Privy Council Appeal No. 21 of 1988

(1) The Attorney General and
(2) The Minister of Labour — *Appellants*

v.

(1) Cordell Stewart and
(2) University and Allied Workers Union — *Respondents*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH MAY 1988

Present at the Hearing:

LORD BRIDGE OF HARWICH
LORD FRASER OF TULLYBELTON
LORD BRIGHTMAN
LORD GRIFFITHS
LORD ACKNER

*[Delivered by **Lord Bridge of Harwich**]*

This is an appeal from the judgment of the Court of Appeal of Jamaica (Rowe P., Carberry and Downer JJ.A.) delivered on 18th December 1987 dismissing an appeal against the order of Morgan J. made on 7th October 1987 whereby she declared as follows:-

"1. That the Collective Labour Agreement commencing the 1st day of January, 1975 as amended on the 3rd day of March, 1986, between the Sugar Producers Federation of Jamaica on the one hand and the Bustamante Industrial Trade Union and the National Workers Union on the other hand:-

(a) Is not an open-ended Agreement;

(b) Terminates on the 31st day of December, 1987; and

(c) Cannot be renewed pursuant to any of its terms to extend its duration beyond the 31st day of December, 1987, so as to prevent the Minister, pursuant to the

[9] Labour Relations and Industrial Disputes

Act and the Regulations made thereunder from causing a ballot to be taken to determine which trade union claiming bargaining rights, in relation to certain factory and field workers of Hampden Estates Limited should be recognised as having such bargaining rights.

2. That the existence of the said Collective Labour Agreement does not prevent the Minister, pursuant to the Labour Relations and Industrial Disputes Act and the Regulations made thereunder, from causing a ballot to be taken as of the 2nd day of October, 1987 at the earliest and at any time subsequent to that date to determine which trade union claiming bargaining rights in relation to certain factory and field workers of Hampden Estates Limited should be recognised as having such bargaining rights."

Morgan J. also granted consequential injunctive relief against Hampden Estates Limited ("Hampden") and the Sugar Producers Federation of Jamaica ("the SPFJ") the precise terms of which are not material to the issues arising for decision in the appeal.

The background to the proceedings from which the appeal arises may be shortly stated. There is keen rivalry among trade unions in Jamaica to represent the workers in the sugar industry. For many years there has been in operation a collective agreement between the SPFJ, of which Hampden is a member, on the one hand and the Bustamante Industrial Trade Union and the National Workers Union on the other. It will be convenient, purely for brevity, to refer to these two unions as "the recognised unions". The recognised unions have hitherto been recognised as having bargaining rights in relation to Hampden's employees. The respondent University and Allied Workers Union ("the UAWU") claim to represent a majority of Hampden's employees in certain categories and in May 1987 requested the Minister of Labour, pursuant to the Labour Relations and Industrial Disputes Act 1975 ("the Act") and the Labour Relations and Industrial Disputes Regulations, 1975, as amended ("the Regulations") to cause a ballot of those employees to be taken. The Minister of Labour refused the request on the ground that the effect of the existing collective agreement between the SPFJ and the recognised unions and of the provisions of regulation 3(4) and (7) of the Regulations was to preclude any ballot being "taken earlier than during the 90-day period expiring on the 31st December 1988". The respondents challenged the Minister's view in these proceedings and succeeded in obtaining the declarations already recited.

In granting leave to the Attorney General and the Minister of Labour to appeal to Her Majesty in Council, the Court of Appeal expressed their opinion that "the following question involved in the appeal is such that by reason of its great general or public importance ought to be submitted to Her Majesty in Council:-

> "Whether on a true construction of Regulation 3 of the Labour Relations and Industrial Disputes Regulations, and the Collective Agreement dated the 19th day of December, 1974 and the Collective Agreement in respect of Wages, Bonuses and Fringe Benefits dated the 3rd of March, 1986, the duration clause in the Collective Agreement dated the 19th of December, 1974 is amended to terminate on the 31st of December, 1987."

Their Lordships will refer to this as "the certified question".

Section 5(1) of the Act provides:-

> "5.(1) If there is any doubt or dispute -
>
> (a) as to whether the workers, or a particular category of the workers, in the employment of an employer wish any, and if so which, trade union to have bargaining rights in relation to them; or
>
> (b) as to which of two or more trade unions claiming bargaining rights in relation to such workers or category of workers should be recognised as having such bargaining rights,
>
> the Minister may cause a ballot of such workers or category of workers to be taken for the purpose of determining the matter."

Regulation 3(1), (4) and (7) of the Regulations provide, so far as material:-

> "3.(1) The Minister may cause a ballot to be taken under section 5 of the Act if -
>
> (a) a request in writing so to do is made to him by a trade union ...
>
> (4) If any collective agreement containing the terms and conditions of employment of the workers in relation to whom the request for the ballot has been made is in force -
>
> (a) the Minister shall not cause the ballot to be taken earlier than ninety days before the date on which any subsisting

specified period of that collective agreement is due to expire ...

(7) In paragraph (4) "specified period" means -

(a) in relation to a collective agreement which specifies (in whatever manner) any period, not exceeding two years, during which that collective agreement shall remain in force, the entire period so specified;

(b) in relation to any other collective agreement -

(i) the period of two years from the date of commencement (or where no date of commencement is mentioned in that collective agreement, the period of two years from the date of execution) of that collective agreement;

(ii) every additional period of two years after the period specified in sub-paragraph (i);

(iii) any fractional part of two years remaining after any period specified in sub-paragraph (i) or sub-paragraph (ii), as the case may require."

The earliest collective agreement proved in evidence between the SPFJ and the recognised unions was made on 19th December 1974 ("the 1974 agreement"). The opening provisions of the 1974 agreement read as follows:-

"EFFECTIVE DATE:

This agreement applies to all sugar workers engaged in the Factory, Field, Distillery and departments ancillary thereto.

The terms and provisions of this agreement shall form part of the existing Labour Relations Agreement which otherwise remains in force.

This agreement shall be effective from 1st January, 1975 or the commencement of the crop whichever is the earlier and it shall continue and be in force for a period of one (1) year and shall continue thereafter from year to year unless amended or terminated by agreement or by notice given before the expiration date."

It is common ground that the commencement of the crop was not earlier than 1st January 1975. It will be convenient to refer to the third paragraph under the heading "Effective date" as "the duration clause". Despite the reference in the second paragraph to the "existing Labour Relations Agreement", in the absence of evidence establishing that any earlier agreement had been concluded between the parties, the courts below were constrained to accept that the 1974 agreement was the basic collective agreement between the SPFJ and the recognised unions and their Lordships are in the same position.

The 1974 agreement contains ten numbered clauses headed as follows:-

"1. Introduction of a forty-hour work week for daily & weekly paid workers.

2. Overtime.

3. Wage increases.

4. Shift premium.

5. Night work premium.

6. Vacation leave with pay.

7. Payment in lieu of vacation leave to task workers.

8. Clothing allowance.

9. Provision of scholarships.

10. Building & construction work."

There follow a "General note" which qualifies certain provisions in the numbered clauses and provision headed "Standing committee" which establishes a joint committee to investigate certain questions.

It seems clear that the 1974 agreement must have been amended from time to time, at least in respect of wage rates. But the first amending agreement in evidence was concluded on 17th April 1985 and provided for enhanced wage rates, a crop bonus and an increase in a death grant (which must have been introduced by an earlier amendment) and enhanced scholarship benefits for workers' children. The 1985 agreement did not amend the duration clause in the 1974 agreement.

A further agreement was concluded on 3rd March 1986 ("the 1986 agreement"). Clause 1 is headed "Duration of Agreement" and provides:-

"This Agreement shall be effective from 1st January, 1986, or from the commencement of Crop whichever is earlier, and shall be in force for two (2) years to the 31st of December, 1987."

Again it is common ground that the commencement of the crop was not earlier than 1st January 1986. There followed in the 1986 agreement clauses numbered 2 to 12 headed as follows:-

"2. Wages.

3. Minimum daily rate.

4. Crop bonus.

5. Group life insurance scheme.

6. Unused sick leave.

7. Health and safety.

8. Clothing allowance.

9. Meal allowance.

10. Vacation leave.

11. Watchmen.

12. Implementation of new rates/payment."

Clause 13 provides:-

"The above Agreement is an amendment to the existing Collective Labour Agreement between the parties."

The submission for the appellants is that when the relevant request for a ballot was made by the UAWU in May 1987 there were in force two collective agreements, viz. (1) the 1986 agreement, the duration of which was governed by clause 1 which applied only to the matters which were the subject of clauses 2 to 12 of that agreement and (2) the 1974 agreement, which was governed by the duration clause in that agreement in relation to matters unaffected by the 1986 agreement. The 1974 agreement, it is submitted, is what has been described as an "open-ended" agreement. Regulation 3(7)(a) does not apply to it; it is therefore an "other collective agreement" governed by regulation 3(7)(b). Since the 1974 agreement commenced on 1st January 1975, the initial "specified period" of the agreement under (b)(i) would have expired on 31st December 1976 and under (b)(ii) the subsequent "specified periods" would have been the successive periods of two years expiring on 31st December in even numbered years. Hence the relevant "specified period" current at the date of

the request for a ballot by the UAWU was not due to expire until 31st December 1988.

The primary submission for the respondents is that the effect of the 1986 agreement was to amend the 1974 agreement (as in force subject to any earlier amendments) in such a way as to conclude a new single collective agreement between the parties the duration of which is wholly governed by clause 1 of the 1986 agreement, which supersedes and displaces the duration clause in the 1974 agreement. This is the submission which was accepted by Morgan J. and by Rowe P. and Downer J.A. in the Court of Appeal and it is the primary issue to which this submission gives rise that underlies the certified question.

As a matter of construction the words "The above agreement" in clause 13 of the 1986 agreement are apt to embrace all the preceding clauses including clause 1 with the result that this clause is part of the amendment of the 1974 agreement. The duration clause of the 1974 agreement itself, providing for the agreement to continue from year to year, applied "unless amended". When clause 1 of the 1986 agreement was introduced by amendment into the 1974 agreement it necessarily substituted a fixed term expiring on 31st December 1987 as the duration of the amended agreement.

Any other construction confronts insoluble difficulties. Their Lordships have not set out in full the terms of the 1974 and 1986 agreements, but have contented themselves with enumerating the headings of the several clauses which are sufficient to indicate their general subject matter. But detailed examination of the clauses themselves shows how closely they interact with each other. All the numbered clauses of the 1974 agreement, with the single exception of clause 9 making provision for scholarships for workers' children, are, to a greater or lesser extent, affected in their operation or superseded by the provisions of the 1986 agreement. Even the important clauses 1 and 2 of the 1974 agreement providing for a forty-hour basic working week and for enhanced rates for overtime, which the Solicitor-General submitted have an important free-standing and durable status, are meaningless unless read in conjunction with agreed rates in financial terms. Moreover the 1986 agreement introduced important new safety provisions in clauses 9 and 11.

It is against this background that the question arises: if the duration clause in the 1974 agreement survives the amendment in the 1986 agreement, what is the effect of a notice given by either side to terminate the agreement on 31st December 1986? To allow such a notice to terminate the amended agreement in its entirety would be to contradict the

clear intention expressed by the parties in clause 1 of the 1986 agreement that the new agreement effected by amending the old was to remain in force until 31st December 1987. To allow such a notice to operate simply to terminate the provision of scholarships for workers' children and to dissolve the standing committee cannot have been the parties' intention.

One may equally pertinently ask the question: since clause 1 of the 1986 agreement makes no provision for the amended agreement to continue after 31st December 1987 from year to year unless terminated by notice, what is the result if, before that date, no fresh agreement is negotiated? From the point of view of construing the agreement, it is not an effective answer to this question to say, as the Solicitor-General did, that in practice such a situation would never arise. If the amended agreement expires by effluxion of time, there is no principle of law or construction which could operate to revive the terms of the agreement as in force prior to the 1986 amendment. If all that survives of the 1974 agreement after 31st December 1987 is the provision in clause 9 for scholarships for the children of workers and the continuing existence of the standing committee this would not satisfy that part of the definition of a "collective agreement" in section 2 of the Act expressed in the words "any agreement which ... (b) contains (wholly or in part) the terms and conditions of employment of workers of one or more categories".

In the light of these considerations their Lordships are of the opinion that the respondents' submission on the primary issue is correct and that the certified question should be answered in the affirmative.

This would be sufficient to dispose of the appeal, but their Lordships have been invited to rule upon the alternative submission by which the respondents seek to support the decision of the courts below in their favour and on which Carberry J.A. based his conclusion. This submission is to the effect that, even if the unamended 1974 agreement were the operative agreement to which the provisions of regulation 3(4) fell to be applied, it would fall within regulation 3(7)(a), not regulation 3(7)(b). It is to be noted that regulation 3(4)(a), in its amended form, restricts the taking of a ballot by reference to the date of expiry, not of the relevant collective agreement itself, but of the "specified period of that collective agreement". Regulation 3(7)(a) applies in relation to a collective agreement "which specifies (in whatever manner) any period, not exceeding two years, during which that collective agreement shall remain in force". These words clearly apply to any agreement which is to be in

force for one year certain. It is submitted for the respondents that they apply equally to such an agreement notwithstanding the addition of a provision that the agreement shall continue thereafter from year to year unless terminated by notice. Having regard especially to the words in regulation 3(7)(a) "which specifies (in whatever manner)" and "shall remain in force" the respondents submit that an agreement such as the 1974 agreement in this case does specify a period during which the agreement shall remain in force, sc. the period of one year to 31st December 1975 and it is nihil ad rem that the agreement may remain in force for a longer period if neither party gives notice of termination. So, it is submitted, as each anniversary date passes without any notice of termination having been given, the new calandar year becomes the relevant "specified period" to which regulation 3(7)(a) applies and there is no occasion to resort to regulation 3(7)(b) which applies only to agreements for a fixed term longer than two years or of indefinite duration. The point is a short one which does not admit of elaboration. Giving the language of regulation 3(7)(a) its ordinary meaning, their Lordships conclude, in agreement with Carberry J.A. that the respondents' alternative submission is well founded and affords an independent ground on which the appeal must fail.

Their Lordships will accordingly humbly advise Her Majesty that the appeal should be dismissed. The appellants must pay the respondents' costs.