt for the purchase.

After a wallet search for the radio and truck parts receipts, none were found.

Customs officer Tweedle states that he and inspector Bondy examined the plaintiff's truck for undeclared goods coming into Canada. He states that he received a phone call from officer Hudson advising that he (Hudson) was sending a vehicle to pay duty and taxes on a declared bottle of liquor that was not entitled to an exemption and that the driver was confrontational in that he (plaintiff) had challenged him (Hudson) to step out of the booth.

Tweedle confirms that when plaintiff exited from his truck, he heard the plaintiff cursing but cannot remember his exact words. Tweedle states that he also heard plaintiff say that he was being "hassled" because he is black.

He states that upon inspecting the truck, he found the truck parts in their original U.S. packaging together with the invoice.

The final witness for the defendant was Ms. Violet Badardon, an employee of the defendant for approximately 26 years, 15 of which were in Windsor, Ontario. She is now a Programme Support Officer and wrote the complaint response to "Mr. Black's legal agent".

Although the testimony was very brief, it was most informative. She states she obtained the reports of the incident and gave a response to Mr. Black's complaint. She states that she agreed "that the primary interview was less than perfect" and, in response, apologized for the primary officer's conduct.

She states she received no reply to the above letter.

DISCUSSION

I will start my discussion of this case by stating that this case is not one that should have been brought before this Court for a hearing.

With regard to the issue of damages, the plaintiff has failed to legally make proof of any damages. Having said this, the plaintiff did say that, as a result of the incident, it was his belief he lost two to three hours of work time. He states that his time is worth approximately \$100.00 per hour. Other than his own statement, given under oath, I have no other evidence that his time is, in fact, worth \$100.00 per hour and that, at best, plaintiff is entitled to \$200.00 to \$300.00 for "lost" time.

I am prepared to accept this evidence. Nevertheless, the evidence does not indicate that the time was lost as a result of any illegal activity on the part of any employee of the defendant.

Pursuant to section 11 of the *Customs Act* (Act), every person, there are exceptions not applicable in this case, arriving in Canada must "forthwith" present himself to the Customs office. Pursuant to section 12 of the Act, all goods that are imported shall be reported.

Pursuant to section 98(1) of the Act, an officer may search any person who has arrived in Canada within a reasonable time after his arrival in Canada and, pursuant to section 99(1) of the Act, an officer may examine any goods that have been imported and open any package of imported goods.

Section 98(1) states:

An officer may search

- (a) any person who has arrived in Canada, within a reasonable time after his arrival in Canada
- (b) ...
- (c) ...

if the officer suspects on reasonable grounds that the person has secreted on or about his person anything in respect of which this Act has been or might be contravened, anything that would afford evidence with respect to a contravention of this Act or any goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.

Section 99(1)(a) states:

(1) An officer may

- (a) at any time up to the time of release, examine any goods that have been imported and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts

Therefore, the extra time that it took for the defendant's employees to "clear" the plaintiff and the goods he was importing resulted from the search of the plaintiff's vehicle and documents while the officers were looking for the invoices for the non-declared C.B. radio.

This "extra" time resulted from activity that pursuant to the Act the defendant's employees were permitted to do if there was a suspicion, on reasonable grounds, that the plaintiff may have been secreting undeclared goods into Canada.

The witnesses for the defendant gave examples of when and how they judge a person may be bringing undeclared goods into Canada. Amongst the examples given were, the person is argumentative, appears to avoid eye contact, appears to be nervous.

The evidence clearly shows that the plaintiff was most argumentative when he approached the primary officer. The reason for same may not have been as a result of the plaintiff importing undeclared goods, although some were found, but as a result of waiting in line for 40 to 50 minutes to reach the primary officer and then being told that he would have to pay duty and tax for the bottle of liquor he was importing into Canada.

I am satisfied the primary officer had reason to send the plaintiff to pay the duty and tax on the bottle of liquor and to have plaintiff's vehicle "searched" for undeclared goods.

Therefore, no time was lost by the plaintiff as a result of any illegal activity of employees of the defendant.

The plaintiff, in paragraph 15 of his Statement of Claim, states:

15. The Plaintiff therefore claims against the Defendant:

- (a) general damages in the amount of \$75,000.00;
- (b) special damages in the amount of \$10,000.00;
- (c) a declaration that the conduct of the employees of the Defendant herein violated and infringed s. 7 of the *Canadian Charter of Rights and Freedoms*;
- (d) a declaration that the conduct of the employees of the Defendant herein violated and infringed the Plaintiff's rights pursuant to s. 15 of the *Charter of Rights and Freedoms*;
- (e) such relief as may be appropriate pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*;

(f) his costs of this action;

(g) such further and other relief as this Honourable Court may deem just.

No evidence of any damages of a general or of a special nature was made before me.

Plaintiff did state that, as a result of being called a "moron", he felt insulted.

There is no doubt that the primary officer should not have used the term. It is no excuse to say that he used the term because of the fact that plaintiff had challenged Mr. Hudson to a fight.

Nevertheless, being called a "moron" may be insulting and may cause hurt feelings but this does not necessarily lead to an award of money. Evidence must be made by the plaintiff showing a loss occurred as a result of the "hurt feelings".

As to what actually happened on that 14th day of September, I have concluded from the evidence, the following: the plaintiff became frustrated waiting in line to cross the border; he had to wait 40 to 50 minutes which, he thought, was excessive. When arriving at the booth occupied by Mr. Hudson, he is asked how long he was out of Canada. His answer "not as long as I had to wait in line" clearly indicates an unhappy individual who feels he wasted much time. After being told by the primary officer that because he was not out of the country (Canada) long enough, he could not import any liquor unless he paid the assessed duty and tax, Mr. Black became more upset and this resulted in the incident.

After the incident at the primary booth took place, I am satisfied the primary officer called the secondary area informing the officers stationed there that the plaintiff was to stop at their area to pay duty and tax on a bottle of liquor and informed them that he believed the vehicle should be checked for undeclared goods.

This was done. This, I believe, caused the plaintiff to become very upset, to say the least.

Who called who a derogatory name I cannot determine other than to say that it was probably plaintiff who did the name calling as the evidence is that when plaintiff got out of his truck, he used the derogatory expression in describing the primary officer.

The entire issue is based on the facts as to what took place. I have before me the version of the plaintiff and that of the defendant as given to me by her employees.

The burden is with the plaintiff. Other than proving that plaintiff was called a "moron", I have contradictory evidence as to who called who a derogatory name.

There was no evidence of racial discrimination other than the plaintiff's statement that the incident happened because he is an African Canadian. This was denied by the defendant's witnesses, in that, the issue of race was not raised.

From the facts of this case, the plaintiff's Statement of Claim must be dismissed.

As I have already stated, I do not understand the reason for this case proceeding to trial. If it was a matter of principle to show that an employee of the defendant had no reason to call plaintiff a "moron" and should not have done so, defendant, before the Statement of Claim was filed, apologized by letter saying the officer should not have used the term. No damages were caused to the plaintiff as a result of the incident. The entire time lost was caused by a legal and valid search pursuant to the Act. In fact, undeclared goods were being imported into Canada illegally by the plaintiff. No evidence was made before me that the plaintiff suffered any loss

as a result of the incident. I again ask, why did this case proceed to a trial that lasted 1½ days involving a large number of witnesses and costs?

The present action is dismissed with costs.

"Max M. Teitelbaum"

J U D G E

OTTAWA

May 29, 1997

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