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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 75/89

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

R. v. NORMAN H. REITTIE
ROYDEN K. REITTIE
CENTURY CORPORATION LTD.

Robert Baugh for appellants

L. Clarke for the Crown

October 30, November 1, 1989

& March 19, 1990

GORDON, J.A. (AG.):

On 1st November, 1989 we dismissed this appeal against conviction on information charging breaches of the Labour Relations and Industrial Disputes Act (the Act) and in keeping with our promise to reduce our reasons in writing, we do so now.

The appellants were charged on informations alleging that in breach of section 4 (2)(b) of the Act

they dismissed Percival Thompson, Monica Clarke, Lennette Smith and Lenford Spencer from employment by reason of their exercising their rights to be members of a trade union of their choice. The four persons named above were employed with others at Century Corporation Limited, Dairy Farms at Free Town in St. Catherine, which produced and packed milk for distribution to the Consumer trade. Norman Keittie was General Manager and Royden Keittie was Proprietor of the undertaking. Both were actively employed in the day to day management of the business with offices at the site.

On 16th June, 1986 the management complained to the workers that they suspected sabotage in the operations. Work was suspended while investigations were carried out. On that date Mr. Spencer went to the Bustamante Industrial Trade Union (B.I.T.U.), the Union's office in Kingston, and applied for membership and was accepted. He took back to the plant application forms which were signed by other workers including those mentioned above. These forms together with membership fees were submitted to the Bustamante Industrial Trade Union on the 17th June, 1986 and on the same day the union organiser Mr. George Nicholas served on the Company a Notice by delivering same to Mr. R. Keittie at the plant, claiming representational rights on behalf of the workers. The following day Mr. Royden Keittie spoke to the workers telling them that he had information they had become members of a union and inviting them to sign a paper which he displayed. He said if they did not sign they would be out (of a job). The complainant did not sign. On the 18th June, 1986 three complainants, Thompson, Clarke, and Smith were dismissed by

the Company, the letters of dismissal were signed by Mr. R.K. Reittie. When Mr. Norman Reittie was questioned by Miss Smith he said the action was taken "through the Union and over his dead body no union not coming there because the place bought by him and he is not going to make any Union come there and mash up his place." Miss Smith questioned the termination pay and "he said when he gives us this little much we don't have any money to fight court but dem have it so we can't win them in Court." Miss Clarke corroborated Miss Smith.

Mr. Percival Thompson who worked on the farm was on 18th June, 1986, summoned to the office by Norman Reittie and asked by him if he had joined the Union. On his affirmative reply Mr. Norman Reittie ordered his secretary to "write up P. Thompson." Later while Mr. Thompson was at his quarters Mr. Norman Reittie came there and tendered an envelope which Mr. Thompson refused to take. Mr. Reittie dropped the letter on the step and left. Mr. Thompson retrieved the letter and found in it money, a recommendation and a dismissal notice. He went to Mr. Royden Reittie and complained that he was dismissed without cause after six (6) years employment. Mr. Royden Reittie laughed at him.

On 24th June, 1986 Lenford Spencer was summoned to the presence of Mr. Royden Reittie, informed that management had been made to understand that he was the chief organiser for the union, and over his dead body the union was coming there because the place was his, bought with his money, and neither the Minister of Labour nor any union could reinstate them, and also that he was no longer an employee of the Company. Mr. Royden Reittie said that a decision was taken

on 16th June, 1986 to close the plant temporarily and lay off the workers while investigations were carried out to determine the cause of excessive spoilage of milk. Sabotage was suspected. The investigations revealed "massive improprieties" but no deliberate sabotage. He said "Linnette Smith, Monica Clarke and Lenford Spencer were dismissed because it came out in the investigations that they were a part of a group that were transporting milk off the plant compound. "Thompson was dismissed because he repeatedly refused to co-operate with his supervisor. He said that the workers were not dismissed because they had joined the Union. "I did not know of my employees joining any union up to 16th June, 1986." He further denied receiving any notice to this effect from the union. "I was never served with a form 2 by the Bustamante Industrial Trade Union (B.I.T.U.). I was never served a form 2 by Mr. George Nicholas." Percival Thompson was dismissed on the 16th and a decision to dismiss the others taken on the 17th June, 1986. Mr. Norman Reittie said he prepared dismissal notices for the employees on instruction by Mr. Royden Reittie given on 17th June, 1986 who signed them. The plant workers were dismissed on the 16th June, 1986. The "preparation of the letters took all day" and the following day the 18th June, 1986 he attempted to deliver them. Spencer had been suspended on the 7th June, 1986. The workers had not been dismissed because they had joined the union. Sharon Cole said she prepared eighteen dismissal letters dated 18th June, 1986. Roy Chanteloupe said he was present on 16th June, 1986 when Mr. Thompson was fired. He denied being one of those who applied for membership of the union.

On this evidence the learned Resident Magistrate for St. Catherine found the following facts inter alia:

1. Century Corporation Limited is a Company engaged in the business of milk processing;
2. The Defendants Royden K. Reittie and Norman Reittie are responsible Officers of the company - (Defence Ex 5 has them noted as Directors, describing R.K. Reittie as Managing Director while Ex 6 describes N.H. Reittie as General Manager);
3. Lenford Spencer, Linnette Smith, Monica Clarke and Percival Thompson were among workers employed to the Company in 1986;
4. Problems were being experienced at Century Corporation and the Management spoke to the workers on 16th June, 1986 indicating that they suspected sabotage;
5. On that day Spencer went to the Head Office of the Bustamante Industrial Trade Union and joined the Union;
6. The four (4) complainants and 18 other workers became members of the Union;
7. On 17th June, 1986 the claim for bargaining rights on behalf of the workers was served on the Company;
8. On 18th June, 1986 Smith, Clarke and Thompson among others were dismissed. This followed attempts by both Reitties to obtain the signatures of Workers on their Union status;
9. The dismissal letters were dated 18th June, 1986 after the Union had served the Statutory Form 2 on the Company. Earlier that day both R.K. Reittie and N.H. Reittie expressed their determination in very strong terms that no union should gain representational rights for the workers of Century Corporation Limited;
10. Lenford Spencer was dismissed by R.K. Reittie on 24th June, 1986. "The Court accepts that during that meeting (with Spencer) Mr. R.K. Reittie did use words to the effect that neither the Minister of Labour or Union could reinstate the dismissed workers and rejects the defence contention that words were used in connection with the return to the plant to "handle milk" after dismissal of milk stealing;"

11. Smith, Clarke, Thompson, Spencer and other workers who were union members were dismissed as a consequence of their rights to become members of a trade union of their choice;
12. "The reasons given by the defence for dismissals are fabrications." No workers were dismissed because they were involved in sabotages. The investigations by managers revealed no sabotage. Smith, Clarke and Spencer were not dismissed for stealing;

Mr. Baugh argued that taking into account the findings of the Resident Magistrate and the provisions of Section 4 (2)(a) of the Labour Relations and Industrial Disputes Act, the convictions of N.H. Reittie and R.K. Reittie ought not to stand. The complainants were employed to Century Corporation and were dismissed from Century Corporation. The Resident Magistrate did not find that they were employed to R.K. and N.H. Reittie nor did she find they were dismissed from employment to R.K. and N.H. Reittie. The Reitties not having employed and therefore not being in a position to dismiss anyone, could not be found guilty of such a charge.

On behalf of Century Corporation Mr. Baugh submitted that the Resident Magistrate based the conviction of the Company on findings 4 - 8 and 10 (supra). The defence was to try to move the date of dismissal to the 16th or 17th June, 1986. The findings of facts are not supported by the evidence.

Mr. Clarke in reply submitted that where a company has been held liable for a crime depending on the level of participation in the crime the directors can be held liable jointly with the Company either as joint principals or as aiders and abettors in the commission of the crime.

Century Corporation acted as the formal framework through which the workers were dismissed and the Reitties actively participated in the commission of the crime. The Company he said, could not act without the Reitties speaking. The action of the company cannot be extricated from the action of the Managing Director and General Manager. They spoke with one voice. He placed reliance on Section 49 (2) of the Interpretation Act.

Section 4 (1) and (2) of the Labour Relations and Industrial Disputes Act, under which these charges were laid, provides:

"4.—(1) Every worker shall, as between himself and his employer, have the right—

- (a) to be a member of such trade union as he may choose;
- (b) to take part, at any appropriate time, in the activities of any trade union of which he is a member.

(2) Any person who—

- (a) prevents or deters a worker from exercising any of the rights conferred on him by subsection (1); or
- (b) dismisses, penalises or otherwise discriminates against a worker by reason of his exercising any such right,

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two thousand dollars."

A company as a legal entity can only act through its officers. Here Norman Reittie and Royden Reittie as officers of Century Corporation Limited acted on behalf of the company and avowedly on their own behalf to protect the interest they had in the venture. The submissions of Mr. Clarke appear well founded. One only has to look at

the provisions of Section 49 (2) of the Interpretation Act to see the prosecution's posture. This section states:

"49.—(2) Where an offence under any Act passed after the 1st April, 1968, has been committed by a body corporate the liability of whose members is limited, then notwithstanding and without prejudice to the liability of that body, any person who at the time of such commission was a director, general manager, secretary or other similar officer of that body or was purporting to act in any such capacity shall, subject to subsection (3) be liable to be prosecuted as if he had personally committed that offence and shall, if on such prosecution it is proved to the satisfaction of the court that he consented to, or connived at, or did not exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions in that capacity and to all the circumstances, be liable to the like conviction and punishment as if he had personally been guilty of that offence."

Further, Section 49 (3) reads:

"(3) A person shall not be charged under subsection (2) except upon the direction of the Director of Public Prosecutions."

There is, however, no evidence that prosecution was directed by the Director of Public Prosecutions. Mr. Errol Miller, the Conciliation Officer of the Ministry of Labour said that the matter "re the dismissal of the workers" was referred to the Director of Public Prosecutions but there is no evidence, direct or inferential, that Section 49(3) of the Interpretation Act was complied with. The notes of evidence fail to disclose whether Miss P. Williams who marshalled evidence for the Crown was a Crown Counsel from the office of the Director of Public Prosecutions.

The evidence discloses that the Reitties expressed themselves in strong words and declared their intention to

resist the intervention of the Union in the affairs of the Company. They acted as agents of the Company and aided, abetted, counselled and procured the breaches charged in the information. They, by their action, fell squarely in the provisions of Section 6 of the Justices of the Peace Jurisdiction Act -

"6. Every person who shall aid, abet, counsel, or procure the commission of any offence which is or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the parish where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling, or procuring may have been committed."

We find that there was ample evidence to support the Resident Magistrate's findings of fact and for these reasons we dismissed the appeal.