

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

THE FULL COURT

BEFORE VANDERPUMP, THEOBALDS AND WOLFE J.J;

Suit No. M21/81

Reg. v. THE INDUSTRIAL DISPUTES TRIBUNAL

and

THE HONOURABLE MINISTER OF LABOUR

Exparte - WONARDS RADIO ENGINEERING LIMITED

J.H.N. Forrest and Robert Baugh for the Applicant

Rance Langrin for the Respondents

Dennis Morrison for the Union of Technical Administrative and Supervisory Personnel representing the Workers.

Heard: 12, 13, 14 and 15 February, 1985

JUDGMENT

WOLFE J.

The Applicant herein is a Company Registered under the Companies Act of Jamaica with its Registered Office and place of business at 55½ Church Street in the Parish of Kingston.

The Union of Technical Administrative and Supervisory Personnel, a registered Trade Union, holds bargaining rights in respect of certain workers employed to the Applicant.

On the 15th December, 1981 the Applicant issued a memorandum to its workers. The contents of the memorandum are set out hereunder:-

"TO ALL MEMBERS OF STAFF

The year 1981 has been a most difficult year in many respects for this Company. The continuing shortage for "Funded" Licences for importation of goods created further hardships and the alternative "No Fund" method was difficult and in most cases too costly.

Our overhead expenses continue to increase and there just wasn't sufficient business generated to ensure profitability. The end of year sales on which we placed some recovery has so far not been up to expectations.

We therefore find that it will not be possible to make any special Bonus Payments which we deeply regret, knowing that at this time of year each person is looking to find that extra "cheer". We have arranged for Combined Investments Ltd. to purchase a portion of the shares held by anyone wishing to sell.

We crave your understanding, and it is hoped that we will continue to receive your full support in the still difficult times ahead.

THE MANAGEMENT."

In response to the memorandum the Union representing the workers wrote a letter dated the 17th December, 1981 advising the Applicant of the likely consequence of the decision contained in the memorandum dated 15th December, 1981. The letter dated 17th December, 1981 is set out hereunder:

"Mr. Edward Wong,
Managing Director,
Wonards Engineering,
55½ Church Street,
Kingston.

Dear Sir,

Your employees who are members of the Bargaining Unit view with total dismay the decision not to pay the traditional staff Xmas bonus.

Our members are concerned that the decision is influenced by the fact that they have become unionised, and regard the attitude of your Company to be unfriendly and obstructive towards their freedom of association.

We are to request that you take steps to alter the unfriendly decision by 3 p.m. on the 17th inst.

Failing that, this union will not be able to guarantee normalcy.

Yours truly,

Re Ennis"

By letter of even date the Applicant replied in the terms set out below:

"UTASP.,
108 Church Street,
Kingston.

Attention: Reg Ennis - General Secretary.

Dear Sir,

I acknowledge receipt of your letter of today's date which was delivered to us at approximately 10 a.m.

I note that the Company is being accused of anti-unionism and being unfriendly and obstructive towards its employees freedom of association.

The Company challenges you or any of its employees to provide any proof in support of these distasteful allegations, which are denied by the Company.

We enclose a copy of the circular to members of staff dated 15th December 1981 and this was distributed to all staff members and we repeat that we deeply regret having to make that decision which was arrived at after indepth consideration of all relevant factors. We are unable to share with you your view that the decision was an unfriendly one, and consequently we are unable to alter the decision made.

We wish to say that should the members of staff decide to act in a manner other than normal in relation to their work we should be forced to adopt such measures as we deem fit.

We extend the seasons greetings to you and members of your office.

Yours truly,

EDWARD C. WONG
MANAGING DIRECTOR

ECW/FM. ENCL.

On the 18th December, 1981 the workers withdrew their services. Following the withdrawal of labour the General Secretary of the Union representing the workers and the Directors of the Applicant Company held discussions but to no avail. The workers have since then remained off the job and have continued to picket the Applicant's business place up to this point in time. The length of this strike will no doubt find its place in the Guinness Book of Records.

On the 4th day of January, 1982 the Applicant addressed a letter, the contents of which are recited hereunder, to the workers informing them that they had abandoned their

jobs and that the Applicant had accepted the abandonment:

"Mr. Robert Clough
c/o UTASP
108 Church St
Kingston

Dear Sir/Madam,

Re your contract of employment
with Wonards Radio Eng/Ltd.

You have voluntarily and, indeed without consent of the Company or justifiable cause, absented yourself from work from the 18th December 1981 up to the date hereof.

You will appreciate that in doing so, you have subscribed to the Company suffering considerable loss as it had to be closed to business and even business which was transacted with it prior to the 18th December 1981, where goods were supposed to be delivered before Christmas day, had to be cancelled and refunds will have to be made in respect to deposits and cash prices paid to the Company in respect to sales which had been effected.

This took place at the most important sales period of the year, and the Company's financial position has been worsened thereby.

We have received no indication from you of a desire to return to work and the Company treats such action as an abandonment of your work at the Company and a severe breach of your contract of service.

The Company has accepted the abandonment of your position at the Company and brings to your attention that you had been paid in good faith, salary up to the 31st December 1981 for which the Company has had no service from you from the 18th December 1981.

Yours faithfully,

Managing Director".

It would appear from a letter dated 22nd December, 1981 and which is set out below that the Applicant reported the taking of Industrial Action by the workers to the Ministry of Labour:

"BY HAND

IMMEDIATE

General Secretary,
Union of Technical, Administrative
& Supervisor Personnel
108 Church Street
Kingston.

Dear Sir:

I have to inform you that this Ministry has

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been advised by representatives of Wonards Radio Engineering Limited that industrial action has been taken by the workers of the Company who are represented by your Union. This Ministry has also been advised that industrial action which commenced on the 18th instant is still continuing.

I am directed by the Minister to request that normalcy be restored immediately and that the Company and the Union meet at this Ministry not later than Friday 8th January, 1982 to discuss the issue which caused the industrial action, with a view to arriving at a settlement.

Yours faithfully,

(A.G. Irons)
for Permanent Secretary

c.c. Managing Director,
Wonards Radio & Engineering Ltd.
55½ Church Street
Kingston. "

The records are silent as to whether or not the parties did meet at the Ministry of Labour as per the request contained in the letter set out above.

The Honourable Minister of Labour by Reference dated the 9th February, 1982 referred the matter to the Industrial Disputes Tribunal for settlement under Section 11 (1) of the Labour Relations and Industrial Disputes Act. The Reference is set out hereunder:

"Dear Sir,

I am directed by the Minister to refer to the Industrial Disputes Tribunal for settlement, the dispute between Wonards Radio Engineering Limited on the one hand and certain workers employed by the Company and represented by the Union of Technical, Administrative and Supervisory Personnel on the other hand, in accordance with Section 11 (1) of the Labour Relations and Industrial Disputes Act, 1975.

The Terms of Reference of the Tribunal are as follows:

"To determine and settle the dispute between Wonards Radio Engineering Limited on the one hand and certain workers employed by the Company and represented by the Union of Technical, Administrative and Supervisory Personnel on the other hand over the Union's claim for Christmas bonus for the said workers".

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Industrial action has been taking place since 18th December, 1981 and it would be appreciated if the relevant division of the Tribunal would convene an early meeting in accordance with Section 12 (5) (a) of the Act.

Yours faithfully,

L.R. Stewart
for Permanent Secretary"

It is to be noted that the reference of the 9th February, 1982 dealt only with the claim for Christmas Bonus.

I shall now set out the contents of a letter dated the 4th October, 1983 addressed to the Permanent Secretary of the Ministry of Labour and Public Service by the General Secretary of the Union of Technical, Administrative and Supervisory Personnel. Paragraph 3 of this letter accounts for the delay in the hearing of the reference dated the 9th February, 1982.

"Permanent Secretary,
Ministry of Labour & Public Service
North Street
Kingston.

ATTENTION MR. A. IRONS

Dear Sir,

You will recall our dispute with Wonards Engineering Limited over the matter of payment for Christmas Bonus which is now before the Industrial Disputes Tribunal.

You will further recall the Company's avoidance to attend meetings at the Ministry of Labour despite repeated invitations by your Ministry on the context that the workers have abandoned their jobs.

The matter before the Industrial Disputes Tribunal was adjourned sine-die since an earlier Award by the same Panel on a Wage Dispute was challenged in the Court by the Company on the same basis that the workers had already abandon their jobs.

The Court issue was discontinued by the Company but the Company still maintain that the workers have abandoned their jobs and that question is not before the Tribunal which is now legally free to hear the issue.

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I am therefore requesting that the matter concerning dismissals of our members whose names have been sent to you under separate cover be referred to the Industrial Disputes Tribunal for adjudication.

Please treat the matter urgently since the workers are still on strike after twenty months.

Yours truly,

Reg Ennis
General Secretary."

By letter dated the 13th October, 1983 the Honourable Minister of Labour by virtue of the powers vested in him under under Section 11A (1) (a) of the Labour Relations And Industrial Disputes Act made a second reference to the Industrial Disputes Tribunal. This reference dealt with the question of termination of employment.

"BY HAND

Dear Sir,

I am directed by the Honourable Minister to refer to the Industrial Disputes Tribunal for settlement, the dispute between Wonards Radio Engineering Limited on the one hand and Locksley Anderson, Oswald Bobalal, Gilmour Burnett, Robert Clough, Meverlyn Dudassee, Raymond Duncan, Jeanette Davis, Anderson Fagan, Henry Dussard, S. Edwards, Joseph Gray, Rupert Guthrie, Egbert Golding, Ruel Henry, Iona Hamilton, Paula Harris, Donald McPherson, Julius McKenzie, Enos Moss, Jeffery Shaw, Bertram Saddler, Voloney Thompson, Daniel Tucker, Eric Williams, D. Williams, Norman Walker, Walter Wallen, Alrick Whitely, Ray Sumerville, Christopher Wilson, Benjamin J. Blackwood and Sylbert White formerly employed to Wonards Radio Engineering Limited and represented by the Union of Technical, Administrative and Supervisory Personnel on the other hand, in accordance with Section 11A (1) (a) of the Labour Relations and Industrial Disputes Act."

The Terms of Reference to the Tribunal are as follows:

To determine and settle the dispute between Wonards Radio Engineering Limited on the one hand, and Locksley Anderson, Oswald Bobalal, Gilmour Burnett, Robert Clough, Meverlyn Dudassee, Raymond Duncan, Jeanette Davis, Anderson Fagan, Henry Dussard, S. Edwards, Joseph Gray, Rupert Guthrie, Egbert Golding, Ruel Henry, Iona Hamilton, Paula Harris, Donald McPherson,

Julius McKenzie, Enos Moss, Jeffery Shaw, Bertram Saddler, Voloney Thompson, Daniel Tucker, Eric Williams, D. Williams, Norman Walker, Walter Wallen, Alrick Whitely, Ray Summerville, Christopher Wilson, Benjamin J. Blackwood and Sylbert White formerly employed to the Company and represented by the Union of Technical, Administrative and Supervisory Personnel on the other hand over the termination of their employment."

Yours faithfully

L.R. Stewart

for Permanent Secretary."

Consequent upon the reference of the 13th October, 1983 the Union by letter dated the 30th November, 1983 requested the Permanent Secretary of the Ministry of Labour and Public Service to withdraw from the consideration of the Tribunal the question of the non-payment of Christmas Bonus. The contents of that letter are set out hereunder:

"Permanent Secretary,
Ministry of Labour & Public Service
North Street
Kingston.

ATTENTION MR. A. IRONS

Dear Sir,

I refer to dispute between this Union and Wonards Engineering Limited pertaining to the non-payment of Christmas Bonus and to advise you that since the matter has been before the Tribunal the said dispute has been lessened in importance as a result of the Company's claim that the workers have "ABANDON ~~their~~ JOBS".

The said claim by the Company has created a new dispute which is presently before the Industrial Disputes Tribunal and will indeed amplify the question of payment of Christmas Bonas since this new dispute arose from its non-payment.

I am therefore requesting that the dispute pertaining to the question of Christmas Bonus payment be withdrawn from the Tribunal so as to faciliatate without complication the Tribunal's hearing of the matter concerning the dismissal of the employees.

Yours truly,

Reg Ennis

General Secretary".

The response of the Applicant to the reference of the 13th October, 1983 is contained in a letter dated 20th January, 1984 which is set out hereunder:

"Permanent Secretary
Ministry of Labour
1F North Street
Kingston

Dear Sir:

Claim Union of Technical, Administrative
and Supervisory Personnel, on behalf of
Workers Against Wonards Radio Engineering
Limited, for Termination of Employment

I refer to your letter of the 13th October 1983, whereby you referred to the Industrial Disputes Tribunal for settlement of a dispute between Wonards Radio Engineering Limited on one hand, and Loxley Anderson and several other persons set out therein, and who are represented by the Union of Technical, Administrative, and Supervisory Personnel, on the other hand, in accordance with section 11A (1)(a) of the Labour Relations and Industrial Disputes Act.

I also refer to my letters to you of the 4th November 1983, and the 10th November 1983, which were delivered.

My submission is that the Claim for a bonus was the sole basis on which the workers withdrew their services from the Company on the 18th December 1981.

The Company at that time contended that the payment of a bonus was an ex-gratia payment, and was never a part of the workers service Contracts, nor intended to be part thereof.

The workers were paid fortnightly on the 15th of a month, and at the end of the month, and when it discovered its inability to make a payment by way of a bonus, because of the lack of business done for that year, and its financial inability to cope with the payment, the Company offered to advance to the workers, salary to the 31st December 1981, and this proposal was accepted by the workers, who were paid salaries to the 31st December 1981, on or about the 15th December 1981.

On the 17th December 1981, the Company received a letter bearing that date from the Union of Technical, Administrative, and Supervisory Personnel (herein after referred to as UTASP), accusing the Company that the non-payment of bonus was influenced by the fact that the members of the Union had become unionised, and that they regarded the attitude

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The goods sold prior to Christmas for delivery at Christmas, could not be delivered because of the picketting of the premises, and all these were caused as a result of the non-payment of bonus by the Company, and the withdrawal of services without any legal justification.

The claim in respect to termination of employment was made in 1983 when the workers employment had already been terminated, and such a claim cannot be the subject of an Industrial Dispute.

One has to take into consideration, the fact that this claim of the termination of employment was not made within a reasonable time.

At the time of the withdrawal of services, there was actually a dispute before the Tribunal for increased wages, and this claim has been heard and determined.

I submit that the reference of the termination claim to the Tribunal at this stage is unlawful, and should be withdrawn, as it is not within the provisions of any Act dealing with Industrial Relations.

Yours faithfully,

J.H.N. Forrest".

The Permanent Secretary of the Ministry of Labour and the Public Service and the Applicant were not ad idem on the question of the validity of the reference. The letter dated 7th February, 1984, as set out hereunder is ample evidence of this fact.

"Mr. J.H.N. Forrest
Attorney-at-Law
71 Duke Street
Kingston.

Dear Sir:

Re: Dispute - Wonard Radio Engineering
Limited Union of Technical,
Administrative and Supervisory
Personnel, over workers termination
of Employment

We acknowledge receipt of your letter dated 20th January, 1984, (ref. No. FF) protesting the reference to the Industrial Disputes Tribunal of the caption dispute.

Your submissions were carefully studied, and I

have been instructed to advise that the Ministry of Labour's position is that the reference is valid, and the matter is properly before the Industrial Disputes Tribunal as a dispute.

Yours faithfully,

R. Stewart
for Permanent Secretary".

The Applicant having failed in its bid to convince the Ministry of Labour and the Public Service as to the validity of the reference dated 13th October, 1983 ought and obtained from Patterson J, on the 13th March, 1984, leave to apply for an Order of Prohibition to prohibit the Industrial Disputes Tribunal from hearing the reference made to it by the Honourable Minister of Labour.

Mr. Baugh for the Applicant submitted firstly:

That the reference dated the 13th October, 1983 was invalid in that at the time of the reference the workers had been already dismissed and therefore were not workers within the meaning of the Labour Relations and Industrial Disputes Act. A natural consequence of the above it was further submitted that there was no industrial dispute, as defined by the Labour Relations and Industrial Disputes Act; which could have properly been referred to the Tribunal.

Section 2 of the Labour Relations and Industrial Disputes Act defines industrial dispute as meaning:-

"a dispute between one or more employers or organizations representing workers, where such dispute relates wholly or partly to -

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work; or
- (b) engagement or non-engagement, or termination or suspension of employment of one or more workers;
- (c) allocation of work as between workers or groups of workers; or
- (d) any matter affecting the privileges, rights and duties of any employer or organization representing employers or of any worker or organization representing workers.

The Terms of Reference to the Tribunal was set out in the following manner:

"To determine and settle the dispute between Wonards Radio Engineering Limited on the one hand and Locksley Anderson formerly employed to the Company and represented by the Union of Technical, Administrative and Supervisory Personnel on the other hand over the termination of their employment".

Mr. Baugh in a submission which will be remembered for its bravery contended that the words "formerly employed to the Company" clearly indicated that the persons named in the reference were not workers at the time the reference was made and therefore there was no Industrial Disputes referable to the Tribunal bearing in mind the definition. The fact that Reference mentioned that the persons were represented by the Union of Technical Administrative and Supervisory Personnel was of no consequence, Mr. Baugh contended, because the reference had clearly stipulated that the dispute was between **the Applicant** and persons formerly employed to it. In support this ingenious argument Mr. Baugh cited and relied on Regina v. Industrial Disputes Tribunal Exparte Kaiser Bauxite Company unreported). per Ross J. as he then was

"Having regard to the definition of industrial dispute "and worker" it seems that after 2nd June, 1978 there was here a dispute between the Kaiser Bauxite Company and Herbert Kerr, an ex-worker of the company, if this is correct then there would not have been an industrial dispute within the meaning of the law, since such a dispute must be between the employer and a worker or the organization representing one or both of them. If of course there was no "industrial dispute" (as defined by the Act) then there would have been nothing to refer to the Industrial Dispute Tribunal".

per Bingham J.

"But, even for argument sake, one were to apply such a construction, one would have to do so strictly, and if such a construction was applied Mr. Kerr would have had to be a worker at the time that the Minister sought to act, and it is, at least common ground that on the 9th November 1979 when the reference was made Mr. Kerr had long ceased to be a worker".

Let me state at the outset that the passages relied on are obiter as the views expressed therein were not germane to the issue to be decided. It cannot be that a worker who has been unlawfully dismissed ceases to be a worker for purposes of the Labour Relations and Industrial Disputes Act. The reference to the workers as being "formerly employed" is not indicative of the fact that they have ceased to be workers for purposes the Labour Relations and Industrial Disputes Act. Taken to its logical conclusion the submission would mean that wherever a dispute arises an employer could by terminating the contract deny the worker access to the Industrial Disputes Tribunal. Finally the operative date at which it must be decided whether or not a person is a worker under the Act must be the date when the dispute arose and not the date when the reference was made. "Formerly employed" must be read in the light of the workers allegations that they have been unlawfully dismissed.

Secondly it was contended that the Provisions of Section 11A of the Labour Relations and Industrial Disputes Act had not been complied with hence the purported reference thereunder was bad in law. The argument in support was posited in this way. The dispute having arisen some twenty-one months before the date of the reference it could not properly be said that "an industrial dispute exists in any undertaking and should be settled expeditiously". As is required by Section 11A(1) of the Act.

It was further urged that even if the above contention was unsound as in my view it is the failure of the Minister to comply with Section 11A(1)(a) of the Act was fatal to the reference.

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It is convenient to deal with both submissions together.

Section 11A

(1) Notwithstanding the provisions of sections 9, 10 and 11, where the Minister is satisfied that an industrial dispute exists in any undertaking and should be settled expeditiously, he may on his own initiative -

(a) refer the dispute to the Tribunal for settlement if he is satisfied that attempts were made, without success to settle the dispute by such other means as were available to the parties.

As I understand the submission it seeks to challenge the exercise of the Minister's discretion. It cannot be doubted that there is power in the Court to review the exercise of the discretion.

Mr. Langrin for Tribunal relying upon Secretary of State for Education and Science v Metropolitan Borough of Tameside (1976) 3A.E.R. 665 submitted that the Court must bear in mind that the discretion to refer a dispute to the Industrial Disputes Tribunal is a discretion entrusted to the Minister. Accordingly the Court ought not to interfere with the exercise of that discretion once it appears that the Minister has acted within the provisions of the Act and there is a foundation of facts upon which the Minister could lawfully have exercised his power or discretion in making the reference. The duty of the Court he further urged was to ascertain whether or not there is any foundation of facts on which the Minister could have lawfully exercised his discretion on the 13th October 1983 the date of the reference. Once the Minister acted bona fides the Court ought not to interfere with the exercise of the discretion.

What then was the status quo of the matter on the 13th October 1983 when the reference was made? The workers had taken industrial action on the 18th December 1981 re the question of christmas bonus. The letter dated 4th October 1983 set out herein and the supplemental affidavit of Leslie Stewart, Senior Conciliation Officer in the Ministry of Labour and Public Service, dated the 6th February 1985 give a clear picture of the circumstances which existed at the time of the making of the reference. The affidavit of Leslie Stewart is uncontroverted. We take the view that both the letter of the 4th October 1983 and the supplemental affidavit of Leslie Stewart disclose a foundation of facts on which the Minister could lawfully exercise his discretion under Section 11A of the Labour Relation and Industrial Disputes Act.

For the reasons aforementioned I am of the view that the relief sought ought to be refused and the Motion dismissed.

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exercise his discretion under Section 11A of the Labour Relation and Industrial Disputes Act.

For the reasons aforementioned I am of the view that the relief sought ought to be refused and the Motion dismissed.

VANDERPUMP J.

On 13th October the Minister referred to the Industrial Disputes Tribunal for settlement a dispute between Wonards on the one hand and various employees on the other hand over the termination of their employment. This was done in accordance with the provisions of Section 11A - (1) (a) of the Act.

This reads - ".....where the Minister is satisfied that an industrial dispute exists in any undertaking and should settled expeditiously, he may on his own initiative" -

- (a) refer the dispute to the Tribunal for settlement if he is satisfied that attempts were made, without success, to settle the dispute by such other means as were available to the parties; my emphasis.

On 20th October, 1983 Mr. Forrest wrote protesting this reference for reasons which he then advanced.

On 13th March, 1984 leave was sought to apply for an Order of Prohibition prohibiting the Industrial Disputes Tribunal from entering upon this reference and/or hearing the matter referred to it as a dispute between these parties. Leave was duly granted by my brother Patterson that same day.

The Statement filed pursuant to the relevant provisions of the Code had in only one discernible ground. Paragraph 3 "The company contends inter alia that the reference of the alleged dispute herein was ultra vires in that it is not an Industrial Dispute as defined by the Labour Relations and Industrial Disputes Act"

"Industrial dispute" means a dispute between one or more employers or organizations representing employers and one or more workers or organizations representing workers, where such dispute relates wholly or partly to -

(a)

(b) engagement or non-engagement or termination or suspension of employment of one or more workers

----- Section 2 of the Act.

Dispute is not defined in the Act. The Oxford Dictionary has it as meaning a controversy.

What sparked off this controversy was the decision by Wonards not to pay Xmas Bonus to the workers that year, 1981. They were so informed in writing on the 15th December, On the 18th they withdrew their services from the company and picketed their store at 55½ Church Street daily at least up to March 1984.

On 9th February, 1982 the Minister referred this claim for Xmas Bonus to the Tribunal but it was later withdrawn at the Union's request. This was on 30th November, 1983 when the instant reference was before them.

On 27th January and 28th January, 1982 these workers were dismissed on the spot whereupon the picketing took on a more aggravated form in that various debris were scattered all over the place, the outer door locks were tampered with, some destroyed. In addition executive members of the company were abused on sight. This escalation was due to the fact that the workers were not satisfied with the purported termination of their employment.

So it could be said that this controversy related partly to the termination of their employment.

At the time when this controversy was aggravated by their dismissal they were workers, that is the relevant date,

M38/80)not the date of reference to the Tribunal. Dicta of my brothers
Ex Parte)
Kaiser) Ross and Bingham to the contrary are but Obiter as not being
Bauxite)
Company) necessary to the decision which turned on the fact that Section
11A - (1) (a) was not in force on 2nd June, 1975 when the worker
was dismissed so the Minister had not this power to act on his
own initiative then.

It seems to me that this controversy over the termination of their employment is an industrial dispute and I so hold. This ground accordingly fails.

At the hearing Mr. Baugh was given leave to argue two further grounds - these dealt with the pre-requisites necessary to the exercise of the Minister's discretion in referring the dispute to the Tribunal.

It was his submission first of all that the Minister could not have been satisfied that this was one that should be settled expeditiously as he took so long to refer it to the Tribunal. Secondly that he could not have been satisfied that attempts were made without success to settle it by such other means as were available to them as no attempts were in fact made.

"It seems to me to be a matter of common sense that where the exercise of a power is dependent upon the existence of certain conditions then a Court is entitled to see if those conditions have been satisfied before the power is exercised" Wolfe, J. In the same case the then C.J. accepted the submission of Mr. Langrin that as long as there is a foundation of fact before the Minister on which he could reasonably have exercised his discretion in the way he did a court ought not to hold that his discretion was not lawfully exercised.

So I have to consider whether there is here a foundation of fact on which the Minister could have acted, so exercised his discretion in the way he did.

The picketing going on apace for so long must have struck any well thinking person that here was a controversy that should be expeditiously settled. Business at the store was stultified. There was general chaos in the vicinity. As soon as the Minister was informed it seems the Permanent Secretary wrote Wonards and Mr. Forrest so stating and asking them to be present at a meeting on the following 10th this letter was dated 4th October, 1982. This Mr. Forrest declined to do. This letter of the 4th said that efforts to resolve this dispute at the local level were fruitless. So attempts had been made without success

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to settle it. I so find as well as that there was a foundation of fact on which the Minister could be satisfied that this was one that should be settled expeditiously. Consequently these two grounds also failed.

In the result I would dismiss this Motion.

Judge.

THEOBALDS, J.

Since resuming office I have had the opportunity to peruse thoroughly the judgments of my learned brothers. I agree with both the reasoning and the conclusions arrived at and there is nothing that I can usefully add. The delay in bringing this matter to a finality is deeply regretted but I have been out of office and off the Island almost continuously from the 10th April until mid September.