

ANTIGUA

MAGISTERIAL CRIMINAL APPEALS NOS. 3 to 29 of 1974

BETWEEN:	H.M. ROBERTS (Chief of Police)	Appellant
	and	
	ROY WILLIAMS & OTHERS	Respondent

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice E.L. St. Bernard
The Honourable Mr. Justice N. Peterkin

S.P. Christian for the appellant.
T.H. Kendall for the respondents other than Elton Barthley.
Miss B.V. Lake for the respondent Elton Barthley

1974, November 11

J U D G M E N T

CECIL LEWIS, C.J.(Ag.) delivered the judgment of the Court:-

These twenty seven appeals have been heard together by consent. They arise out of the dismissal by a magistrate of a charge brought against each respondent under section 19(1)(a) of the Trade Disputes (Arbitration and Settlement) Ordinance 1967, No.13.

Upon the Court enquiring from counsel for the appellant as to the manner in which the charges were initiated the Court was informed they were laid before the magistrate on police charge sheets. The Court thereupon referred him to section 29 of the Magistrate's Code of Procedure Act, Chapter 48, which provides that "the charge shall (subject as hereinafter mentioned) be laid on complaint and the complaint may, in the discretion of the Magistrate, be reduced into writing."

Section 28(b) of the said Act provides:-

"In all cases where a charge or complaint is made before a Magistrate

(b) that any person, being within the jurisdiction of such Magistrate has committed or is suspected of having committed any offence punishable on summary conviction;

..... the Magistrate may issue his summons directed to such person requiring him to appear before the Magistrate's Court

at the time to be therein mentioned to answer the said charge or complaint and to be further dealt with according to law."

The respondents having been charged with the commission of an offence punishable on summary conviction, it was the duty of the person making the charge to lay a complaint against each respondent as required by section 29 of the Act.

The appropriate form of complaint is Form 1 appearing in the Schedule to the Magistrate's Code of Procedure Rules Cap.48. This form if it will be observed, makes provision for the particulars of the charge to be included therein and contains a prayer for the issue of a summons to the defendant to answer the complaint. Upon the complaint being laid a summons in Form 2 of the Schedule to the Magistrate's Code of Procedure Rules, Cap. 48, is issued to the person charged to ensure his attendance to answer the complaint.

The provisions of section 29 of the Act were admittedly not followed and, as no complaints were laid before the magistrate in connection with the charges against the respondents the proceedings before him were a nullity. As the offences which gave rise to the charges arose more than six months ago, the time has expired within which complaints may be laid and therefore new trials cannot be ordered.

The appeals will accordingly be dismissed with \$50.00 costs to the respondent Elton Barthley and \$50.00 to the other respondents jointly.

P. CECIL LEWIS
ACTING CHIEF JUSTICE

E.L. ST. BERNARD
JUSTICE OF APPEAL

N.A. PETERKIN
JUSTICE OF APPEAL (AG.)