IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2004/0498

BETWEEN:

JALOUSIE (1996) LIMITED

Claimant

and

[1] THE LABOUR COMMISSIONER
[2] THE ATTORNEY GENERAL

Defendants

APPEARANCES :
Mr. Vern Gill for Claimant
Mr. Deale Lee for Defendants

2005: March 15;
2006: July 26

JUDGMENT

Introduction

[1] EDWARDS J: This claim focuses on the interpretation of statutory provisions relating to the Recognition of a trade union by poll majority, and the meaning of a poll 'tie' under the Registration, Status and Recognition of Trade Unions and Employees Organisations Act, No. 42 of 1999 (St. Lucia).

[2] Jalousie (1996) Limited (Jalousie) is a limited Company under the Companies Act of Saint Lucia 1996. It operates the Jalousie Hilton Spa and Resort Hotel in Soufriere, St. Lucia.

[3] The Labour Commissioner is a public servant employed in the Ministry of Labour Relations, Public Service and Co-operative, and also the Principal Office of the Labour Relations Department of the said Ministry.

[4] The Attorney General is a Minister of Government and the principal legal advisor to the Government of Saint Lucia.

[5] By a fixed date claim filed on the 28th July 2004, Jalousie has claimed:

(a) Judicial Review of a decision made by the Labour Commissioner outlined in a letter of the 27th day of February, 2004, that the outcome of a poll for Recognition by a Trade Union held amongst the workers of the Claimant's establishment Jalousie Hilton Spa and Resort is a tie requiring a second poll to be held.

(b) A Declaration that the decision of the Labour Commissioner determining the result of the poll a tie is wrong and that the current findings ought to have been that the Union had lost the poll.

Preliminary Matters

[6] On the 13th July 2004 the Court granted leave to Jalousie to make a claim for judicial review on condition that Jalousie file a claim by 27th day of July 2004 and join the Honourable Attorney General as a party to the claim. At the first hearing of the claim on the 20 September 2004, and the subsequent hearing on the 2nd September 2005, there was no application from Counsel for Jalousie, for the Court to extend the time for filing the fixed date claim, or alternatively, to validate the late filing of the claim. Neither was there any Application from Counsel for the Defendants for the Claim to be dismissed or struck out, on the ground that the force of the Order made on the 13th July 2004, granting leave to file the claim, was spent, and was void, and of no legal effect, on the 28th July 2004 when the claim was filed. Instead, Counsel for the Defendants has chosen to make this a preliminary issue, in his submissions filed on the 15th March 2005, while relying on the decision in the Antigua case The Police Service Commission v Clarence

Edwards and Others, Suit No. ANUHCV 2003/0035 delivered by Olivetti J, paragraphs 30 to 31.

[7] In the absence of submissions from learned Counsel Mr. Gill, or any explanations as to why the claim was filed out of time, unhappily, I look to the CPR, its overriding objectives, and PART 26.9. I am satisfied that the Court Order dated 13th July 2004 did not specify the consequences, where there was a failure to file the claim by the 27th July 2004. I will therefore exercise my discretion pursuant to PART 26.9, by validating the late filing of the claim form. Because the claim concerns a matter of public importance, I am moved to give effect to the over riding objectives of the CPR, by allowing the claim to be determined on its merits. This is not to be regarded by Counsel Mr. Gill as condonation of his non-compliance with the Rules. This case presents special circumstances, and I am satisfied that the defendants will not be prejudiced by my ruling.

Factual Background

[8] On the 11th January 2000 the Registration, Status and Recognition of Trade Unions and Employers Organizations Act No. 42 of 1999, (the Act) was passed. It came into force on the 1st February 2000. By Section 24 of this Act, one of the procedures for the Registration and status of trade unions is prescribed. Section 24 (1) provides that:

> "A trade union claiming to have as members in good standing a majority of the employees in a bargaining unit may, ... apply to the Labour Commissioner to be recognized as the exclusive bargaining agent of the employees in the unit."

[9] By letter dated 21st February 2003 the President General of the National Workers Union (N.W.U.) wrote to the Labour Commissioner, requesting trade union

recognition on behalf of the employees of Jalousie Hilton Hotel, who were members of the N.W.U.

[10] Pursuant to other provisions under the Act, the Labour Commissioner informed the General Manager of Jalousie Hotel of the N.W.U. Application.

[11] Section 27 of the Act gives an employer the option to communicate to the Labour Commissioner any doubt the employer has that the trade union is entitled to be recognized as a bargaining agent for that bargaining unit. Section 29 (1) of the Act states that:

> "Where 2 or more trade unions have applied ... in relation to the same bargaining unit, or where one trade union has applied and the employer has doubted entitlement in a communication made under section 27, the Labour Commissioner shall carry out a secret poll among employees in the bargaining unit and in accordance with section 33 (a) shall recognize as the bargaining agent for the bargaining unit the trade union which is shown by the secret poll to have the greatest support among the employees."

[12] Section 29 (2) states that "Where the results of the secret poll show a tie, a second secret poll shall be carried out within 7 days unless extended for cause."

[13] As a result of the option exercised by Jalousie pursuant to Section 27 (1) (b) of the Act, a poll was subsequently conducted at the Hotel premises by the Labour Commissioner on the 5th February 2004.

[14] Section 2 of the Act defines "bargaining unit" to mean "a group of employees on whose behalf collective bargaining may take place."

[15] The parties are in dispute as to the number of employees who comprised the "bargaining unit." By a previous agreement between the Ministry of Labour, Jalousie, and the N.W.U., the eligible employees in the bargaining unit who were to vote in the secret poll were divided into 2 groups, Management Employees and General Employees.

[16] Jalousie alleges that there were 212 General Employees and 40 Management Employees in the bargaining unit. The Labour Commissioner contends that there were 229 General Employees and 40 Management Employees. Since the Labour Commissioner is responsible for the conduct, organization and timing of the secret poll under the Act, it is more probable that the record of the Labour Commissioner as to the number of General Employees in the bargaining unit would be accurate. I therefore accept that there were 229 employees in this group, so the bargaining unit was compromised of 269 employees.

[17] The results of the poll were as follows:

(i) Management Employees - 2/40 in favour
- 34/40 not in favour

(ii) General Employees - 93/229 in favour
- 93/229 not in favour

[18] The Labour Commissioner interpreted these results as showing that there was a tie within the meaning of section 29 of the Act. By letter dated 27th February 2004, Jalousie Hotel was informed that the poll showed a tie, so a second secret poll was required.

The issues

[19] The parties have agreed that the 2 issues are:

(a) Whether the results of the poll of the 5th day February 2004 was a tie within the meaning of section 29 (2) of the Act No. 42 of the 1999?

(b) Whether it is possible to have a tie within the meaning of section 29 (2) of the Act in circumstances where only one trade union applied for recognition.

[20] In order to determine these 2 issues, I must first determine the meaning of the statutory provision in Section 29 of the Act, for the purpose of applying it to the poll results. It is obvious from the submissions of Counsel that I will have to call in aid two particular rules of statutory interpretation.

Applicable Rules of Statutory Interpretation

[21] The literal or plain meaning rules state that Acts of Parliament:

> "... should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense.": (PER Tindal C.J. in Sussex Peerage Case (1844) 11 Cl. & FN 85, at 143).

[22] Tindal C.J. also recognized that before deciding whether the words in the Statute are 'in themselves precise and unambiguous,' the Court must have regard to the whole of the enacting part of the Statute: (Cross on Statutory Interpretation, 3rd ed. 15)

[23] In one of the authorities cited by Counsel Mr. Lee, Byron C.J. as he then was, adopted the Chief Justice Sir Vincent Flossaic's expression of the other relevant principles connected with the plain meaning rule, in the Dominica case of Charles Savarin v John William, (1995) 51 W.I.R. 75 at 79, where he stated thus:

> "... I start with the basic principle that the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which that word or phrase should bear. That legislative intention is an inference drawn

> from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it concordant with the statutory context. In this regard the statutory context comprises every other word or phrase used in the statute, all implications therefrom and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention.": (The Attorney General v Barbuda Council, Civil Appeal No. 7 of 2001 at para. 10)

[24] I am further guided by Lord Reid's statement of the relevant principles in Pinner v Everett [1969] 3 All E.R. 257, at 258) where he said:

> "In determining the meaning of any word or phrase in a statute the first question is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when the meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that if is proper to look for some other permissible meaning of the word of phrase."

[25] The other relevant rule of English Statutory Interpretation, allows a judge to read in words which he/she considers to be necessarily implied by words which are already in the Statute. The judge has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligent, absurd totally unreasonable, unworkable, or totally irreconcilable with the rest of the Statute: (Cross on Statutory Interpretation 3rd ed. at page 93).

[26] "The line between judicial legislation, which our law does not permit, and judicial interpretation in a way best designed to give effect to the intention of Parliament is not an easy one to draw. Suffice it to say that before our Courts can imply words into a Statute the statutory intention must be plain and the insertion not too big or too much at variance with the language used

by the legislature. The courts will strain against . . . leaving unfilled the "casus omissus" ": (Per Scarman L.J. in Western Bank Ltd v Schindler ['1997] Ch 1, at 18)

Submissions of Counsel

[27] Learned Counsel, Mr. Gill maintains that the word "employees" in section 29 (1) of the Act is in relation to the total member of employees in the eligible pool, as opposed to the total number of employees who have cast votes, having regard to the clear and unambiguous words in section 24 (1) of the Act. He found support for his proposition in the Grenada case, Liberty Club v Attorney General and others: [1996) 52 W.I.R. 172 [C.A.].

[28] Section 3 (1) of the Trade Unions Recognition Act (Grenada) is similar in substance to section 24 (1) of the St. Lucia Act reproduced at paragraph 8 above. Section 4 (2) of the Grenada Act which is comparable to Section 29 (1) of the St. Lucia Act, states: "The Minster, within seven days after receipt of an application, shall institute a poll of the unit specified, in order to determine whether the trade union making the application includes as members in good standing a majority in the unit appropriate for collective bargaining."

[29] Section 4 (4) of the Grenada Act states that:

> "Within three days after the poll has been conducted, the Minister shall issue his certificate to the Union giving the requisite majority as the bargaining agent for that unit and shall inform all interested parties that he has done."

[30] The Court of Appeal relied on the long title to the Grenada Act in its interpretation of the provisions of the Act. The long title states that it is:

> "An Act to provide for compulsory recognition, by employers of trade unions that represent a majority of workers."

Byron J.A. pronounced:

> "This title clearly indicates the intention of the legislature to provide for the compulsory recognition of trade unions that represent a majority of the "workers employed", as distinct from providing for the compulsory recognition of trade unions representing a majority of "workers who participated in a poll," which could comprise a minority of the workers employed as in fact occurred in this case. An interpretation of section 3(1) and 4(2) to require that a union be certified as the bargaining agent of the workers in that unit gives effect to the purpose declared in the long title, and would accord with the statutory context:" (at pages 175 to 176).

[31] It was held that the plain and unambiguous meaning of the words is simply that the Minister was required to certify a union which could demonstrate in a poll that it included as members in good standing a majority of the workers employed at La Source Hotel. The results of the poll had shown that the TAWU had gained 70/102 votes while the GMMIWU gained 23/102 votes; and there were 225 workers employed at the hotel. The Court of Appeal held further that the TAWU did not gain the requisite majority and should not have been certified. The Minister, therefore acted ultra vires the provisions of the Act in issuing his certificate, and it should accordingly be set aside.

[32] Mr. Gill has entreated the Court to adopt a similar interpretation of the legislative provisions of the St. Lucia Act, in light of the words "A trade union" claiming to have as members in good standing "a majority of the employees in a bargaining unit…," existing in section 24(1) of the Act.

[33] Mr. Gill also focused on section 38 of the Act which sets out the requirements for the revocation of exclusive bargaining rights of a trade union. Section 38(1) provides that any employee in a bargaining unit "may apply to the Labour Commissioner for the withdrawal of the recognition on the basis that the majority of employees in the bargaining unit no longer wish to have the trade union as their exclusive bargaining agent." Upon receiving such an application supported by evidence of this, the Labour Commissioner is required to conduct a secret poll of the employees in the bargaining unit, within 30 days of receiving the application, pursuant to section 38(3) of the Act.

[34] Section 38(4) states:

> "After a secret poll conducted under subsection 38(3), the Labour Commissioner shall grant the application made under subsection (1) if more than 50% of those employees in the bargaining unit vote against having the trade union represent the bargaining unit as the exclusive bargaining agent; in which case the Labour Commissioner shall cancel the recognition of the trade union."

[35] Though the requirements for winning recognition under section 29(1) are not spelled out in legislative language similar to section 38(4), the significance of section 38(4), is that it may provide Parliamentary guidance for interpreting section 29(1), in my opinion.

[36] Mr. Gill attempted to garner support from the previous practice and procedure under the Act, and his statement of the decision of the Labour Commissioner, in the Wyndham Morgan Bay Hotel recognition poll in 2000. This he argued, shows that there is acceptance by trade unions and past Labour Commissioners, that the Union either wins recognition by winning a majority accepted as being 50% plus one of the employees in the bargaining unit, or loses if it does not get the requisite majority.

[37] Mr. Gill's recourse to post-enactment practices and procedure cannot assist the Court as a possible aid to interpreting Section 29(1), since he has not provided the Court with any relevant and legally acceptable contemporary expositions of the meaning of the Statute.

[38] In Cross on Statutory Interpretation at page 146 to 148, it is recognized that post-enactment practices and statements of an official body can be appropriately influential in the interpretation of a Statute, provided it is in the form of a judicial decision, or it is a contemporary exposition of a Statute. "Contemporary exposition may refer firstly to the way a text was interpreted by the courts, legal writers and others in the period following its enactment. This shows how the Statute was understood by those to whom it was addressed. Contemporary exposition may refer secondly, to statements or statutory instruments issued by the government contemporaneously with the Act. This shows how the Act was understood by those responsible for its enactment .... As regards contemporary official statements and statutory instruments, the courts are willing to use this form of contemporary exposition as an aid to interpret even very recent Statutes."

[39] Further, Mr. Gill has drawn the Court's attention to the authoritative statements in Tolley's Employment Handbook 15th ed. (2002) at paragraph 45:32; and Harvey on Industrial Relations and Employment Law (U.K.), paragraphs 936, 939, 947 to 949.15 and 1325. With the utmost respect to Counsel, I do not regard these authoritative works as being particularly helpful or suitable in the interpretation of the St. Lucia Act. Those expositions are concerned with the meaning of Statutory Provisions in the U.K. and America which are dissimilar to the provisions in the St. Lucia Act.

[40] Finally, Mr. Gill contends that the words "or ... one... Union" in section 29(1) are out of place in the context used, having regard to section 29 (2) of the Act. He has argued that section 29 (2) cannot be taken out of context or in isolation from

section 29(1). Consequently, he said, section 29(2) is concerned with situations where two or more Unions apply for recognition, and the result provides a tie in the event two or more Unions receive the same number of votes. Otherwise, Mr. Gill maintains, there is no contemplation of a tie if one Union applies for recognition.

[41] Learned Counsel Mr. Lee structured his submissions, in the following manner-

(1) The context of section 29 is directed to the results as shown by the secret poll from those employees actually voting and not those entitled to vote (as applies in revocation of recognition under the provisions of section 38 of the Act).

(2) The settled rules of interpretation permit the court to refer to the long title of the Act as was done by the Court of Appeal in Liberty Club v Attorney General of Grenada (supra).

(3) The long title states that it is: "An Act to establish procedures for the registration and status of trade unions and employees organisations, to promote and protect the recognition of trade unions and to encourage orderly and effective collective bargaining and related matters." The long title clearly indicates that it is to provide for the promotion and protection of trade unions and for the encouragement of orderly and effective collective bargaining. The long title in effect is promoting the encouragement of recognition for trade unions [Counsel's emphasis].

(4) Section 29(2) of the Act clearly shows that the word "tie" is qualified by the phrase "the results of the secret poll show." This phrase taken as a whole indicates a tie among those actually voting, and not a tie of those entitled to vote. The words assume or imply that the persons who voted, and not those who were entitled to vote determine the results of the poll.

(5) Sections 29 and 38 make provisions for 2 different methods of determining the results of the relevant secret polls. Whereas the results are determined from those persons who participated in the poll under

section 29, under section 38, the results are determined from the total number of employees in the relevant bargaining unit. Under section 29(2) it has not been expressed, and it should not be implied that a union must have gained 50 percent of the entire bargaining unit or of the eligible employees. The implications under section 29 are therefore that abstentions should be ignored.

(6) In determining the object and purpose of the Act, and the intention of Parliament, the words "where the results of the secret poll" in section 29(2) are significant. The law presumes that words in statutes are not used unnecessarily: (Halsbury's Laws of England Vol.44, 4th ed. at paragraph 861).

(7) The difference between sections 29 and 38 gives effect to the purpose declared in the long title of the Act, and accords with the statutory context i.e. to promote and protect the recognition of trade unions and to encourage orderly and effective collective bargaining (Counsel's emphasis).

(8) There is nothing in the wording of section 29(1) which says or implies that the results of such a poll cannot amount to a tie where one trade union is involved. To construe section 29 otherwise will not accord with the statutory context.

(9) Reference to a "tie" in section 29(2) is directed towards the results of the poll, and not towards the number of trade unions applying for recognition.

(10) The defendants contend therefore that the clear implication under section 29(2) is that a "tie" will occur where the same number of votes is received for and against recognition from persons participating in the poll (as opposed to those entitled to participate). Consequently, a "tie" can occur where only one trade union is involved.

Distinguishing Liberty Club v AG

[42] I do not endorse Counsel Mr. Gill's view that I can adopt a similar interpretation of the legislative provision in the St. Lucia Act as was done in the Grenada case. Learned Counsel Mr. Lee quite rightly pointed out in his submissions that in section 4(2) of the Grenada Act the word "majority" is qualified by the phrase "in the unit appropriate for collective bargaining (See paragraph 28 above). This provision, he argued, along with section 3(1) and 4(4) of the Grenada Act indicates clearly the legislative intention that the recognition of the trade union would be based on the majority of workers in the unit. By contrast, section 29(1) of the St. Lucia Act speaks about "a secret poll among employees in the bargaining unit" and recognition based on the trade union showing by the secret poll "to have the greatest support among the employees." The phrase "majority of employees in the bargaining unit does not appear in section 29(1) as it does in section 24(1) of the Act.

[43] Another obvious difference between the Grenada Act and the St. Lucia Act is the long title in the Grenada Act: "An Act to provide for the compulsory recognition by employers, of trade unions that represent a majority of workers." This compelled Byron J.A. to conclude as he did in his observations reproduced at paragraph 30 above.

[44] This is in contrast to the long title in the St. Lucia Act (reproduced at paragraph 41 (3) above), which in my opinion, provides no such assistance for the interpretation of section 29(1).

Internal context of the Act

[45] Since Statutory words in section 29(1) must be interpreted in the context of other enacting provisions of the same Statute, guidance with regard to the meaning of a

particular word or phrase, may be found in other words and phrases in the same section or in other sections: (Cross on Statutory Interpretation at page 113).

[46] This leads me to section 33(b) of the Act which states that: "The Labour Commissioner shall in writing, within a reasonable period of time and not exceeding 3 months of the receipt of the application...

(a) ...

(b) Refuse to recognize the trade union on the grounds that it has not satisfied the requirement that a majority of the employees in the proposed unit wish to have the trade union recognized as their exclusive bargaining agent;..."

[47] I note that section 33(b), 24, 29 and 38 are in PART 5 of the Act captioned "RECOGNITION OF BARGAINING RIGHTS"

Construction of Section 29 (1)

[48] Having regard to the provisions in section 24, 33(b) and 38(4), it is my opinion that the criterion stated in section 29(1) is not an exception to the criterion stipulated in sections 24, 33(b), and 38(4) of the Act. I do not regard any of these provisions to be ambiguous or unclear. On applying the plain meaning rule therefore to the construction of these provisions, the criterion contained in sections 24, 33(b) and 38(4) based on the words in those provision in their natural and ordinary sense is, that a trade union may be recognized by the Labour Commissioner only where the majority of the employees in the bargaining unit or proposed unit wish to be members in good standing of the trade union or wish to have the trade union recognized as their exclusive bargaining agent, or have not voted against having the trade union represent the bargaining unit as the exclusive bargaining agent.

[49] I therefore hold that though the words in section 29(1) in their natural and ordinary sense do not expressly state that the trade union which is shown by the secret poll

to have the greatest support among the employees in the bargaining unit shall be recognized, the words "in the bargaining unit" following the word "employers" at the end of section 29(1), is of necessity implied by words which are already in the Statute in the provisions of sections 24(1) 33(b) and (38(4) of the Act. This construction gives effect to the legislative purpose and object of the Act in my judgment.

The Poll Results

[50] Consequently, the Statutory threshold for recognition of the NWU pursuant to sections 24(1) and 29(1) of the Act is, in practical terms, that the NWU must gain the support of at least 135 employees out of the 269 employees at the Jalousie Hotel who make up the group of employees on whose behalf collective bargaining may take place.

[51] There were 4 abstentions for the Management Employees and 43 abstentions for the General Employees. Though the Act makes no provision for abstentions to count as votes against the NWU, by implication, the abstentions represent employees in the bargaining unit or proposed unit, who do not wish to have the NWU recognised as their exclusive bargaining agent.

[52] Since the majority of the employees in the bargaining unit must vote for the NWU for it to cross the statutory threshold for recognition, it follows ineluctably, that the trade union which is shown by the secret poll to have the greatest support among the employees in the bargaining unit will have more than 50 per cent of the employees in the bargaining unit. The NWU did not have more than 50% of the required eligible pool of employees so it lost the poll.

[53] It is significant that the Act makes no distinction between one Union's recognition criterion, as opposed to the recognition criterion for 2 or 3 unions. The criterion for crossing the recognition threshold under section 29 remains the same, whether it

be 1,2 or 3 unions competing for employees' votes. It follows therefore, that where only one union is involved, there can be no "tie", the poll is either won or lost. Section 29 (2) of the Act therefore contemplates a "tie" only where 2 or more trade unions are competing for votes of employees in the same bargaining unit. The words "between 2 or more trade unions" is of necessity to be implied after the word "tie" in section 29 (2) of the Act.

[54] The reasoned arguments of Counsel Mr. Gill are very sound in my view. They find favour with me. The Labour Commissioner therefore acted ultra vires the provisions of the Act in deciding that the poll result was a tie, and it must accordingly be set aside.

Relief

[55] Turning now to the relief claimed, I am guided by PART 56. 13 (3) of the CPR 2000 which states:

> "The judge may grant any relief that appears to be justified by the facts proved before the judge, whether or not such relief should have been sought by an application for an administrative order."

[56] I have also had regard to the Statement of the law in Halsbury's Laws of England Vol. 37 4th ed., paragraph 253 as to when a Declaration will not be made.

[57] I therefore can find no legal impediment to prevent me from making the following Declarations and Order, and I now make them accordingly:

(1) THE COURT HEREBY DECLARES that the plain and unambiguous meaning of the words in Section 29 (1) of the Act is that the Labour Commissioner shall recognize as the bargaining agent for the bargaining unit a trade union which is shown by the secret poll to have

the greatest support or majority among the employees in the bargaining unit.

(2) THE COURT FURTHER DECLARES that the results of the poll showing that the NWU had gained only 96 votes from the 269 employees in the bargaining unit means that the NWU did not gain the requisite majority of 135 votes and therefore lost the poll.

(3) THE COURT ALSO DECLARES that the plain and unambiguous meaning of the words in Section 29 (1) and 29 (2) of the Act is that the secret poll results can show a "tie" only where 2 or more trade unions have applied under Section 24 in relation to the same bargaining unit.

(4) The decision of the Labour Commissioner that the poll result was a tie is ultra vires the provisions of the Act and is hereby set aside.

(5) The defendants shall pay costs to the Claimant to be assessed by the judge pursuant to PART 56.13 (5) and PART 65.11 (5) of the CPR 2000.

Dated this 6th day of July 2006

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Ola Mae Edwards
High Court Judge