

ANTIGUA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 1A of 1984

BETWEEN:

ELEFIEDA MORGAN
ESTHER BACHELOR

- Plaintiffs/Appellants

and

ANDREW E. HOIMES LTD.,
doing business as
(Anchorage Hotel)

CARIB HOLDINGS LTD., as
(Blue Waters Hotel)

H.M.B. HOLDINGS LTD., as
(Half Moon Bay Hotel)

HUONI TRAVEL & HAWKSHILL LTD,
as (Hawksville Hotel)

UNIVERSAL CARIBBEAN
ESTABLISHMENT LTD., as
(Jolly Beach Hotel)

- Defendants/Respondents

Before: ~~The~~ Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Williams (Acting)

Appearances: Justin Simon for Appellants
F. Kelsick for Respondents

1985: March 8.

REASONS FOR JUDGMENT

ROBOTHAM, C.J.

The plaintiffs herein are members of the Antigua Workers Union, a Trade Union within the State of Antigua and Barbuda. They brought an action on their own behalf and on behalf of other members of the said Union, all of whom were employees of the respondents, who in turn are members of the Antigua Hotels Association.

In that action they sought declarations that

- (1) The Industrial strike action taken by
/them....

them from Friday, December 23 to Sunday, December 25, 1983, was not prohibited by the Industrial Court Act No. 4 of 1976

- (2) They had not abandoned their employment by taking part in the said industrial strike
- (3) That the reference dated December 23, 1983 made by the Minister of Labour and addressed to the Industrial Court was not a proper reference of an existing trade dispute between the plaintiffs and the defendants and is therefore void and of no effect.

They also sought an injunction to restrain the defendants from treating the contracts of service as terminated by virtue of the strike action taken by them.

In the Court below, the Judge found that they had not abandoned their employment by taking part in the strike, and granted the injunction sought. Those findings were therefore in the appellants' favour, and there is no appeal in respect thereof.

The Judge however went on to find that

- (1) The reference made by the Minister of Labour and addressed to the Industrial Court was a proper reference of an existing Trade Dispute between the appellants and the respondents
- (2) The proceedings in relation to the said reference were pending at Midday on December 23, 1983, and that the appellants were thereby prohibited from taking part in the strike called at 1.00 p.m. on that same day.

/The appellants....

The appellants have appealed against these findings and having heard the arguments, we dismissed the appeal and confirmed the finding of the trial Judge. As the matter is one involving a question of interpretation which is likely to arise at a future date, and as Counsel for the appellants has asked for it, we decided to put our reasons for dismissing the appeal in writing.

The short question which this Court was asked to decide, was ~~was~~ formulated at the hearing of the appeal in these terms:-

Whether at 12.00 midday on December 23, 1983 a dispute had become a "pending proceeding" before the Industrial Court, was to make the strike called at 1.00 p.m. to be in contravention of section 20(1) of the Industrial Court Act No. 4/1976.

Section 20(1) reads:-

"No employee may go on strike or take part in a strike..... and no employer may declare a lock out or take part in a lock out while proceedings in relation to a trade dispute between such employee and such employer are pending before the Court or the Court of Appeal."

It is relevant for the purposes of this appeal to note that the Industrial Court operates in two divisions which are presided over by the President, and an Associate President. The main office is that of the President which is situated at the Princess Elizabeth Hall on Factory Road. The Registrar is there and the Court Register in respect of disputes is kept there. The other division presided over by the Associate President is situated in the Hadeed Building on Redcliffe Street. An office is maintained there, and the Deputy Registrar has charge thereof. Each office is provided with an official stamp.

It is not in dispute that at 11.45 in the forenoon of December 23, 1983 Ivan Keene, the Deputy Registrar, received in his office at
/Redcliffe.....

Redcliffe Street through Cuthbert Prince the Commissioner of Labour, a reference bearing the same date from the Minister of Labour by which the said Minister referred the dispute between the appellants and the respondents to the Industrial Court for settlement in accordance with Section 19 of the Act.

A copy of this reference was served on Monica Christian an employee of the Union, at the headquarters of the Union in Newgate Street by a Labour Relations officer Walter Frederick between 11.45 a.m. and 12.00 noon. This is admitted by the appellants.

When Keene received the reference, he said in evidence in the Court below that

- (a) he put the Court stamp on all four copies to show the date of receipt;
- (b) he opened a file for it and placed the copies therein; and
- (c) he kept it in his office.

What he did not do was to cause the dispute to be entered in the Court register which is kept at the President's office at Princess Elizabeth Hall. He explained this by saying that when he tried contacting the President's office, nobody was there. It must be remembered that this was Christmas eve in Antigua.

The strike was called at 1.00 p.m. on December 23, and was called off on December 25.

It is mainly upon the failure to have the reference recorded and numbered in the Court register, that the appellants case rests, their contention being that the proceeding was not "pending", until it had been registered in the Court Register.

The procedure to be followed in relation to a reference from the Minister to the Industrial Court is to be found in S.R.O. 16 of 1980

/section 3....

section 3 thereof states that there shall be kept under the supervision of the President a Court Register in which shall be entered the date the reference is received, the names of the parties, the nature of the dispute, the date and place of the hearing, and such other particulars as the President may direct. But for the date and place of the hearing, all the above particulars were set out in the reference in compliance with Form 1 in the Schedule to the S.R.O. 16/1980. There was therefore nothing new, (other than assigning a number to the reference) which was being placed on the register which was not already shown in the reference.

Regulation 4 reads:-

"Form of Reference to Court:- Where a trade dispute is referred to the Court under section 19 of the Act, the reference shall be in Form 1 or as near hereto as circumstances permit. The Court shall thereupon take cognizance of the dispute and cause the dispute to be registered in the Court Register."

It was the submission of Counsel for the appellant that the mere receipt of the document by Ivan Keene the Deputy Registrar in the office of the Associate President on Redcliffe Street did not without more make it a pending proceeding. He pointed out that the reference was not numbered up to December 28, but that is now academic because the strike was called off before that date.

He submitted that service of the notice on Monica Christian in the office of the Union might have placed upon the Union an obligation or a duty to check whether or not the Court had taken cognizance of the dispute by causing it to be registered in the Court Register but it did nothing more.

In effect, what Counsel for the appellant was saying is that when rule 4 requires the Court to "take cognizance of the dispute and cause the dispute to be registered in the Court Register" it is speaking of one act and cognizance of the dispute cannot be taken by the Court until
/it

it is so registered. Registration therefore precedes cognizance.

We were unable to agree with this interpretation. If Counsel's interpretation is to be accepted, it would necessitate reading for the word "and cause" the words "by causing". Indeed if the rule did read that the Court shall thereupon take cognizance of the dispute by causing the dispute to be registered, there would be no area of disagreement with Counsel.

It is well established that if the meaning of words are clear and unambiguous, no attempt should be made to change those words in order to achieve a desired construction. That is what Counsel was seeking to do.

Rule 4 requires the reference to be in a particular form, or as near thereto as circumstances permit. On receipt the Court shall thereupon take cognizance of it. This Keene did by placing the Court stamp on it. This stamp, under the Industrial Court Act, is to be judicially noticed. When cognizance is thereupon taken of the dispute, it is then registered and given a number.

We are of the opinion that from the moment when the document was filed with the Deputy Registrar of the Industrial Court and he placed his stamp thereon, it was a pending proceeding before the Industrial Court within the meaning of section 20(1) of the Industrial Court Act No. 4/1976. The strike called at 1.00 p.m. therefore, after service of the reference had been effected on Monica Christain was prohibited, as was found by the learned trial Judge.

The appeal was therefore dismissed with costs to the respondents.

E.L. ROBOTHAM,
Chief Justice

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I agree.

E.H.A. BISHOP,
Justice of Appeal

I also agree.

L. WILLIAMS
Justice of Appeal (Acting)