ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.177 OF 1998

BETWEEN:

CYRIL ALEXANDER

Plaintiff

and

MICHAEL NANTON
CABLE & WIRELESS (WEST INDIES) LTD

Defendants

Appearances:
John Bayliss Frederick for the Plaintiff
Samuel Commissiong for the Defendants

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2001: January 17, 18, April 26, May 4, 10, 24
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JUDGMENT

[1] MITCHELL, J: This case raised the question of whether a letter written by an employer to an employee and copied to certain other persons, giving the employee notice of charges brought against him of gross insubordination and misconduct and inviting him to appear at an enquiry, constituted the tort of libel.

[2] The suit began by the issue on 24 April 1998 of a Specially Endorsed Writ. By the Statement of Claim endorsed on it, the Plaintiff claimed that he was a senior telecommunications technician employed by the Defendants; and that on or about the 21st of March 1997 the 1st Defendant had falsely and maliciously published to various persons the following words concerning the Plaintiff:

> On Thursday, 27 March, 1997, while you should have been on duty, you appeared at the Company's main office in Kingstown and made statements about the senior members of management which can only be regarded as gross insubordination, gross misconduct and criminal threats.

The Plaintiff claimed that the Defendants were thereby saying in writing that the Plaintiff is not a person to be employed by any firm, organisation or person, as he behaved in a grossly insubordinate manner to his employer, was guilty of gross misconduct, and of the commission of crimes, and was a person to be shunned and avoided. The Plaintiff claimed that he had been greatly injured in his reputation and his credit and since this publication had been consistently refused employment. He claimed damages and costs.

[3] By a Defence filed late by an Order of the Court, the Defendants pleaded that the Plaintiff had been a fitter faultsman with the Defendant Company immediately before his retirement. They denied that they had published any of the words alleged. Alternatively, they claimed the words were incapable of bearing the meaning alleged. Alternatively, they pleaded that if the alleged words bore the meanings alleged in the Statement of Claim that the same were true in substance and in fact. The Defendants gave particulars of this plea of justification. In particular, the Defendants claimed that the Plaintiff had been guilty of gross misconduct in saying the following words in a very loud voice:

> Morgie you crazy I want my money tell them pay me my money. Morgie what the fuck wrong with you. Morgie ah go kill one ah them, is the same thing they do Gaymes.

The Defendants claim that the Plaintiff had been guilty of gross insubordination by the following words spoken in a very loud voice:

> "Small boy wey you telling me you think 30 years is 30 fucking days. Boy I start with this fucking company since they had one fucking jeep you feel I going and let Nanton and dem come and tell me to stop work."

The Defendants claimed in their filed defence that the Plaintiff had threatened two senior management members of staff, Mike Nanton and Leonard Mounsey, with the following words:

> "Boy I done mek up my fucking mind ah have no wife, she dead since 91, me last child 25 ah have no fucking body to cry and nothing to live for. Wait til Calvert come back Monday and I see he all you go see them bumping the roadway, ah done mek up me mind and is only 2 dose ah gramazone. If Nanton and bang belly Mounsie feel they bad wait til Calvert come, if I don't kill one ah them mother cunt I don't name. We go see who bad in Cable and fucking Wireless."

The Defendants pleaded that the words in the letter set out at paragraph 2 above had been published solely to officers of the company and to a trade union that, together with the Defendants, had a legitimate interest in the subject matter of the letter. The Defendants claimed that the words had been published if at all *bona fide* and without malice and under a sense of duty and in the honest belief that they were true. The defence of qualified privilege was thereby raised. The Defence denied that the words were capable of bearing the meaning alleged in the Statement of Claim.

[4] The Order on the Summons for Directions appears from a note on the back of the file to have been made on 24 September 1999, but was never filed. The Request for Hearing was filed on 7 July 2000, and the matter came on for trial in open court on 17 January 2001. At the trial, the court heard evidence from the Plaintiff, and from his witness Daniel Matthias. The defence was supported by the testimony of Michael Frederick Nanton, Godfrey Roberts, St Clair Scott, and Janine Williams.

[5] The facts as I find them are as follows: There had in the year 1996 been a 9-day strike by the employees of the 2nd Defendant. The industrial dispute underlying the strike had gone to a hearing before the appropriate administrative tribunal. That dispute had been settled in the year 1996 on the basis that the 2nd Defendant had behaved properly in the matter. It was agreed between the parties to that hearing that the striking employees would not be dismissed, but would be have their pay debited with the 9 days that they had been on strike. The Plaintiff was determined to have his money. He did not accept that his pay should be debited. On 20 March 1997, the Plaintiff attended at the main administrative offices of the 2nd Defendant in Kingstown. He came there to demand his money. He was angry. He was also a sick man. The medical report tendered in evidence showed that he suffered from a stress-related disorder that rendered him unable to handle stress unless he regularly took certain medication. He was not taking his medication. He said he could not afford to buy it. As a result, when he attended at the offices of the 2nd Defendant company on the day in question, he behaved very badly. He paced up and down the corridors of the office speaking loudly, aggressively, obscenely, and in a threatening manner about and to the employees of the 2nd Defendant. His behaviour was so unacceptable that an independently employed security guard who gave evidence for the Defendants felt obliged to call his supervisor and report the matter to him. He wrote down the words used by the Plaintiff in a report for his employer while they were fresh in his memory. He later the same day went to the Police Station and made a detailed report about the threats that he had heard the Plaintiff use. He confirmed in every particular in his testimony before the court the words alleged by the Defendants in their defence to have been used by the Plaintiff. I was impressed with his evidence, and find him to have been a witness of truth. The Plaintiff and his witness denied that the Plaintiff had used the words alleged. I did not believe them.

[6] The upshot was that the following day, 21 March 1997, the 2nd Defendant had the offending letter written to the Plaintiff. The letter was signed by the 1st Defendant.

The 1st Defendant is the personnel manager whose job it is to sign such letters from the 2nd Defendant. The letter was copied to various heads of department in the 2nd Defendant who needed to know about the contents of the letter. The letter was also copied to the trade union to which the Plaintiff belonged. The letter was copied to the union as a result of an agreement entered into between the 2nd Defendant and the union acting on behalf of the employees. The letter was no more than the usual letter required by law and by good industrial relations to be written to an employee about whom a complaint has been made, putting him on suspension with full pay and summoning him to an enquiry to explain his conduct. Such a letter, if it contains any remark disparaging about an employee, is clearly privileged in the absence of malice. In this case, the enquiry never came off. The Plaintiff went to see his doctor, who issued a number of sick leave certificates for the balance of the year. The Plaintiff never went back to work. He never attended the enquiry, which had to be cancelled. Eventually, the Plaintiff took early retirement and received his full retirement entitlement from the 2nd Defendant.

[7] After this settlement had been arrived at, the Plaintiff issued his writ against the Defendants in this case, alleging that the letter of 21 March 1997 had libelled him. He could only succeed in this claim if he could show malice on the part of the Defendants. There was no evidence produced by the Plaintiff of any malice on the part of the Defendants in the writing of the letter. A great deal of the evidence, of the cross-examination of the witnesses, and of the legal submissions, appeared to proceed on the basis that this was a case of wrongful dismissal. The correct procedure for an employer to follow in writing a letter such as that written in this case was canvassed. The court was asked to find that the letter did not set out with any particularity the charges against the Plaintiff. He was left to find out what words he had allegedly uttered that had caused the disciplinary proceedings to be brought against him until he read the Defence filed in the suit. However, the adequacy of the letter for founding a disciplinary charge, in an enquiry of the sort that it attempted to initiate, was not in issue in this case. This case was not an industrial relations case. I make no finding on this claim by the Plaintiff. If it is

alleged that the supposed inadequacy of the letter was evidence of malice, then I find that it amounted to no such thing. The words used in the letter do not amount to a defamation of the Plaintiff. There is nothing in the words used in the letter that could be said to lower the reputation of the Plaintiff in the minds of right thinking members of the community. However, even if the words were defamatory, the Defendants as employers were required by law to write those words in giving the Plaintiff notice of what the allegation was against him. The Defendants were under a duty to write to the Plaintiff the letter complained of. The Defendants copied the letter only to persons who had an interest and a duty to receive them. In the absence of malice on the part of the Defendants, the law clothes them with a privilege for uttering those words. The Plaintiff is not permitted to use the letter as the basis of a claim in the tort of defamation in the absence of malice, even if the words had been defamatory. Further, in the circumstances of this case the Defendants have the defence of justification available to them. The Plaintiff having behaved exactly in the way described in the letter, he cannot now claim that the Defendants have libelled him for having described his conduct in the disciplinary letter.

[8] Given the above findings of fact and applying the law as stated above, the suit of the Plaintiff is dismissed with costs to the Defendants to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge