

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E127 OF 2000

IN THE MATTER of section 32 of the Labour Relations and Industrial Disputes Act

BETWEEN	THE ATTORNEY GENERAL OF JAMAICA	APPLICANT
AND	JUNIOR DOCTORS ASSOCIATION]
]
AND	THE CENTRAL EXECUTIVE OF THE JUNIOR DOCTORS ASSOCIATION]
	(being sued in a representative capacity on behalf of themselves and all the other members of the Junior Doctors Association)]
		RESPONDENTS

Miss Cheryl Lewis and Miss Carolyn Tie instructed by the Director of State Proceedings for the Applicant

Lord Gifford, Q.C., Hugh Thompson and Miss Kerry Brown, instructed by Gifford, Thompson and Bright for the Respondents

Heard: April 11, 14, 19, 2000.

CORAM: WOLFE, CJ

The Junior Doctors Association, hereinafter referred to as the 'JDA' and the Ministry of Health and the University Hospital of the West Indies were in the process of negotiations concerning salaries and other emoluments for members of the JDA.

The parties became locked in their respective positions and efforts at conciliation failed.

On March 30, 2000, the JDA issued a letter advising the Ministry of health that as at 4.00 p.m. on March 30, the members of the JDA would be working from 8.00 a.m. to 4:00 p.m. Monday to Friday not including Public Holidays or weekends.

Efforts at conciliation having failed, the Honourable Minister of Labour and Social Security was advised that a dispute existed between the parties pursuant to section 9 (1) of the Labour Relations and Industrial Disputes Act, hereinafter referred to as the "LRIDA".

The Honourable Minister on the 31st day of March, 2000, pursuant to section 9(3) of the LRIDA referred the dispute to the Tribunal for settlement. The Tribunal, hereinafter referred to as the "IDT" met with the parties to the dispute on the same date. The JDA was ordered by the IDT to resume normal working hours by 4:00 p.m. on March 31. The JDA ignored the order.

On April 1, 2000, the Supreme Court of Jamaica, on the application of the Attorney General of Jamaica issued an injunction pursuant to section 32 of the LRIDA in the following terms:

- (i) that the respondents are restrained from commencing or continuing any industrial action, and or taking any step or doing any act likely to endanger the lives of a substantial number of persons or expose a

substantial number of persons to serious risk or disease or personal injury, or create a serious risk of public disorder in the Jamaican society.

- (ii) That the respondents be restrained from causing or attempting to cause or doing any act calculated to induce any Junior Doctor from withholding his/her services.
- (iii) That the respondents be restrained from causing or attempting to cause or doing any act calculated to cause disaffection among the Junior Doctors.
- (iv) That a publication of the Order herein (either by broadcasting same on at least two separate occasions over a commercial broadcasting system operating in Jamaica, or in at least one newspaper circulating in Jamaica) be deemed service of Notice of the Order on the respondents.
- (v) That the respondents be restrained until the matter has been determined by the Industrial Disputes Tribunal.

It is common ground that the said order was duly served and that the members of the JDA failed to comply with the terms of the order.

The Attorney General now seeks the liberty to issue Writ or Writs of Attachment against the respondents for their contempt in not having complied with the order of the court made on April 1, 2000.

Locksley Christie, President of the JDA, in an affidavit sworn to on the 11th day of April, 2000, and to which is exhibited an apology, avers that the apology was unanimously approved by the members of the Executive of the JDA.

The apology admits without reservation that the Order of the Court was breached. It is further admitted that

“the rule of law and the authority of the Supreme Court must prevail, however passionately the members feel about the issues in dispute”.

The Executive pledges itself “to conduct all future dealing in this or any future dispute, in accordance with the law, and to influence its members by all lawful means to do likewise”.

Let me say that I am not impressed with the sincerity of the apology. The apology, which Lord Gifford, Q.C. referred to as a full apology, is no more than a legal document drafted to avoid the serious consequences which are likely to flow from the breach. The expressions therein do not in my view emanate from the contemnors. They have, however, embraced it.

Having admitted their contempt, the question arises, what is the appropriate sentence to impose on the contemnors.

Generally, three options are open to the Court, viz. imprisonment, fine or reprimand.

It cannot in my view, be argued that this was not a willful and deliberate act of defiance by the respondents. The decision taken by the members of the JDA was a calculated risk. In voting not to resume normal working hours, after they had notice of the order of the Supreme Court, they were treating the order of the Court as not worthy of notice.

In light of the above, it would be wholly inappropriate to exercise the option of a reprimand only. Citizens, whatever their status must recognise that when the Court speaks, its order must be obeyed. The only option to a citizen who disagrees with the order of the Court is to challenge it by way of appeal. Defiance is clearly not an option. A citizen, who chooses the route of defiance opens himself or herself to sanctions. To tender an apology is only a step taken to mitigate the consequences which may flow from the act of defiance.

The mitigating effect of the dubious apology offered in this case is not such as to avoid the consequences of the failure to obey the order of the Court.

Is imprisonment an appropriate option in the circumstances of this case? Is the measure of contumacy such as to justify the imposition of a term of imprisonment on the contemnors.

No doubt these contemnors appreciated the essential nature of their services and were using their dominant position to stand firm against the order of the Court. In so doing they exposed the members of the public to great danger. They, however, came to their senses and resumed normal working hours on Monday, April 3, 2000. The order was made on April 1, 2000 and published on the same day by being aired on R.J.R. 94 FM at 8.45 p.m. and 10.15 p.m. The order was also published in the Sunday Gleaner of April 2, 2000 at page 3A and in the Sunday Observer of April 2, 2000 at page 6, thereof.

The affidavit filed by the JDA makes it clear that at least 242 members of the Association had knowledge of the order on Sunday, April 1.

The option of imprisonment is generally resorted to where the contemnor continued to be in breach at the time of hearing of the application to issue a writ of attachment. The primary purpose of imposing imprisonment is to compel the contemnor to purge himself or herself of the contempt.

I am not to be understood as saying that a contemnor cannot be imprisoned where there is a breach and the order is subsequently complied with. Imprisonment in such circumstances would surely depend upon the measure of the contumacy.

In the circumstances of this case, I will not exercise my discretion in favour of the imprisonment option.

In deciding whether or not to impose a fine, I ask myself the question, what was the effect of the refusal to promptly obey the order of the Court?

The failure to obey promptly, the order of the Court, deprived those who required the services of these doctors of such service and had the potential to put at risk the lives of persons who may have needed medical attention. I am not convinced that a mere payment of a fine adequately addresses the problem. These contemnors should be made to render service to the public of this country for a period of time without remuneration. They have indicated that they are willing so to do.

During this period they will constantly be reminded of the consequences which are involved in disobeying the order of the Court. This course of action will have a more salutary and lasting effect than the mere payment of a fine.

I, therefore, order as follows that each of the persons listed below is hereby order to do 200 hours of medical care at the named institutions:

<u>NAME OF INSTITUTION</u>	<u>NAME OF CONTEMNOR</u>
1. TOWER STREET ADULT) CORRECTIONAL CENTRE)	
2. SOUTH CAMP ROAD) REHABILITATION CENTRE)	
3. FORT AUGUSTA WOMEN) CORRECTIONAL CENTRE)	(i) CHRISTINE PARRIS
4. ST. CATHERINE DISTRICT) PRISON)	(ii) LEROY POTTINGER
5. TAMRIND FARM ADULT) CORRECTIONAL CENTRE)	(iii) MIKE MILLS
6. RIO COBRE JUVENILE) CORRECTIONAL CENTRE)	

The details of the above assignments are to be worked out between the contemnors and the Commissioner of Corrections Col. John Prescod.

7. SCHOOL OF HOPE FOR) CHILDREN WITH MENTAL) RETARDATION)	TANYA BROWN-BRYAN
8. HALF WAY TREE POLICE) STATION - LOCK UP)	

The details of the above assignments are to be worked out between the contemnor and Miss Christine Rodriques of the School of Hope and the Superintendent of Police i/c Half Way Tree Police Station.

9. ST. ANDREW SETTLEMENT)
CLINIC)

10. HOMESTEAD BOYS HOME -)
STONY HILL)

KEISHA MITCHELL

Details of the above assignments are to be worked out between the contemnor and Mr. Jos Chambers of the St. Andrew Parish Church and the Superintendent of the Homestead Boys Home.

11. GOLDEN AGE HOME)
ST. JOSPEH'S HOSPITAL)
COMPOUND)

12. JACOB'S WELL)
(Operated by Brothers of the)
Poor - Hanover Street))

ANDREW MANNING

Details of the above assignment to be worked out between the contemnor and Major Desmond Clarke of the Golden Age Home and Rev. Fr. Ambrose of Jacob's Well.

13. MARIE ATKINS NIGHT)
SHELTER)

14. CENTRAL POLICE STATION)
LOCK UP)

WAYNE FONG

Details of the above assignments to be worked out between the contemnor and Mrs. Carol Anthony of the Marie Atkins Shelter and the Superintendent of Police i/c Central Police Station.

15. ST. JAMES INFIRMARY -)
 MONTEGO BAY)
)
 16. CATHERINE HALL LOCK-UP)
 MONTEGO BAY)
- SHAUN JONES**

Details of the above assignments to be worked out between contemnor and Matron Nora Chambers of the St. James Infirmary and the Superintendent of Police i/c of Montego Bay Police Station.

17. SEAVIEW GARDENS HEALTH)
 CENTRE)
)
 18. HUNT'S BAY POLICE STATION,)
 LOCK UP)
- LOCKSLEY CHRISTIE**

The details of the above assignments are to be worked out between Nurse Lewis of the Seaview Gardens Health Centre and the Superintendent of Police i/c Hunts Bay Police Station.

All the contemnors must make contact with the respective contact persons on or before 4.00 p.m. on Wednesday April 26, 2000 and advise the Registrar of the Supreme Court, in writing by Friday, April 28, 2000 of the arrangements which have been made to give effect to the carrying out of the order herein.

The programme of medical care must commence not later than Saturday, May 6, 2000.

No contemnor must be assigned to perform more than two (2) hours work on any one day unless the contemnor agrees so to do.

There will be No Order as to Costs.