9 pages.

ROYAL COURT
(Samedi Division)

209.

30th November, 1992

F.C. Hamon, Esq., Commissioner
and Jurats Myles and Bonn

Between: **The Union of Communication Workers** **Plaintiff**

And **Richard F. Le Maistre**
Director of Postal Administration
States of Jersey **Defendant**

Application by the defendant to raise a mandatory interim injunction, contained in the plaintiff's Order of Justice, dated 29th November, 1992.

The Attorney General on behalf of the Defendant.
Advocate A.J. Olsen for the Plaintiff.

JUDGMENT

THE COMMISSIONER: This Court was convened at short notice in what by any stretch has been a remarkable application.

The Court cannot sit on a Sunday and so we were convened at one minute past twelve today, Monday. And the case by the two counsel concluded at twenty minutes past three. And now, at twenty minutes past four we must attempt to deliver a judgment.

The application is to raise an interlocutory mandatory injunction. This injunction was imposed by Commissioner Le Cras sitting as a Lieutenant Bailiff.

The Order of Justice reads as follows and it is a complaint by the Union of Communication Workers referred to as "the plaintiff":

> *"1. **THAT** the Plaintiff represents a large majority of the workers employed by the Department of Postal Administration of the States of Jersey.*

2. That MR. DEREK HODGSON is the Deputy General Secretary of the Plaintiff (Mr. Hodgson).

3. **THAT** the Plaintiff has a Jersey Branch whereof Mr. Hugh Carr is the Branch Secretary.

4. **THAT** the members of the JERSEY BRANCH OF THE PLAINTIFF, as a result of considerable frustration at the breakdown of negotiations between the Plaintiff's representatives and THE CHIEF EXECUTIVE OFFICER of the STATES PERSONNEL DEPARTMENT made a protest stoppage of work from the morning of Thursday, 26th November, 1992, to the morning of Friday, 27th November, 1992.

5. **THAT** the Plaintiff and the DEPARTMENT OF POSTAL ADMINISTRATION have long recognised and adhered to the principle of collective negotiations and collective agreements. These are recognized and formalised by, inter alia, a joint document entitled "Achieving local agreement" and a further document entitled "Agreed guide to postal overhauls and revisions", signed by representatives of the parties on the 7th August, 1992.

5A. **THAT** by letter dated 25th November, 1992, the DEPARTMENT OF POSTAL ADMINISTRATION is in breach of its agreement with the Plaintiff.

6. **THAT** on the morning of Friday, 27th November, 1992, members of the JERSEY BRANCH OF THE PLAINTIFF presented themselves for work at the Headquarters of the Department of Postal Administration in the usual way.

7. **THAT** upon doing so they were confronted by a requirement that they should first individually sign a letter dated the 27th November, 1992, from MR. RICHARD LE MAISTRE, DIRECTOR OF POSTAL ADMINISTRATION, STATES OF JERSEY (hereinafter referred to as "the Defendant"), unilaterally setting out new terms and conditions of employment, including, inter alia, pay and allowances, allocation of duties and overtime. The endorsement required to be signed by each employee individually, reads as follows:-

> "I have read and understood the above and in signing below I fully accept all the conditions for the duration of my employment with the Postal Committee".

8. **THAT** signature of the individual letters would effectively put an end to all collective negotiations by the Plaintiff on behalf of the members of its Jersey Branch.

9. ***THAT*** *on the morning of Saturday the 28th November, 1992, the Controller of Mails and Operations of the POSTAL ADMINISTRATION refused to talk with MR. HODGSON, except regarding the conduct of members of the JERSEY BRANCH OF THE PLAINTIFF, which conduct was orderly and well behaved in all respects".*

As a result of that complaint the defendant was injuncted in these terms:

A ***THAT*** *service of this Order of Justice upon the Defendant"* (and that is Mr. Le Maistre) *"shall operate as an immediate interim injunction requiring him to withdraw or suspend the said letter of the 27th November, 1992, and to allow the members of the JERSEY BRANCH OF THE PLAINTIFF access to all postal premises and to resume work on the terms and conditions of employment previously established until either collective negotiations betweeh the Plaintiff and the COMMITTEE OF POSTAL ADMINISTRATION shall have been concluded or until further Order of this Court".*

It is clear from what we heard that the learned Lieutenant Bailiff considered the matter anxiously. He heard the parties, it appears, on more than one occasion and took time to consider before he signed the Order of Justice. We would, as a Court, have expected no less of him.

It was, we understand, at his suggestion that paragraph 5A of the Order of Justice was added.

Let us, for a moment, say that like the Attorney General and indeed all members of the public, we are deeply concerned that this dispute has reached the point that it has. We cannot, however, as a Court of Law, allow our sympathies to override our judicial function and it is that function to consider one thing and one thing only: whether the injunction was properly obtained and by properly we mean in accordance with the legal principles adumbrated to us by the learned Attorney General.

Mr. Olsen stated no law to us. We do not criticise him for that, but we made that remark because we as a Court must be bound by the principles that we heard.

We will say this further, we can see no reason to depart from those principles at this stage.

There are three preliminary points, though not raised as such, which we need to consider. The first is the anomaly between the plaintiff and the body that is seeking injunctive relief.

We can see the draftsman's very real problem. The agreement which he was instructed to rely upon is signed by the plaintiff but it is only the Jersey membership of the Union that has been allegedly abused. We will allow that matter to stand.

The question of the defendant and who that should have been is perhaps more difficult and we must say that we cannot see why the Committee - that is the Postal Administration Committee if that is its name - were not joined with Mr. Le Maistre in this action.

We say this because as the learned Attorney pointed out to us, any Order given against Mr. Le Maistre could have properly (and we say properly with some reservation) have been avoided by the Committee if they had dismissed Mr. Le Maistre and put someone else in his place. We are told (and we have not had time to consider it) that that would not have been a contempt of Court. Mr. Bailhache was quick to assure us, of course, that the Committee has no intention and would never have had an intention of acting in that way.

There is one other preliminary point which was raised with us and that is set out in Bullen & Leake: s.27 Contract (or Agreement) p.345, which says this:

> ***"Pleadings. Where the action is brought upon an agreement not under seal, the Statement of Claim should show whether the agreement relied on is in writing or made by word of mouth or is to be implied or inferred from the conduct of the parties. In all cases the date, the parties, and the general substance and effect of the agreement so far as is material, must be set out in the Statement of Claim".***

We might have regarded those two latter matters as either fatal or suitable for amendment. However, in the light of these very important matters we wish to disregard them for the purposes of this application and this application only and to press on to deal with the substance of what everyone, I believe, considers to be the very important matters which lie before us.

The learned Attorney produced two affidavits, one from Mr. le Maistre, the other from Mr. Machin. These affidavits were properly brought in support of the application and we have studied them most carefully; they were in fact read to us in their entirety and we also have the affidavit, of course, of Mr. Hugh Carr, which was sworn on 28th November. Again we have considered that very carefully.

Let us for a moment consider before we get on to the meat of the matter, the principles upon which we feel we are to act. The learned Attorney cited to us the case of American Cyanamid Co. -v- Ethicon Ltd. [1975] 1 All E.R. 504, which everybody in this Court

knows very well. But I have to point out that O.29/1/5 of the Rules of the Supreme Court says this:

> ***"The Cyanamid guidelines are not relevant to mandatory injunctions. The case has to be unusually strong and clear before a mandatory injunction will be granted at the interlocutory stage even"*** (and I stress that word) ***"even if it is sought in order to enforce a contractual obligation. However where it is necessary that some mandatory order has to be made ad interim the court will make the order whether or not the high standard or probability of success at trial is made out".***

From what we have heard it is clear to us that a mandatory injunction is a very unusual form of injunction to be granted on an interlocutory application. Although neither the learned Attorney nor Mr. Olsen knew of any such injunctions having been obtained before this Court, we can recall two or possibly three in recent years and they are Thomas et uxor -v- Blampied (18th July, 1991) Jersey Unreported; Eves and The Glendale Hotel Ltd -v- The Tourism Committee (11th December, 1991) Jersey Unreported; and Le Nosh -v- Sterling & Ors. (30th April, 1990) Jersey Unreported. We are not going to refer, of course, to those cases, they were not referred to us, but we bring them in at this stage in order to assist both counsel because as we fully appreciate and I think everybody here appreciates this matter, whatever we decide this morning, may have to go further.

It seems to us that we have a judicial discretion, but this discretion will be exercised to withhold an injunction more readily if it is mandatory than if it is prohibitory. And it seems to us, from what we have heard, that we must have a very high degree of assurance that at the trial it will appear quite clear to the Court that the injunction was rightly granted.

In the case of Harold Stephen & Co. Ltd. & Ors. -v- Post Office [1978] 1 All E.R. 939, - a court comprised of Denning MR, Browne and Geoffrey Lane LJJ, - I read the following from the headnote:

> ***"Held - On the assumption that the plaintiffs had a cause of action in detinue or bailment against the Post Office, the case was not an appropriate one in which to issue a mandatory injunction. If granted, such an injunction would have to specify exactly what was required of the Post Office, i.e. that it should take back the suspended men who would be likely to continue their unlawful discrimination of Grunwick's mail. The injunction would therefore have the effect of revoking the Post Office's disciplinary measures against the men and making it appear that the court endorsed the continuance of the unlawful discrimination against Grunwick. Furthermore the court would be unable to enforce***

> ***the injunction and it was only in the most exceptional cases that the court should interfere in industrial disputes and negotiations by way of a mandatory injunction".***

With respect to the learned Attorney we do not see that that case is on all fours with what we have to decide because that was an action being made by a company whose mail was not being delivered. Perhaps, more in point is the case of Ford Motor Co. Ltd -v- Amalgamated Union of Engineering and Foundry Workers & Ors. [1969] 2 All E.R. 481. Now although the learned Attorney read much of the headnote, we need only refer to the passage at letter I which reads:

> ***"For the unions"*** (and it is important for us to see that it was the unions here that appeared to be adopting the argument which has been taken by the Crown this morning) ***"it was contended that the agreements were never intended to be amenable to legal action because they were negotiated against a background of industrial opinion known to all parties which was adverse to collective agreements being legally enforceable, as was evidenced by several extra-judicial authorities (including the published evidence before, and unanimous report of, the Royal Commission on Trade Unions and Employers' Associations, 1965-1968), and, further, that the vague aspirational wording of many of the clauses in the agreements showed that the parties did not intend the agreements to be legal contracts".***

Mr. Olsen obviously - and I sympathise with him, working, as we all are, under constraints of time - said that Mr. Hodgson had told him that matters have changed since that case was decided in 1969; as he put it to us "the climate has changed". That may be so, but that point is a matter of fact and not a matter of law and as a matter of fact it can, if necessary, be argued at trial.

The contract upon which the plaintiff relies in order to set up its injunctions are two-fold and we satisfactorily established, I believe, that there are only two agreements. One is called "Achieving local agreement" and the other one is called "Agreed guide to postal overhauls and revisions".

We can sadly see nothing in either of these agreements which in our view establishes a legal contract.

In the document headed "Achieving local agreement" the general principles are expressed like this:

> *"4) The following General Principles are accepted as paramount".*

And again under paragraph 9d:

"Until all stages of the procedure have been exhausted there shall be no industrial action or ballot for industrial action of any kind by Union members. For its part the Postal Administration will continue to apply agreements which are already in place or have been agreed for implementation; (or where there is no recorded agreement, whatever practice has been in place for at least one working month immediately prior to Stage One being entered into)".

And then again and we are taking matters perhaps out of context rather than read the whole agreement, but we did look at these carefully. Paragraph 10 says:

"If the procedures outlined in Stages 1 to 3 fail to resolve the differences between the parties and a dispute continues to exist, both parties may proceed to an agreed voluntary arbitration. In all cases where the procedure fails to achieve an agreement it will be the responsibility of the party raising the issue to advise the other of its intended course of action. Where voluntary arbitration is not agreed and a dispute could lead to a ballot for industrial action or referral to the Industrial Disputes Officer, both parties agree that the matter will be represented to the full Postal Committee before either course is embarked upon.

11. Both parties will have an obligation to ensure that all terms of agreements are carried out in full. Agreement shall continue to operate until such time as they are re-negotiated.

13. Either party will bring to the notice of the other any breaches of this agreement and is entitled to expect that any such breaches will be viewed seriously by both parties".

When we came to the clause which reads: *"Either party will bring to the notice of the other any breaches of this agreement and is entitled to expect that any such breaches will be viewed seriously by both parties"*, Mr. Olsen said and we use his words: *"If anyone in my firm had drafted that he would be looking for a job".*

Well, that was very candid of Mr. Olsen and we do not penalise him for having made that remark because it is the sort of remark I think that anybody would have made on reading these alleged agreements.

Mr. Olsen submits, with as much force as he can muster, that the two agreements do not exclude legal liability. But that regretfully is a negative. Let us look at the breach which is relied on and when we look at the breach that is relied on, let us do that in the context of what Mr. Hodgson said to us.

The breach relied on is a letter, so-called, dated 25th November, 1992, where Mr. Le Maistre said this:

"UCW Pay Negotiations.

At a meeting today between Management and UCW representatives an offer similar to that agreed with other Public Sector employees in the Island, i.e. 5.8% in 1992 and Cost of Living in 1993 was repeated. Unfortunately, the UCW representatives at the meeting stated that the offer was unacceptable.

There are no plans for any further meetings".

Now, Mr. Olsen relied very heavily on that, but again we have got to remind ourselves that Mr. Machin's affidavit says this (he is talking about the meeting that he had with Mr. Hodgson on 25th November). We quote from paragraph 6 of that affidavit:

"Mr. Hodgson said that this was unacceptable and that he would be reporting the matter to his National Executive with a recommendation that it authorise a ballot for industrial action of the Postal Worker members of the plaintiff. I do not know whether Mr. Hodgson told me but I do recall that I knew that there would be a meeting of the Jersey Postal Workers that evening at the Pomme d'Or Hotel".

It seems to us that the argument runs both ways. It seems to us that Mr. Hodgson from that had already decided that the very stage of the procedures upon which he relies would not be adhered to by the Union because he felt apparently at that stage that the procedures had been exhausted.

The strike was called, and whether the strike was wise or whether the strike was not wise, whether we sympathise with the strikers or whether we do not sympathise with the strikers, is really not in point. The strike occurred and it breached the contract of employment.

In those circumstances, and however much we may regret this decision, we cannot see that there is anything to uphold an injunction because it seems to us that there is no legally binding contract which has been shown to us which could possibly be enforced. If we reach the conclusion there is no legally binding contract it follows, as night follows day, that there can be no breach of that contract. In the circumstances, with deference to the learned Lieutenant Bailiff, we think that he was wrong to have imposed these injunctions and accordingly we raise them.

Authorities

Harold Stephen & Co. Ltd. & Ors. -v- Post Office, [1978] 1 All E.R. 939.

Ford Motor Co. Ltd. -v- Amalgamated Union of Engineering and Foundry Workers & Ors. [1969] 2 All ER 481.

NWL Ltd. -v- Woods; NWL Ltd. -v- Nelson & Anor. [1979] 3 All ER 614.

EMI Records Ltd. -v- Riley & Ors. [1981] 2 All ER 838.

Walters & twenty eight others (1985-86) JLR 439.

American Cyanamid Co. -v- Ethicon Ltd. [1975] 1 All ER 504.

R.S.C. (1993 Ed'n): O.29/1/5.

Thomas et uxor -v- Blampied (18th July, 1991) Jersey Unreported.

Eves and Glendale Hotel Ltd. -v- Tourism Committee (11th December, 1991) Jersey Unreported.

Le Nosh Ltd. -v- Sterling & Ors. (30th April, 1990) Jersey Unreported.

Bullen & Leake: s.27: Contract (or Agreement) p.345.

4 Halsbury 24: para 847: Circumstances in which mandatory injunctions will be granted.
para 848: Mandatory injunctions on interlocutory applications.