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25 JLR p. 253

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 22/86

BEFORE: The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Forte, J.A.

BETWEEN	EWART MASON	APPELLANT
AND	KINGSTON & ST. ANDREW CORPORATION	
AND	KINGSTON & ST. ANDREW FIRE BRIGADE	RESPONDENTS

Carl Rattray, Q.C., & Mc. A. Rattray for Appellant

Dr. Lloyd Barnett & Harold Brady for Respondents

May 30, 31 & July 6, 1988

FORTE, J.A.

This is an appeal from the judgment of the Full Court of the Supreme Court, dismissing an application by the appellant for an Order of Certiorari to quash the decision of a Disciplinary Tribunal which tried and dismissed him for certain breaches of the K.S.A.C. Fire Brigade Regulations made pursuant to the K.S.A.C. Fire Brigade Act.

The first ground of appeal relates to the appellant's conviction in respect of a breach of Regulation 25 (10) of the Kingston and St. Andrew Fire Brigade Regulations 1946 set out hereunder:

> "Any member of the Brigade commits an offence against these Regulations if he is guilty of absence without leave or being late for duty, that is to say if he without reasonable excuse is absent without leave from, or is late for parade or any other duty."

The appellant was tried in disciplinary proceedings by the Superintendent of the Fire Brigade by virtue of his jurisdiction under Section 15 (2) of the K.S.A.C. Fire Brigade Act and was dismissed by him from the service of the Fire Brigade by virtue of powers under Regulation 26 of the K.S.A.C. Fire Brigade Regulations.

Mr. Rattray in urging this Court to find that the Full Court was wrong in concluding that the Superintendent had jurisdiction to hear and determine this charge against the appellant, put forward, in his usual forceful manner, the following proposition:

> "That the Labour Relations and Industrial Disputes Act (hereinafter called the LRID Act) is a comprehensive scheme dealing with labour relations and industrial disputes, that it provides its own remedies and its own procedures and that it is these remedies and procedures which must be embarked upon in industrial disputes to the exclusion of any other remedies provided by any other enactment in force prior to the coming into being of this comprehensive scheme."

This proposition became arguable because of the uncontradicted and accepted fact that the appellant's absence from work on the relevant dates was in connection with an industrial dispute which existed at the time, between the firemen (the appellant included) and their employer the Kingston and St. Andrew Corporation which resulted in strike action being taken on the 24th June, 1985.

Mr. Rattray therefore contended that the appellant being absent from work in connection with an industrial dispute, an absence which by virtue of Section 13 (2) of the Labour Relations and Industrial Disputes Act (hereinafter called the LRID Act) was unlawful, could only be tried and punished under the provisions of that Act to the exclusion of the K.S.A.C. Fire Brigade Regulations, which was an enactment earlier in time.

The K.S.A.C. Fire Brigade Regulations (hereafter called the Regulations) were made by virtue of Section 14 of the K.S.A.C. Fire Brigade Act. This Act provides for the establishment of a Fire Brigade (Section 3 (1)), the appointment of its members (Section 3 (3)), and the establishment of a Fire Committee to which it delegates the powers of the K.S.A.C. in relation to the control and discipline of the Brigade (Section 4). By Section 14, the committee is given power to make regulations:

> (1) (a) ..... prescribing the requirements for the admission of members into the Brigade, and the period of service, and the training, government, discipline, good conduct and discharge of such members, (emphasis mine)

The method for the trial of charges for breaches of the Regulations are clearly set out in Section 15, and in relation to the specific breaches alleged in this case Section 15 (2) gives the Superintendent the power to try in disciplinary proceedings, any member of the Fire Brigade, other than the Assistant Superintendent or Chief Officer, charged with such breaches.

The Fire Brigade is therefore a statutory organization with special statutory rules for the control and discipline of its members, who are liable to disciplinary action for any breaches of the Regulations. The Act creates special statutory contractual relations between the employer and the employees which every person accepting such employment accepts as binding upon him.

It is clear then, that the absence of the appellant from work on the relevant days is conduct which offends Regulation 25 of the Regulations as well as Section 13 (2) of the LRID Act. Mr. Rattray nevertheless argued that the LRID Act creates a new obligation and the procedure and remedy to deal with it, and that Act being a comprehensive scheme for dealing with industrial disputes, its provisions for dealing with the appellant's absence from work as a result of an industrial dispute, is applicable and this, to the exclusion of the powers given to the Superintendent under the K.S.A.C. Fire Brigade Act.

In support of this argument, several authorities were cited which are worthy of mention. Learned Attorney for the appellant referred the Court to Halsbury's Laws of England 4th Edition Volume 44 paragraph 945 thus:

> "Where a new obligation not previously existing is created by a statute which at the same time gives a special remedy for enforcing it, the initial general rule is that the obligation cannot be enforced in any other manner."

For this statement, the learned author, cited the case of Doe Dem. Murray, Lord Bishop of Rochester v. Brigades (1831) 109 E.R. 1001. Mr. Rattray relied on the following passage from the judgment of Lord Tenterden, C.J., at page 1006:

> "And where an Act creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner. If an obligation is created; but no mode of enforcing its performance is ordained, the common law may, in general, find a mode suited to the particular nature of the case."

The answer to this seemingly attractive proposition by the appellant, is simply that the LRID Act created no new obligation. To determine this issue it is not necessary to enter into an examination in respect of the common law contractual relation between an employer and an employee, and the employees responsibility to be present at work unless specific permission is given for his absence, or he is excused for some other reason e.g. illness. On the facts of the present case, at the time of the coming into effect of the LRID Act all firemen already had that obligation under risk of penalty, by virtue of Regulation 25 of the Regulations.

The LRID Act, in dealing generally with labour relations and industrial disputes, set out special procedures to be followed in relation to industrial disputes in essential services (Section 9-12) and in Section 13 (2) creates an offence in the following terms:

> "Any worker who, during the period of any unlawful industrial action which is taken in the undertaking in which he is employed -
>
> (a) ceases or abstains from, or refuses to continue any work which it is his duty, under his contract of employment to do, or
>
> (b) .....
>
> shall ..... be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars."

This section does nothing more than provide criminal sanctions in certain circumstances, where workers employed in essential services withhold their services from their employers. The fact that these general provisions in relation to the essential services (of which the Fire Brigade is one) make absence from work a criminal offence in certain circumstances relating to industrial disputes cannot in my view be said to affect the specific regulations which control the discipline of the employees of the Fire Brigade. Indeed, there are many instances in which the conduct of an employee can amount to a criminal offence, as well as give cause for disciplinary action at the workplace. In such cases depending on the particular nature and circumstances of the conduct, the employer could determine whether criminal complaint should be made, or whether the matter may be more appropriately dealt with in the context of the private contractual relations with his employee. If the proposition contended for, was correct, it would result in the LRID Act depriving the Superintendent of his disciplinary powers and would create a situation which would allow a guilty fireman to be fined under the procedure in that Act and then return to the workplace with immunity from departmental discipline. Such a situation would be untenable and in my opinion would not give effect to the intention of the legislature.

The LRID Act as it relates to the Fire Services, quite contrary to creating a new obligation, created an additional method of dealing with a breach of an obligation which already existed in the Regulations, when that breach occurs in the circumstances of an industrial dispute.

Also relied on by Mr. Rattray in support of his proposition was the case of Meade v. London Borough of Haringey (1979) 2 All E.R. 1016 and in particular the following words of Sir Stanley Rees at page 1031:

> "There is of course a well-established general principle that where a statute expressly provides machinery for the enforcement of its provision that is the only remedy". (emphasis mine)

It is sufficient to state, that in the instant case, the disciplinary trial which is now the subject of complaint, was in no way an attempt to enforce the provisions of the LRID Act, but was conducted in order to enforce the provisions of the K.S.A.C. Fire Brigade Act and its Regulations and followed the machinery therein provided for the enforcement of those provisions.

As a subsidiary arm of ground 1, Mr. Rattray contended that the LRID Act, by implication repealed that part of the Regulations which gives the Superintendent of the Fire Brigade, the jurisdiction to hold a disciplinary trial for an offence under Regulation 25 (10) of those Regulations where the absence from work was in connection with an industrial dispute.

The principle which governs repeal by implication is described in the maxim "generalia specialibus non derogant". It is clearly explained in the following words of Lord Hobhouse in Barker v. Edger (1895 -9) All E.R. 1642, at page 1646 in the following terms:

> "The general maxim is, 'generalia specialibus non derogant'. When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly."

And was again considered by the Earl of Selbourne, L.C. in the case of Mary Seward v. The Owner of the Vera Cruz (1884) 10 A.C. 59, at page 68:

> "Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so."

The Regulations as I have already expressed, are, in my opinion, special rules provided for controlling the discipline and conduct of firemen, whereas the LRID Act provides general enactments for labour relations, and procedures in relation to industrial disputes in all the essential services listed in the First Schedule of the Act. There is no doubt that both enactments are not inconsistent with each other and that each can be applied according to the particular circumstances that exists at any given time. There is nothing whether expressed or implied in the LRID Act that demonstrates an intention that the specific rules of discipline in the Regulations should be repealed. Indeed, the dicta of Farewell, J., in Lewis v. Berrey (1936) 1 Ch. 274 at page 279 supports the view that where two enactments may stand together, then there is no indication of an implied repeal.

Farewell, J., said this:

> "It is well settled that the Court does not construe a later Act as repealing an earlier Act unless it is impossible to make the two Acts or the two sections of the Act stand together i.e., if the section of the later Act can only be given a sensible meaning if it is treated as impliedly repealing the section of the earlier Act."

I agree therefore with the judgments of the Full Court, that the principle expressed in the maxim "generalia specialibus non derogant" is applicable to the circumstances of the instant case and that on both limbs of the proposition put forward by Mr. Rattray, the appeal fails.

I turn now to the incidents out of which the charges of insubordination and discreditable conduct arose, and therefore to ground 2 of the Grounds of Appeal which reads as follows:

> "That the learned judge erred in holding that the appellant was properly found guilty of the other charges of which he was found guilty in the circumstances in which the Appellant was off duty in a public bar and the complaining Fire Brigade Officers were also off duty on a private occasion in a public bar."

These charges arose out of an incident which occurred in a bar, at a time when neither the officers, the object of the insubordination nor the appellant were on duty. The words allegedly spoken by the appellant to the officers namely Senior Deputy Superintendent A. Henry and Deputy Superintendent L. Cameron were as follows:

> "So onnu bruk wi strike sah. Of course oonu bruk wi strike, Oonu over deh a work wid di soldier dem a show dem how fi operate fire truck; but dem should a kick oonu in a oonu arse."
> "You a traitor".

The thrust of the appellant's complaint in this regard, was based on the submission that the Regulations only apply to conduct of firemen while on duty, and as in the circumstances of this case, the appellant was off duty, the provisions of the Regulations would not apply to his conduct in the bar.

The charges resulted from alleged breaches of the following Regulations:

> "25. Any member of the Brigade commits an offence against these Regulations if he is guilty of
>
> (1) discreditable conduct, that is to say, if he acts in a disorderly manner or any manner prejudicial to discipline or likely to bring discredit on the reputation of the Brigade;

"(2) Insubordinate or oppressive conduct that is to say, if he -

(a) is insubordinate by word, act, or demeanour; or

(b) .....

(c) uses obscene, abusive, or insulting language to any other member of the Brigade."

An examination of the provisions of the Regulations discloses on the face of some Regulations that the breaches need not be committed while the fireman is on duty. A perfect example of this occurs in Regulation 25 (1) under which the appellant was charged for discreditable conduct. It is obvious that a fireman need not be on duty in order to conduct himself in such a way as is likely to bring discredit on the reputation of the Brigade. It seems to me therefore that in respect of the charge for discreditable conduct there is no necessity for the appellant to have been on duty in order to bring him within the provisions of Regulation 25 (1), as his alleged conduct in the bar, if accepted as fact would certainly be likely to discredit the reputation of the Brigade.

But Mr. Rattray's main contention related to the charge of insubordination. This question ought to be determined on the background that the Fire Brigade is an organization established almost on the basis of a para-military structure nearly akin to the Jamaica Constabulary Force. Indeed by virtue of Section 11 of the Act the members of the Brigade on duty at any fire shall have the powers, authorities and immunities of constables to the extent of even having powers of arrest without a warrant in certain circumstances. If Mr. Rattray is correct in his contention, then firemen could postpone their acts of insubordination to a time when they are off duty, and thereby avoid the provisions of the Regulations. In my opinion that would create an absurd situation, which would not be in keeping with the obvious intention of the legislation to provide rules for maintaining a disciplined and orderly Brigade.