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G.M. L. L.

UNIVERSITY OF LONDON  
W.C.I.  
19 FEVER  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

63817

41/1951

IN THE PRIVY COUNCIL No. 51 of 1960

O N    A P P E A L

FROM THE WEST INDIES FEDERAL SUPREME COURT

B E T W E E N :

WALTER ANNAMUNTHODO	Plaintiff Appellant
- and -	
OILFIELD WORKERS' TRADE UNION	Defendants Respondents

10                                      CASE FOR THE RESPONDENTS

RECORD

1. This is an appeal from the unanimous Judgment and Decree of the West Indies Federal Supreme Court dated 25th January, 1960, dismissing the Plaintiff's Appeal from the Judgment and Order of the Supreme Court of Trinidad and Tobago dated 25th June, 1959, dismissing the Plaintiff's action with costs.
2. At all material times until his expulsion on 17th June, 1957, the Appellant was a member of the Respondent Union. The following are the material Rules of the Respondent Union in force at the material time:

30                                      Rule 11 (7). "The General Council may fine any member who is proved to the satisfaction of the said Council, to have been guilty of conduct prejudicial to the interests of the Union any sum not exceeding \$5.00 and/or may suspend or expel such member from the Union. Any member so fined, suspended or expelled, shall have the right of appeal to the Annual Conference of Delegates, whose decision shall be final and binding.....".

Rule 25. "Irregular Discussions of Union's Business."

It shall be irregular for any officer or member of the Union to discuss the business of the Union in public or with persons who are not members of the Union and any Officer or member so charged and found guilty shall forfeit his office or be suspended from membership or be fined any sum not exceeding five dollars or expelled. Any other member found guilty of such breach shall be fined two dollars (\$2.00) for the first offence, for the second offence he shall be suspended from membership for three months and for a third similar offence he shall be expelled". 10

Rule 26. "Plotting of Members."

(1) Any officer or member who is charged with plotting against fellow officers or members shall on conviction, if an officer forfeit his office, or be suspended or fined any sum not exceeding five dollars or be expelled; and if a member be fined two dollars for the first offence; for a second offence he shall be suspended from membership for three months or may be expelled from the Union. 20

(2) Any officer or member attending the meeting with motives to create disharmony among officers and members assembled, thereby disturbing the peaceful and harmonious working of the same, shall be subjected to the same penalties". 30

Rule 27. "Respect to officers."

All officers and members are required to show due respect to the officers of the Union who have been duly elected. Anyone charged and found guilty of disrespectful conduct in this connection, if he be an officer shall, for the offence, either forfeit his office or be suspended from office. If he be an ordinary member he shall for the first offence be fined the sum of one dollar. Anyone found guilty for a second offence may be expelled". 40

"COMPLAINTS AND APPEALS"

Rule 32 (5) "... All charges made by any member or officer against another must be

in writing and if any charge, on investigation, is proved to be made through malice and without foundation, the member or officer preferring such charge shall be liable to suspension or expulsion or be fined any sum not exceeding five dollars as the case deserves".

10 Rule 32 (9) "Any member of the Union who feels aggrieved in any way must in the first instance complain to the Committee of his Branch for redress within four weeks of the date of the incident or incidents in respect of which complaint is being made. All complaints must be made in writing".

3. By letter dated 15th May, 1957, the Appellant was required to appear before the General Council of the Respondent Union on 9th June, 1957, to answer four charges, namely:

Charge 1

20 Plotting with others during 1956 against the President-General, the First Vice-President, the General Secretary and the Treasurer of the Respondent Union, contrary to Rule 26.

Particulars alleged a plot to hold meetings during the lunch hour to disseminate slanders of the said officers, in furtherance of which a number of meetings were held and such slanders disseminated.

30 Specific dates of two such meetings (15th and 17th August, 1956) were given with time and place.

40 Specific slanders were set out. They included one that the President-General had embezzled \$25,000 of the Respondent Union's funds, one that the said officers had sold the Respondent Union's car and failed to account for the proceeds, and one that there were quite a few thousand dollars for which the said officers could not account to the Auditors.

Charge 2

Irregular discussion of Union Business, contrary to Rule 25.

Particulars gave the dates (15th and 17th August, 1956) of the said two

meetings as in Charge 1, with time and place, and it was alleged that non-Union members were present at these meetings.

Charge 3

Making for some months public oral charges of corruption against Executive Officers of the Respondent Union, contrary to Rule 32.

Particulars repeated the date, time and place of the said two meetings, at which charges of corruption were said to have been made.

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Charge 4

Gross disrespect to the President-General of the Respondent Union at a Branch meeting on 4th February, 1957, contrary to Rule 27.

Particulars alleged that the Appellant had declined to canvass for subscriptions for distressed members, stating that when the money was collected it would have to go to Central Office, where the President-General and others might spend it for their own purpose.

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4. The Appellant attended the hearing of the said charges on 9th June, 1957, and gave evidence on his own behalf. After the evidence had been heard the General Council adjourned the inquiry until 16th June, 1957, for consideration.

5. By letter dated 12th June, 1957, the Appellant was requested to attend the adjourned hearing, but by letter dated 14th June, 1957, the Appellant stated that he was unable to attend as he was to be the judge in a "mock trial" sponsored by a Girls' Group in his district and asked for written notification of the decision arrived at by the General Council. He did not ask for an adjournment.

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6. On 16th June, 1957, after consideration the General Council convicted the Appellant on all the charges made against him, and decided to expel him under Rule 11 (7) on the ground that his general conduct had been prejudicial to the best interests of the Union, notice whereof was given to the Appellant by letter dated 17th June, 1957.

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7. By letter dated 21st June, 1957, the Appellant gave notice of appeal from the said decision to the next Annual Conference of Delegates.

8. On 30th March, 1958, the Annual Conference of Delegates heard the Appellant's said appeal and upheld his expulsion. The Appellant has never made any complaint as to this hearing.

10 9. It has always been common ground between the Appellant and the Respondents:-

- (1) That the Appellant was given full particulars of the four specific charges made against him.
- (2) That he was given an adequate opportunity of defending himself against the said charges.
- (3) That the General Council was entitled to find him guilty on Charges 1, 2 and 4.
- (4) That the conduct described in Charges 1, 2 and 4 was conduct prejudicial to the interests of the Union.

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10. On 17th May, 1958, the Appellant brought proceedings against the Respondent Union claiming reinstatement and damages and by his Statement of Claim delivered on 30th May, 1958, he claimed that his expulsion was ultra vires because:

- (a) The conviction on Charge 3 was wrong.
- (b) No power to expel existed under any of the specific Rules covering Charges 1, 2 and 4.
- (c) The Appellant was never charged under Rule 11 (7) or given any opportunity of being heard in respect of any action contemplated under that Rule.
- (d) The General Council had accordingly no power to impose any penalty on him under that Rule.
- (e) The General Council in deciding to expel the Appellant wrongly took into account his conviction on Charge 3.

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11. By its Defence delivered on 24th September,

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1958, the Respondent Union contended that the power of expulsion was validly exercised.

12. At the hearing on 15th June, 1959, the Appellant was the only witness. After hearing argument Mr. Justice Phillips delivered a reserved Judgment on 25th June, 1959, in the course of which he held, following Wolstenhome v. Amalgamated Musicians' Union, 1920 2 Ch. 388, that Rule 11 (7) conferred an "enabling power" entitling the General Council to impose more severe penalties for specific offences than was permissible under the rules creating these offences in cases where the Council was satisfied that the acts constituting the offences were prejudicial to the interests of the Union, and that specific notice of intention to proceed under Rule 11 (7) was unnecessary. 10

13. Mr. Justice Phillips further held that Charge 3 was not covered by Rule 32 (5) and that the Appellant was wrongly convicted on this Charge. 20

14. He further held that the fact that the Appellant had been wrongly convicted on Charge 3, did not invalidate the General Council's decision to expel him, since the other Charges on which he had been convicted covered the same ground and constituted, quite apart from Charge 3, conduct prejudicial to the interests of the Union.

15. Mr. Justice Phillips further held that, upon its true construction, Rule 25 conferred power to expel a member charged and found guilty of a first offence under this Rule. 30

16. Accordingly, the learned Judge gave Judgment for the Respondent Union with costs, from which the Appellant gave notice of appeal dated 6th August, 1959.

17. The appeal was heard on 30th November and 1st December, 1959, and the Judgment of the Federal Supreme Court was delivered on 25th January, 1960. 40

18. The Federal Supreme Court upheld that part of the Judgment of Mr. Justice Phillips which held that Rule 11 (7) was an enabling rule and agreed with his reasoning but differed from the Trial Judge's view that Rule 25 conferred power to expel a member for a first offence (as

distinct from an officer, which the Appellant never was).

19. The Federal Supreme Court further pointed out that, from 17th June, 1957, until the hearing of his appeal to the Annual Conference of Delegates on 30th March, 1958, the Appellant had known that Rule 11 (7) was being invoked against him; and that he was not complaining of any failure of natural justice before the Annual Conference. Accordingly, the Federal Supreme Court dismissed the Appellant's appeal with costs.

20. Conditional Leave to Appeal to Her Majesty in Council was granted to the Appellant by the Federal Supreme Court on 12th February, 1960, and Special Leave to Appeal was granted to the Appellant by Order in Council dated 7th June, 1960.

21. The Respondents respectfully submit that the Judgment of the Federal Supreme Court was right and should be upheld and that this appeal should be dismissed for the following among other

R E A S O N S

1. BECAUSE upon its true construction Rule 11 (7) is an enabling rule entitling the General Council to expel a member guilty of specific offences under the Rules which, in the Council's opinion, constitute conduct prejudicial to the interests of the Union.
2. BECAUSE the Appellant had full notice of all the facts which were to be proved in evidence against him and upon which the General Council found him guilty of conduct prejudicial to the interests of the Union, and a full opportunity of defending himself thereon.
3. BECAUSE the Appellant did not choose to attend the meeting of the General Council at which the decision to expel him was taken, although he was requested to do so, nor did he ask for an adjournment.
4. BECAUSE the Appellant was aware between 17th June, 1957, and 30th March, 1958, that Rule 11 (7) was being invoked against him, and was in a position to submit reasons to the Annual Conference

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of Delegates why he should not be expelled, yet he has never complained of the decision of that body to uphold his expulsion.

5. BECAUSE upon its true construction Rule 25 conferred a power to expel the Appellant.
6. BECAUSE the conviction of the Appellant on Charge 3 was justified by Rule 32 (9) if not by Rule 32 (5) 10
7. BECAUSE even if a conviction on Charge 3 was not well founded, that conviction did not, in the circumstances, vitiate the General Council's decision that the Appellant had been guilty of conduct prejudicial to the interests of the Union.
8. BECAUSE the Appellant was guilty of a breach of Rule 32 (9) for which no penalty was provided, and which, therefore, fell to be dealt with under Rule 11 (7). 20
9. BECAUSE if Rule 11 (7) were to be regarded as creating a specific offence independent of the offences specified in Rules 25, 26, 27 and 32, there would be no right of appeal against expulsion for breaches of the latter rules, and charges could be framed so as to deprive a member of his right of appeal. 30

R.S. LAZARUS

DUDLEY COLLARD

