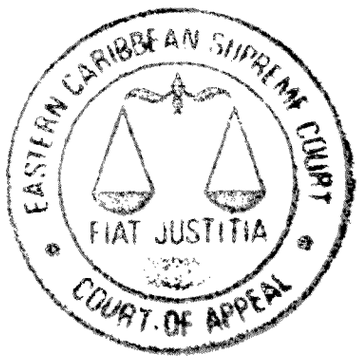

IN THE COURT OF APPEAL

ANTIGUA

Civil Appeal No. 3 of 1970

Between:

THE ANTIGUA TRADES AND LABOUR UNION — Defendant/Appellant

and

GEORGE HERBERT WALTER — Plaintiff/Respondent

Before: The Honourable The Chief Justice
The Honourable Mr. Justice Cecil Lewis
The Honourable Mr. Justice St.Bernard

McChesney George for appellant
D. Christian for respondent

1972, Feb. 14, 15, 16, April 24

JUDGMENT

LEWIS, C.J.

This case arises out of the dismissal, on 5th May, 1967, of the respondent from his office of General Secretary of the appellant Union. He was an elected officer and by rule 11(1) of the Union's Rules held office during the pleasure of the Union, but in fact since 1960 he had been re-elected annually at the annual conference of delegates. The last such election was in September 1966. His duties were, inter alia, to conduct the business of the Union in accordance with its Rules, and carry out the instructions of the annual conference and of the Executive Committee; in conjunction with the treasurer and one of the trustees, to sign cheques on behalf of the Union; and to be responsible for all financial books and for all monies belonging to the Union. He was ex officio a member of the Executive Committee and had the right to speak but not to vote at meetings. He was paid a salary of $400.00 per month and allowances.

On 5th May, 1967, the Executive Committee passed a resolution

/dismissing....

dismissing him from his office and at the same meeting appointed one Donald Sheppard to act as General Secretary "as of now". Negotiations ensued with a view to the respondent's reinstatement but broke down because the Executive Committee would not accept a condition insisted on by the respondent that all Ministers of Government who were members of the Executive Committee should resign from that Committee. The respondent accordingly brought his action for damages for wrongful dismissal. In paragraph 7 and 8 of the statement of claim he pleaded -

> "7. No notice of any charge was given to the Plaintiff nor was he allowed to speak at the said meeting.
>
> 8. In consequence of the said decision the Plaintiff has been and is still excluded from his post as General Secretary of the said Union and from his rights and privileges attached to the said post and has suffered damage".

By way of defence the appellant pleaded that the respondent "has been conducting himself in a manner adverse to the best interest of the" Union and that he had been "removed from office for reasons which the defendant deemed good and sufficient in the interest of the defendant as provided in rule 10(f)(v) of" its Rules. A further plea alleged that the respondent was dismissed for breach of duties owed by a servant to his master at common law. Counsel for the appellant, who also appeared in the court below, informed this Court that reliance was placed only on the former plea.

Particulars of the reasons deemed good and sufficient under rule 10(f)(v) were delivered by order of the court. Those relevant to this appeal were -

(i) Disloyalty.

(ii) Failure to account for Union's money.

(iii) Forming cliques in the organisation and constantly quarrelling with the older officers.

(iv) Generally acting in many little ways to show his dissatisfaction with and contempt for the Union, its policy, and members of the Executive duly elected by Annual Conference.

The evidence led at the trial was directed to the issues raised by these pleadings. In his closing address, however, counsel for the defence submitted for the first time that since by virtue of rule 11(c)

/the

the General Secretary holds office during the pleasure of the Union, his position was akin to that of a civil servant, and that the Executive Committee could dismiss him summarily and he would have no right of action for wrongful dismissal.

The learned judge held against the appellant on all issues and awarded the respondent $5,694 as damages.

On this appeal counsel for the appellant advanced submissions under two main heads, viz:

(1) That the services of the respondent could be terminated at the pleasure of the appellant whenever they so desire without notice of any kind and without assigning any reason.

(2) That the judge's findings of fact on the issues raised by the particulars of reasons for dismissal referred to above are erroneous and the judge ought to have held that the respondent was dismissed for a reason or reasons deemed good and sufficient in the interest of the Union.

I shall deal first with the circumstances in which the resolution purporting to dismiss the respondent was passed. The meeting of 5th May was an extraordinary meeting of the Executive Committee summoned at the instance of the President of the Union, Mr. V.C. Bird, in place of the regular meeting scheduled for the 28th April which had been cancelled. No minutes of this meeting were put in evidence but learned counsel for the appellant told this Court that he accepts the evidence of the respondent on this point as substantially correct. The learned judge has recorded what occurred in the following words:

> "At the meeting, the preliminary formalities having been completed, the President referred to his efforts to get the Executive members to work together, their inability to do so and strongly recommended that the plaintiff, among others, be dismissed from office.
>
> The plaintiff sought an opportunity to speak but was denied it and the majority present voted for his dismissal.
>
> No other business was undertaken, no minutes of the previous meeting were confirmed and the meeting came to an end within about 10 minutes of its commencement.

One fact mentioned by the respondent but omitted by the judge should be added. When the witness, Joseph Cornwall, a member of the Executive was called on to vote he asked the President why he recommended

/the....

the respondent's dismissal. The President replied, to use the respondent's words, "that I disagree with the wages being paid at the factory"; and in Cornwall's words, "you know, you know the General Secretary went to the Bank." This reply referred to an accusation which Mr. Bird and Mr. McChesney George, a member of the Executive Committee, had during the previous week made against the respondent that he had gone to the Manager of Barclays Bank and advised him not to lend the Government any money to operate the sugar industry which they had recently purchased because they were not paying the workers at the Factory adequate wages. This was a grave accusation because the Government was closely bound up with the Union. Mr. Bird was also the Premier, and all members of the Government were members of the Executive Committee. The learned judge found that this accusation had been investigated by a sub-committee of the Executive Committee and found to be untrue. The appellant in its defence denied the allegation in paragraph 4 of the Statement of Claim that the reason given for his dismissal was that he did not agree to the wages offered by the Board of Management of the Antigua Sugar Factory to the workers of the said Factory.

This evidence about the meeting of 5th May established (1) that the motion that the respondent be dismissed from his office was brought forward without previous notice to members (2) that the respondent was denied the right to speak on the motion to which he was entitled under the rules; (3) that no specific charge against the respondent was put before the Executive Committee which the Committee might deem a good and sufficient reason for dismissing the respondent from his office; (4) that in answer to a member the President gave as the reason for the proposed dismissal the allegation already proved to be unfounded concerning the respondent's visit to the Bank.

In my opinion the irregularities disclosed by this evidence with respect to the passing of the motion for the respondent's dismissal are so grave as to vitiate and render invalid the decision of the Executive Committee. Not the least serious is the arbitrary denial to the respondent of his right to speak on a motion which vitally affected

/ his...

his status as an officer and his livelihood. This denial deprived him of the opportunity to influence the mind of the meeting and perhaps to persuade a majority of the members that the statements made by the President were in fact unfounded and no good reason for his dismissal. The decision was obtained without the mind of the meeting being brought to bear upon any specific charge preferred against the respondent and in breach of fundamental rules of procedure. This in my opinion was an improper exercise of the Committee's power under rule 10(f)(v) and renders the dismissal wrongful.

This would be sufficient to dispose of the appeal, but I shall make a few observations about the grounds on which the appeal was mainly argued. These, and the facts relevant to them have been fully dealt with in the judgments about to be delivered by Cecil Lewis, J.A. and St. Bernard, J.A. with which I agree.

Dealing with the second ground first the submission was that the judge should have found that the particulars mentioned above had been proved and that these constituted good reasons for the respondent's dismissal in the interest of the Union. Learned counsel for the appellant appeared to treat the particulars as being so many separate reasons which the Union deemed to be good reasons for dismissal and submitted that it was not necessary that these should have been in the mind of the Executive Committee when the resolution was passed. He urged that it was sufficient for the appellant to prove them at the trial. This was in keeping with the pleading in paragraph 5 of the defence that the dismissal was for reasons which the defendant (not the Executive Committee) deemed good and sufficient. On the construction of rule 10(f)(v) I am of opinion that when the Executive Committee purports to exercise its power under the latter part of that rule the Committee must have before it the complaint or charge which is alleged to be a good and sufficient reason and the facts relevant to that complaint, and that it is the Committee which, upon consideration, must reach the conclusion that that reason is one which is good and sufficient cause for dismissal in the interest of the Union.

In the instant case the particulars pleaded and about which evidence was given relate to incidents alleged to have occurred (except

/for.....

for the quarrel with the witness Novelle Richards) in 1965 and 1966. All had been dealt with either in Annual Conference or at meetings of the Executive Committee and none had been deemed sufficient to warrant the dismissal of the respondent. The evidence clearly establishes that there was a conflict of opinion amongst members of the Executive Committee, resulting from dissatisfaction of members of the Union over the way in which the Executive Committee in recent years was treating their demands for increased wages, as to whether members of the Government should also be members of the Executive. The respondent said in his evidence:

> "I have never formed any cliques in the organisation. All the younger people in the Executive were trained and there would be heated debates when anything was being done. Often though there was a similarity of outlook."

The respondent as General Secretary was the one who brought to the Executive Committee the demands of the workers. He denies that he was quarrelsome and says that he exercised the right to express his views. I have no doubt that he was dissatisfied with the attitude of the members of Government - mostly the older members of the Executive - towards the demands of the workers. His refusal to return to the post of General Secretary unless those members resigned from the Executive shows this. The older members in turn found him quarrelsome and hostile. All this was known to the Executive Committee and the Annual Conference when it re-elected him in 1966. At that Conference, held in September 1966, the President is reported to have said -

> "We must not fight and quarrel as you won't have time to look after the people's business. We don't want groups we don't want cliques, we want good and conscientious leaders. We don't want new comrades against old ones."

At a meeting of the Executive Committee held on 9th September 1966 (prior to the Annual Conference) the President had referred to the fact that members were entitled to have differences of opinion "but the practice has always been that we abide by the majority decisions or views. Comrade McChesney George and the General Secretary had been getting at each other. This should be stopped in the interest of the organisation."

If an incident had occurred in April/May, 1967 involving the conduct of the respondent which upon consideration by the Executive

/Committee....

Committee against the background of former incidents seemed to it to be "the last straw", and which they honestly deemed to be good reason for dismissing him in the interest of maintaining harmonious relations within the Committee for the smooth and efficient conduct of the Union's business, this Court would not, in my opinion, interfere with that decision or hold that the dismissal was wrongful. But this was not the case here. The incident put forward, insofar as it was put forward, as a reason for dismissal, related to an accusation about an alleged visit by the respondent to Barclays Bank which had already been investigated and proved to be unfounded. In point of fact, the Executive Committee never really brought its mind to bear on the question whether or not there was any good and sufficient reason for dismissing the respondent but merely accepted the President's recommendation without discussion or enquiry.

In my opinion the appellant failed to establish that the respondent was dismissed for any reason which the Executive deemed good and sufficient in the interest of the Union and this ground of appeal fails.

The other ground of appeal was that the Union was entitled to dismiss the respondent summarily without notice and without assigning any reason, and that the Executive was empowered to exercise this function on behalf of the Union. This was based upon the fact that the respondent held his appointment at the pleasure of the Union and that the Executive is the governing body of the Union between Annual Conferences. In support of this proposition the case of Shenton v. Smith (1895) A.C. 229, which relates to the dismissal of persons in the employment of the Crown, was cited, and reliance was also placed upon passages in the judgments in Ridge v. Baldwin (1964) A.C. 40. Shenton v. Smith is distinguishable because there is no relation of master and servant between the Crown and its employees. The passages referred to in Ridge v. Baldwin merely establish that where an office is held at pleasure, the authority having the power to terminate the appointment may do so without giving any reason and without hearing the officer. They do not deal with the question whether the authority may dismiss without notice or without compensation.

Rule 10(f)(v) which clothes the Executive Committee with authority

/to.....

to dismiss an officer expressly limits that authority to certain specific cases and to "any other reason which it deems good and sufficient in the interest of the Union". So the Executive when dismissing must have a reason and as the General Secretary is a member of the Executive he must when the motion to dismiss comes up for discussion be informed of the reason. I am further of the opinion that the fact that an office which is held under a contract and is governed by the law of master and servant is held at pleasure, does not entitle the employer to terminate it without giving notice or compensation to the employee. Authority for this proposition may be found in the cases of Creen v. Wright (1876) 1 C.P.D. 519, and Re African Association Ltd. and Allen (1910) 1 K.B. 396. In the latter case an agreement for the employment of a clerk or trade assistant in Africa for two years provided that the employers might at any time at their absolute discretion terminate the engagement at any earlier date than that specified if they desired to do so. It was held that the power to terminate the engagement at an earlier date than that specified could only be exercised after giving reasonable notice. In Malloch v. Aberdeen Corporation (1971) 2 All E.R. 1278 the learned Law Lords referred with approval to a decision of a Scottish Court, Morrison v. Abernethy School Board (1876) 3 R. 945 that a teacher whose appointment was "during the pleasure of" the school board was nevertheless entitled to reasonable notice before dismissal or to a money payment in lieu thereof. I hold, therefore, that the Executive Committee, even if it were vested with power to terminate the respondent's appointment at pleasure could not do so without giving him reasonable notice or compensation in lieu.

For the foregoing reasons I would dismiss this appeal with costs.

Allen Lewis
Chief Justice

CECIL LEWIS, J.A.

I have been afforded the opportunity of reading the judgment about to be delivered by St. Bernard, J.A. I agree with the conclusions he has reached on the questions of law and of ~~the~~ fact involved in this appeal. I do not think it necessary to say anything in relation to the latter, but as regards the former I consider it desirable to state the reasons for my concurrence.

The respondent was elected General Secretary of the Antigua Trades and Labour Union, (hereinafter referred to as "the Union") on January 3, 1960. He was re-elected thereafter at the annual conference held in September of each year and remained in his post until May 5, 1967 when he was dismissed by the Executive Committee of the Union without notice or compensation in lieu thereof.

The respondent's election was effected pursuant to rule 11(c) of the rules of the Union which provides that "the general secretary shall be elected by a ballot vote of an annual conference and shall hold office during the pleasure of the Union."

The respondent alleged that his dismissal by the Executive Committee was wrongful and he issued a writ against the Union claiming damages for the wrongful termination of his services. In paragraph 1 of his statement of claim the respondent pleaded that "the rules of the Union for the time being ~~from~~ form the contract of membership and service between" himself and the Union and this was admitted by the Union in its defence. It was also pleaded in para. 2 of the statement of claim that "it was an implied term of the said contract that the plaintiff (respondent) would not be dismissed from his post in the said Union otherwise than in accordance with the said rules". When the Executive Committee of the Union dismissed the respondent, it purported to act under rule

/10(f)(v).....

10(f)(v) of the rules of the Union. This rule reads:-

> "It (i.e. the Executive Committee) may suspend or dismiss from office any officer of the Union or section or member of the staff for neglect of duty, dishonesty, incompetence, refusal to carry out the decision of the Executive or for any other reason which it deems good and sufficient in the interest of the Union."

In justification of its action in terminating the respondent's services, the Union pleaded in para. 5 of its defence that he "was rightly dismissed both for the breach of duties owed by a servant to his master at common law, and for reasons which the defendant deemed good and sufficient in the interest of the defendant as provided in rule 10(f)(v) of the defendant Union."

It will be convenient at this stage, to mention two other rules which were relied upon by counsel for the appellant in his arguments as justifying the respondent's dismissal. These are:

> Rule 5 "The supreme authority of the Union shall be vested in the Annual Conference of members of the Executive Committee and delegates elected by the sections of the Union and subject to that authority the Union shall be governed by the Executive Committee."
>
> Rule 10(a) "The Government of the Union in the periods between Annual Conference and the conduct of its business shall be vested in an Executive Committee."

Although the Executive Committee of the Union purported to act under rule 10(f)(v) in dismissing the respondent, counsel for the appellant also relied on rule 11(c) in connection with which two grounds of appeal were adduced and argued together. These were grounds (ii) and (ix) which read:-

> "(ii) The learned judge erred in law when he held that the defendant could not terminate the services of the plaintiff at

/their .....

their pleasure as stated in para. 11(c) of the rules of the Union."

"(ix) The learned judge erred in law when he held that the terms of the plaintiff's contract of service as contained in rule 11(c) was not analogous to that of the services between Civil Servants and the Crown."

The two following propositions based on these grounds of appeal were urged on the appellant's behalf: (i) Since the respondent held office "during the pleasure of the Union" he could therefore lawfully be dismissed by the Union under rule 11(c) without any notice being given to him or reason assigned for his dismissal, and (ii) the Executive Committee had authority to act in place of the Union under rule 11(c) and could dismiss the respondent in the manner specified in (i) above; its authority so to act being derived from a combination of rules 5 and 10(a). The second of these propositions will be dealt with first.

In my view if it were desired to take any action under rule 11(c) to terminate the services of the general Secretary such action must be taken by the Union itself acting in an annual conference which is the supreme authority of the Union or in a special conference convened under rule 9. The Executive Committee is subject to the authority of the annual conference and its functions and powers are set out in rule 10. It undoubtedly has the power to "suspend or dismiss from office any officer of the Union" under rule 10(f)(v), but this power is restricted in that it can only be exercised for the reasons stated therein, whereas in the case of a dismissal under urle 11(c) no reasons for dismissal need be given. Herein lies the difference between the powers of the Union under rule 11(c) and those of the Executive Committee under rule 10(f)(v) in relation to the termination of the services of the general secretary. They

/are .....

are separate and distinct powers arising under different rules, conferred on different authorities and exercisable by means of a different procedure.

The basis of the first proposition is that the respondent's position was analogous to that of a civil servant and therefore he could be dismissed without notice and without any reason being assigned for his dismissal, and Shenton v. Smith (1895) A.C. 229, and Ridge v. Baldwin (1964) A.C. 65 were referred to in support thereof. This proposition entirely overlooks two facts: (a) the plea in para. 5 of the defence "that the plaintiff was rightly dismissed for the breaches of duty owed by a servant to his master at common law", which was a tacit admission that the relationship of master and servant existed between the Union and the respondent and (b) the finding of fact by the trial judge "that the position of the defendant union vis-a-vis the plaintiff is that of master and servant". In the light of the aforesaid plea and the judge's finding, which is unchallenged, it was unnecessary and irrelevant to describe the respondent's position as being analogous to that of a civil servant.

Neither Shenton v. Smith (supra) nor Ridge v. Baldwin (supra) dealt with the situation which arises in this case, viz, the situation where the relationship of master and servant exists and the servant's tenure is at pleasure. The former case concerned Dr. Smith, a civil servant, and as such he held office during the pleasure of the Crown. The relationship between the Crown and himself, was not however that of master and servant because as Lord Goddard, C.J. pointed out in Inland Revenue Commissioners v. Hambrook (1956) 1 All E.R. 807 at 810, "an established civil servant, whatever his grade, is more properly described as an officer in the civil employment of Her Majesty". Moreover, "there is a fundamental difference between the domestic relation of master and servant

/and .....

and that of the holder of a public office and the State which he is said to serve". (See per Viscount Simonds in A.G. for New South Wales v. perpetual Trustee Co. (1955) 1 All E.R. 846 at 858).

The facts in Shenton v. Smith (supra) show however that Dr. Smith was in fact dismissed only after hearing and for good cause, so in any event he had no ground of complaint.

Ridge v. Baldwin (supra) involved the dismissal by a watch committee of a chief constable of whom Lord Morris of Borth-y-Gest said (1964) A.C. 122 that "the relationship between the watch committee and the appellant was not that of master and servant. Nor was the appellant one who held office at pleasure with the consequence that he could be required at pleasure to relinquish it."

In my view, Shenton v. Smith (supra) and Ridge v. Baldwin do not assist the appellant in arriving at the meaning to be ascribed to the words "shall hold office during the pleasure of the Union" in rule 11(c) insofar as they relate to the contract of service existing between the respondent and the Union. However, in the latter case, Lord Reid made certain observations in the course of his judgment which are pertinent to this appeal. At page 65, he mentioned the categories into which dismissals fall. He said:

> "So I shall deal first with cases of dismissal. These appear to fall into three classes: dismissal of a servant by his master, dismissal from an office held during pleasure and dismissal from an office where there must be something against a man to warrant his dismissal".

Under rule 11(c) the respondent's position was that of a servant holding office during the pleasure of his master, the Union, so his case for the purpose of dismissal fell within the first and second categories mentioned by Lord Reid.

At page 66 (ibid), Lord Reid said:

/"I.....

> "I fully accept that where an office is simply held at pleasure the person having the power of dismissal cannot be bound to disclose his reasons".

So if the Union had invoked rule 11(c) in determining the respondent's services it would have been under no obligation to state its reasons for so doing. This however does not mean that it could have determined his services without notice or compensation in lieu thereof. It was held nearly a century ago in Morrison v. Abernethy School Board (1876) 3R 945 that a person holding an appointment " during pleasure" was entitled to reasonable notice or compensation in lieu of notice if dismissed. This was accepted as being a correct statement of the law in the recent case of Malloch v. Aberdeen Corporation (1971) 2 All E.R. 1278. In this connection Lord Morris said at p. 1287:-

> "The question which was in issue in Morrison's case was whether a teacher whose appointment was 'during the pleasure of' the school board was nevertheless entitled to reasonable notice before dismissal or to a money payment in lieu thereof. It was held that he was. But it was recognised there was no obligation to assign the reasons which promoted a decision to dismiss".

Lord Guest at p. 1291 quoted with approval the following passage from the judgment of Lord Justice Clerk (Moncrieff) in Morrison's case:

> "The only question is what a tenure 'at pleasure' implies. It is said that we cannot import the common law into the statute. From this I entirely dissent. The statute necessarily imports the common law by providing that the teacher shall hold office during the pleasure of the School Board. We are compelled to resort to the common law to ascertain what are the incidents of a tenure at pleasure. I think that a tenure at pleasure while it implies the right of the employer to dismiss the employee at any time without reason assigned lays upon him an

/obligation .....

obligation either to give reasonable notice or compensation in lieu of notice".

In commenting on this decision Lord ~~Gest~~ Quest said at page 1291:-

"This was a decision of the Second Division with consulted judges. The decision in Morrison has never been challenged for nearly one hundred years and was approved by Lord Avonside and by Lord Hunter in the Inner House".

Lord Wilberforce, at p. 1296 said:-

"Equally, I can draw no conclusion from the use of the words 'master and servant' in certain passages in the judgments in Morrison v. Abernethy School Board (supra). I do not think that the Second Division were intending to do more than point out, as the opinions justly do, the ordinary consequence of holding at pleasure, i.e. that no reasons need be given for dismissal, while at the same time indicating that the schoolmaster was entitled to reasonable notice or compensation in lieu".

Rule 10(f)(v) which was invoked for the purpose of terminating the respondent's services states the reasons for which any officer of the Union or member of the staff may be dismissed. This is the third ~~cause~~ class of dismissal referred to by Lord Reid at p. 65 in Ridge v. Baldwin (supra), viz, "dismissal from an office where there must be something against a man to warrant his dismissal".

In referring to this class, Lord Reid said (at p. 66 ibid):

"So I come to the third class which includes the present case. There I find an unbroken line of authority to the effect that an officer cannot be lawfully dismissed without first telling him what is alleged against him and hearing his defence or explanation".

The Executive Committee purported to terminate the respondent's services under that part of rule 10(f)(v) which empowerd it to dismiss an officer "for any other reason which it deems good and sufficient in the interest of the Union". This imposed on the Executive Committee an obligation to let the respondent know exactly what charge was alleged

/against .....

against him, i.e. the ground on which his dismissal was contemplated and to permit him an opportunity of being heard by way of defence or explanation.

The respondent's account of what happened at the meeting of the Executive Committee on May 5, 1967 at which he was dismissed is, that after the President arrived and opened the meeting he stated:

> "For sometime now I have been trying to get the Executive members to work together and we may as well face up to it. I have come to the conclusion that we cannot work together and some parting must take place. I must therefore strongly recommend that the general secretary be dismissed from office".....

The President asked for a vote on the matter, but before the vote was taken the respondent requested an opportunity to speak. This was refused. The President insisted that a vote be taken which resulted in a majority vote for the dismissal of the respondent. One man, Joseph Cornwall who voted against the proposal asked the President before voting why the Secretary was being dismissed. The President told him, "you know, you know the general secretary went to the bank". This was a reference to an allegation that the respondent had previously gone to the manager of Barclays Bank and had advised him not to lend the Government any money to operate the sugar industry because the Government "was not paying the workers the right wages at the factory". This allegation which the respondent denied was investigated. Mr. Lake, second Vice President, who was delegated to deal with the matter, stated that he and the Executive Committee were satisfied that the allegation was unfounded and asked the respondent to drop the matter, which he did.

Now although the respondent was present at the meeting of the Executive Committee at which the decision to dismiss

/him .....

him was taken he was never given an opportunity of being heard before dismissal. Moreover, the ostensible reason for his dismissal as stated by the President to the other members of the Executive Committee was that they could not get along with him, but when the dissenting member, Cornwall, asked for the reason why the Secretary's dismissal was being considered he was given an entirely different reason, and one which, according to the respondent, had been investigated and held to be unfounded. This could not, by any test be regarded either as a satisfactory or fair method of dealing with the matter under rule 10(f)(v).

I am of the opinion that the Executive Committee, in failing to give the respondent an opportunity of being heard, violated the provisions of rule 10(f)(v) and accordingly, the respondent's dismissal was wrongful.

I would dismiss the appeal with costs.

P. Cecil Lewis
JUSTICE OF APPEAL

/ST. BERNARD, J.A. .....

ST. BERNARD, J.A.

George Herbert Walter was elected General Secretary of the Antigua Trades and Labour Union (hereinafter referred to as the Union) on the 3rd January, 1960. Thereafter he was elected annually by the annual conference and remained in that post until the 5th May, 1967, when he was dismissed by the Executive Committee of the Union purporting to act under rule 10(f)(v) of the Antigua Trades and Labour Union Rules. That rule reads as follows:

> "It (The Executive Committee) may suspend or dismiss from office any officer of the Union or section or member of the staff for neglect of duty, dishonesty, incompetence, refusal to carry out the decision of the Executive or for any other reason which it deems good and sufficient in the interest of the Union."

As a consequence of his dismissal, the respondent issued a writ against the Union alleging wrongful dismissal and claiming damages therefor. In paragraph 1 of his statement of claim delivered on the 13th July, 1967, the respondent pleaded that the rules of the Union formed the basis of the contract between himself and the appellant. The appellant in paragraph 1 of its defence admitted that this was so. In paragraphs 3 and 5 of the defence the appellant pleaded that the respondent was rightly dismissed both for the breach of duties owed by a servant to his master at common law, and for reasons which the Union deemed good and sufficient in the interest of the Union as provided for in rule 10(f)(v) of the Union Rules.

On the 20th March, 1969, the respondent applied by summons for particulars in respect of allegations of misconduct stated in paragraphs 3, 5 and 6 of the defence. The particulars requested were as follows:

/"(a) .....

"(a) Under paragraph 3 what conduct of the Plaintiff was adverse to the Union including the dates of such conduct and the manner of such conduct.

(b) Under paragraph 5 what breach of duty was the plaintiff guilty of and the dates of and manner of such breach of duty.

(c) Under paragraph 6 what are the reasons which the defendant alleged is good and sufficient in the interest of the Union.

(d) All the facts and circumstances which the defendants are alleging by virtue of which the plaintiff would know the President and Executive Committee was displeased with his conduct towards the said organisation".

Pursuant to an order of the Court made on the 27th March, 1969, the following particulars were delivered on the 3rd April, 1969:-

"The following are the particulars as required by your lettered paragraphs.

(a) For some time before and after the 26th September, 1966, the Plaintiff constantly quarrelled with members of the Executive, formed a clique in the Union whose main aim was to remove certain members of the Executive from office and to separate the Union from the Government, and in general to do other acts and things directed at changing the Policy of the Union contrary to the known views of the Executive and the Annual Conference Delegates.

(b) The Defendant says that the Plaintiff as a servant of the Defendant was guilty of disloyalty to the Antigua Trades and Labour Union and the Executive Committee which is the Paramount duty owed by a Servant to his master.

(c) The reasons are as follows:-

(i) Disloyalty

(ii) Failure to account for Union Money

(iii) Forming cliques in the Organisation and constantly quarrelling with the Older Officers

(iv) Showing an extreme reluctance to obey the

/Instructions.....

Instructions of the Executive and at times disobeying those instructions.

(v) Generally acting as though he intends to command rather than obey.

(vi) Holding secret meetings in his house and elsewhere aimed at transferring the loyalty and support of Union Leaders and members from the Union himself, which resulted in his being able to form a New Union within 12 days of his dismissal.

(vii) Encouraging Officers and members to assist him in changing the Policy of the Union.

(viii) Campaigning and Canvassing during ordinary Working Hours against officers of the Executive and endeavouring to create disrespect and contempt from them.

(ix) Generally acting in many little ways to show his dissatisfaction with and contempt for the Union, its policy and members of the Executive duly elected by Annual Conference.

(d) See (c) - (ix) above."

On all the issues raised in the pleadings the learned trial judge found in favour of the respondent and awarded damages in the sum of $5,694.15. The Union has appealed against this decision on eleven grounds. These grounds will be dealt with at a later stage.

Some of the ministers of Government and members of the Legislative Council were members of the Executive Committee of the Union and during the years 1964, 1965 and 1966 the respondent, as General Secretary of the Union, observed a conflict of interest in respect of the Government and that of the non-established Government employees of the Union. In 1964 these employees requested the Union to negotiate increased wages on their behalf. The Executive Committee

/discussed .....

discussed the matter and the views of members who were also ministers of Government prevailed and a request of 20% increase in wages was scaled down to 5%. In 1965 there was a dispute involving the workers of British West Indian Airways. The third Vice President of the Union was a director of the company and the workers were told if they did not resume their posts by a certain date their positions would be filled. In 1966 the non-established workers of the Public Works Department claimed an increase but they were told to await the completion of the purchase by Government of the Antigua Sugar Factory.

The 28th April, 1967, was the date scheduled for the meeting of the Executive Committee of the Union. This meeting was adjourned to the 5th May, 1967. At this meeting the President stated:-

> "For some time now I have been trying to get the Executive members to work together and we may well face up to it. I have come to the conclusion that we cannot work together and some parting must take place. I must therefore strongly recommend that the general secretary be dismissed from office".

A vote was asked for on the matter. The General Secretary asked to be allowed an opportunity to speak. This was denied him and a vote was taken which resulted in his dismissal. Joseph Cornwall, one of the members who voted against the dismissal, asked the President before voting why the Secretary's dismissal was recommended and he replied, "you know, you know the general secretary went to the Bank". The reference made here to the Bank was a reference to an allegation made against the respondent on the last Friday in April, 1967, that he advised the manager of Barclays Bank not to lend Government any money to operate the sugar factory as the wages paid by Government at the factory were too low. This allegation was investigated by

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the Executive Committee and resulted in the Second Vice President of the Union who was asked to deal with the matter stating to the respondent that he was satisfied the allegation was unfounded and requested him to drop it.

The respondent denied the allegations set out in the particulars delivered on the 3rd April, 1969, and in respect of the alleged shortage of the Union's funds stated that Novelle Richards before presenting the 1965 accounts in 1966 informed him that there was a shortage of $11,000. He made available two accountants and in a few days the error relating to five - six thousand dollars of the amount was discovered.

The appellant, at the trial, called several witnesses in an attempt to prove the allegations of misconduct set out in the particulars. The trial judge found that none of these allegations were proved. These were all questions of fact to be determined by the judge and, unless the appellant can show that the findings of the trial judge were unjust and unreasonable and that he had misdirected himself, this Court ought not to interfere with those findings.

I will now deal with the grounds of appeal in the order in which they were argued by counsel. Grounds two and nine were argued together. These grounds are:

> "(ii) The learned judge erred in law when he held that the defendant could not terminate the services of the plaintiff at their pleasure as stated in para. 11(c) of the Rules of the Union.
>
> (ix) The learned judge erred in law when he held that the terms of the plaintiff's contract of service contained in Rule 11(c) was not analogous to that of the service between Civil Servants and the Crown".

Rule 11(c) reads in these terms:-

/"The .....

"The General Secretary shall be elected by a ballot vote of an annual conference, and shall hold office during the pleasure of the Union."

Counsel submitted that although the Executive Committee, in dismissing the respondent, acted under rule 10(f)(v) which stated the reasons for which any officer of the Union might be dismissed by the Committee, yet it was competent to dismiss him without cause under rule 11(c) since he held office during the pleasure of the Union and the Committee under rules 5 and 10(a) had the authority to conduct the Union's business between one annual conference and another. He argued that the Committee could terminate the respondent's contract by just indicating its pleasure to do so; and if this were not so then rule 11(c) would be useless. He contended that the term "during the pleasure of the Union" in rule 11(c) made the tenure of the office of the respondent analogous to that of a civil servant who could be lawfully dismissed without notice and without assigning any reasons therefor. He cited as authority for this proposition the cases of Shenton v. Smith (1895) A.C. 229 and Ridge v. Baldwin (1963) 2 A.E.R. 66. In the case of Shenton v. Smith, one Dr. Rogers, medical officer at Albany obtained leave of absence and the respondent was appointed to act in his place. About eight months afterwards he asked that his appointment be made permanent but was informed that Government had decided not to interfere with the existing arrangements. On the 9th July 1888, the respondent was informed that his appointment would cease at the close of the year. He asked the Governor to reconsider his case and this was refused. In October 1889 he presented a petition of right making the Colonial Secretary defendant. The Privy Council held that the respondent had no cause of action.

/At .....

At page 234 Lord Hobhouse stated:-

> "Unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown."

In my opinion this case is not relevant and does not assist the appellant in any manner.

In the second case cited, Ridge v. Baldwin and others, the appellant was appointed Chief Constable of the County Borough of Brighton in 1956. His appointment was expresseed to be subject "to the Police acts and regulations". In October 1957, he was suspended from duty after he had been arrested, together with two other officers of the same police force, on charges which were subsequently the subjects of two indictments. He was tried in February, 1958 and acquitted on the first indictment and the prosecution offered no evidence on the second indictment. On March 7, 1958, the watch committee held a meeting at which, after considering matters relating to the appellant, unanimously dismissed him from the office of chief constable. The appellant was not present at this meeting, nor was he charged or given notice of the proposal to dismiss him or particulars on the grounds on which it was based or an opportunity of putting his case. The appellant appealed to the Home Secretary against his dismissal and his appeal was dismissed on July 5, 1958. In October, 1958, the appellant commenced an action against the watch committee claiming that his purported dismissal was void. His action was dismissed. On appeal, the House of Lords, allowing the appeal held that the watch committee were bound to observe the principles of natural justice, but in this instance the committee had not observed them.

In the course of his speech, Lord Reid stated at page 72:-

"I fully accept that where an office is simply held at pleasure the person having power of dismissal cannot be bound to disclose his reasons. No doubt he would in many cases tell the officer and hear his explanation before deciding to dismiss him. But if he is not bound to disclose his reason and does not do so, then, if the court cannot require him to do so, it cannot determine whether it would be fair to hear the officer's case before taking action. Again that is not this case. In this case the act of 1882 permits the watch committee to take action only on the grounds of negligence or unfitness. Let me illustrate the difference by supposing that a watch committee who had no complaint against their present chief constable heard of a man with quite outstanding qualifications who would like to be appointed. They might think it in the public interest to make the change but they would have no right to do it. But there could be no legal objection to dismissal of an officer holding office at pleasure in order to put a better man in his place."

At page 108, Lord Morris of Borth-y-Gest states:-

"The relationship between the watch committee and the appellant was not that of master and servant. Nor was the appellant one who held an office at pleasure to relinquish it."

In my opinion this case is no authority for the proposition that a person holding an office at pleasure could be dismissed at any time without reasonable notice or without a money payment in lieu thereof. The passages quoted state that a person holding an office at pleasure could be dismissed without assigning reasons for the dismissal and therefore it would be unnecessary before doing so to afford him an opportunity to present his defence. This case is silent on the point whether or not such a person is entitled to reasonable notice before dismissal. That issue was not before the Court.

In the case of Malloch v. Aberdeen Corporation (1971) 2 A.E.R. 1278 at page 1287, Lord Morris of Borth-y-Gest said:-

/"The.....

"The question which was in issue in Morrison's case was whether a teacher whose appointment was "during the pleasure of the school board was nevertheless entitled to reasonable notice before dismissal or to a money payment in lieu thereof. It was held that he was."

At page 1291 of the same case Lord Guest stated:-

"I will only quote from Lord Justice Clerk (referring to the judgment in Morrison's case). The only question is, what a tenure "at pleasure" implies. It is said that we cannot import the common law into the statute. From this I entirely dissent. The statute necessarily imports the common law by providing that the teacher shall hold office during the pleasure of the school board. We are compelled to resort to the common law to ascertain what are the incidents of a tenure at pleasure. I think that a tenure at pleasure, while it implies the right of the employer to dismiss the employed at any time without reason assigned lays upon him an obligation to give reasonable notice or compensation in lieu of notice."

At page 1298 Lord Simon of Glaisdale stated:-

"Morrison's case had already decided that although holding office at pleasure the teacher was entitled at common law to reasonable notice before dismissal or to a money payment in lieu thereof."

Applying these principles and assuming the Executive Committee had authority to dismiss the respondent under rule 11(c) of the rules of the Union as submitted by counsel, then, in my view, he should have been given reasonable notice or a money payment as compensation in lieu thereof. In my opinion, however, the Executive Committee had no such authority under rule 11(c) to terminate the services of the respondent. Rules 5 and 10(a) respectively of the Rules place the supreme authority of the Union in the annual conference and subject to that authority the Executive Committee is the governing body of the Union between annual conferences.

/Counsel .....

Counsel submitted that the combined effect of these two rules was to vest in the Executive Committee the power to dismiss the General Secretary under rule 11(c) simply by indicating its pleasure to terminate the tenure of office. In my opinion under rule 11(c) the General secretary holds office at the pleasure of the Union but he must be given reasonable notice. The Union in Conference, therefore, is the authority to dismiss at pleasure since under rule 10(f)(v) the reasons are set out for which the Executive Committee may terminate the services of any officer of the Union. If it acts outside the conditions and circumstances set out therein its conduct would be ultra vires. In my view these two grounds of appeal fail, and in order to succeed in his appeal the appellant would have to convince the Court that the Committee was justified in dismissing the respondent under rule 10(f)(v) of the Rules.

The next ground of appeal argued was that:-

> "the learned judge erred in law and on the facts when he held that the plaintiff was not responsible for the loss of Union cash which occurred".

Counsel submitted that under rule 11(c) of the rules of the Union the respondent was the person responsible to the Union for all financial books and for all moneys belonging to the Union and since there was a shortage of cash as indicated by the evidence of Novelle Richards and the auditor's report the judge was wrong in holding that the respondent was not liable. In his judgment the learned judge stated:-

> "In the latter capacity the witness (Novelle Richards) states that he reported to the 1966 annual conference a deficit of $4,321 for the year 1965 together with a shortage of over $4,000 for the period January - August 1966 ..... On the 5th October, 1966, the Executive decided that the

/General .....

General Secretary should be relieved of dealing with all the Union's cash etc ....."

It is not clear from the evidence whether the alleged shortage of cash was due to accounting errors or otherwise. In respect of this shortage the auditor's report states:-

> "As stated in previous reports I am not able to verify the figure of cash in hand at the close of the financial year and this figure is necessarily accepted as given by the responsible union officer. It is noted that at the close of 1965 the actual cash in hand was reported to be less than the lodged figure and this unexplained shortage of $4,321 has been reported as a deficit on the balance sheet".

Novelle Richards, the accountant, stated that "the shortage took place in the bank withdrawals and were not brought to account in whole or part." He further stated "after I reported to the 1966 conference, the conference authorised the new executive to deal with the matter and the general Secretary was relieved of his responsibility at the next meeting of the Executive."

The auditor's report was not prepared before the 20th December 1966, but the annual conference re-elected the respondent as general secretary of the Union. In my view it was not competent for the Executive Committee to dismiss the respondent on this ground eight months after the annual conference had condoned the alleged misconduct. This ground of appeal must fail.

Counsel next argued grounds three and six together. These grounds are as follows:-

> "(iii) The learned judge misdirected himself when he held that the plaintiff did not quarrel with older members of the Executive; and
>
> (iv) The learned judge misdirected himself when he held that there was no formation of cliques by the plaintiff."

/In .....

In respect of ground three counsel directed the Court's attention to various pieces of evidence which he said showed that the respondent was always "outrageous". He referred to the respondent's evidence where he said "I can recall Novelle Richards, accountant, complaining to the Executive in late 1966 or 1967 that I abused him as a result of a quarrel." Reference is made to the quarrel in the minutes of 10th February, 1967. The reference is as follows:-

> "Com. Carrott began condemning the general secretary for being abusive to Com. Richards, but Com. Joseph Mayers said he would like to hear what the General Secretary had to say. The General Secretary outlined the general attitude of Com. Richards and the reasons why he became abusive. Most of the members voiced their views on the incident and after a long discussion the meeting came to a close with a prayer."

Novelle Richards must have considered this incident closed after the prayer. He gave evidence as a witness but made no mention of this quarrel with the respondent. Counsel, too, appeared to have treated the incident in the same way as he asked no questions in the cross-examination of the respondent regarding this quarrel. Counsel also referred to the evidence of Joseph Mayers and Mildred Baynes. Joseph Mayers stated that on one occasion the President spoke of harmony and the respondent is reported to have said that he was not a Martin Luther King but rather a Malcom X. Mildred Baynes said the respondent was always "outrageous."

In regard to ground six counsel submitted that this type of evidence was obtained more by inference than directly as it was extremely difficult to get evidence of groups formed and of disloyalty. The fact, he submitted, that very soon after his dismissal respondent was able to form a new union and take all officers and nearly all the members with him was indicative of the fact that he was disloyal and formed cliques prior to his dismissal.

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The trial judge made the following comment on these issues:-

> "The evidence does not support the formation of cliques by the plaintiff and the only evidence of quarrelling with older officers appears to involve Mr. George".

The trial judge was not impressed by the evidence of Mildred Baynes and, in my view, it would be unjustified to dismiss the respondent because he said he was more like Malcolm X than Martin Luther King. I think the trial judge's conclusions on these issues were right and I would not disturb his findings. The appeal on these two grounds must fail.

Counsel abandoned grounds (iv), (xi) and (xii) and argued ground (viii) as his last ground. This ground is as follows:-

> "The learned judge erred when he found that there is nothing to indicate action by the plaintiff indicative of dissatisfaction with or contempt for the Union, its policy and Executive members".

Counsel submitted that the evidence on this issue had to be inferred and stated that one of the causes of dissatisfaction with the Executive was that he felt members of Government should not be members of the Executive Committee. This is a matter of opinion to which, in my view, the respondent was entitled to hold.

In my judgment there is no substance in this ground of appeal which must also fail.

For the reasons stated herein I would dismiss the appeal with costs.

E.L. St. Bernard
JUSTICE OF APPEAL