IN THE SUPREME COURT

IN THE FULL COURT

BEFORE: MORGAN, DOWNER, HARRISON, JJ.

SUIT NO. M. 36 of 1985

R. v. BUSTAMANTE INDUSTRIAL TRADE UNION
and THE NATIONAL WORKERS UNION
and THE INDUSTRIAL DISPUTES TRIBUNAL
Ex parte JAMAICA PUBLIC SERVICE COMPANY LIMITED

Carl Rattray, Q.C. and Andrea Rattray for the Unions
Joslyn Leo-Rhynie Q.C. and Allan Wood for the Applicant
Neville Fraser, Assistant Attorney General and Douglas Leys,
Crown Counsel, amici curiae

HEARD: May 5, and July 31, 1986

MORGAN J:

Downer J. will read the judgment of the Court with which I agree. Accordingly, I wish only to make a brief contribution.

The bargaining agreement from which the meal allowance arose, categorized meals as "breakfast supper and lunch." All enjoyed the same sum as allowance. The submission by the unions in updating the collective agreement was for breakfast and supper to be increased to $10.00 each and lunch to $15.00. The preamble of the original award indicates the bases of the award and when read together must be taken as saying "we are dealing only with lunch" or if the preamble is to be ignored it would be saying "all meals should be $8.00". I would hold that in any proper interpretation the preamble as set out could not be ignored, as Mr. Rattray has asked us to do, and that the original award was therefore ambiguous and unclear and there was every need to invoke Section 12(10) of the Labour Relations Industrial Disputes Act.

For the reasons as set out by my learned brother Downer, J. I concur with the view that the Tribunal having on the application of the Jamaica Public Service clarified this award in the clearest interpretation possible; it had no power to entertain any further reference or make any further interpretation as it did. This second interpretation I would say is clearly an error in law.

DOWNER,J.

THE GENESIS OF THE DISPUTES

On May 13, 1985, the hourly paid workers at the Jamaica Public Service Company Limited, a vital "essential service" struck. The reason for this was that the Company implemented an interpretation of an award of the Industrial Dispute Tribunal dated April 30, 1985 as pertaining exclusively to lunch allowances and not meal allowances generally, as the workers had contended. The Honourable Minister of Labour in the face of the disruption of electricity supplies, sought a further interpretation of the award, and in compliance with this reference the I.D.T. also gave an interpretation. From a financial standpoint, this interpretation was in accord with the workers' expectations, but to the Company, it was a purported interpretation, as they contended that it was beyond the jurisdiction of the Tribunal, or in the alternative, there was a patent error of law on the face of the award. It is important to note that the Supreme Court is not being asked to decide the merits of the dispute, there being no Appeal, but is asked to determine whether the I.D.T. acted in accordance with the law of the land. For so specialized a subject as industrial relations, much is left to negotiations and adjudication on the merits by the I.D.T. The Supreme Court can only intervene when the legality of the tribunal's conduct or determination is challenged.

HOW THE I.D.T. INTERPRETED THE AWARD PURSUANT TO ITS STATUTORY POWERS

The relevant part of the award of 12th December, 1984 relating to meal allowance, reads as follows:-

"Item 20 - Meal Allowance

> The Unions modified their claim at Item 20(a) to read "meal allowances of $10 per meal within base and a meal allowance of $15 per meal outside" and submitted that because of the increased cost of food the present allowance of $6 per meal is inadequate. The allowance is payable if an employee is outside a radius of three miles from base during lunch time.
>
> The Company submitted that the proposed increase to $15 is not supported as it is wholly unreasonable.
>
> The Tribunal awards an increase in meal allowance from Six Dollars ($6.00) a week to Eight Dollars ($8.00) a week as from January 1, 1985."

There was a corrigendum dated 17th December, 1984 which is not in dispute. Because of a typographical error "meal" was then substituted for the word "week." Was there any ambiguity in the award which permitted any party to invoke Section 12(10) of the L.R.I.D.A.? That section reads as follows:-

> " If any question arises as to the interpretation of any award of the Tribunal the Minister or any employer, trade union or worker to whom the award relates may apply to the Chairman of the Tribunal for a decision on such question, and the division of the Tribunal by which such award was made shall decide the matter and give its decision in writing to the Minister and to the employer and trade union to whom the award relates and to the worker (if any) who applied for the decision. Any person who applies for a decision under this subsection and any employer and trade union to whom the award in respect of which the application is made relates shall be entitled to be heard by the Tribunal before its decision is given. "

If one concentrates on the operative words of the award, it was unambiguous and the workers would be entitled to an increase for meals generally. This was the effect of Mr. Rattray's submission. On the other hand, if one takes into account the basic rule of construction that words can only be fully understood in their context, then one would have to acknowledge that the preceding words "allowance is payable if an employee is outside the radius of 3 miles from base during lunch time," governs the meal allowance

referred to in the operative part of the award, and in the caption. This was Mr. Leo-Rhynie's contention, and it seems good law and common sense.

It is not surprising therefore, that in response to the request by the Company for an interpretation, given the apparent ambiguity of the word "meal", the Tribunal in its interpretation of 30th April, 1985 said as follows:-

> " The increased meal allowance relates to the following provision in the Collective Labour Agreement between the Company and the Unions and is payable only where all other conditions of the provision have been satisfied.
>
> Lunch allowance of $6.00 will be paid to all regular full time employees in the establishment (excluding shift workers), who are required by the Heads of their respective Departments to work and do in fact work as required, outside the radial distance of 3 miles from their headquarters and as a result are outside that radial distance during the whole of their normal lunch hour and one hour or more thereafter."

This was the interpretation which the Company implemented, but to the Unions, there being no ambiguity in the award, the company ought not to have been afforded an interpretation, and it was submitted on their behalf that the Court should so declare. For my part, I would say interpretation was warranted and I find that the Tribunal's interpretation at that stage was correct.

WHETHER THE TRIBUNAL EXCEEDED ITS JURISDICTION OR ERRED IN LAW IN GIVING A FURTHER INTERPRETATION

It is pertinent to point out that in the light of the Tribunal's interpretation and the Company's implementation of that decision, on the 13th May, 1985 the workers struck. The response of the executive was understandably prompt; vital electricity supplies were suspended and the Minister asked for a further interpretation. The Tribunal on its part, in accordance with its statutory power pursuant to Section 12(5)(a) of the L.R.I.D.A. made an order that the workers resume work immediately. In handing down its interpretation, the Tribunal said as follows:-

"

INTERPRETATION

> In handing down the Award dated 12th December, 1984 subject to the Corrigendum dated 17th December, 1984 the Tribunal awarded "an increase in meal allowance from Six Dollars ($6.00) a meal to Eight Dollars ($8.00) a meal as from January 1, 1985." It was the Tribunal's intention to have the increased allowance applied to all types of Meal Allowance to which the Collective Labour Agreement between the parties to the dispute refers. "

The legal question in issue is whether the Tribunal had jurisdiction to make this interpretation. It is undisputed that when a statutory Tribunal has completed its functions, it cannot undertake any further hearing and determining on the same subject matter, unless a statute so permits. The only permission for a further hearing accorded by the L.R.I.D.A. by the Tribunal was where a question "arises as to the interpretation of the award." So the initial interpretation sought by the applicant was appropriate, as it sought the interpretation of the word "meal", which was ambiguous. But once that interpretation was completed, the Tribunal had no further powers under the statute. If authority be needed for this contention, the case of R.v. Agricultural Land Tribunal (South Eastern Area) Ex parte Hooker (1951) 2 All E.R. 801, illustrates the position. Mr. Rattray, as I understand him, did not disagree with this submission, but suggested that although this further interpretation should be quashed, the Court should declare that the original award was unambiguous, there was no need to give the first interpretation. To my mind, there was a need for a first interpretation because the word "meal" as used could mean lunch or meals generally, and as the second interpretation was beyond the Tribunal's jurisdiction as in substance it was a new award which revoked the original one, certiorari should go to quash it.

There is another way of examining the situation to determine whether certiorari should go to quash the second

interpretation. In the second interpretation, the Tribunal states that "it was the Tribunal's intention to have increased the allowance applied to all types of meal allowance .....". It is a cardinal rule in the construction of documents and statutes that intention must be inferred from the words used. Neither in the original award nor in the first interpretation could it be properly inferred from the words used that meals related to all types of Meal Allowance. In fact, so far as the original award was concerned, by stipulating that the allowance was payable if an employee was outside the radius of three (3) miles from base during lunch time, the indication was that meal must refer unequivocally to lunch, and all that the first interpretation does, is to indicate that for greater certainty. If that was correct, then this second interpretation was erroneous in law, as it referred to an intention without the appropriate words from which it could be inferred, that all meals were to be accorded an increased allowance. Certiorari therefore should issue to quash the second interpretation on the ground that there was an error of law on the face of it.

CONCLUSION

It is important to re-emphasize the limited role accorded to the Supreme Court in industrial disputes which are brought up to the Supreme Court on judicial review. We say this because just as one of the oddest wars in history was fought over Captain Jenkins's ear, so one could regard this as one of the oddest strikes. Although, to be fair, workers have struck in other climes over the duration of tea breaks. To the workers it was a strike no doubt over meal allowances, to the Company no doubt it was a dispute over additional expenditure, but to the Supreme Court, the issues had to be subsumed under the technical concepts of jurisdiction and error of law on the face of the

record as this is what the L.R.I.D.A. ordains. One must never forget that the parties ought to understand the basis of the Court's decision, so in simple language, the decision here is that the Tribunal had no legal powers to give a second interpretation and in any event that second interpretation showed an error of law on its face. On both grounds therefore, the applicant has succeeded, and the workers in law are only entitled to an increase in lunch allowance.

HARRISON, J.

I concur.

MORGAN, J.

In the event, we hold that Certiorari will go to quash the award. The cost of the applicant to be taxed or agreed and to be paid by the Unions.