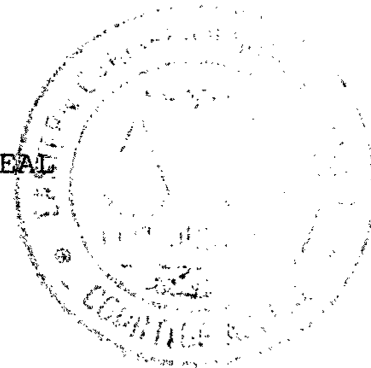
ANTIGUA AND BARBUDA



IN THE COURT OF APPEAL

CIVIL APPEAL NO. 4 of 1986

BETWEEN:

THE ANTIGUA (SUGAR)MILL HOTEL - Appellant

and

THE ANTIGUA WORKERS' UNION
(representing V. Matthews,
P. Lewis, V. Crump, H. Lewis,
E. Willock, M. Charles,
V. Millette, A. Braide,
M. Joseph, G.DaBreo, and
J. Crump) - Respondent

Before: The Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: L.Luckoo, Q.C. and S. Browne for Appellant
J. Simon for Respondent

1986: Nov. 18.

JUDGMENT

BISHOP, J.A.

On the 20th June 1986, the Industrial Court decided that the Management of the Antigua (Sugar) Mill Hotel had dismissed eleven of its employees unfairly, and it awarded compensation to ten of the said employees.

Being dissatisfied with the decision, the employer appealed to this Court and asked that the judgment of the Industrial Court be set aside.

On the 18th November 1986, the appeal was dismissed and this Court indicated then that it would hand down written reasons for the decision, at a later date.

THE FACTS

On the 17th May 1983, the Antigua Workers' Union (or A.W.U.) representing the dismissed workers submitted a memorandum to the Industrial Court in which it claimed that (i) their dismissal was was unjust and unfair; (ii) the action of the employer was high handed and not in keeping with

/natural......

natural justice and/or good industrial relations practice.

The solicitor for Antigua (Sugar) mill Hotel submitted a memorandum in reply, dated 2nd June 1983.

From these memoranda and other documents, and with the assistance of oral testimony from witnesses, the Industrial Court reached the decision mentioned above.

The memoranda revealed that the employer admitted, without reservation, that (a) the eleven employees listed in the memorandum of the A.W.U. worked for the hotel at the duties stated therein and for the periods specified; (b) the wages and other terms and conditions of employment were covered by an existing Collective Agreement made between The Antigua Hotel and Tourist Association, of which the employer was a member and the A.W.U. of which the employees were members; (c) on the 18th April 1983, the Management of the hotel suspended Maria Forde, a cook at the hotel, for two weeks; (D) on the said date the employees/Union requested a meeting with the employer to discuss the matter of meal breaks for staff and (e) Management of the hotel blatantly refused to discuss the matter at the work place (hotel) though there was indication of willingness to meet them either at the Labour Department or the office of the Hotel Association or of the Employers Federation.

The reason for dismissal as set out in letters dated 21st April 1983, was violation of the Collective Agreement mentioned earlier. In the case of eight of the employeees dismissed with effect from Tuesday 19th April 1983, the letter alleged:-

> "You along with other workers arived at your work place but did not check in for duty.
>
> After discussions with Mr. Keithlyn Smith, General Secretary of the Antigua Workers' Union, you and the other workers left and did not report for work.
>
> This action is construed to be a strike and is in violation of Clauses 24 and 25 of the Collective Agreement.........."

In the case of the other employees dismissed with effect from Wednesday 20th April 1983, the letter stated:-

/"Your walk.......

> "You walked off your job for no apparent reason. This action is construed to be a striked and is in violation of Clauses 24 and 25 of the Collective Agreement......."

The letters of dismissal were copied, not only to the Labour Commissioner and to the Employers Federation, but also to Coolidge Police Station.

In addition to the facts admitted by memorandum, there was evidence from which the Industrial Court could find (i) that on the 18th April 1983, employees of the hotel who were members of the Works Committee approached Brian Gonsalves and requested a meeting to discuss the grievance surrounding meal breaks for staff, which had led to the suspension of Maria Forde. The employees were not asking to discuss the suspension of Maria Forde,their grievance involved a broader issue; and (ii) Brian Gonsalves refused to meet with them on the premises. The shop steward of the A.W.U. then contacted the general secretary to see whether he - on their behalf - might succeed where the employees failed.

It was clear therefore that before the Union's assistance was invoked Brian Gonsalves knew of the grievance and of the desire of some employees for a meeting with him.

Further evidence available to the Court below revealed that (A) Keithlyn Smith, general secretary of the A.W.U. telephoned Brian Gonsalves the same day (18th April) and requested a meeting on behalf of the concerned employees; (b) he asked that the meeting take place on the 19th April at 6.00 a.m., which would have been about half an hour before the employees commenced duties; (c) the request was refused.

For reasons best known to him, but not disclosed when he testified, Brian Gonsalves then wrote a letter on the same day (18th April) to Keithlyn Smith, in which he referred to the telephone conversation, and stated that he had advised that the date and the time requested were not convenient to him. Also, "when a meeting is arranged it will not be at the Mill Hotel". To make his position and attitude unequivocal, Brian Gonsalves wrote thus:-

> "I now wish to place on record that I have not agreed to a specific date and time for a meeting......

/Should....

> Should you wish to set up a meeting with me, I require that this be done in writing and our response will also be in writing to you".

There was evidence to show that on the 19th April 1983, employees and their representative attended at the Labour Commissioner's office some time after 10.00 a.m. They or some of them remained there for the rest of the day but Brian Gonsalves did not attend. The Labour Commissioner advised the employees to return to work. Some or all of them obeyed his advice.

As for the 20th April 1983, there was evidence to the effect that employees were unable to clock-in for work when they arrived at the hotel, because the punch cards normally used in the process were not in place and were not available in the usual way. Employees attended at the Labour Commissioner's Office and, in the mid afternoon, Brian Gonsalves attended. He stayed long enough to be told by the Commissioner that the employees wanted to have a meeting with him, and to tell the Commissioner that the employees had withheld their labour that morning and he considered it to be illegal strike action; so they were no longer employees. There was evidence that Brian Gonsalves tried to leave letters of dismissal of the employees with the Labour Commissioner.

The implication from such evidence was that Brian Gonsalves did not wish to have anything to say to the employees or their representative. Indeed he described what occurred as "a brief meeting, not anything of consequence".

THE FINDINGS OF THE INDUSTRIAL COURT

The Industrial Court considered the application of Clause 7 of the Collective Agreement and observed that the clause contemplated, not a unilaterial but a bilateral effort to deal with the grievance with "all due speed"; however, in the words of the judgment;-

> "Looking at the evidence on the whole, throughout the dispute we find that there was no urgency on the part of Mr. Gonsalves to have matter settled .... The only urgency exhibited by Mr. B, Gonsalves was in the preparation of dismissal letters on the 21st April 1983."

/Clause.....

Clause 24 of the said Agreement dealt with Grievance Procedure and Settlement of Dispute. The Court quoted the clause in its judgment and found that there was nothing to suggest that Brian Gonsalves desired to set up a meeting with the A.W.U. After referring to the second paragraph in the letter of 18th April 1983, the Court stated:-

> "Nowhere throughout the evidence could we find a glimpse of any suggestion from Mr. B. Gonsalves for any date and/or time for any meeting."

The Court concluded from the said letter that Brian Gonsalves "laid down upon the Union his own method and procedure for setting up any such meeting;" and that his approach or attitude seemed to be

> "a deliberate attempt either to frustrate or delay the grievance procedure wherein it is stipulated that each step should be taken at the earliest opportunity."

When the Industrial Court considered the application of Clause 25 of the Collective Agreement, which dealt with Avoidance of Strikes and Lockouts, it quoted the clause and found that

> "workers.......were told to report back for work either by Mr. Smith of the Union or by Mr. Prince the Labour Commissioner. But on returning to work the employees were either prevented from working or told not to work."

The Industrial Court applied the statutory test for deciding whether or not the dismissal was unfair (section C 60(2) of the Antigua Labour Code No. 14 of 1975)and it concluded from all that was before it that, firstly, the employer did not adhere to the procedures laid down in the Collective Agreement and required by the provisions of the Antigua Labour Code, and secondly, the employer had acted unreasonably in "taking the decision to dismiss within the context of good industrial relations practice."

THE APPEAL

Learned Counsel for the appellant did not argue the grounds of appeal as they were set out in the Notice of Appeal. Consequently this Court considered the appeal as it was conducted.

/Mr. Luckhoo.......

Mr. Luckhoo analysed, in extenso, the evidence of the witnesses and the letter of the 18th April 1983. He invited this Court to find that the Industrial Court misdirected itself with respect to the contents and purpose of the letter. He submitted that (1) the adverse conclusions reached by the Industrial Court were unjustified when the letter was examined and interpreted; (2) the fact that the letter was written and despatched on the same day that the workers requested a meeting, and the general secretary telephoned also requesting a meeting indicated that the matter was being dealt with as a matter of urgency; (3) there was no refusal to have a meeting within a reasonable time and (4) the request for a meeting came from the A.W.U. and it was open to the Union to respond to the letter, proposing another time and another place.

Learned Counsel argued that it was Keithlyn Smith and not Brian Gonsalves who was dictatorial in his attitude, and he was also at fault in not setting out to have "a two-way process".

Only one further objection was taken. Mr. Luckoo submitted that in the absence of evidence from or on behalf of workers Millette, Braide, Matthews and J. Crump, the Industrial Court should not have decided in their favour, and awarded compensation.

It is helpful to point out here that J. Crump was not awarded compensation by the Industrial Court.

Learned Counsel for the respondent in his address submitted that on the totality of the case as presented to the Industrial Court the clear conclusions were that (1) on the 18th April 1983, Brian Gonsalves was aware, even before his telephone conversatioin with Keithlyn Smith, that there was a grievance among hotel workers over meal breaks, and that the workers wanted to sit down with him and discuss the matter; (2) Brian Gonsalves refused the requests of the employees and of their representative Keithlyn Smith; (3) on the morning of the 19th April 1983 although Brian Gonsalves was informed by Pat Gonsalves that there was something amiss among the hotel workers and that they were going to meet at the office of the Labour Commissioner, he took no action or no immediate action to hear their grievance, and (4) Brian Gonsalves acted in breach of

/the Collective.....

the Collective Agreement in that he refused to arrange to meet them at the earliest opportunity or to seek to resolve the grievance with utmost despatch; rather, he ordered them or some of them from the premises when they reported for work, and then he dismissed them.

Mr. Simon analysed the letter dated 18th April 1983 and urged that Brian Gonsalves acted imprudently by not seeking to arrange to meet on another date or time. He asked the Court to answer for itself the question: What was the intention of Brian Gonsalves in writing in such a tone and in copying the letter to the Police Office in charge of Coolidge Police Station?

It was Counsel's submission that there was enough cogent evidence on which the Industrial Court could, with justification, find as it did.

On the final objection, Mr. Simon submitted that the dismissals of the employees were substantially for the same reason, namely, violation of clauses in the Agreement by which they were all bound; and, in effect, there was a common cause that was supported by the evidence adduced. In the view of learned Counsel, it would have been essentially repetitive evidence if the other four employees had been called to testify; and he submitted that from a consideration of the relevant sections of the Industrial Court Act 1976 which showed the powers vested in the Industrial Court, the judgment complained against insofar as it concerned the four employees, was correct according to lae.

It will suffice to say that the fact that the four employees in question did not go to the witness stand and give evidence was not fatal to their claim in the circumstances of this matter. I have already referred to the facts which the employer admitted in his memorandum. In addition, Brian Gonsalves gave evidence on oath from which it was beyond dispute that at the material time all the employees listed were working at the hotel. Millette, Matthews, and J. Crump received letters of dismissal similar to those received by Willock, V. Crump, H. Lewis and Charles from each of whom the Court heard. Braide received a letter identical to that sent to Dabreo and Joseph both of whom testified.

The Industrial Court is a creature of statute. Its nature, powers and scope are all stated. From a consideration of the statute and of the facts and circumstances of this case I am satisfied that the Court was empowered to find that the four employees were unfairly dismissed if it found that the other seven employees were unfairly dismissed, although the Court did not hear from any of the four employees.

Now a careful examination of the material which the Industrial Court had before it revealed that Brian Gonsalves did not evince an intention to act with "utmost despatch" or to have the grievance satisfactorily settled "at the earliest opportunity". Indeed, in my view, his approach to the matter and to his employees was adversarial rather than conciliatory. In his address, learned Counsel for the appellant preferred the use of the phrase "within a reasonable time" but clearly that was not the criterion which was called for in resolving grievances of differences such as the instant matter. Nor was the fact that Brian Gonsalves wrote Keithlyn Smith on the 18th April any indication of an intention to treat the matter as one of urgency. At best, it merely served to support and record instantly his earlier oral rejection of the suggestions of Keithlyn Smith, to name the venue of any meeting, and to direct the employees how to approach him if they wished to meet him.

The conclusions to which objection was taken on behalf of the Antigua (Sugar) Mill Hotel were conclusions to which the Industrial Court could properly and with justification, come, and that being so the finding that the dismissal of the employees was unfair was irresistible. Hence the appeal was dismissed, with no order as to costs.

It was unnecessary thereafter to consider the interpretations of the sections of the Industrial Court Act 1976 to which Mr. Simon made little more than passing reference at the end of his address.

There were no exceptional circumstances revealed from which this Court could exercise its power to order payment of costs.

/E.H.A........

E.H.A. BISHOP,
Justice of Appeal

I agree.

L.L. ROBOTHAM,
Chief Justice

I also agree.

G,C,R, MOE,
Justice of Appeal