

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M43 OF 1993

BEFORE: THE HON. MR. JUSTICE CHESTER ORR
THE HON. MR. JUSTICE MALCOLM
THE HON. MR. JUSTICE EDWARDS

IN THE MATTER of an Application
by the TRADES UNION CONGRESS for
Leave to apply for an Order of
Mandamus

A N D

IN THE MATTER of the Labour
Relations and Industrial Disputes
Act

A N D

IN THE MATTER of a dispute between
the Trades Union Congress and
Cifuentes Y Cia Limited referred
to the Industrial Disputes
Tribunal by the Minister of Labour,
Welfare and Sports, by letter dated
20th day of May, 1992.

Lord Gifford Q.C. for Applicant

Mr. Lennox Campbell and Mr. Collman of The Attorney General's Department
as Amicus Curiae for the Industrial Dispute Tribunal.

HEARD: 19th and 20th October, 1993.

EDWARDS J.

On the 20th October 1993 we gave an oral Judgment in this
matter and promised then, to set out in more detail our reasons for
doing so. This we now do.

Pursuant to leave granted by Pitter J. the Full Court was
moved by originating Notice of Motion dated 20th April 1993 on behalf
of the Applicant the Trade Union Congress for an Order of Mandamus
directed to the Industrial Disputes Tribunal requiring the Tribunal
to hear and determine the dispute referred to it by the Honourable
Minister of Labour Welfare and Sports by letter dated 20th day of
May, 1992.

The dispute was between the Trade Union Congress hereinafter referred to as the Union) and CIFUENTES Y CIA LIMITED (hereinafter referred to as the Company) over payment in lieu of uniforms for workers to wear to and from work.

The Minister referred the Dispute to the Tribunal under powers vested in her by Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act.

This Section provides that -

"Notwithstanding the provisions of Section 9, 10 and 11, where the Minister is satisfied that an industrial dispute exists in any undertaking and should be settled expeditiously he may on his own initiative:-

- (a) Refer the dispute to the Tribunal for settlement --
- (i) If he is satisfied that attempts were made, without success, to settle the dispute by such other means as were available to the parties:-

Section 9, 10 and 11 are not here relevant, and it is important to note that Section 11A (1)(a) gives the Minister the power to act on her own initiative in referring an industrial dispute to the Tribunal for settlement, where she is satisfied that an industrial dispute exists in any undertaking and should be settled expeditiously, and also where she is satisfied that attempts were made without success, to settle the dispute by such other means as were available to the parties.

The Minister's letter to the Tribunal conveying the terms of reference indicates that at the time of reference industrial action had been taking place and was continuing for some thirteen days.

The terms of reference are as follows:-

"To determine and settle the dispute between the CIFUENTES Y CIA on the one hand and the Trade Union Congress on the other hand, over the Union's claim for payment in lieu of uniforms for workers to wear to and from work."

The Tribunal commenced hearing the reference, and at its meeting on the 28th October, 1992 after hearing arguments from the

Attorneys-at-Law representing the Union and the Company respectively as to the validity of the reference, with the Union's Attorney holding that the reference was a valid reference, while the Company's Attorney argued that the particular matter had already been decided by an earlier division of the Tribunal, and that that Division had handed down its award which was final and binding, and the new reference could not be heard as the Tribunal was now functus officio.

The Chairman who was presiding over the meeting of the Tribunal concluded that the terms of reference had not been agreed and consequently the Tribunal could not proceed to deal with the matter and he would be referring it to the ministry. In his own words ".....
"we will be referring the matter to the ministry. We can't proceed once the terms of reference is not agreed to".

Having regard to the provisions of the Labour Relations and Industrial Disputes Act under which the Minister acted in referring the dispute to the Tribunal i.e. Section 11A (i) (a) (i) which allows the Minister to act on her own initiative in referring a dispute to the Tribunal, the reason given by the Tribunal through its Chairman for declining to accept jurisdiction, was clearly wrong.

Mr. Campbell Senior Assistant Attorney General appeared as Amicus Curiae for the Tribunal. He argued that the preliminary procedural steps such as negotiations between the parties which should normally precede a reference to the Tribunal had not taken place consequently the reference was bad.

There was nothing however in the evidence before us to support that view and from the papers made available to us that point had not been taken by either the company or the union. We therefore rejected that argument.

Although not germane to the matter before us, which is the grant of an Order of Mandamus to compel the Tribunal to hear and determine the Minister's reference which was forwarded to the Tribunal under cover of letter dated 20th May, 1992, it is observed from the Notes of Evidence of the meeting of the 28th October 1992 that the Attorney-at-Law for the Company had argued that the reference was in

respect of a matter that had already been decided by another division of the Tribunal which had made its award in respect thereof, and that that award was final and binding and the present division was therefore functus officio and could not hear the matter before it.

Clarification of the earlier award had been sought by the union and given by the Tribunal and that award was not challenged in Court. It is therefore binding.

But that is not the end of the matter as the Labour Relations and Industrial Disputes Act itself provides in Section 12(6) that although an award is binding, and that as from the date from which it has effect it becomes an implied term of the contracts of employment of the workers, that the rates of wages to be paid and the other terms and conditions of employment to be observed under such contracts of employment shall be in accordance with such award, this is only so "until such rates, terms and conditions are varied by agreement, or by a subsequent award, or by or under any enactment other than this Act".

An award is not therefore cast in iron but can in appropriate circumstances be varied by a subsequent award.

The Section reads;

"An award in respect of any industrial dispute referred to the Tribunal for settlement and any decision given under subsection (10) shall be binding on the employer, trade union and workers to whom the award relates and, as from the date from which the award has effect pursuant to subsection (4) it shall be an implied term of the contracts of employment of those workers that the rates of wages to be paid and the other terms and conditions of employment to be observed under such contracts of employment shall be in accordance with such award until such rates, terms and conditions are varied by agreement, or by a subsequent award, or by or under any enactment other than this Act".

The earlier award dealt with uniforms but the union's claim at the time when the Minister on the 17th July, 1991 referred that dispute to the Tribunal for hearing did not include a claim for pay in lieu of uniforms to wear to and from work, and the award which was handed down on the 29th day of November, 1991 made no reference to that issue.

The subject matter of the reference of the 20th May, 1992 which deals with pay in lieu of uniforms to wear to and from work is therefore new and specific and at the time of reference was actually the cause of a prolonged industrial dispute, lasting some thirteen days.

That dispute was properly referred to the Tribunal for settlement by the Minister and the Tribunal having declined to accept the reference an Order of Mandamus should now go directly to the Industrial Disputes Tribunal to hear and determine the dispute referred to it by the Honourable Minister of Labour Welfare and Sports by letter dated 20th May, 1992.

No Order as to costs.