

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

M86A/92

IN THE MATTER of The Arbitration Act S. 20

AND

IN THE MATTER of an Arbitration between

The Government of Jamaica through the

Ministry of the Public Service and

The Police Federation

BETWEEN

THE GOVERNMENT OF JAMAICA

PLAINTIFF

A N D

THE POLICE FEDERATION

DEFENDANT

Lennox Campbell, instructed the Director of State Proceedings for the Government of Jamaica.

Huntley Munroe Q.C. and Lord Gifford for the Police Federation.

HEARD: 29th & 30th October, 1992

PATTERSON J.

By a memorandum of agreement dated the 1st October, 1992, The Government of Jamaica ("the Government") and The Police Federation ("the Federation") agreed to submit differences between them to arbitration. The arbitrators were duly appointed and they commenced the hearing on the 12th October, 1992. The chairman of the Federation announced that the Federation was represented by the Rt. Honourable Hugh Shearer and Dr. Trevor Munroe. He explained that because of the ignorance of the Federation in arbitration matters, they had chosen persons who had relevant experience to represent them, and had therefore "solicited the services of two individual Jamaicans who had particular skills which could assist in its members' case". Mr. Lennox Campbell, who represented the Government, objected to the representation of the Federation on the ground that it would be in breach of S. 67 (3) of the Constabulary Force Act. He suggested that the arbitrators should state a special case for the opinion of the court, pursuant to S. 20 of the Arbitration Act. The Federation did not object to that course, and accordingly, the following special case was stated on motion for the opinion

of the Court:-

"Whether on the true construction of the Constabulary Force Act (and in particular Section 67 (3) and Section 68) the Police Federation have a legal right to be represented by the Rt. Honourable Hugh Shearer O.J. and Dr. Trevor Munroe before The Arbitration Tribunal constituted to determine and settle a claim for increased wages and other improvements in the conditions of employment".

Before me, Mr. Campbell seeks to show why the Federation would not be legally represented by both The Rt. Honourable Hugh Lawson Shearer and Dr. Trevor Munroe. He refers firstly to S. 68 of the Constabulary Force Act ("the Act"), which prohibits Sub-Officers and Constables from being members of trade unions and like associations, but I do not think that that section is relevant to the opinion sought. The relevant section of the Act seems to be S. 67 (3) which reads:

"(3) The Police Federation shall be entirely independent of and unassociated with any body outside the Force".

The gravamen of Mr. Campbell's submissions seems to be that the clear intention of the Act is to isolate the police force ("the Force") from external influences, since the Force is recognised to be an essential service, and in order to maintain its independence. The members of the Federation are prohibited from being members of trade unions or any similar association. He submits that the true construction of S. 67 (3) is to render the Federation entirely independent of any body outside the Force; it exempts the Federation from representation by any person or organization outside of the Force save and except legal representation as provided by law. He argues that it is well known that both persons selected by the Federation as their representatives are eminent trade unionists and the founders and heads of well known trade unions. Therefore, to allow them to represent the Federation "would be a device" to circumvent the clear intention and spirit of the Act which forbids the Federation from associating with trade unions, and seeks to maintain its complete independence. He submits that this is sufficient reason for the arbitrators to exclude the Federation's representatives. Nevertheless he admits that by practice, an agent of any party in arbitration proceedings may represent him before the tribunal.

Learfed Queens Counsel urges the court to consider S. 67 as a whole and submits that S.S. (1) must be read and construed with S.S. (3). It is therefore clear that what S.S. (3) is saying is that the Federation, in the exercise of its functions to garner material to bring to the attention of the Commissioner and the Minister must act through the Branch Councils, Central Conferences and the Central Committee, as provided in S.S. (1). The Federation has similar functions to a trade union, but it may only receive information from the three sources mentioned above. In so doing it must be entirely independent and unassociated with any body outside the Force (S.S. 3). He urges the court to say that S. 68 of the Act has no relevance to the opinion sought and that it cannot assist in the interpretation of S. 67 (3).

Lord Gifford, in dealing with S. 67 (3) submits that the sub-section "does not preclude the Federation from engaging the individual of their choice as their representative or as their consultant or advisor, when they are a party to an arbitration. The fact that such an individual holds office in one or more organizations cannot signify that the Federation has thereby become dependent on or associated with such organization". He relies on the natural and ordinary meaning of the words in the sub-section. He emphasises the right of each party in arbitration proceedings to put his case, and submits that the arbitrators cannot, except for some sufficient reason, exclude from the proceedings any person whom either of the parties desire to be present to assist in the reference. He urges the court to protect parties from interference with their right to choose their representatives particularly when that interference is urged by the opposing party to the arbitration. He submits, finally, that "they have no right to influence the Federation's choice".

The general rule is that an arbitrator derives his authority from the agreement between the parties. It follows that his powers and duties are those and only those that the parties have agreed to place upon him. However, the Arbitration Act makes Provisions to cover situations where the agreement is silent. In the exercise of his duties, an arbitrator usually follows the ordinary course of procedure adhered to by a court of law at a trial. A party may appear in person, or he may be represented at the hearing by counsel, or he may be represented by an agent. There is nothing in the Arbitration Act

to show the contrary. If it is the intention of a party to be represented by counsel, it is his duty to give notice of such intention to the other party to permit of his being represented also, if he so desires. Apparently, this was not done in the instant case. A party is entitled to have persons to attend to assist in the presentation of his case, and if such persons are excluded without good ground, the award by the arbitrator may be set aside. In Haigh v Haigh (1861) 31 L.J.Ch. 420, (1861) 3 DE.G.F.&J. 157, (English Report 838 at p. 842) The Lord Justice Turner said:-

"I think that before he (the arbitrator) excludes anyone from attending on behalf of any of the parties interested, he is bound to ascertain that there is good ground for the exclusion, and to take the best care he can that the party who is affected by the exclusion is not prejudiced by it".

The parties in the instant case, namely, the Government of Jamaica and The Police Federation, are bodies that can only attend by representation, and they have the right to so attend. I know of no Act which expressly or by necessary implication, limits the common law rights of any person who is sui juris to appoint an agent to act on his behalf, in proceedings such as this.

In the instant case, the terms of reference to the Arbitrators under the Memorandum of Agreement is as follows:-

"To determine and settle the dispute between the Government of Jamaica on the one hand and the members of The Jamaica Constabulary Force represented by The Jamaica Police Federation on the other and over the Federation's claim for increased wages and other improvements in conditions of employment of its members".

In order for the arbitrators to carry out their mandate, it is necessary for them to hear and consider submissions from the parties to the dispute, and I hold that both bodies have the right to appoint counsel or an agent to act on its behalf. It is interesting to note that the request of the Federation to both the Rt. Honourable Hugh Lawson Shearer and Dr. Trevor Munroe is for "assistance in preparing and presenting the Police Federation's case". The chairman of the Federation explained the reason for the selection of their representatives, but the Government seeks to restrict the choice of the

Federation while acknowledging the "undoubted contribution that the two persons selected can make to the Federation's case". (see letter dated October 8, 1992, Biggs -- Permanent Secretary to Forbes -- chairman).

The contention that such appointments offend the spirit and intent of S. 67 (3) of the Act, in my opinion, is unfounded. I do not understand the Federation to be seeking the assistance of trade unions or any other body to present its case. The request is made to two persons whom the Government admits can contribute greatly to the Federation's case, and that must be because of their personal skill and ability. It has nothing to do with the trade unions to which they are affiliated or which they represent. Even assuming that I accept the wide meaning attributed to S. 67 (3) by Mr. Campbell, I could not say that the appointment of the two persons would inexorably lead to a breach of that section by the Federation. It is quite possible for a person to wear several hats, as it were, but at different times. What is germane to the issue is the capacity in which he is acting on the particular occasion.

Having given due regard to the able submissions made by counsel for the Government and counsel for the Federation, I hold that the Federation have a right to seek the services of persons of their choice to assist in the preparation and presentation of their case before the arbitrators. Further, I hold that the selection of the Rt. Honourable Hugh Lawson Shearer and Dr. Trevor Munroe is in their personal capacities as skilled men, and as such, it would not be a good ground for the arbitrators to exclude them from the hearing.

Therefore, in answer to the special case stated, I state my opinion to be that on a true construction of the Constabulary Force Act (and in particular S. 67 (3) and S. 68), The Police Federation has a legal right to be represented by the Rt. Honourable Hugh Lawson Shearer O.J. and Dr. Trevor Munroe before the Arbitration Tribunal constituted to determine and settle a claim for increased wages and other improvements in the conditions of employment of their members.