

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

IN MISCELLANEOUS

SUIT NO. M48 OF 1986

CORAM: WOLFE, PATTERSON and ELLIS JJ.

REGINA V. THE INDUSTRIAL DISPUTES

TRIBUNAL EXPARTE LINTON C. GAYLE

David Muirhead Q.C. and H.I. London for the Applicant

Carl Rattray Q.C. and Clarke Cousins for the Respondent

Heard: July 6, 1987.

WOLFE J.

The applicant herein sought an order of certiorari to quash the Award made by the Industrial Disputes Tribunal on the 14th day of November, 1985 "that the names of the persons who should be eligible to vote in the ballot to determine the claim of the National Workers Union for bargaining rights shall be as set in the list therein".

The grounds on which the relief was sought are set out hereunder:

- 1) The said Award or decision was wrong in law.
- 2) That under the provisions of Regulation 4 of the Labour Relations and Industrial Disputes Regulations 1975 the Tribunal by its decision to exclude from the list the names of certain persons in the employment of the applicant whose jobs place them in the categories of workers for which the National Workers Union is claiming bargaining rights, is thereby unlawfully depriving these workers of their rights to vote in the ballot to determine the Union's claim for bargaining rights.
- 3) That the tribunal erred in law when it decided on the evidence given and the submissions made

to include on the list of persons eligible to vote the names of certain persons who were not in the employment of the applicant by reason of termination by redundancy pursuant to section 5 (2) of the Employment (Termination and Redundancy Payment) Act at the time when the Minister of Labour requested a voters list from the employer or when the Tribunal made its Award.

- 4) That the Tribunal exceeded its terms of reference when by its decision it implied that certain persons whose employment had been legally terminated by the applicant on the 4th day of January, 1985 were still persons whose names were on the pay bills of the applicant on the 14th day of November 1985.
- 5) Alternatively, that the Tribunal in the light of the evidence given and submissions made by the applicant before it failed to consider and give recognition to the fact that management in the exercise of its functions needs to use its resources (material and human) as provided for paragraph 2 of the Labour Relations Code 1976.

On the 24th day of December 1985 the applicant issued a letter to the workers employed by Gayle's Supermarket and Hardware informing them that the service of some members of staff would be terminated on January 4, 1985. The letter failed to specify who were the workers to be affected by this decision. Prior to this on the 20th December 1984 the National Workers Union served upon Gayle's Supermarket and

Hardware a claim for bargaining rights in respect of certain categories of workers employed to the said establishment.

Following the receipt of the letter on the 24th day of December 1984 the National Workers Union wrote to the Ministry of Labour by letter dated the 27th day of December 1984 reporting that the workers had been threatened with dismissal.

The Ministry of Labour summoned the parties to appear with a view to resolving the issue. Two meetings were held and by letter dated the 26th February 1985 the Ministry of Labour concluded and so informed the parties that the National Workers Union had in fact made out a prime facie case and requested Gayle's Hardware and Supermarket to furnish a list of all drivers, sideman, operators, labourers, watchmen, clerks, attendants, warehouse workers and supermarket workers to be used as a voters list in the ballot to be taken at Gayle's Supermarket and Hardware. By letter dated the 5th March, 1985 the applicant complied with the request and forwarded a list of workers to which the Union objected on the basis that names which should have been properly included had been omitted and names that should not properly be included had been included. The parties were again summoned to the Ministry where efforts to resolve the matter failed.

On the 15th day of April, 1985, the Honourable Minister of Labour pursuant to section 5 (3) of the Labour Relations and Industrial Disputes Act referred to the Industrial Disputes Tribunal for settlement the dispute between the Company and the Union.

The terms of Reference to the Tribunal were as follows:

"To determine and settle the dispute between Gayle's Supermarket and Hardware on the one hand, and the National Workers Union on the other hand, as respects the category of workers of whom the ballot should be taken or the persons who should be eligible to vote in the ballot, to determine the Union's claim for bargaining rights on behalf of certain employees of the Company".

The Tribunal began its sittings on the 24th day of June, 1985 and on the 14th day of November 1985 made its Award. Before continuing let me observe that the Ministry had requested the Company to furnish it with a list of workers, within the categories mentioned earlier herein, on the payroll as at the 31st December 1984. This list included the names of the fifteen (15) workers who the Company are contending were made redundant on the 4th January 1985. Although these workers names appeared on the payroll as at 31st December 1984 the Company did not include their names on the list of the "names of workers to be used as voters list in the ballot to be taken".

The issue then before the Tribunal was at what date should the list of voters be determined. Was it at the date when the claim was first made by the Union on behalf of the workers or was it at the date when the list was compiled by the Company. It is significant to note that when the Ministry requested the list of workers in the categories claimed by the Union it used December 31, 1984 as the cut off period.

Mr. London for the applicant abandoned grounds one, two and five of the feted grounds and elected to argue grounds three and four only. The arguments in respect of these two grounds will be considered together as they are essentially the same.

It was submitted for and on behalf of the applicant

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that the dispute which existed had no "retrospective effect". By this I understand Counsel to mean that it was not proper for the Tribunal to look backwards to the 31st December to ascertain as at that date who were the workers eligible to vote but rather that the Tribunal ought to have looked at the Status quo at the time when the list was requested by the Ministry of Labour.

The question therefore arises at what point in time did the right to vote accrue to the workers? Was it at the time when the claim was made by the Union on behalf of the workers or was it at the time when the Ministry concluded that the Union had established a prima facie claim. Certainly, common sense would dictate that when the Ministry ruled that a prima facie case had been made out by the Union. All that it was saying is that the claim of the Union made on the 20th December 1984 is prima facie a valid one. It is therefore my view that once the claim is made the right to be included on the voters' list accrues to every worker in the categories embraced by the claim. This was the mandate entrusted to the Tribunal to decide that workers were to be included in the claim for the Tribunal. Once there was evidence upon which the Tribunal could have found as it did then a reviewing court ought not to disturb that finding simply on the basis that it would not have come to the same finding as the Inferior Tribunal.

Mr. London quoted a passage from Anisminic Limited v. The Foreign Compensation Commission and Another /1969/

1 All E.R. 208 at p. 213 per Lord Reid.

"But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have

made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which under the provisions setting it up, it had no right to take into account".

Relying upon this citation Mr. London submitted that the Tribunal was guilty of exceeding its jurisdiction in that it took into consideration irrelevant matters in arriving at its decision.

In Grunwick Processing Laboratories Ltd. and others v. Advisory, Conciliation and Arbitration Service and another
[1978] 1 All E.R. p. 338 at p. 345 Lord Denning MR said:

"It is plain, to my mind, that when a formal ballot is taken, it must be taken of all the workers to whom the issue relates and not merely some of them Everyone of them should be given the right and opportunity of voting".

On appeal to the House of Lords, Lord Diplock, after referring to the definition of "worker" in section 30 (1) of the Trade Union and Labour Relations Act 1974, which definition is in pari materia to the definition of worker in the Labour Relations and Industrial Disputes Act, said:

"It is enough to draw attention to the words that I have caused to be italicised in this definition. I may perhaps add, however, that a group of employees who have been dismissed for going on strike are among the most likely to need the services of a union to negotiate for their re-engagement and that this would obviously have been one of the first matters which Apex would want to raise with Grunwick".

By parity of reasoning the observation of the Learned Law

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Lord could be extended to a group of workers who were served with notices of redundancy subsequent to a claim of recognition made on their behalf by a Registered Trade Union.

For the aforementioned reasons I would dismiss the motion with costs to the Respondent to be taxed if not agreed.

PATTERSON J.

I concur.

ELLIS J.

I concur