IN THE SUPREME COURT

THE FULL COURT

BEFORE: GORDON, DOWNER,JJ AND PANTON,J (AG)

SUIT NOS: M 71/85 & 69, 70, 72 and 73/85

R. v. Kingston and St. Andrew Corporation

Ex parte Ewart Mason and

Ex parte Headley Shaw, Lloyd Henry, David Richards and Clive Smith.

Carl Rattray, Q.C. and Andrea Rattray for the Applicants
Dr. Lloyd Barnett and Harold Brady for the Respondent
Douglas Leys, Crown Counsel, amicus curiae

HEARD: February 3, 5 & 6, 1986
March 20, 1986 & April 2, 1986.

GORDON AND DOWNER,JJ

HOW THE ISSUE OF JURISDICTION AROSE

In these proceedings Mr. Rattray moves on behalf of Ewart Mason for an order of certiorari to bring up and quash the decision of a Disciplinary Tribunal which dismissed him for breaches of regulations made pursuant to the Kingston and St. Andrew Fire Brigade Act. There are provisions for an appeal to another Tribunal, where there would be a re-hearing on the merits of the case, but the Applicant preferred to invoke the supervisory jurisdiction of the Supreme Court, as he questioned the competence of the Disciplinary Tribunal to adjudicate on the charges preferred. Although the subject matter was an industrial dispute in an essential service which coinceded with widespread strikes in other areas, so that the matter became one of general public importance, the issue as formulated is purely legal. Specifically, what has to be decided, is whether expressly or by implication the Legislature intended the general words of the Labour Relations and Industrial Disputes Act pertaining to unlawful industrial action in the essential services to repeal the special provisions of the Fire

Brigade Act whenever there was a breach of discipline such as absence from work without lawful excuse. From the vantage point of judicial review, it is a question of whether the Disciplinary Tribunal had the jurisdiction to hear and determine the charges preferred.

WAS THE TRIBUNAL EMPOWERED TO HEAR AND DETERMINE THE CHARGES AGAINST THE APPLICANT FOR BEING ABSENT WITHOUT LEAVE?

The rule of construction on which the Applicant relies to show that the only statute applicable to resolve the issue, is the L.R.I.D. Act which was first stated by Lord Tenterden,C.J. in Doe v. Bridges 109 E.R. 1001 and is as follows:-

> "And where an Act creates an obligation, and enforces the performance in a specific manner, we take it as 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 obtained, the common law may in general find a mode suited to the particular nature of the case."

It was contended that Sections 9(5) and 13(2) which relate to unlawful industrial action in an essential service and the corresponding criminal sanction, set out the only mode of enforcement, when there was a strike in the fire fighting services, as those services were made an essential service by the First Schedule of the L.R.I.D. Act. If this submission was correct, we would be bound as a matter of course to quash the decision of the Disciplinary Tribunal, but as that Tribunal derived its jurisdiction and powers from the Kingston and St. Andrew Fire Brigade Act, we are compelled to examine another canon of construction, as failing that, we would be suspending or repealing this earlier special Act which specifically deals with breaches of discipline in the fire fighting services of the Kingston and St. Andrew Corporation. The critical question is whether the special provisions of the Fire Brigade Act can be resorted to when there is a strike in an essential service which

is also a breach of discipline, and the appropriate rule is summed up in the latin maxim 'generalia specialibus non derogant.' In plain language it lays down the rule which states that the general words of a later statute cannot repeal or suspend special provisions of an Act which deals with a particular subject matter, unless there is a manifest intention in the later Act to repeal or suspend the provisions of the earlier one. This is a salutary rule, for if the canon of construction relied on by Mr. Rattray were applied, it would mean that the judiciary could repeal or suspend the operation of an Act of Parliament under the guise of interpreting it, and this would upset the well defined balance in the constitution which assigns to the judiciary an interpretive role and not a law making one where statute laws are concerned. No doubt it was against this background that in stating this rule in The Vera Cruz (1884-85)10 A.C. 59 at 68 Lord Selborne said:-

> "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 application of this rule is well illustrated in Baker v. Edgar (1898) A.C. 748 relied on by Dr. Barnett, where the general words of a subsequent Act dealing with land titles and a Validation Court were held not to have repealed the special statutory jurisdiction of the Native Land Court which dealt with the subject of Native Land known as 'Poututu' in New Zealand. To apply these principles to the instant proceedings, it is appropriate to advert to the specific charge pursuant to paragraph 25(1) of the Kingston and Saint Andrew Fire Brigade Regulations which reads as follows:-

> "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."

This is a special provision which was not repealed by the general words dealing with strikes in essential service of the L.R.I.D. Act, therefore it was competent for the Tribunal to find that Mason was absent during the period of 24th-27th June, 1985 without the requisite leave, and the Tribunal's finding cannot be successfully challenged on this aspect, although the Applicant's submission to the Tribunal was that his being on strike was in the nature of a lawful excuse.

WAS THE TRIBUNAL EMPOWERED TO HEAR AND DETERMINE THE CHARGES OF INSUBORDINATE AND DISCREDITABLE CONDUCT?

To understand the nature of the challenge in respect of these two charges, it is pertinent to cite paragraph 25 of the Kingston and Saint Andrew Fire Brigade Regulations:-

D I S C I P L I N E

> "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) is guilty of oppressive or tyranical conduct towards an inferior in rank, or
>
> (c) uses obscene, abusive, or insulting language to any other member of the Brigade, or
>
> (d) .....
>
> (e) .....
>
> (f) ..... "

The Tribunal found the two Senior Officers, Senior Deputy Superintendent Henry and Deputy Superintendent Cameron had been given permission to refresh themselves at a bar which is situated

very near the Fire Station. The Applicant Mason directed the following words to the Officers:-

"them should a kick oonoh in a oonoh ass."

Insubordinate is a plain English word, and on the authority of Brutus v. Cousins (1973) A.C. 854, it was well within the competence of the Tribunal to find such conduct insubordinate. It was however contended, that the Applicant was not on duty and so the Tribunal acted outside its jurisdiction. In rejecting that submission, we considered that if the Applicant was right, we would have the absurd situation where being insubordinate while off duty could be deliberately resorted to by an errant fireman, while his less fortunate brethren who erred while on duty could be subject to the drastic punishment of dismissal for the same type of misdemeanour. Such an absurd situation was not contemplated by disciplinary rules in a service where officers by virtue of Section 11 of the Fire Brigade Act have the same responsibilities and immunities as the Constabulary Force while attending on duties in putting out a fire.

The Tribunal who was the Superintendent, as stipulated by the regulations, further considered that as the words referred to were used in the presence of other members of the Fire Brigade, as well as members of the public, that the words were "prejudicial to the discipline or likely to bring discredit on the reputation of the Brigade." It is difficult to see on what ground the Superintendent's decision could be faulted in certiorari proceedings, and we find in this matter also, that his decision could not be said to be unreasonable, as explained in Associated Provincial Houses Ltd. v. Wednesbury Corporation (1948) 1 K.B. 223. There is therefore no basis for the issue of certiorari in this regard.

THE ISSUE OF PROHIBITION

The Applicants Headley Shaw, Lloyd Henry, David Richards and Clive Smith were summoned by the Tribunal on charges similar to those preferred in respect of Ewart Mason. Since the principles which govern the issue of an order of certiorari are similar to those which govern an order of prohibition, it was rightly conceded that in these circumstances, if certiorari were refused, so would prohibition. We had therefore unanimously decided on March 20, 1986 that the applications would be refused, and costs would go to the Respondent.

PANTON,J.(AG)

There is no dispute that Ewart Mason was absent from his post as District Officer in the Kingston and Saint Andrew Fire Brigade on four successive days in June, 1985, without leave. This was a breach of the Kingston and Saint Andrew Fire Brigade Regulations, 1946, (regulation 10).

There is no dispute either that, in being absent, he had committed an unlawful act which was punishable criminally under the Labour Relations and Industrial Disputes Act (hereinafter referred to as LRIDA), Section 13. Incidentally, it should be noted that a few days prior to Mason's absence from duty, the Ministry of the Public Service had advised the General Secretary of the Jamaica Association of Local Government Officers in writing that that Ministry was unable to improve an offer on salaries made to firemen attached to the Kingston and Saint Andrew Corporation; nor could the Ministry address claims for increases in fringe benefits.

On the second day of his unlawful absence from duty, Mason was in a bar near to the Fire Brigade Headquarters. In that

bar were two members of the Brigade who were senior in rank to Mason. They were addressed by Mason thus:

> "So oonu 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 shoulda kick oonu in a oonu arse"
> "You are a traitor"

The use of these words was held in subsequent disciplinary proceedings to amount to discreditable conduct and insubordinate conduct, contrary to regulation 25 of the Regulations mentioned above.

At the conclusion of the disciplinary proceedings presided over by Superintendent Allan Ridgeway, Mason was dismissed with immediate effect on all three charges - absence without leave, discreditable conduct and insubordinate conduct. He was immediately advised by the disciplinary committee of his right to appeal within eight days of the date of the decision. He chose not to exercise that right of appeal. Instead, as is his right, he came to the Full Court seeking an order to quash the decision of the disciplinary committee.

THE SUBMISSIONS

Mr. Rattray, on behalf of the Applicant, submitted that in a situation where there was an industrial dispute as defined by the LRIDA, the disciplinary committee had no concurrent jurisdiction in relation to a fireman.

If, he said, there is an essential service and unlawful industrial action is taken in that service, the penalty in respect of that unlawful industrial action is the criminal penalty under the LRIDA - and that would be the only penalty, as the criminal proceedings would take precedence over the domestic tribunal.

He further submitted that the LRIDA constituted a comprehensive scheme on the subject of industrial disputes, and where that/an Act constitutes a comprehensive statutory code on a

particular subject and provides its own procedures and its own penalties, no other procedure can be embarked upon to deal with the matter complained of. In support, he cited the case Doe v. Bridges (1831) 1 Barnwell and Adolphus p.847 and referred us to paragraph 945 of Volume 44 of the 4th edition of Halsbury's Laws of England.

The LRIDA, he submitted, was a special statute, not a general one, so the presumption "generalia specialibus non derogant" was inapplicable.

If we accepted the above submissions, I understood Mr. Rattray further to be saying that it would be impermissible for there to be severance of the charges before the disciplinary committee; that is, we could not say that the committee had no jurisdiction to deal with the absence without leave, but had jurisdiction to hear the other charges. In any event, it was submitted that the incident in the bar was outside the bounds of duty and as such would not be justiciable by the committee.

Dr. Barnett, on behalf of the respondent, noted that the submissions made by Mr. Rattray gave rise to questions of construction. He listed what he regarded as basic propositions of law relevant to the instant case. To my mind, the most important ones were :-

(1) there is a presumption against abrogation of legal rights as well as against the abolition of the common law;

(2) there is a presumption against repeal of special statutory provisions dealing with a particular group of persons, class of things, or situation by means of a later statute which deals with those persons or things as part of a general treatment of a general subject matter;

(3) the Kingston and Saint Andrew Fire Brigade Act deals specifically with the Municipal Fire Services and provides for a regime of discipline by members of the Fire Brigade; and

(4) the LRIDA makes certain industrial acts a criminal offence in certain specified circumstances. It does not authorise a breach of contract or a breach of any other statutory provision or regulations.

DECISION

The main issue for determination in this application was whether the disciplinary committee had the jurisdiction it assumed and exercised. In determining this point, I am of the view that the answer may be found in the propositions made by Dr. Barnett.

In Re Berrey (1936) 1 Ch. 274 at 279, Farwell,J. said:-

> " 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."

This principle is applicable in the instant case. There is nothing in the LRIDA which states that the provisions of the Regulations which govern firemen are being altered, amended or repealed generally or in part. The LRIDA is a later Act and if it was the intention of Parliament that it should affect the Regulations in any way, one must assume that Parliament would have said so clearly. Parliament's silence ought not to be taken as an implied repeal.

There is no impossibility in making the two pieces of legislation stand together. The LRIDA makes the absence from duty a criminal act punishable in the Resident Magistrate's

Court. On the other hand, the Regulations make provision for in-house disciplinary proceedings. There is nothing unusual, strange, or impossible about this situation. An errant fireman may be prosecuted in the Resident Magistrate's Court or he may be dealt with in the confines of the fire brigade station. To say that the authorities were bound to proceed in the Resident Magistrate's Court alone is to give to each errant fireman, who is on an unlawful strike, the right to choose the tribunal to adjudicate on his misdeeds - knowing fully well that the disciplinary committee can dismiss him, whereas the Resident Magistrate's Court can only impose a nominal fine. If Parliament intended that, it has not said so in the LRIDA.

On the question whether the LRIDA is a general or special Act, we ought to bear in mind the Privy Council decision in Barker v. Edgar (1898) A.C. 748. In that case, application was made to stay proceedings that were before the Native Land Court in New Zealand. One point for determination was whether current proceedings in the Native Land Court under a specially enabling Act were stayed by the commencement of proceedings in the Validation Court. Here, there was a provision in the Act establishing the latter Court to the effect that commencement of proceedings therein operated as a stay of proceedings in any other Court in respect of the same matters. It was held that notwithstanding that general provision, the current proceedings would not be stayed.

At page 754, Lord Hobhouse said this:-

> " 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. Each enactment must be construed in that respect according to its own subject-matter and its own terms."

At page 755, he further said in dealing with the facts before the Court:-

> " The Legislature could not have intended to displace the complete and precise jurisdiction adapted to the special case of Poututu, or to put it in the power of a defeated litigant to so displace it, without substituting something equally complete and precise in its place."

It seems to me that the LRIDA has to be viewed as a general Act, making provisions relating to labour disputes for general application. On the other hand, the Regulations are special, in that they apply to a particular section of the population only.

In my judgment, the LRIDA did not in any way affect the power of the disciplinary committee to deal with the breaches of discipline committed by the applicant. I should perhaps add that whether he is on duty or not, he is a fireman who is at all times subject to the disciplinary rules that govern firemen. It was said that the applicant being off duty, whatever transpired in the bar was a private matter. I cannot agree, as that would mean that a member of the Brigade could say anything, however disreputable or indecent, to his superior officer provided that the member is not on duty at that time. How then could discipline be maintained in the Brigade in those circumstances?

I am therefore in agreement with my learned Brothers that this application for certiorari should be refused with costs being awarded to the respondent. The companion applications for prohibition are also refused.