IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M34 OF 1982

BETWEEN	THE NATIONAL WORKERS UNION CYNTHIA HENRY DOROTHY MARTIN BARBARA REDDICKS	PLAINTIFFS
AND	DANAH BRASSIERRE COMPANY LTD.	DEFENDANT

Mr. R. Carl Rattray Q.C. and Mr. Clark Cousins instructed by Rattray, Patterson, Rattray for the Plaintiffs.

Mr. Robert Baugh for the Defendant.

Heard: June 7, 8, 9, 10 and 11, 1982.

Delivered: July 29, 1982.

WALKER J:

On July 29, 1982 I gave an oral judgment in this matter and promised then to put my reasons in writing at a later date. I now do so.

On April 26, 1982 these proceedings were commenced by way of an originating summons whereby the plaintiffs claimed relief as follows:-

"1. A Declaration that:-

(a) the action of the Defendant Company in locking out the Plaintiff employees and refusing them entry into the place of employment for the purpose of engaging upon the jobs for which they have been employed is contrary to the provisions of the Collective Labour Agreement existing between the National Workers Union on behalf of the employees and the employers as well as the provisions of the Employment (Termination and Redundancy Payments) Act, the Labour Relations and Industrial Disputes Act, and the Labour Relations Code and is, therefore, illegal, null and void.

(b) the action of the Company in purporting to dismiss the Plaintiff employees from their jobs is invalid and of no effect.

(c) the employment of the Plaintiff employees is still subsisting and the Plaintiff employees remain employed to the Defendant Company.

(d) the employment of the Plaintiff employees has not been effectively terminated.

(2) An Injunction to restrain the Defendant Company from employing any persons to fill the jobs held by the Plaintiff employees whilst the Plaintiff employees are still employed in these jobs.

(3) A Mandatory Injunction issued to the Defendant Company to accord to the Plaintiff employees in respect of whom the Declaration is prayed their rights as employees of the Defendant Company.

(4) That the Defendant Company pays the costs of and incident to this Application.

(5) Such further and/or other relief as may be just."

On June 9, 1982 pursuant to an application made by Counsel for the Plaintiffs I ordered that paragraph 1(b) of this Summons be amended to read as follows:

"1 (b) the action of the company in treating the workers as having abandoned their jobs is invalid and of no effect."

Filed along with this Summons was a schedule of the employees of the defendant in respect of whom such relief was being claimed.

Also on April 26, 1982 on an ex-parte summons taken out on behalf of the plaintiffs, Theobalds J. granted an injunction for ten days to May 6, 1982 restraining the defendant from employing any persons to fill the jobs held by the plaintiff employees as listed in the schedule to the originating summons until the determination of that summons.

On April 30, 1982 a summons for interlocutory injunction to restrain the defendant as aforesaid was taken out and duly served on the defendant. On May 6, 1982 this summons came on for hearing before Theobalds J. who ordered that the interim injunction be extended on the same terms on which it was granted until the hearing of the summons then before him. The result is, therefore, that the interim injunction granted by the Court on April 26, 1982 remains in force up until the conclusion of hearing of these proceedings which in themselves have over-reached the hearing of the summons for interlocutory injunction. The latter summons remains on file.

Insofar as the parties are concerned the first plaintiff is the National Workers Union (hereinafter referred to as "the union") which is a registered trade union with offices at 130-132 East Street in the parish of Kingston. The union is the exclusive bargaining agent for the direct labour employees of the defendant company. The second, third and fourth plaintiffs are three such employees of the defendant company. The term "direct labour employees" is applicable to all employees of the defendant company except members of staff and embraces two categories of employees, namely piece rate employees i.e. employees paid at a fixed rate for each piece of work done and non-piece rate employees i.e. employees paid at a fixed rate per hour on the basis of a 40 hour work week. The defendant, Danah Brassierre Company Limited, is a company incorporated under the laws of Jamaica having its principal place of business at Port Maria in the parish of St. Mary. The company is in the business of manufacturing brassieres for export to the United States of America and has been in operation in Jamaica for upwards of twenty three years to date.

On February 1, 1974 the union and the company entered into a collective labour agreement which over the years was amended from time to time, the most recent amendment having been signed by the parties on March 10, 1982 with retroactive effect from February 1, 1982, the date of the document. Pursuant to this amendment a revised rates schedule was issued by the company reflecting a 15% increase in the rates payable to the company's piece rate employees, and in accordance with this schedule increased wages were paid to these employees on March 18, 1982. The following pay day, March 25 , 1982, increased wages were paid to all direct labour employees with the exception of piece rate employees who were paid at the old rates in force prior to February 1, 1982. Mr. Peter Shalleck, Managing Director of the company, in his evidence explains the situation

in this way:

> "That on or about the 22 of March 1982 it came to my attention that the payroll for the Company had been incorrectly prepared and paid on the 18 day of March 1982.
>
> That I immediately telephoned the Office Manager/Head Bookeeper in Jamaica and gave certain instructions with regard to the interpretation of the Agreement dated the 1st day of February 1982 in so far as it applied to wage increases for the direct labour employees both non piece rate and piece rate.
>
> That on the 25 day of March 1982, the direct labour employees were paid the rates established in the Agreement dated the 1st day of February 1982 in so far as it applied to wage increases for the direct labour employees both non piece rate and piece rate.
>
> That on the 25 day of March 1982, the direct labour employees were paid the rates established in the Agreement dated the 1st day of February 1982 i.e. non piece rate employees received an increase of 15 per centum and piece rate employees who had not made by their piece rate the minimum wage applicable were paid the new minimum wage established by the Agreement.
>
> That in the Agreement made prior to that of 1st February 1982, specific provision was made for increases in piece rates separate and apart from those increases applicable to minimum wages and to non piece rate employees.
>
> That no provision was made in the Agreement of 1st February 1982, in respect of increases in piece rates as the Company was of the view that the piece rates were already high and needed no upward adjustment."

Mr. Shalleck was supported by Kathleen May Graham, Office Manager and Head Book-keeper employed to the company, her evidence being as follows:-

> "That prior to the 18 day of March 1982 I gave instructions for a payroll to be prepared for the direct labour employees of the Company reflecting a across the board increase of 15% to both piece rate and non piece rate workers.
>
> That at the time when I gave the instructions set out in paragraph 2 hereof I had not seen nor was I in possession of the Agreement dated the 1 day of February 1982 between the Company and the National Workers Union but had been verbally advised that it contained provision for a 15% increase and as such increases had been applied across the board in the past I assumed the same situation applied to the new contract.

That on the 22 March I had a Telephone conversation Peter Shalleck who gave me certain instruction as to the provisions of the Agreement dated the 1 day of February 1982.

That during the telephone discussion I advised Peter Shalleck that in my view there would be a problem with the Union as his instructions differed from the method of payment applied on the 18 March 1982 to which he replied to the effect that if there was any problem with the Union I should tell Cynthia Henry one of the National Workers Union delegates that the Company was willing to go to Arbitration.

That on the 22nd day of March 1982 I advised Cynthia Henry and Barbara Reddicks two of the Workers delegates of Peter Shalleck's instructions as to how the payroll should be calculated for payment on the 25 March 1982 and further advised them that Peter Shalleck had said that the Company would be willing to go to Arbitration if there was a problem over his instruction.

That I gave instructions for the payroll to be prepared for payment on the 25 March 1982 on the basis of, a increase of 15% for all non piece rate employees covered by the Agreement with the National Workers Union, a increase of 15% on the minimum rates and no increase in the piece rates over those applicable up to 31 January 1982.

That on the 25 March 1982 the direct labour employees were paid in accordance with my instruction set out in paragraph 7 hereof and I noticed that during the afternoon several of the direct labour employees were not at their work stations but were under the shed in the compound."

On March 26, 1982, as a direct consequence of the refusal of the company to pay increased rates to the piece rate empolyees, all the direct labour employees of the company, acting on the authority of the union, took strike action. The evidence discloses that on the same day, namely March 26 the company caused to be posted within the precincts of the factory a notice to the effect that the factory would close after business on April 1 and re-open for business on April 16. This decision, it was not disputed, had been taken unilaterally by the company which gave as the reason for this closure

"strikes at the wharf which are holding up shipments for delivery here and the low amount of work in the factory at the present time."

The employees strike was first brought to Mr. Shalleck's attention on the same day it commenced i.e. March 26, 1982. Mr. Shalleck was then off the island. Having been so informed Mr. Shalleck dispatched a mailgram to the union. In the mailgram Mr. Shalleck set out the company's position and called upon the union to observe and comply with the provisions of the collective labour agreement. The union says that this mailgram was received in its office on April 8, 1982 although Mr. Shalleck swears that the mailgram was sent on March 26. Mr. Shalleck's evidence continues:

> "That on several occasions between the 26th March 1982 and 29th March 1982, I attempted to contact Mr. Carl Thompson of the Union but was unable to do so.
>
> That on the 29th March 1982, I eventually spoke to Mr. Carl Thompson of the Union on the telephone when I read to him the contents of the mailgram sent on the 26th March 1982 and requested that he immediately instruct a resumption of normalcy following which the proceedings established in the Agreement of 1st February 1974 would be followed.
>
> That in the said telephone conversation I further pointed out to Mr. Carl Thompson that in accordance with the Agreement dated 1st February 1974 the Union had no right to call a strike so long as the Company did not renege on its undertaking to submit disputes to arbitration and to abide by the findings of the arbitration.
>
> That Mr. Carl Thompson replied to the effect that in Jamaica every Worker had the right to strike and the Workers of the Company had exercised that right on his instruction for which he took full responsibility on behalf of the Union.
>
> That I again requested that Mr. Carl Thompson instruct a return to normalcy by the Workers but he again refused to do so.
>
> That I then advised Mr. Carl Thompson that there were certain finished goods at the plant which would have to be removed immediately if the Company was to maintain its export orders to which Mr. Thompson replied that he would not allow the removal of the finished goods from the plant as that was his "ace in the hole" at which point the conversation ended.

That having received no response to the mailgram of 26th March 1982, and the open letter of April 5, 1982, aside from that contained in the telephone conversation with Mr. Carl Thompson of 29th March 1982, I decided to visit Jamaica to assess the situation first hand."

In response to this evidence Mr. Carl Thompson, the union's representative, admitted the telephone conversation of March 29 but denied that at that time Mr. Shalleck read the mailgram to him and that both men then had a conversation relative to the removal of finished goods from the plant. Mr. Thompson admitted receipt of the open letter referred to by Mr. Shalleck but insisted that that document was received on April 14, 1982. Mr. Shalleck's evidence goes on:

"That I arrived in Jamaica on the 11th April 1982 and on making enquiries with the local management I was advised that the employees were still on strike, were picketing the Company's premises in Port Maria and had not responded positively to my request for a restoration of normalcy.

That as a result of the information I received I decided that the Company should now exercise its option of treating the direct labour employees as having abandoned their employment and signed letters to this effect dated 12 April 1982.

That on the 13th April 1982, I was advised by my Attorney-at-Law Mr. Robert Baugh that a meeting had been fixed for 16 April 1982 at the Ministry of Labour which I decided to attend out of respect for the Minister of Labour as I considered that the Company no longer had any direct labour employees and there was therefore no reason to discuss any matter pertaining to former employees who had abandoned their employment with the Company."

The letters here referred to were all similar in content and read thus:

"12th April, 1982

Dear Mr/Mrs/Miss,

Since 25th March, 1982, you have not reported for work, despite our repeated requests for you to do so.

In the circumstances, we can no longer continue to treat you as an employee of Danah Brassiere Company Limited, in that you have clearly abandoned your job.

This is therefore to advise you that your name has been removed from the Company's employment list with effect from 9th April, 1982.

Very truly yours,
Peter Blair Shalleck
Managing Director."

The plaintiffs are adamant that such a letter was never delivered to any employee of the company for whom it was intended and the company has not been able to prove otherwise.

The next event of importance was a conference which was convened at the Ministry of Labour on April 16, 1982. At this meeting which was attended by representatives of the company and the union, the company took a hard line. Mr. Baugh, the company's Attorney-at-Law, stated in unequivocal terms that both he and Mr. Shalleck had attended the meeting only out of courtesy to the Ministry since the company had taken the position that the striking employees had abandoned their jobs. The result was, he said, that the company no longer regarded those persons as enjoying the status of employees and intended to advertise for persons to fill the vacant positions existing within the labour force of the company. The evidence shows that such an advertisement did in fact appear subsequently in the issue of the Jamaica Daily News newspaper of April 24, 1982. On the other hand the union's stance at this conference was that strike action taken by its members was taken in furtherance of a genuine industrial dispute between the parties, and that the dispute which concerned wages payable to the company's employees involved interpretation of the collective labour agreement entered into between the company and the union. Through its representative, Mr. Carl Thompson, the union requested a reference of the dispute to the Industrial Disputes Tribunal "so that justice can be done in this matter."

From the venue of this conference at the Ministry of Labour in Kingston the scenario shifts back to the company's factory site in Port Maria, St. Mary where, on the same day, according to the evidence for the plaintiffs, the company's striking employees reported for work but found the factory gates locked and barricaded against them in such a way as to make entry into the factory impossible. In these circumstances it is the plaintiffs' case that the union wrote a letter to the company, which letter was delivered by Mr. Carl Thompson to Mr. Alfred Thomas,

the manager of the company, on April 19. This letter which was dated 16th April, 1982 reads as follows:-

"The Managing Director
Danah Brassiere Company Limited
Port Maria
St. Mary

Dear Sir:

Re: Employees of your Company represented by the National Workers Union

This is to inform you that the abovementioned employees stand ready, willing and able to resume their employment with your Company, but as a result of your instituting a lock-out, they are unable to enter upon the premises to carry out their lawful employment activities.

We wish to inform you that this state of affairs is unacceptable and request that it be immediately rectified.

Sincerely yours
National Workers Union

Hugh Salmon
Legal Adviser."

The company's version of the events occurring in Port Maria on April 16 is to be gathered from the evidence of Mr. Shalleck, Mr. Thomas and Mr. Anselmo Rodriques. Mr. Shalleck says:

"That after the Union and the Company had exchanged views at the Ministry of Labour on the 16 April 1982 the Union requested that the Minister of Labour refer to the Industrial Disputes Tribunal a dispute with the Company over the interpretation of the Agreement dated the 1st February 1982.

That I returned to the plant in Port Maria on the afternoon of 16 April 1982 where I observed a large group of employees at the gate.

That I proceeded to the Port Maria Police Station where I requested that a police officer accompany Messrs. John Wistler, Rodriques and myself back to the plant.

That I returned to the plant accompanied by Messrs. John Wistler, Rodriques and a Police Officer where I observed that the gate way was blocked by large holders, wood and steel and there were picket signs hanging on the gate and fence. In addition I observed a large number of employees standing by the gate.

That I came out of my car and helped Messrs. Wistler and Rodriques remove the stones, wood and steel and I took down a few of the picket signs hanging on the gate and fence.

That I entered and left the plant in Port Maria under Police escort on the 16 April 1982."

Mr. Thomas' evidence reads thus:

> "That on the 16th April 1982, I went to the plant in Port Maria and on approaching the gate observed that the gateway had been blocked by large bolders, wood and steel and that there were a number of employees gathered outside the gate.
>
> That because of the bolders, wood and steel blocking the gate I had to leave my car outside and enter the plant compound by way of the employee entrance gate which was open.
>
> That I remained at the plant on the 16th April 1982 until in the afternoon period when Peter Shalleck, John Wistle, Anselmo Rodriquez and a police officer arrived at the plant.
>
> That Messrs. Shalleck, Wistler and Rodriquez cleared the wood, steel and bolders away from the gate and entered the plant in a motor vehicle."

Mr. Rodriques' contribution was in these terms:

> "That on the 16 April 1982 I travelled from Kingston to Port Maria accompanied by Peter Shalleck and John Whistler and on reaching near the plant gate I observed a number of ex employees of the Company standing at the gate some of whom were holding picket signs.
>
> That I went to the Port Maria Police Station and returned to the plant accompanied by Peter Shalleck John Whistler and a Police Officer.
>
> That on reaching the plant gate I observed that there were a number of large bolders, pieces of wood and steel bars placed in front of the gate and that a number of picket signs and ex employees were also there.
>
> That I assisted my companions in removing the bolders, wood and steel from in front of the gate and entered the plant."

Against the background of this evidence certain issues arise for determination.

Firstly, I have to consider whether or not the collective labour agreement between the company and the union is legally enforceable or binding in honour only. Counsel for the plaintiffs argued that the agreement was not a legal contract and, therefore,

was not legally enforceable as such while Counsel for the defendant argued to the contrary. During the course of his submissions Counsel for the plaintiffs examined several sections of the agreement and pointed particularly to the provisions of section iv (a) which reads as follows:

> "(a) It is the responsibility of the Company to maintain the highest level of efficiency and the Company must therefore be the one to judge the requirements of any job and the suitability of any employee or candidate for employment to fulfill the requirements of any job. The probationary period of all hired employees is three months time; in addition, if at the end of the three months probationary period the Company decides that an employee is not thoroughly trained then the probationary period will, at the option of the Company, be extended an additional four weeks time, provided, however, that the Company gives notice of such an extension to the employee and the Union. The Company may therefore dispense with the services of anyone who has not yet completed the probationary period as explained above."

Mr. Rattray submitted that the principles enunciated in this section fell entirely outside the realm of contract and that, read as a whole, the agreement was a classic British type labour agreement designed primarily to create an environment of industrial peace. He advanced the proposition that, as a class, collective labour agreements were not legally enforceable and cited as authority for that proposition the Supreme Court decision of The National Workers Union and Collington Campbell v. The Jamaica Broadcasting Corporation (Suit No. M10/1981) and the Union of Clerical, Administrative and Supervisory Employees and Beverley Newell vs. The Jamaica Broadcasting Corporation (Suit No. M. 11/1981). Counsel was prepared to rely on this decision while recognising that it was exceptional as being the only instance in which a collective agreement has been held to be legally enforceable.

For his part, Counsel for the defendant readily conceded that as a class collective agreements were not binding in law. He argued, as did Counsel for the plaintiffs, that the proper approach to a determination of the nature of such agreements lay in an examination

of the terms of each agreement. Counsel submitted that in the instant case the agreement was intended to be legally binding on the parties, and in this regard he pointed specifically to the evidence of Mr. Shalleck which was to such effect. He, too, cited the Jamaica Broadcasting Corporation cases (supra) and also referred to the case of Ford Motor Co. Ltd. v. Amalgamted Union of Engineering and Foundry Workers and others [1969] 2 All E.R. 481, in the course of argument.

In my view the law applicable to a determination of the nature of collective agreements is as stated by Carey J. (as he then was) in the case of R. v. The Industrial Disputes Tribunal ex-parte The Shipping Association of Jamaica (suit No. M15/1979) an unreported decision of the Full Court of the Supreme Court. There (at page 38 of the judgment) Carey J said:

> "Such agreement will have to be considered on its own facts. Where the terms are precisely stated and certain, there is no reason in law why the intention to be bound by the terms cannot be imputed to the parties."

Again in the same case [at page 39] Carey J. had this to say:

> "The position at Common Law must now be regarded as settled. Strictly speaking a collective agreement may be enforced if the intention can be discovered from the terms if precisely stated and from the surrounding circumstances. Certainly, in this country, the surrounding circumstances are against such an inference being drawn."

This decision of the Full Court was cited with approval by Smith C.J. in the Jamaica Broadcasting Corporation cases (supra), the Learned Chief Justice there delivering himself thus:

> "Various reasons are given in the authorities cited why collective agreements are not binding and it is not necessary to set them out here, but it seems clear from those authorities that a decision as to the legal enforceability of such agreements can only be made on an examination of the terms of each agreement."

On Appeal from this judgment of Smith C.J. (vide SCCA Nos. 14 and 15 of 1981) Zacca P. in delivering the unanimous judgment of the

Court of Appeal posed and answered the question in these terms:

> "Are collective labour agreements legally binding in Jamaica? The position would seem to be that they are legally enforceable if it can be determined from the terms of the agreement and the surrounding circumstances that it was the intention of the parties for the agreement to be legally binding..... We see no reason for departing from the view which has long been held that a collective labour agreement may be legally binding if there are express provisions to that effect in the agreement or it can be ascertained from the surrounding circumstances that the intention of the parties was that it was to be legally binding."

Having examined the collective agreement in this case I find that it is not expressed in precise contractual terms. Indeed, it is one instance of this imprecision of language which gave rise to the difficulties between the company and its employees. I have come to the conclusion that the agreement provides, and was intended to provide, no more than guidelines for fostering harmonious relations between the company, its employees and their union. The objective of the agreement was the creation of an environment of industrial peace at the work place hence section II of the agreement which is captioned "Section 11: Purpose" and reads as follows:

> "The general purpose of this Agreement is to record orderly collective labor relations between the Company and its employees as represented by the Union and to secure prompt and equitable disposition of grievances and to maintain satisfactory hours, stable wages and fair working conditions as agreed upon between the Company and the Union."

In my judgment, therefore, the agreement is not legally enforceable but binding in honour only.

Secondly, I must decide whether or not the workers'strike was lawful action. Counsel for the plaintiffs contended that the strike was lawful as having been taken by the company's employees in furtherance of a genuine industrial dispute, namely a dispute as to whether or not those employees were entitled to be paid increased wages on an across-the board basis under the terms of the amendment to the collective

labour agreement dated 1st February, 1982. In support of his submissions Counsel cited the case of Regina vs. Industrial Disputes Tribunal ex-parte Serv-Wel of Jamaica Limited (Supreme Court suit No. M. 6 of 1982). Counsel argued that legislation in Jamaica had advanced to the stage where strike action was recognised as a legitimate weapon in the armoury of the worker. In that regard he referred specifically to the Labour Relations and Industrial Disputes Act which he said on a proper construction impliedly permitted strike action inasmuch as it contained express provisions in sections 9(5) and 10(8) which clearly defined the circumstances in which strike action was unlawful. Counsel went further to say that in the Jamaican context strike action was today a legal right enjoyed by the worker and not merely a privelege as such action was described by Parnell J. in the Serv-Wel case (supra).

On the other hand Counsel for the defendant took a different view. He argued that the strike was unlawful on two main grounds, namely:

(1) it was in breach of section 10, clause 15 and section 11, clause 4 of the collective labour agreement and

(ii) it contravened the common law.

Section 10, clause 15 of the agreement reads as follows:

> "In the event of a dispute as to a piece rate, the Company agrees to review the rate within thirty (30) days of the employee's complaint and to revise the rate if in the Company's opinion, a revision is warranted. Pending the resolution of the dispute, work on the operation must proceed without interruption. If the Company revises the rate, the adjustment will be retroactive to the date of the complaint."

Section 11, clause 4 contains the following provisions:

> "As part of the consideration for this Agreement, the Union agrees that it will not call, authorize or ratify a strike or stoppage of work during the life of this Agreement, except for the Company's failure to submit to arbitration or to comply with the decision of an arbitrator as hereinabove provided. Should any unauthorized strike or stoppage occur, the Union agrees to endeavor in good faith, within twenty-four hours after receipt of notice from the Company, to bring about a prompt return to their work of its members who have stopped working. (Upon the failure of any employees to return to work within the said twenty-four hour period, the Company may, at its option, consider that such employees have abandoned their employment)."

Having regard to my finding as to the nature and effect of the collective agreement Counsel's submission cannot be sustained on the first ground. I say this, however, that, staged as it was in the face of the provisions of the collective agreement quoted above, the strike was immoral and reprehensible conduct on the part of the union and its employees. The evidence of Kathleen Graham which I accept reveals that Mr. Carl Thompson, the union's representive, told her (Graham) that when he closed down a business it was properly closed, that the workers would have to bear the suffering and that he took full responsibility for the strike. That was the level of irresponsibility displayed by Mr. Thompson and for which Mr. Thompson and the union must take full blame. Mr. Thompson's proud boast brought no honour either to himself or his union and suffering, indeed, to the workers.

In amplification of the second ground of his submission counsel for the defendant argued that the company's employees failed to give proper strike notice as they were required to do by law. He cited as authority for the proposition that strike notice was a prerequisite to lawful strike action the case of Morgan v. Fry and Others [1968] 3 All E.R. 452 and also referred to the Employment Termination and Redundancy (Payments) Act as providing the basis on which the proper length of strike notice should be computed. In the course of his submissions Counsel for the defendant also examined the case of Simmonds v. Hoover [1977] 1 All E.R. 775 and the Morgan v. Fry case (supra). Counsel for the defendant further submitted that, in walking off their jobs in the manner in which they did, each of the company's employees had acted in repudiation of his contract of employment. Counsel for the defendant argued, somewhat half - heartedly, that it was open to the Court to find that such repudiatory conduct on the part of the company's employees had been accepted by the company with effect from April 9, 1982. In so saying Mr. Baugh was, of course, referring to the company's letter dated 12th April, 1982.

Replying to these arguments, counsel for the plaintiffs

submitted that the Jamaican worker was under no duty to give notice of his intention to take strike action. In that regard Mr. Rattray sought to distinguish the cases cited by Mr. Baugh on the basis that those cases dealt with the tort of intimidation as it affected the employer - employee relationship which was not the situation here. Expanding his arguments counsel for the plaintiffs submitted that in the instant proceedings the company had not dismissed its employees and was not seriously contending that it had done so. At the same, he said, the company's employees had not abandoned their jobs. Further Mr. Rattray submitted that even if the employees' conduct by striking was wrongful and amounted to a repudiation of their contracts of employment, the company had not effectively terminated those contracts. This was so because there was no evidence to show that the company's letter dated 12th April, 1982 was ever delivered, or its contents in any other way communicated, to any of the employees concerned who had themselves denied any knowledge of that letter. The employees' contracts not having been terminated, those contracts, therefore, remained in force and were still subsisting. Insofar as it was argued that the company had constructively dismissed its employees, Mr. Rattray submitted that such an argument could not be sustained on the facts. Moreover Counsel for the plaintiffs drew attention to the fact that the defendant's case had been presented and argued not on the basis that the company had dismissed its employees but rather on the basis that the employees had abandoned their jobs.

With regard to the question of strike notice I think it is sufficient to say that I accept the submission of counsel for the plaintiffs and hold that this concept is inapplicable to the facts and circumstances of these proceedings.

I come next to determine the question whether or not the dispute between the company and its employees was an industrial dispute within the meaning of the Labour Relations and Industrial Disputes Act. Under that Act the term "industrial dispute is

defined thus:

> "Industrial dispute means a dispute between one or more employers or organizations representing employers and one or more workers or organizations representing workers, where such dispute relates wholly or partly to -
>
> (a) terms and contiions of employment, or the physical conditions in which any workers are required to work; or
>
> (b) engagement or non-engagement, or termination or suspension of employment, of one or more workers; or
>
> (c) allocation of work as between workers or groups of workers; or
>
> (d) any matter affecting the privileges, rights and duties of any employer or organization representing employers or of any worker or organization representing workers."

The facts disclose that the dispute between the company and its employees related to the payment of increased wages which the employees maintained were due to them under the terms of the collective labour agreement entered into between their union and the company. The company had gone as far as to issue a revised rates schedule reflecting such increased wages. Pursuant to that schedule the company had paid increased wages to these employees for a single week. The employees had every right to expect payment of wages on a similar basis thereafter. However, for the week following, wages were paid at the old rates, the company asserting that the revised rates schedule had been issued and increased wages paid in error. The company's employees refused to accept the company's explanation of error and went out on strike. There can be no doubt that wages form part of the terms and conditions of employment of workers and, accordingly, I hold that this dispute was an Industrial Dispute within the meaning of the Labour Relations and Industrial Disputes Act. Furthermore, inasmuch as the strike action taken by the company's employees was prompted by this dispute such action was action taken in furtherance of an industrial dispute. The employees strike was a "real" strike such as was contemplated by Phillips J. in the Simmonds v. Hoover case (supra) when that learned

judge said (at page 785).

> "We should not be taken to be saying that all strikes are necessarily repudiatory, though usually they will be. For example, it could hardly be said that a strike of employees in opposition to demands by an employer in breach of contract by him would be repudiatory. But what may be called a 'real' strike in our judgment always will be."

Accordingly, I find that the employees strike action was lawful and, therefore, was not repudiatory of their contracts of employment. There is, too, another reason why the company's workers could not in my opinion be said to have repudiated their contracts of employment. The question must be asked: Could a company justifiably terminate the employment of workers on the ground that such workers had repudiated their contracts of employment by abstaining from work during a period of time when the company's operations had been officially closed down and they were not required to work? This was the factual position here in the light of which Counsel for the defendant, while conceding that the company's decision to close its factory on April 1 and re-open for business on April 16 had nothing to do with the dispute between the company and its employees, nevertheless argued that the company had, by its letter dated 12th April, 1982, effectively terminated the employment of its workers. Mr. Baugh's argument is clearly untenable and the question posed must be answered in the negative. However, in case I am wrong and the strike action of the company's employees did, as a matter of law, constitute a repudiation of their contracts of employment, I find that the company did not effectively terminate the workers' contracts inasmuch as the company's letter was never delivered, or in any other way communicated, to any of the workers for whom it was intended. Before parting with this aspect of the matter let me also say that I accept the submission of Counsel for the plaintiffs that, more than a privilege, strike action in furtherance of an industrial dispute is a legal right enjoyed by the Jamaican worker. I hasten to emphasise, however, that the right to strike is a right that should be exercised sparingly, only in the last resort where the prevailing circumstances leave no alternative course of action open to the worker. It should never be exercised frivolously or immorally as I have found happened in this case.

Did the company's employees then abandon their jobs? They staged a strike which I have found was lawful as being action taken in furtherance of a genuine industrial dispute with their employer. In striking they acted on the authority, and at the direction, of their union. Certainly they had no intention of abandoning their jobs by taking such strike action. Several of them had been continuously employed for upwards of ten years, others for as many as twenty years and yet others for more than twenty years. Is it likely that such persons would have abandoned their jobs thereby forfeiting their rights to all such benefits as had accrued to them over those long years of service? Again, the union's letter to the company dated 16th April, 1982 indicated that, far from abandoning their jobs, the company's employees stood "ready, willing and able to resume their employment." In these circumstances can it be said that these employees abandoned their jobs? Except that for the word "privelege" I would substitute the word "right", I think that the legal position was clearly and precisely stated in the Serv-Wel case (supra) when Parnell J. there said:

> "Where workers withdraw their services in furtherance of a genuine industrial dispute, they are exercising a privilege which is permissible in Law. In such a case, it cannot be said that they have "abandoned" their jobs. A man who by himself or in concert with his fellow workers honestly withdraws his services for a sustainable cause is not dismissing himself from his job."

In the light of these facts, therefore, I have no hesitation in coming to the conclusion that the company's employees did not abandon their jobs.

It is also abundantly clear that the company did not dismiss its employees either expressly or constructively. The realities of a situation such as this are best described in the words of Lord Denning M.R. expressed in the Morgan v. Fry case (supra). There Lord Denning said:

> "The truth is that neither employer nor workmen wish to take the drastic action of termination if it can be avoided. The men do not wish to leave their work for ever. The employers do not wish to scatter their labour force to the four winds."

A similar observation is to be found in the Simmonds v. Hoover case (supra) where Phillips J. said:

> "We accept, of course, that in most cases men are not dismissed when on strike; that they expect not to be dismissed; that the employers do not expect to dismiss them, and that both sides hope and expect one day to return to work."

I turn now to consider whether the company locked out its employees as was argued by counsel for the plaintiffs. The Labour Relations and Industrial Disputes Act defines the term "lock-out" as:

> "action which, in contemplation or furtherance of an industrial dispute, is taken by one or more employers, whether parties to the dispute or not, and which consists of the exclusion of workers from one or more places of employment or of the suspension of work in one or more such places or of the collective, simultaneous or otherwise connected termination or suspension of employment of a group of workers."

Here I accept as true the evidence of the company's witnesses and, in particular, the evidence of Mr. George Thomas which was to the effect that at all material times the gate by which the company's employees normally entered the plant remained open and permitted entry to any employee who desired to enter. In my opinion the company's employees did not enter the plant as they might have done because they had resolved to remain out on strike during that period of time. Accordingly, I find that the company did not lock out its employees as alleged or at all.

Lastly I have been invited by Counsel on both sides to interpret for the benefit of the parties the provisions of paragraph 2(a) of the amendment to the collective labour agreement dated 1st February, 1982. This paragraph reads as follows:

> "2. WAGES
>
> (a) That wages be increased by 15% for the first year of this contract, bringing the first year minimum wage to $1.265 per hour and an additional 15% for the second year of this agreement beginning February 1, 1982, increasing the minimum wage to $1.454 per hour."

Counsel for the plaintiffs argued that the word "wages" appearing in the first line of this paragraph should be construed to mean wages in general with the resultant effect of making the 15% increase granted thereby applicable on an across - the - board basis to all employees of the defendant company. He interpreted the subsequent conduct of the company in (a) issuing a revised rates schedule and (b) paying increased wages, albeit for a single week only, as confirmatory of the true import of the negotiated amendment. He found no room for error in the company's conduct which he submitted was clear and unequivocal. Counsel for the defendant argued to the contrary. He submitted that in the particular context in which the word "wages" was used it was capable only of the interpretation "minimum wages". He traced the history of amendments to the collective labour agreement and pointed to the circumstance that whenever it was intended to increase the rates payable to piece rate employees the term "piece rates" was specifically used. He said the revised rate schedule and accompanying payment of increased wages to the company's employees on an across - the - board basis resulted from error which the company had corrected at the first possible opportunity.

Speaking for myself I find no ambiguity in the meaning of the word "wages" in the context in which it was used. I understand and interpret the 15% increase mentioned and referred to in paragraph 2(a) to be referable only to an increase in the minimum wage rate and not to piece rates payable to the company's employees. The company's conduct subsequent to issuance of the revised rates schedule and related payment of increased wages was entirely consistent with the discovery of error which I am prepared to accept did in fact occur.

Accordingly, the judgment of the Court is as follows:

1. The declaration sought at paragraphs 1(a) of the originating summons is refused.

2. The declarations sought at pargraphs 1(b) as amended, 1(c) and 1(d) are granted.

3. The injunction sought at paragraph 2 is granted.

4. The mandatory injunction sought at paragraph 3 is refused.

5. There will be costs to the plaintiffs to be agreed or taxed.

Finally I should, perhaps, state my reason for refusing the mandatory injunction sought by the plaintiffs. It is this, that were I to grant such an injunction, the defendant company would not know exactly what it had to do. The need for precision in a positive injunction referred to by Lord Upjohn in the case of Redland Bricks Ltd. v. Morris and Another (1970) AC652 has not been satisfied in these proceedings. I ask the question: What are the specific rights which the defendant company should accord to the plaintiff employees in their capacities as employees of the defendant company? The precise answer to this question does not immediately suggest itself to me. In my judgment a mandatory injunction granted in these circumstances would offend a basic principle in the grant of equitable relief of this nature and, accordingly, I have refused the injunction.