

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT APPEAL No. 143/76

BEFORE: The Hon. Mr. Justice Swaby, J.A.
The Hon. Mr. Justice Zacca, J.A.
The Hon. Mr. Justice Melville, J.A. (Ag.)

THE DIRECTOR OF PUBLIC PROSECUTIONS - APPLICANT

vs.

GORDON, FRANK et al - RESPONDENTS

Glen Andrade, Deputy Director of Public Prosecutions
for the Applicant.

Frank Phipps, Q.C. and Mr. Earle DeLisser
for the Respondents.

January 14 and 21, 1977

SWABY, J.A.:

This is an application by the Director of Public Prosecutions for leave to appeal to Her Majesty in Council from a decision of this Court whereby the appeals by the respondents, from their convictions in the Resident Magistrate's Court, St. Andrew, for breaches of s. 13(2) of the Labour Relations and Industrial Dispute Act, 1975 (hereinafter referred to as the Act) were allowed, the convictions quashed and the sentences set aside. The application is made pursuant to the provisions of s. 110 (2)(b) of the Constitution of Jamaica and s. 35 of the Judicature (Appellate Jurisdiction) Act which enables an appeal, with the leave of the Court of Appeal, to be made to Her Majesty in Council by the Director of Public Prosecutions, the prosecutor,

or the defendant "where in the opinion of the Court, the decision involves a point of law of exceptional public importance and it is desirable in the public interest that a further appeal should be brought."

The relevant portions of the affidavit of the learned Director of Public Prosecutions in support of the application read as follows:

- "2. That the Respondents Frank Gordon et al were each charged on a separate information which in each case alleged that during the period between the 23rd day of October and the 25th day of October 1975 being a worker employed to Jamaica Omnibus Services Limited, in an undertaking which provides an essential service namely - Public Passenger Transport Services for the Corporate Area - during the said period of an unlawful industrial action in the said undertaking unlawfully did cease to continue the work which it was his duty under the contract of employment to do namely - the work of a driver - contrary to Section 13(2) of the Labour Relations and Industrial Disputes Act, 1975, and against these convictions the Respondents appealed.
3. That the Court of Appeal allowed the appeal and quashed the convictions for reasons set out in their Judgment dated the 1st December, 1976.
4. That the decision involves the following points of Law:
 - (1) Whether or not the words in Section 13(2) (a) of the Labour Relations and Industrial Disputes Act, 1975, "ceases or abstains from, or refuses to continue, any work which it is his duty, under his contract of employment, to do" are alternative averments and may all be included in one information.
 - (2) Whether or not the word "cease" in Section 13(2) supra embraces in its meaning, having regard to the context in which it appears and the mischief sought to be remedied, both a permanent as well as a temporary cessation of work by a worker.

- (3) Whether or not in the instant case the evidence established that the defendants ceased working within the contemplation of the Act and as charged in the information.
5. That the points of law involved are of exceptional public importance and it is in the public interest that a further appeal should be brought.
6. Wherefore the Applicant respectfully prays that pursuant to Section 110(2)(b) of the Constitution of Jamaica and Section 35 of the Judicature (Appellate Jurisdiction) Act, this Honourable Court grant this application for leave to appeal to Her Majesty in Council and make such orders and give such directions as to the Court may seem fit."

Mr. Andrade in support of the application invited the Court's attention to the averments in the affidavit and submitted that the Act was designed to deal expressly with the frequent incidents of wildcat strikes in industry in this country. He argued that the effect of the Court's decision tended to nullify the operation of the Act. It was therefore in the public interest that there should be a further appeal to determine, in relation to the facts of the case, whether or not a work stoppage in the circumstances would be a cessation of work within the meaning of the Act. The interest of the State he urged should take precedent over that of the individual.

Mr. Phipps for the respondents opposed the application on the ground that the applicant had not shown that the application fell within the necessary statutory requirements for granting such an application. The statute he said cast a duty on the applicant to show that the Court's decision involved (i) a point of law of exceptional public importance and (ii) that it was desirable in the public interest that a further appeal should be brought.

The decision he said was no more than an elementary point of interpretation of particular provisions of a statute, a matter which the Court was required to do from time to time.

Whereas the contention advanced in support of the application was that section 13(2) of the Act created one offence expressed in alternate forms the Court had held that the section created three distinct offences. It was still possible that the respondents could properly be prosecuted to conviction for an offence following upon the Court's ruling. It had not been shown that this was a matter of exceptional public importance, or that it was in the public interest to bring such an appeal. On the contrary, he submitted, that hardship would be caused to the respondents, particularly as the Court had confined its decision to only one of the four grounds of appeal argued. Should there be a further appeal there was no certainty that the other grounds could then be argued and a ruling obtained on them.

It is regrettable that the arguments of Counsel proceeded without reference to any authorities or to any principles by which the Court should be guided in coming to its decision. We do not think that the considerations that should guide this Court in granting or refusing leave to appeal in applications of this nature should be any different from those adopted by the Board of Her Majesty's Privy Council in Ibrahim v. Rex (1914) A. C. 599, the judgment of Lord Sumner at pp. 614-5:

" Leave to appeal is not granted except where some clear departure from the requirements of justice" exists ...
..., nor unless "by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done" The Board cannot give leave to appeal where the grounds suggested could not sustain the appeal itself; and, conversely, it cannot allow an appeal on grounds that would not have suffice for the grant of permission to bring it. There must be something which, in the particular case, deprives the accused of the substance of fair trial and the protection of the law, or which in general, tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future."

Cited in the Reporter's note of the case of Nirmal v. The Queen, Privy Council Appeal No. 46 of 1970, unreported, referred to in the case of D.P.P. v. Walker, an appeal from Jamaica, to the Privy Council (1974) 1 W.L.R. p. 1090 at p. 1095 F.

The circumstances of this application, in our view, cannot be accommodated within any of the considerations that ought to weigh with a Court in granting leave to appeal to Her Majesty in Council. This view is further strengthened by a reference to Exparte MacRea, (1893) A.C. 346. There, inter alia, it was alleged that Section 511 of the Indian Penal Code had been wrongly construed by the learned trial judge. The Lord Chancellor in delivering the judgment of the Board said at p. 350:

" But they do not desire to dispose of the petition simply upon that ground. If there be any foundation for this application, it rests upon this - that the learned judge did not in his charge to the jury correctly construe the 511th section of the Penal Code, or that he left the case to the jury when there was no evidence to go to the jury. In their Lordships' opinion, if they were to sanction an appeal in the present case, it would be very difficult to refuse leave to appeal in all cases in which it could be established that there had been a misdirection by the judge who tried the case."

We are not unmindful of the circumstance that this country is plagued with more than its fair share of industrial disputes, but for the reasons we have set out above, we are not, in the words of the statute of the opinion that the decision in this case involves a point of law of exceptional public importance, and one in which it is desirable in the public interest that a further appeal should be brought.

The application is accordingly refused.