

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M20/95

BEFORE: THE HON. MR. JUSTICE ELLIS
THE HON. MR. JUSTICE LANGRIN
THE HON. MR. JUSTICE COURTNEY ORR

REGINA

VS.

INDUSTRIAL DISPUTES TRIBUNAL

EXPARTE MOTHERS ENTERPRISES LTD.

Mr. L. Smith for Applicant Company.

Mr. Lackston Robinson & Mrs. A. Johnson for
Attorney General.

Heard: January 23 & October 10, 1997

ELLIS, J.

For the reasons set out in the judgment to be delivered by my brother Langrin J, which I have had the opportunity of considering in draft and with which I agree, I would dismiss the motion.

LANGRIN, J.

This is an application for an order of Certiorari to remove into this Court and quash an order made by the Industrial Disputes Tribunal on 23rd January, 1995 as follows:

"The Tribunal awards, therefore that all the individuals who were employed to Mothers Enterprises Limited as Cashiers, Counter Hostesses, Bakers and Janitors at the Spanish Town Branch on the 29th September, 1992 are the persons who are eligible to vote in the ballot."

Background to the Dispute

By letter dated September 29, 1992 the United Union of Jamaica, hereinafter called the Union informed the Mothers Enterprises Limited hereinafter called the Company that all Cashiers Counter Hostesses, Janitors and Bakers and all other workers are members of the Union and as such the Union is authorised to represent them.

A dispute arose between the company and the Union with regard to the category of workers in respect of whom the ballot should be taken and the persons who should be eligible to vote in the ballot. The Minister referred the dispute to a Tribunal pursuant to Section 5(3) of the Industrial Disputes Act with the following terms of reference:

"To determine and settle the dispute between Mother's Enterprises Limited on the one hand and the United Union of Jamaica on the other hand over the categories of workers of whom the ballot should be taken or persons who should be eligible to vote in the ballot to determine the Union's claim for bargaining rights for certain employees of the Spanish Town Branch of Mothers Enterprises Limited."

The Tribunal met on 8 sittings between May 25, 1994 and 12th October, 1994. In the initial sitting of the Tribunal Mr. Reid, Attorney-at-Law for the Company agreed to an amendment to the terms of reference by indicating that he had no problem with such amendment as: "Certain categories of the Spanish Town branch." Evidence was adduced from Mr. Hudson, Managing Director that there are fourteen branches of Mothers Enterprises with the same categories of employees. The Union served claims for bargaining rights in respect of certain categories of employees at three of the Companies restaurants. The three restaurants were Park Plaza, East Queen Street and Spanish Town. The Ministry of Labour ceased processing the claim in respect of the East Queen Street Branch because of the Unions failure to satisfy certain essential requirements. Thus there are now two separate claims by one union in respect of the Companies fourteen restaurants.

The Company has sought to quash the Award in the form stated above on several grounds but relied essentially on Ground 3 which is stated as follows:

- (3) The Tribunal failed to take into consideration the matters required by regulation 4 of the Labour Relations and Industrial Disputes Regulations, 1975 to be taken into consideration for the purpose of settling the dispute, and in particular it failed to take into consideration the following matters:

- (i) whether or not the duties and responsibilities are identical for all of the workers;
- (ii) the interchangeability of the workers in respect of whom the dispute arose.

It seems clear that the grounds of attack are so stated in light of the clear provision of Section 12(4)(c) of the Act which states that an award in respect of any industrial dispute referred to the Tribunal for settlement:

"Shall be final and conclusive and no proceedings shall be brought in any court to impeach the validity thereof except on a point of law."

Mr. Smith on behalf of the applicant submitted that an award that the workers of the Spanish Town Branch of Mothers Enterprises are eligible to vote, the Tribunal was in effect declaring that the workers of this one branch constituted a category of workers of whom the ballot should be taken. It can be seen from the evidence that the person in any category comprised persons in all fourteen branches, so that workers from any branch could not constitute a category or sub-category. The Tribunal must have misdirected itself in law in order to arrive at the award which it made.

Section 4(1) of the Act states:

"Every worker shall, as between himself and his employer, have the right -

- (a) to be a member of such trade union as he may choose;
- (b) to take part, at any appropriate time, in the activities of any trade union of which he is a member."

Much assistance will be derived from an examination of the provision of section 5(3) of the Act which is stated as follows:

"Where the Minister decided to cause a ballot to be taken and there is a dispute which he has failed to settle, as respects the category of workers of whom the ballot should be taken or the persons who should be eligible to vote in the ballot, the Minister shall refer the dispute to the Tribunal for determination. The Tribunal shall, in determining any dispute referred to it under this subsection, have regard to the provisions of any regulations made under this Act and for the time being in force in relation to ballots."

The dispute which the Tribunal must settle, will have to be examined on the basis of the evidence and the submissions offered by each party. The Tribunal cannot act on anything else. Regulation 4 of the relevant regulation requires the Tribunal to consider certain factors in a dispute of the kind referred to for settlement.

They are stated as follows:

- (a) the community of interests of the workers in that category, and in particular, whether the duties and responsibilities and work-place are identical for all of those workers;
- (b) the history of collective bargaining in relation to the workers in the employment of the employers in the trade or business in which that employer is engaged;
- (c) the interchangeability of the workers in respect of whom the dispute arises;
- (d) the wishes of the workers in respect of whom the dispute arises.

As I understand it the Company was maintaining before the Tribunal the position that the categories - Cashiers, Counter Hostesses, Bakers and Janitors are common to all the restaurants. Therefore the Union should be seeking to represent the workers in all the restaurants instead of claiming the right to bargain for the one branch in Spanish Town. Further, there are regular transfers of the workers between the restaurants, resulting in some of those who were at the Spanish Town branch at the time the claim was received being transferred to other restaurants. While it is not averse to its workers being members of a Trade Union it is fearful of the possible devastating effect that the right of workers at each restaurant to exclusive representation by a trade union would have on the Enterprises' ability to function.

The Union's position is that it would shortly be extending its representation bid since it was in the process of presenting the Company with five more claims on behalf of the workers at five additional restaurants. The Union further contends that the dispute occurred as a result of the resistance of the Company to the Union's

attempt to provide trade union protection for the Cashiers, Counter Hostesses, Bakers and Janitors comprised of thirteen workers at Spanish Town Branch of the Enterprise. The Ministry of Labour inspected the Union's ledger and membership roll which disclosed that nine of the thirteen workers, at the restaurant were bonafide members of the Union.

It would seem to me that the question which the Tribunal had to determine was whether or not the categories claimed for by the Union were such in relation to whom collective bargaining could appropriately be carried on.

It appears to me that on an examination of the transcript of the proceedings before the Tribunal, the Tribunal approached the matter from the standpoint of the concession by the Company that it had no problem with the reference by the Minister relating to the 'categories of the Spanish Town Branch'. As a consequence of this concession the Tribunal's jurisdiction was confined to the Spanish Town Branch. It is clear that regulation 4 was forcefully brought to the attention of the Tribunal and there is nothing that could lead to the conclusion, in light of the reference that the Tribunal had not applied its mind to the factors which regulation 4 requires it to do. It held by its award that all the workers in the categories outlined at the Spanish Town Branch are the persons who are eligible to vote in the ballot.

This conclusion is reasonable because of the clear words of Section 4 of the Act which confers on all "workers" defined as individuals who work for an employer, the right to join a trade union and to secure recognition of their Union by invoking the provision of Section 5 of the Act in the event of a dispute arising between them and their employers consequent on the latter failing and or neglecting to recognise their right to join a union.

In my judgment, the Tribunal did no more than it was asked to do. I am not therefore persuaded that there is any legal error on the part of the Tribunal in granting the Award.

For these reasons I agree with the order proposed that the application should be refused with costs to respondents to be agreed or taxed.

Courtney Orr J.,

I concur.