Privy Council Appeal No. 29 of 1958

Sir Edward Betham Beetham and another - - - - *Appellants*

v.

Trinidad Cement Limited - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH DECEMBER, 1959

Present at the Hearing:

LORD DENNING
LORD JENKINS
MR. L. M. D. DE SILVA

[*Delivered by* LORD DENNING]

On the 16th April, 1956, the Governor of Trinidad appointed a Board of Inquiry. It consisted of Mr. Bernard Gillis, Q.C., sitting alone. His duty was to inquire into a trade dispute which was said to exist in the island between a company called Trinidad Cement Limited and certain of its workmen. On the next day, the 17th April, 1956, Mr. Gillis sat to hold the inquiry but the company at once objected to it. It said there was no trade dispute for him to inquire into. Mr. Gillis thereupon adjourned the hearing so as to enable the company to challenge the validity of the Governor's action. On the 25th May, 1956, the company issued a writ in the Supreme Court of the colony claiming that the appointment by the Governor of the Board of Inquiry was *ultra vires* and therefore null and void. The case was tried before Archer, J., who, on the 14th November, 1957, made an Order declaring the appointment null and void. The Governor appeals from his decision to Her Majesty in Council.

In making the appointment the Governor presumed to act under an Ordinance called the Trade Disputes (Arbitration and Inquiry) Ordinance, which says in section 8 (1) that: "Where any trade dispute exists or is apprehended the Governor may, whether or not the dispute is reported to him under this Ordinance, inquire into the causes and circumstances of the dispute and, if he thinks fit, refer any matters appearing to him to be connected with or relevant to the dispute to a Board of Inquiry appointed by him for the purpose of such reference, and the Board shall inquire into the matters referred to it and report thereon to the Governor." Subsection 8 (3) says that the Board may, if the Governor thinks fit, consist of one person appointed by the Governor.

The phrase "trade dispute" is defined by section 2 (1) in these terms: "" Trade Dispute" means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person."

Their Lordships observe that the Ordinance follows the pattern of the legislation in the United Kingdom and uses the self-same words, see section 4 (1) of the Industrial Courts Act, 1919, and the definition of "trade dispute" in section 5 of the Trade Disputes Act, 1906.

Their Lordships also observe that, although the Ordinance gives the Governor power to act, not only when a trade dispute *exists*, but also when it *is apprehended*, nevertheless in the present case the Governor was content to assert, as the basis of his jurisdiction, that a trade dispute *exists*. The Minute of Appointment, after reciting the Ordinance, went on to say:

> " And Whereas *a dispute exists* between Trinidad Cement Limited and certain of its workmen, members of the Federated Workers' Trade Union.
>
> Now therefore the Governor by virtue of the powers vested in him by the said Ordinance and of all other powers enabling him in that behalf appoints Mr. Bernard B. Gillis, M.A. (Cantab.), one of Her Majesty's Counsel to constitute a Board of Inquiry.
>
> And the Governor directs that the terms of reference to the Board shall be as follows:
>
> (*a*) To inquire into and report on the causes and circumstances of the said dispute;
>
> (*b*) To inquire into and report on the likely effect (if any) of the said dispute . . . upon industrial relations between employers and employed in the Colony generally . . . "

Their Lordships draw attention to the fact that the Governor, in the Minute of Appointment, did not define the dispute. He did not say what it was. He left it to be gathered by those concerned from the facts known to them. To these facts therefore their Lordships now turn.

Trinidad Cement Ltd. (which their Lordships will call " the Company ") had a factory at Claxton Bay where they employed from 300 to 500 men. The Federated Workers' Trade Union (which their Lordships will call " the Union ") sought to get the workers at the factory to join the Union and succeeded in getting 100 or 200 to do so. These formed a branch of their own within the Union.

On 15th October, 1955, the Company dismissed a workman called Clifford Bobb, who was a member of the Union. The Union took up his case and wrote to the Company asking " for an early interview along with Mr. Bobb and his witnesses so that an amicable settlement can be reached ". The Company did not reply. The Union wrote again to the Company. This letter too was ignored. The Union thereupon wrote to the Commissioner for Labour in the island and asked him if he could arrange a meeting with both parties under his chairmanship " to go into this most important matter ". As it happened, just about this time in November, 1955, the Company dismissed another workman called Edmund Simon, who was also a member of the Union. So the Union took up his case too. They asked the Commissioner for Labour if he could arrange for his case to be discussed at the same time as that of Mr. Bobb.

The Commissioner for Labour was willing to do as he was asked. He tried to arrange a meeting between both parties: but he failed because of the attitude taken up by the Company. The Commissioner's representative went to see the Company's works manager on 29th November, 1955. He was told quite bluntly that the Company " do not recognise the Union and are therefore not prepared to accede to the Union's request for a meeting to discuss the dismissal of Clifford Bobb or Edmund Simon ". The works manager said that the Company had its own machinery by way of a works committee for dealing with the grievances of workmen: and it was not willing to meet the Union to discuss the dismissals.

On the 7th January, 1956, the matter reached a higher level. The Commissioner having failed to arrange a meeting, the Minister for Labour himself intervened. He asked the Company to come and see him. At this meeting he told the Company's representative that the Company's refusal to meet the Union was a source of embarrassment to the Government: and that if the Company persisted in its attitude, he would have to consider reporting the matter to the Executive Council with a view to having an inquiry instituted. Even this had no effect on the Company. On

the 9th January, 1956, the works manager wrote to the Minister saying : " We are quite unable to discuss the matters referred to any further ".

On the 15th March, 1956, the men at the factory, who were members of the Union, held a branch meeting. They thought that the inquiry to deal with Bobb and Simon matters was too long delayed. A resolution was passed unanimously recommending that the head office of the Union should write to the Government to have the matter expedited. The men at this meeting were concerned about the delay with the Bobb and Simon matters and nothing else.

Thus far their Lordships consider that there were two matters in dispute: the first was whether or not the dismissals of Bobb and Simon were justified: but this had merged into the second, which was whether the Union had any locus standi to take up such matters with the Company. The Company refused to recognise the Union as being authorised to act on behalf of its members (like Bobb and Simon) who had individual grievances : and the Union took strong exception to this refusal.

On the 26th March, 1956, the Union staked out its claim to recognition by the Company. The Union claimed not merely " limited recognition " but " general recognition ". This needs a little explanation. If the members of a Union are in a minority in a factory, the Union may well claim to represent its own members in cases of individual grievances, but it cannot claim to bargain on behalf of all the workmen in the factory. In such a case the employers may afford the Union " limited recognition ", that is, recognition limited to individual grievances. But if the members of a Union are in a majority, then the Union may claim to make representations on behalf of everyone—whether members of the Union or not—and may claim full bargaining rights on general questions of wages and working conditions. In such a case the employers may afford the Union " general recognition ".

The claim which the Union made on 26th March, was not merely for limited recognition (which would cover the Bobb and Simon cases) but for general recognition as a majority Union. On that day the general secretary wrote to the Company: " I am directed by the Executive Committee of the above-named Union to inform you that the Union now represents a substantial majority of your employees and is applying for bargaining status for the manual workers of your company." In addition he asked for the membership to be checked to confirm the claim. (It should be noticed that the general secretary brought this letter to the attention of the branch. He sent a copy to the Secretary of the branch at the same time as he sent the original to the Company.) The Company did not reply to this letter. It ignored it as it had done the earlier letters. So the Union took the matter up again with the Commissioner of Labour. And he again did his best. He wrote to the Company asking whether they were agreeable to the membership being checked. The reply of the Company was short and to the point. It was dated the 14th April, 1956, and addressed to the Commissioner: " As we have no intention of becoming involved in any way with the Union concerned, we do not feel that any useful purpose would be served by adopting the suggestion contained in your letter."

The 14th April, 1956, was a Saturday. The letter was received (as the Judge finds) by the Commissioner for Labour on the 16th April, 1956. He did not wait to tell the Trade Union about it. He seems to have reported it straightway to the Governor who on the self-same day appointed Mr. Gillis, Q.C., to hold an inquiry. The inquiry, as their Lordships have already pointed out, proved abortive because the validity of it was challenged by the Company.

From that time forward the branch of the Union at Claxton Bay disintegrated rapidly. The men said : " If we cannot get any result from these two cases, what is the use of belonging to the Union." By the end of August or September, 1956, not a single member was paying his subscriptions. The branch died and with it all the disputes, whatever they were, petered out. No longer were the dismissals a live issue. No longer could the Union claim limited or general recognition at Claxton Bay, for

it had no members there whom it could represent. No issue was left between the Union and the Company. But serious issues remain between the Company and the Governor of Trinidad : because the Company has successfully challenged his authority in the Courts and he appeals to Her Majesty in Council so as to know whether his action was lawful or not.

The principal question is this : Did a trade dispute exist on 16th April, 1956? The Governor did not give any particulars of the dispute in the Order which he made on that day. But he did in the pleadings in the action. The dispute, he said, was this : " Whether workmen, being hourly paid employees in the employment of the plaintiff company . . . should be permitted to have as their bargaining agent, or otherwise to be represented by, the Federated Workers (or any other) Trade Union . . ." That pleading was so comprehensive that the dispute might be said to be the wide question whether the Company ought to permit its workmen to be represented by any trade union at all. No dispute of that width was ever proved. As the Trial Judge said : " Non-recognition of trade unions was something that neither of the parties had fought about and it had been brought into the arena by the Minister without their knowledge or consent." But the Governor is not to be tied down by the wide words of the pleading. It is a well-established rule of pleading that any words in an averment can be treated as surplusage and struck out provided that, after they have been struck out, that which is left is sufficient to maintain the claim or defence, as the case may be, see *Anderson* v. *Thornton* (1853) 8 Ex. 425. The Governor is therefore entitled under this pleading to contend that, even though there was no dispute on the wide question, nevertheless there was a dispute (1) " whether workmen . . . in the employment of the plaintiff Company . . . should be permitted . . . to be represented by the Federated Workers . . . Trade Union " ; or alternatively (2) there was a dispute " whether workmen . . . in the employment of the plaintiff Company . . . should be permitted to have as their bargaining agent . . . the Federated Workers . . . Trade Union ".

As to the first of these alternatives, their Lordships are clearly of opinion that, following on the dismissals of Bobb and Simon, there was a dispute whether the workmen should be permitted to be represented by the Union. The facts are plain enough. The Union claimed to represent the two men. The Company refused to recognise the Union : and it did so in terms which showed that the Company refused to recognise the Union as being authorised to act for any men in respect of their individual grievances. The Union resented this. So indeed did the men themselves, if their attitude at the branch meeting of 15th March, 1956, is anything to go by. The only question that can arise about this dispute is whether or not it still existed on 16th April, 1956. The Judge thought it did not then exist. It had been relegated to the background and had become submerged in the claim of the Union for bargaining status.

Their Lordships are prepared to assume that this was the case : but if so, the second alternative has to be considered : Was there on the 16th April, 1956, a dispute whether the workmen should be permitted to have the Union as their bargaining agent? The Trial Judge thought not. His reasoning is to be found in this key passage of his judgment : " The issue which the Union was now seeking to raise (by its letter of 26th March, 1956) was separate and distinct from the Bobb and Simon issue . . . For the first time the Union was asking for collective bargaining status and on the ground that it represented a substantial majority of the Company's workmen . . . There had been no ultimatum on either side and the negotiations had not progressed beyond the initial bargaining stage . . . The prime characteristic of a trade dispute is deadlock and the determination on the part of both sides to the dispute to stand firm. A mere difference in point of view cannot by itself constitute a trade dispute and it is necessary that the view on each side should be persisted in to the point of rigidity."

Whilst their Lordships appreciate to the full the great ability and care which the Judge brought to bear upon the case, they cannot agree with

him in this part of it. By definition a trade dispute exists wherever a "difference" exists: and a difference can exist long before the parties become locked in combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening. And it seems to their Lordships that the parties had reached that point here, even in regard to the claim for bargaining status. The Union had applied for bargaining status. The Company had ignored the request just as it had ignored previous requests. The Union had sought the mediation of the Commissioner for Labour: but when he came forward, the Company rejected his approach out of hand, just as it had rejected his previous approach. "We have no intention of becoming involved in any way with the Union concerned." When this statement is taken in its setting—with the background of repeated refusal by the Company to recognise the Union over the two dismissals—the position at 16th April, 1956, can be put simply thus: "Here is this Union knocking at the door of the Company asking to be let in to negotiate: and the Company time and time again refusing to open it, nay more, keeping it locked and barred against the Union." That was clearly a difference between them which subsisted at that very time.

But then it was said that this was not a difference between the Company and *the workmen*, as the Ordinance requires, but only a difference between the Company and *the Union*: and attention was drawn to the statement by Bennett, J. that a dispute between such bodies is not a trade dispute, see *Rex* v. *National Arbitration Tribunal* [1941] 2 K.B. at p. 421. To this their Lordships think that Lord Wright gave a sufficient answer when that case reached the House of Lords. He said ([1943] A.C. at p.189): "It would be strangely out of date to hold, as was argued, that a trade union cannot act on behalf of its members in a trade dispute, or that a difference between a trade union acting for its members and their employers cannot be a trade dispute." Accepting this statement, however, it was said that in this case the trade union was not acting *for its members*, but for itself. The claim for bargaining status was never authorised or approved, so it was said, by any of the members of the branch at Claxton Bay. It was done by the head office acting on its own initiative. And reliance was placed on observations in some of the cases that if a trade union acts "on a frolic of its own", there is not a trade dispute, see *Rex* v. *National Arbitration Tribunal Ex parte Keable* [1943] 2 A.E.R. 633, *Regina* v. *Industrial Disputes Tribunal Ex parte Courage* [1956] 1 W.L.R. 1062. Their Lordships cannot accept this argument. The claim was made by the Executive Committee who were by the Rules entrusted with the general management of the Union: and it was clearly within the scope of their authority to put forward a claim for bargaining status. If the Union were able to obtain bargaining status it would be able to promote the interest of its members far better than if it were unrecognised. Moreover the claim had been brought to the attention of the branch who may fairly be assumed to have approved of it. The Union can therefore properly be considered as acting for its members: and in consequence the difference was one "between employers and workmen".

Their Lordships are glad to find that in England a Divisional Court presided over by Lord Goddard in a somewhat similar case came to a similar conclusions, see *Regina* v. *Industrial Disputes Tribunal Ex parte American Express Company* reported in "The Times" newspaper for 23rd July, 1954.

There remain, however, two further points. It was said that the Governor was under the Ordinance under a duty to "inquire into the causes and circumstances of the dispute" before he appointed the Board of Inquiry: and that he had not inquired as he ought to have done. He ought, it was said, to have given a fair opportunity to both parties to make representations before he acted: and the familiar passages in *Local Government Board* v. *Arlidge* [1915] A.C. 120 were cited. Their Lordships reject this contention. True it is that the Governor had to inquire and no doubt he did—in his administrative capacity—but he had not to conduct anything in the nature of a judicial or quasi-judicial inquiry.

Then it was said that the Governor did not make a valid reference to the Board of Inquiry because he did not, in the Minute of Appointment, specify the nature of the dispute. There in nothing in this point. If there is a dispute in existence the parties must know of it and there is no need to tell them about it. They may not be able to formulate it themselves, at that stage, or at any rate, not precisely. So how can the Governor be expected to do so? Suffice it for it to be formulated by the parties themselves when they get before the Board.

Their Lordships find therefore nothing invalid in the appointment by the Governor of the Board of Inquiry. It was not null and void. Their Lordships will therefore humbly advise Her Majesty that the appeal should be allowed and judgement entered for the defendants with costs. The respondent must pay the costs of the appeal to Her Majesty.

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In the Privy Council

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TRINIDAD CEMENT LIMITED

DELIVERED BY
LORD DENNING

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