

Compte rendu

Ouvrage recensé :

Labour Arbitration in Canada, by Morton MITCHNICK and Brian ETHERINGTON, Toronto: Lancaster House, 2006, 426 pp., ISBN 0-920450-29-6

par Allen Ponak

Relations industrielles / Industrial Relations, vol. 62, n° 4, 2007, p. 772-774.

Pour citer ce compte rendu, utiliser l'adresse suivante :

URI: <http://id.erudit.org/iderudit/016960ar>

DOI: 10.7202/016960ar

Note : les règles d'écriture des références bibliographiques peuvent varier selon les différents domaines du savoir.

Ce document est protégé par la loi sur le droit d'auteur. L'utilisation des services d'Érudit (y compris la reproduction) est assujettie à sa politique d'utilisation que vous pouvez consulter à l'URI <https://apropos.erudit.org/fr/usagers/politique-dutilisation/>

Érudit est un consortium interuniversitaire sans but lucratif composé de l'Université de Montréal, l'Université Laval et l'Université du Québec à Montréal. Il a pour mission la promotion et la valorisation de la recherche. Érudit offre des services d'édition numérique de documents scientifiques depuis 1998.

Pour communiquer avec les responsables d'Érudit : info@erudit.org

Recensions

Book Reviews

Labour Arbitration in Canada,

by Morton MITCHNICK and Brian ETHERINGTON, Toronto: Lancaster House, 2006, 426 pp., ISBN 0-920450-29-6

Grievance arbitration, a process for the binding settlement of disputes during the life of the collective agreement, has been entrenched in Canadian industrial relations for more than half a century. An important feature of our arbitration system is the near universal requirement that arbitrators file their decisions with the labour ministry (or some equivalent organization) of the jurisdiction in which the arbitration falls. These decisions are publicly available and represent an almost complete set of the thousands of arbitration awards decided in Canada in any given year.

This accessible case law has spawned a variety of efforts to report, categorize, and analyze trends in arbitration. *Labour Arbitration Cases*, the oldest reporting service, chooses and publishes a small proportion of decisions, without commentary, that its editors believe raise new issues or deal with old issues in an innovative way. Lancaster House's various on-line data bases provide in-depth commentary of a handful of cases each month that its editors deem significant. The "bible" of labour arbitration since its first publication in the 1970s has been *Canadian Labour Arbitration*, usually referred to simply as "Brown and Beatty" (the names of its authors). It provides a topic by topic analysis of the myriad arbitration issues, referenced to the cases through extensive footnotes. It is available both on-line and in a hard copy version

that is too massive in size for easy portability.

To this field has been added *Labour Arbitration in Canada*, a concise topical review of the procedural and substantive issues in grievance arbitration. Its authors are well regarded arbitration experts. Morton Mitchnick, for many years one of the country's leading arbitrators, is now in full time practice with a Toronto law firm, acting on behalf of employers. Brian Etherington is a labour law professor at the University of Windsor and an experienced arbitrator. To the authors' credit, cases are drawn from across Canada and the volume is not Ontario-centric.

The book is divided into three parts of roughly equal size: 1) Evidence and Procedure; 2) Discharge and Discipline; and 3) Contract Interpretation. Each of these main parts is further divided into chapters by topic area, with a total of 25 chapters in all. The structure is a sensible one and closely mirrors, for example, the way I teach my own business school course on grievance arbitration. Each chapter is further broken down into sub-topics and these sub-topics are set out in the table of contents, greatly simplifying the task of finding needed information. The coverage is comprehensive, but succinct. The leading cases are cited and discussed and there is sufficient information on each topic to enlighten the reader. Additional sources are provided at the

end of many of the sections, although these sources should be broadened to include those from all publishers, not just Lancaster House.

The structure of the book replicates that of the publisher's "Leading Cases On-Line" website, which itself is based on the book *Leading Cases in Arbitration*, also by Mitchnick and Etherington. In theory, this should provide valuable synergies, enabling readers who are also website subscribers to find updates of the various topics covered in *Labour Arbitration in Canada*. Perhaps it was too soon after publication to see these benefits, but when I checked the website on topics with which I was personally familiar, I was unable to find important cases issued in the past 18 months. I suspect this will be remedied in time.

The first part of the book focuses on the process of arbitration. It contains nine chapters and includes discussions of jurisdiction, arbitrability, evidence, remedies, judicial review, and duty of fair representation. The broad and important debates, such as those following the Supreme Court of Canada's decision in *Weber*, and the impact of the *Charter*, are set out of course. But the more practical issues which arbitrators encounter in hearings, like grievance procedure time limits, the rule in *Browne v. Dunn*, post-discharge evidence, or the admissibility of surveillance videos, are also addressed. On these and similar subjects there is enough information for the reader to grasp the main issue at hand, have reference to the important arbitration and court decisions, and note any divergent opinions in how this issue is handled. For example, with respect to post-discharge evidence, the authors contrast its application in different parts of the country. This section of the book effectively covers the "nuts and bolts" of how our grievance arbitration system works.

The second major part of the book focuses on discipline and discharge.

Since these cases form a disproportionate share of all arbitrations, the decision to devote almost one-third of the book to this topic is justified. The authors highlight the main concepts, such as the just cause standard, onus of proof, progressive discipline, and mitigating factors. Key cases are cited in each of these (and other) areas, frequently accompanied by a list of specific principles gleaned from these cases, such as for example, the factors developed by Professor Innis Christie for linking illness to reinstatement. After the general concepts are introduced the discussion moves to the most common grounds for discipline. Considerable space is devoted to dishonesty, illegal conduct, off-duty behaviour, disloyalty, insubordination, abusive conduct, sexual harassment, and illegal strikes. Leading cases are cited on each topic, often accompanied by direct quotes from the decision that highlights the key points of the case. The last two chapters of this section address non-disciplinary discharge, primarily focusing on absenteeism due to illness or disability (so-called "innocent absenteeism"), which leads naturally into an extensive discussion of the duty to accommodate. Accommodation cases have become a major part of the arbitration landscape since the mid-1990s and the authors capture well the evolving jurisprudence.

The final section of the book is devoted to the myriad contractual conundrums arbitrators are required to resolve on a day-in, day-out basis. The section begins with a chapter on general principles of contract interpretation that reviews the duty of fairness, ambiguity, past practice, and estoppel, among other topics. This is followed by chapters on specific subjects such as bargaining unit work, seniority, promotions, layoffs and recalls, hours of work, wages and benefits, leaves of absence, and union rights and responsibilities. As they do throughout the book, the authors identify the key cases and do a fine job of

highlighting consensus or divergence within a particular topic. Their discussion on call-in pay, in which three distinct arbitral approaches to this issue are identified, is a good illustration.

In summary, *Labour Arbitration in Canada* represents a valuable addition to our labour relations library and a necessity for labour lawyers and labour relations and human resource professionals. The volume is comprehensive, yet of a manageable size that easily fits in a briefcase, an attribute of special interest to practitioners. The book should be considered as a textbook in university labour arbitration courses and

for training and development programs. It is reasonably priced, it is up to date, and it presents a good mix of facts and analysis. Important in our field, the book is balanced and accurately reflects the existing arbitration case law in each of the many topics that it tackles. Since several of my own arbitration awards are discussed, I can vouch for the fact that the volume presents a fair review of the cases that are highlighted. The authors are to be commended for a job well done.

ALLEN PONAK
University of Calgary

Managing Global Legal Systems,

by Gary W. FLORKOWSKI, London and New York : Routledge, 2006, 271 pages, ISBN 0-415369-45-2

Dans un contexte de mondialisation économique, savoir composer avec les différents systèmes juridiques nationaux, régionaux et mondiaux qui encadrent la gestion des ressources humaines est un élément essentiel de l'avantage compétitif des entreprises multinationales. Ceci constitue la prémisse de l'ouvrage de Gary W. Florkowski qui s'inscrit dans la collection *Global Human Resource Management* de la maison d'édition Routledge, qui vise à offrir aux étudiants et praticiens des volumes à la fois détaillés et accessibles sur la gestion internationale et comparée des ressources humaines. Suivant cette perspective, le livre examine les différentes sources juridiques et les institutions qui concernent les relations du travail, tant au plan transnational que domestique, et analyse l'influence que peuvent exercer les entreprises sur ces sources et institutions.

Le premier chapitre expose diverses considérations générales relatives aux relations industrielles et à la gestion des ressources humaines. L'auteur y examine tout d'abord différentes théories

sur le rôle de l'État dans la gestion des ressources humaines et présente certains arrangements structurels entourant les relations du travail qui ont cours dans divers pays, entre autres le corporatisme étatique, le pluralisme industriel, la concertation et le corporatisme social. Il expose ensuite l'importance pour les entreprises multinationales non seulement de comprendre leur environnement juridique, mais également d'être en mesure de correctement identifier les systèmes de droit qui gouvernent leurs relations avec certaines parties prenantes (*stakeholders*), dont les syndicats, les gouvernements et les ONG, à des moments précis dans le temps. À cette fin, l'auteur dessine les grandes lignes des deux principaux types de systèmes juridiques : ceux de *common law* et ceux de droit civil en donnant quelques exemples concrets tirés de la tradition de certains pays.

Le deuxième chapitre traite des institutions internationales et de leur rôle dans l'évolution de la régulation du travail. L'auteur se concentre essentiellement sur les activités de