ANTIGUA

IN THE COURT OF APPEAL

INDUSTRIAL COURT APPEAL NO.2 of 1981.

BETWEEN:

U.S. NAVAL FACILITY - Appellant

and

1. EDISON LEWIS
2. CLIVE AMBROSE - Respondents

Before: The Honourable Sir Neville Peterkin - Chief Justice
The Honourable Mr, Justice Berridge
The Honourable Mr. Justice Robotham

Appearances: C. Phillips, Q.C. for Appellant,
A.W. Archibald with him.

A. Alexander for Respondents,
J. Simon with him.

1982: Nov. 16, 17.
1983: Mar. 21.

JUDGMENT

PETERKIN, C.J.

This is an appeal from the judgment of the Industrial Court making an Order declaratory of the rights of the respondents that each is entitled to be reinstated in the position he was occupying on the date of the termination of his services, or a similar position, along with a concomitant Order that each is entitled to receive from the appellant such pay as he would have received had his services not been terminated.

The facts and circumstances are as follows:-

The appellant Facility is a sub-department of the U.S. Navy. It occupies an area of land in Antigua under treaty arrangements between the Government of the U.S.A. and the Government of the U.K., Antigua and Barbuda being the successor to this arrangement. There is local legislation giving effect to this treaty arrangement. It is the U.S. Defence Area (Agreement) Act 1969, No. 7 of 1969 as amended by No. 25 of 1969. Under this legislation an area has been leased to the U.S., and within that area the laws of the U.S. apply. The area is under

/military.....

military regulations.

Among the functions of the appellant is to provide various services for Navy personnel such as restaurant and shopping facilities at reasonable prices. The appellant Facility is managed and operated by military personnel with the assistance of local civilian employees in such areas as are permitted by military regulations and the needs of the Naval Station.

The respondents were employed as general clerk and service station attendant respectively. Some time before the termination of their services the appellant carried out a survey to examine the structure and cost of the operation. At its conclusion they decided there was need to make economies, one of which being the transfer of the functions performed by the respondents to military personnel. The respondents immediately reacted by contending that their dismissals were unfair on the ground that the appellant Facility should not use Naval personnel to do their jobs and they challenged the employer's position that they were redundant. The point at issue therefore in the Industrial Court was whether a redundancy situation existed at the time of the termination of the employment of the respondents. The employee Clive Ambrose was engaged in August of 1977 as a janitor, but was later on May 1st, 1978, transferred to work at the gas station as a gas attendant. His employment was terminated on October 28, 1978. He was told in the letter terminating his employment that his duties would be assumed by military personnel at the Navy Exchange, Antigua.

The employee Edison Lewis began work on May 3, 1977, as a general clerk. On 27th October, 1977, he received a letter terminating his employment in which he too was told that his duties would be assumed by the military personnel at the Navy Exchange in Antigua, or will no longer be required. Then, there is the evidence of Bruce Davio, the employer's only witness. It should be allowed to speak for itself:

> "From my researches, I discovered that two employees were made redundant in October, 1978 and these were Lewis and Ambrose.
>
> The functions that Mr. Lewis was performing are now being performed by a Military Person.

/This....

> "This same individual on occasion assists in pumping gas, receiving retail merchandise, assisting in collecting money from vending machines, helping in maintaining sanitary conditions on the Navy Exchange Base. This person also stands week end duty manager and so ensures that the employees are issued their charge funds to operate. He also ensures that there is merchandise for sale in the different areas open on week ends."

In short, the Service Station at the U.S. Naval Facility is still in operation, and the job of service station attendant is still being performed by someone. Further to this, in the case of Edison Lewis the Court has found that his services were not only necessary for the esse but also for bene esse of the business, and that such tasks as he performed would have to continue.

The Court after a review of this evidence concluded:

> "From the evidence of these witnesses we have come to very clear conclusion that a redundancy situation did not exist when the services of the employees were terminated, because the tasks which they were last engaged to perform did not cease to exist."

The Court then went on to declare:

> ".....the employer having failed to justify their dismissal on the ground of redundancy, which was the ground on which it relied upon, we are constrained to hold that the employees' dismissal was unfair, and we so declare."

From this decision the Facility (Employer) has appealed on the following grounds:

> ""(1) The Industrial Court is mistaken in confining the interpretation of the word "redundancy" to situations where the tasks the employee was last employed to perform no longer exist at the time the services were terminated.
>
> (2) The Industrial Court was wrong in not giving effect to and/or not considering the effect of the evidence relating to the economic situation of the business in its relationships to the question as to whether or not there was a redundancy within the meaning of the Antigua Labour Code, 1975.

/In my.....

In my view there was ample evidence from which the Court could conclude that the tasks which the employees were last engaged to perform did not cease to exist at the time their services were terminated, but rather in the contrary did in fact continue to exist and are still being performed. I would accept their findings of fact. What falls now to be considered by this Court is whether or not on the facts as found a redundancy situation may be said to have existed at the time of the termination of the employment of the Respondents. The heart of the matter as I see it lies in the true construction of "redundancy" as set out in the Antigua Labour Code (14 of 1975). It is defined in section C3 as meaning, "a situation in which, by virtue of a lack of customers orders, retrenchment, the installation of labour-saving machinery, an employer's going out of business, a force majeure, or any other reason, tasks which a person was last employed to perform no longer exist.

In adumbrating his argument learned Counsel for the Appellant Facility referred the Court to United Kingdom legislation and cases which he stated were in pari materia. Among the cases referred to were:

(1) Dixon v Evernden, 1966, 1 I.T.R. 248

(2) Ewen v Ambrose 1967, 2 I.T.R. 200

(3) Sutton v Revlon 1973, 1 R.L.R., 173

(4) Scarth v Economic Forestry Ltd. 1973 N.I.R.C. 322.

While conceding that the definition of redundancy in the United Kingdom was not the same as in the Antigua Labour Code, he urged that every word in the section should be given some meaning in which case "redundancy" would have the same meaning here as in the United Kingdom. He referred the Court to Maxwell On Interpretation Of Statutes, 12th Edition, page 36, and submitted that on a true interpretation of the section it meant, "no longer any need for the person's services." He argued that the instant case was one of retrenchment and re-organisation, and that while Lewis' work was redistributed among others, in the case of Ambrose the employer had taken over the work in the interests of economy.

/Learned.....

Learned Counsel for the Respondents has argued in the contrary. In propounding an analysis of section C3 of the Code he suggested that the definition did two things from a point of view of syntax. First, it delimits and prescribes the parameters of the concept of redundancy, and secondly, it sets out the grounds which are permissible or the reasons which are available to an employer to justify a redundancy. He argued that primarily there is a potential redundancy situation where the tasks no longer exist, but if the tasks exist there will be no need to look at the series of events which will transform the potential to the real. He contended that the United Kingdom provision was totally different as there the tasks can continue to exist in a redundancy situation. He finally submitted that a prerequisite to a redundancy situation in the Antigua Code is the non existence of the tasks. I would agree.

In regard to the United Kingdom legislation and cases cited it is manifest that they do not apply in this situation, and so are not of any assistance. The legislation is different, and, significantly, in the majority of cases cited, the worker actually contends for a situation of redundancy as the protection afforded by the Act is different. The United Kingdom worker is given the protection of payment for redundancy.

But the essence of the matter is the true construction of "redundancy" as defined in the Antigua Labour Code. Learned Counsel for the Respondents has submitted that in interpreting the statute the Court is performing a judicial function and not a legislative one, and that the Court should not add or take away anything except in the case of a casus omissus. Again, I would agree. Where it is unambiguous, as in the instant case, the Court's duty is to give the words their natural and ordinary meaning having regard to the context in which the words are used.

Accordingly, I would hold that a prerequisite to a redundancy situation is the non existence of the tasks, and that the appellant in the instant matter has failed to overcome that hurdle. The Court has made a finding of fact in the contrary which ought to be accepted.

/I would....

I would also agree with the conclusion reached by the Industrial Court, namely, that the Employer having failed to justify the dismissal of the Respondents on the ground of redundancy, which was the ground on which it relied, their dismissal was unfair.

I would accordingly affirm their decision, and dismiss this appeal with costs to be taxed.

N.A. PETERKIN,
Chief Justice.

I agree.

N.A. BERRIDGE,
Justice of Appeal

I also agree.

L.L. ROBOTHAM,
Justice of Appeal.