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In the Supreme Court of Judicature of Jamaica

Suit No. C201 of 1976

Between Central Fire & Gen Insurance Co. Ltd. Plaintiff
And Trade Union Congress of Jamaica Defendants
Arthur Gilchrist

In Chambers

Messrs. Enos Grant and W. K. Chin-See for plaintiff

Mr. W. Earl Witter for defendants

September 1, 2, 3, 9, 1976

Malcolm, J. :

History

By ex parte summons dated the 30th day of July, 1976, the plaintiff applied to this Court for an injunction:

- (a) to restrain the defendants whether by themselves or their servants and/or agents from doing any act which whether directly or indirectly causes or procures breaches of contract of employment between the plaintiff and its employees; and
- (b) to restrain the defendants whether by themselves or their servants and/or agents from illegally picketing at or near the entrance of the plaintiff's office at 14 Market Street, Montego Bay, for the purpose of persuading persons doing business with the plaintiff from entering the plaintiff's said offices.

On the 4th day of August, 1976, an interim injunction was granted herein until "after the hearing of a summons returnable on the 18th day of August, 1976." On this date, the order for injunction was extended to the 1st September, 1976, the date when the hearing of these proceedings commenced before me in Chambers.

The plaintiff company carries on the business of a General Insurance Company with registered offices at 57 Law Street, Kingston. In addition, it operates branch offices at other places in Jamaica including one at 10 and 14 Market Street, Montego Bay.

The affidavits

An affidavit in support of the application for injunction was filed by Keith Adolph Davis, a director of the plaintiff company. He

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deponed inter alia:

- (a) That on the 3rd February, 1976, a copy of "Form No. 2 (Claim by Trade Union for recognition) in keeping with the regulations made under the Labour Relations and Industrial Disputes Act 1975, was sent to the company's branch office at Market Street, addressed to " Central Fire and General Insurance " and not to " Central Fire and General Insurance Company Limited. "
- (b) That at the request of the Ministry of Labour a meeting was held on the 12th April, 1976, between representatives of the plaintiff and the first named defendant. The result of this meeting was that on the 14th April, 1976, another "Form No. 2" was sent to the plaintiff company at its branch office at Market Street and not to its registered office.
- (c) That on the 23rd April, 1976, the plaintiff company wrote to the Ministry of Labour objecting to the fragmentation of representational rights.
- (d) That on the 11th May, 1976, the second defendant, the representative of the first defendant, called a strike of the workers but after a discussion between Mr. William Mann, the Managing Director of the plaintiff company and the second named defendant, Mr. Arthur Gilchrist, the employees returned to work on the following day.
- (e) That on the 14th June, 1976, a third "Form No. 2" was served at the plaintiff's branch office in Montego Bay.
- (f) That on the 26th July, 1976, the first and second named defendants called a strike at the plaintiff's branch office which strike was still in progress.
- (g) That on the 27th July, 1976, at a meeting called by Mr. Brent Harris of the Ministry of Labour, he pointed out to the second defendant that the first defendant had no bargaining rights.
- (h) That the employees on strike along with other persons including the second named defendant had been displaying

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placards showing that a strike was in existence and had been blocking the entrance to the plaintiff's office and had been physically preventing employees and persons having business with the plaintiff from entering these offices. That business at this branch was at a standstill and irreparable damage was being done to the plaintiff's business.

- (i) That the first named defendant had no bargaining rights with the plaintiff nor was there any valid request for bargaining rights.
- (j) That the plaintiff feared that unless the defendants were restrained from carrying out their unlawful acts damage would be done to the plaintiff's business.

He then prayed for the grant of an injunction.

An affidavit was filed by Mr. Arthur George Gilchrist, the second named defendant in which he stated inter alia:

- (a) That he had charge of the first named defendant's efforts to organise workers employed to the plaintiff company and to secure the right to bargain on their behalf with the plaintiff.
- (b) That he entered into correspondence with the Ministry of Labour and on the 18th March, 1976, he received a letter from them stating that the Minister was satisfied that not less than 40% of the employees of the plaintiff company in relation to whom a request for a ballot had been made were members of the first named defendant.
That thereafter he anticipated that the Minister would have caused a ballot to be taken to determine the issue of bargaining rights raised between the plaintiff and the first named defendant.
- (c) That on the 12th April, 1976, he attended a meeting with the plaintiff and learnt that the real objection of the plaintiff concerned the omission of the words "Company Limited" from the plaintiff's name in the "Form No. 2" (claimed by Trade Union for recognition).

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- (d) That the Union, the first named defendant, has served a valid claim for bargaining rights upon the plaintiff and had done all that might reasonably be expected of it in order to comply with the provisions of the Labour Relations and Industrial Disputes Act and the regulations relating to the procurement of bargaining rights.
- (e) That eleven of the fifteen employees of the plaintiff were on strike and that although the issue of bargaining rights remained outstanding the real reason for the strike was to protest the unjustifiable dismissal of one employee, Miss Veratie Campbell.
- (f) That before the strike was called, he had discussions with Mr. George Moodie, the plaintiff's Montego Bay Branch Manager, to secure Miss Campbell's reinstatement without resort to industrial action but all attempts had proved futile because of the plaintiff's refusal to acknowledge the Union as bargaining agent.

An affidavit sworn on the 26th August, 1976, was filed by Mr. George Moodie, Manager of the plaintiff's branch office at Montego Bay in which he deposed inter alia:

- (a) That on the 3rd August, 1976, two members of his staff were prevented by persons on the picket line from entering the said branch office "by closing the gate and leaning against it." That on the same day a member of the first named defendant's union and one of the workers on strike, assaulted another worker by pouring a bucket of water on her.
- (b) That on the 21st August, 1976, persons attending the office on business were assaulted by members of the strike group who threw raw eggs and guinea seeds at these persons.
- (c) That notwithstanding the injunction granted herein the defendants still persisted in congregating near the office of the plaintiff company preventing and/or dissuading persons having business with the plaintiff company by threats and physical violence from entering the plaintiff's office.

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Other affidavits were filed by William Mann, the aforementioned Arthur Gilchrist and Alma Plowright.

The Submissions

Mr. Chin-See for the applicants made submissions:

1. If the Union does everything for the taking of a poll and if for any reason such poll is not taken, a dispute may arise between the Minister and the Union. Such a dispute does not concern the company. In terms of the Trade Union Law, there is no "trade dispute." He cited the case of Stratford v. Lindley 1964 3 A.E.R. p. 102. This was an appeal to the House of Lords against an Order of the Court of Appeal which discharged an interlocutory injunction granted against the respondents (officers of a Trade Union). The appellants' contention was that arising out of ^a controversy between two Unions the respondents had induced by unlawful means breaches by customers of their contracts with the appellants. It was held inter alia that:
 - (a) the respondents (on whom the onus rested) had not made out a prima facie case that they had been acting in furtherance or contemplation of a trade dispute within sec. 5(3) of the Trade Disputes Act of 1906, and thus were not protected by sec. 3 of the Act of 1906;
 - (b) an interlocutory injunction against the continuance of the wrong would be granted to preserve the status quo pending the trial because the respondents would **suffer** no loss therefrom whereas the appellants would suffer heavy financial loss.

Continuing his submissions:

- (2) It was a question of fact as to whether there has been illegal picketing. Court should find that the picketing has gone "over the boundary" and has become illegal - inducement must not be unlawful.
- (3) Trade Union Act must be read in conjunction with the Labour Relations and Industrial Disputes Act 1975. The calling of a strike by a Union where they have not got bargaining rights is an act of serious harrasment, and ought to be viewed with distaste by the Court in view of the fact that there is machinery available for Union to secure bargaining rights.

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4. The inducement must be peaceful. No protection if unlawful means are used. The defendants in the present case are not protected. Court must decide where the greater damage lies.
- He cited the case of Torquay Hotel Co. Ltd. vs. Cousin 1968 3 A.E.R. p. 43 and asked the Court to say that there was no Trade dispute.

5. The acts of the Union are for the purpose of furthering the position of the Union.

At this stage Mr. E. Grant in the absence of Mr. Chin-See made the following submissions:

6. Defendants' affidavit does not show a dispute between the plaintiff and the defendants. The most it shows is that the Minister has refused to take a poll.
7. The defendants have not made out a prima facie case. Even if it could be said that there is an industrial dispute between themselves and the plaintiff on the evidence, the defendants cannot rely on the protection in secs. 34 and 35 of the Trade Union Act.

Mr. Witter for the defendants also made submissions:

1. Both defendants had in all respects adhered to the regulations made under the Labour Relations and Industrial Disputes Act 1975.
2. What the Court has to decide is "Was there a trade dispute?" The dismissal of an employee can amount to a trade dispute within the meaning of the expression as it appears in the Trade Union Act. Question of bargaining rights can amount to a trade dispute.
3. The Labour Relations and Industrial Disputes Act 1975 does not have the effect of outlawing industrial actions such as strikes - a strike is an industrial dispute - work stoppage was the result of an industrial dispute.
4. A strike does not become unlawful merely because unlawful acts are committed by persons taking part in it.
5. Second named defendant was entitled to claim the protection of sec. 34 of the Act and the first named defendant was entitled to claim the protection of sec. 35. Section 35 not only prohibits actions for damages against a Trade Union for tortious acts but also prohibits the issue of an injunction to restrain any such acts.

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6. Absolute bar prescribed in sec. 35 is operative so far as it concerns a Trade Union irrespective of the existence or non existence of a trade dispute.

He cited Vacher & Sons Ltd. vs. London Society of Compositors & ors.
1913 A.C. p. 107.

It was held that on its true construction sec. 4(1) of the Trade Disputes Act 1906 amounted to a statutory prohibition against any Court entertaining an action of tort against a trade union.

7. It matters not whether the Union is acting in furtherance of a Trade dispute.

8. That if as is the case here a Trade Union official acts in contemplation of the furtherance of a Trade dispute and thereby procures breaches of contracts of employment then he enjoys the protection of sec. 34 of the Trade Union Act.

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He/cited Beetham & Another vs. Trinidad Cement Ltd. 1960 1 A.E.R. P.C.
p. 274 and Bird and others v. O'Neal and another 1960 3 A.E.R. P.C.
p. 254 and Torquary Hotel Co. Ltd. vs. Cousins 1969 1 A.E.R. p. 522.

Section 34 of the Trade Union Act recites:

" An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills. "

Section 35(1) of the said Act recites:

" An action against a Trade Union whether of workmen or masters or against any member or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court. "

As I conceive it, one of the most important questions that fall for my determination is: was there a trade dispute?

The Trade Union Act defines a trade dispute thus:

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" Any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person. "

Does the first named defendant have "bargaining rights" as far as the employees of the plaintiff company are concerned? The Labour Relations and Industrial Disputes Act, 1975, states:

"'Bargaining rights' means rights to participate on behalf of the workers in relation to whom that expression is used in negotiation in respect of:

- (a) the terms and conditions of employment of those workers, or the physical conditions in which any of them are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment, of any worker;
- (c) allocation of work as between workers or groups of workers. "

This Act and the Regulations made thereunder on the 6th May, 1975, sets out in great detail the procedure to be followed to obtain bargaining rights. These procedures were not followed. I do not agree with the defendants' Attorney that; " three valid Form 2's had been served on the plaintiff company." Some did not properly describe the plaintiff company and in any event were not sent to the "registered or principal office" as required by sec. 26 of the Act of 1975.

It was submitted that "refusal or neglect of an employer to treat with a Trade Union who has served upon it a valid request for bargaining rights is a trade dispute." The evidence does not disclose either refusal or neglect on the part of the plaintiff/^{company} A case on the point is Beetham and another v. Trinidad Cement Ltd. 1960 1 A.E.R. P.C. p. 274. In that case the jurisdiction of a Board of Inquiry set up to inquire into a trade dispute in Trinidad was challenged on the ground that there was no trade dispute. It was held, inter alia, that there was a "difference" between the Union and the company at the time of the appointment, viz, the Union had claimed bargaining status and the company refused to recognise the Union. In that case/^{the company ignored the Union's} attempts to discuss two cases of dismissal as it also did the Commissioner of Labours attempts, on the ground that it did not recognise the Union. The company later refused to

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discuss the matter with the Minister of Labour. The facts in the instant case are vastly different.

I find that the acts of the defendants is a cloak in seeking bargaining rights despite the fact that they have not exhausted the "machinery and procedures" laid down in the Labour Relations and Industrial Disputes Act, 1975, and the regulations made thereunder.

I find that there was no trade dispute. As was held in Stratford on v. Lindley 1964 3 A.E.R. p. 102. I find that the defendants/whom the onus rests have not made out a prima facie case that they have been acting in furtherance or contemplation of a trade dispute within the meaning of sec. 2 of the Trade Union Act.

I hold that the defendants cannot rely on the protection of sec. 34 and 35 of this Act.

Torquay Hotel Co. Ltd. v. Cousins & ors. 1969 1 A.E.R. (C.A.) p. 522, was cited by both sides in support of their contentions. In his judgment Lord Denning posed and answered certain questions.

" Was there a 'trade dispute' on the facts of that case? "

He held there was none as between the plaintiff company and the defendant union. He then went on to deal with the question:

" Is the defendant union liable? "

He stated that in his view section 4 (1) of the Trade Disputes Act 1960 (the English Act) which corresponds to sec. 35 (1) of our Trade Union Act, prohibits an action for damages.

If the proceedings before me related to the question of damages, I would clearly say that the plaintiff company could not succeed. What of an injunction? Does sec. 35(1) prevent an action for an injunction?

Lord Denning expressed the view that the section prohibits not only an action for damages for a tort but also an action for an injunction. I am of the view that a distinction must be drawn where the acts complained of against the defendant union are unlawful and involve violence and intimidation as ⁱⁿ the instant case. Lord Denning stated:

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"Other wrongs were canvassed, such as conspiracy and intimidation, but I do not think it necessary to go into these. I put my decision on the simple ground that there is evidence that the defendants intended to interfere directly and deliberately with the execution of the existing contracts. "

Lord Justice Winn in his judgment said:

"The present case is not concerned with any threat or intimidation; it is a simple case of conduct evidencing as the judge thought and I agree, such a disposition to induce or produce, to the prejudice of the Imperial Hotel non-performance of contracts. "

I am of the view that in the instant case an injunction can be granted. The inducement must be peaceful. In my view the acts of the Union are for the purpose of furthering their interests and position and they cannot claim the protection of sec. 35(1) of the Act.

Also cited by Mr. Witter for the defendants, was Ware and DeFreville Ltd. vs. Motor Trade Association & ors /1921/ 3 K.B. 40. The plaintiffs had brought an action for an injunction to restrain the defendants from publishing the plaintiffs' name in a stop list or from publishing any libel of the plaintiffs, injuriously affecting them in their business. It was held, inter alia, that the publication of the plaintiffs' name in the stop list was done by the defendants, bona fide, in protection of trade interests of the members of the association and therefore was not unlawful and an injunction should not be granted.

Another case cited was Vacher & Sons Ltd. v. London Society of Compositors and others (already referred to). This case turned on the construction of sec. 4 (1) of the Trade Disputes Act 1906 to which I have already referred in dealing with the "Torquay case."

I turn now to the question of picketing. The term is not often described with a clarity approaching definition. Fortunately, our Trade Union Act sec. 33(5) defines it thus:

" attendance at or near any house or place in contemplation or furtherance of a trade dispute for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or not to work. "

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The question of the legality of picketing was discussed by the Judicial Committee of the Privy Council in Bird and Others v. O'Neal and Another 1960 3 A.E.R. P.C. p. 254 (cited by Mr. Witter). An employee in the respondents' drug store in Antigua was dismissed by the second respondent, no reason being given for the dismissal. Negotiations between the Union and the respondents having broken down a board of inquiry was appointed. The respondents' representative withdrew from the inquiry when the board ruled that there was a trade dispute. Following on this^{the} trade union resolved to the picket premises. Intimidation and threats of violence were used by the pickets to prevent customers entering the respondents' business premises and to an extent which amounted to an actionable nuisance. The respondents brought an action for damages and an injunction against the appellants.

In the instant case, the question of master and servant does not arise. Suffice it to say that in "Bird's" case it was held:

- (i) " the relationship of master and servant did not exist between the individual appellants and the pickets and the appellants were not vicariously liable for the acts of the pickets on such a ground;
- (ii) on the evidence the two appellants were present and assisting in the picketing which was being carried out with threats and intimidation thereby constituting a nuisance causing damage to the respondents' trade. "

An injunction to restrain the two appellants was granted.

On the facts of the instant case, I find that the picketing has been illegal and not peaceful. I find that unlawful means have been used, What of the second named defendant?

Mr. Arthur Gilchrist on whom the onus lies has not satisfied me that there is a trade dispute and consequently in my view he is not protected by sec. 34 of the Trade Union Act.

I am satisfied that the persons mentioned in para. 15 of the affidavit of Mr. K. A. Davis, sworn on the 30th July, 1976, (already referred to) have been employing threats and intimidation and "have been physically preventing employees and persons having business with the plaintiff

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company from entering these offices."

I refer to the affidavit of Mr. George Moodie, sworn on the 26th August, 1976, and am satisfied "that persons attending the office on business were assaulted by members of the strike group who threw raw eggs and guinep seeds at these persons."

Having considered the various authorities cited and having given careful attention to the arguments advanced by learned Attorneys for the parties herein, I grant the injunction prayed and hereby order and direct that the defendants, The Trade Union Congress of Jamaica and Arthur Gilchrist whether by themselves or their servants and/or agents be restrained and an injunction is hereby granted restraining them whether by their servants and/or agents:

- (a) from doing any act which whether directly or indirectly causes or procures breaches of contract of employment between the plaintiff and its employees;
- (b) from illegally picketing at or near the entrance of the plaintiff's office at 14 Market Street, Montego Bay for the purpose of persuading persons doing business with the plaintiff from entering the plaintiff's said offices until the hearing of this action or further order.

The Attorneys for the plaintiff undertaking to abide by any order which the Court may make in respect of damages suffered by the defendants by reason of this order and the plaintiffs Attorney further undertaking to prosecute this action with due diligence.

AND it is further ordered that costs be costs in the cause.