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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
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LONDON, W.C.1

IN THE PRIVY COUNCIL

No. 29 of 1958

ON APPEAL FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO

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B E T W E E N :

SIR EDWARD BETHAM BEETHAM, K.C.M.G.,
C.V.O., O.B.E., Governor and Commander
in Chief in and over the Colony of
Trinidad and Tobago and
BERNARD BENJAMIN GILLIS, Q.C., M.A.
Appellants

-- and --

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TRINIDAD CEMENT, LIMITED

Respondents

C A S E FOR THE APPELLANTS

RECORD

1. This is an appeal from an Order, dated the 14th November, 1957; of the Supreme Court of Trinidad and Tobago (Archer, J.) whereby a declaration was granted that the appointment by the first Appellant, in purported exercise of the powers conferred upon him by Section 8 of the Trade Disputes (Arbitration and Inquiry) Ordinance, of the second Appellant to be a Board of Inquiry, as set out in a minute of appointment dated the 16th April, 1956, was null and void.

2. The issue raised by this appeal is whether at the date of the appointment of the Board of Inquiry a "trade dispute" existed as defined by the Trade Disputes (Arbitration and Inquiry) Ordinance. The relevant provisions of that Ordinance, Ch. 22 No.10 are :

"2. (1) For the purposes of this Ordinance -
"trade dispute" means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment; or the terms of the employment, or with the conditions of labour, of any person;
.....

"8. (1) Where any trade dispute exists or is apprehended the Governor may, whether or not the dispute is reported to him under

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this Ordinance, inquire into the causes and circumstances of the dispute, and, if he thinks fit, refer any matters appearing to him to be connected with or relevant to the dispute to a Board of Inquiry (hereinafter referred to as the Board) appointed by him for the purpose of such reference, and the Board shall inquire into the matters referred to it and report thereon to the Governor.

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(2) The Governor may also refer any matter connected with the economic or industrial conditions in the Colony to the Board of Inquiry and (sic) report.

(3) The Board shall consist of a Chairman and such other persons as the Governor thinks fit to appoint, or may, if the Governor thinks fit, consist of one person appointed by the Governor.

(4)

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p.23 l.34

p.25 l.30

3. The Respondents operate quarries and cement works for the manufacture of cement at Claxton Bay in Trinidad where in 1956 they employed some 300 men. The Respondents' is the only cement works in the Colony.

4. The Federated Workers' Trade Union (hereinafter referred to as "the Union") is a trade union registered under the Trade Unions Ordinance, Rule 3 of the Union's Rules provides that the objects of the Union shall be (among others) -

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"(b) To regulate the regulations and to settle disputes between members and employers by amicable agreements whenever possible.

(c) To obtain and maintain just and proper rates of wages, hours of work, and other conditions of labour, and generally to protect the interest of members."

p.25 l.32

p.31 l.15

5. In June or July, 1954, the Union first began to organise the cement workers at the Respondents' works. They formed a special Cement Workers Branch. In order to recruit members, meetings were held at which the Union's representatives explained to the workers that the Union would take up their grievances and that

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when the Union had gained a majority it would seek bargaining status in order to ask for an increase in wages. By the end of 1954 there were over 200 of the Respondents' workers members of the Union, though this number fell in 1955. According to one witness the number in April, 1956, was 147; according to another it had fallen to 88.

p.26 1.1

p.31 1.28

p.26 1.7

10 6. On the 10th August, 1954, the Union wrote to the Respondents informing them that they were organising the workers at their factory, and expressing the hope that the Union's relations with the Respondents would be amicable. This letter was not answered.

p.85

7. In September 1954, the Respondents established a Works Committee, and held the first elections of workers' representatives to this Committee.

p.24 1.12

20 8. In October, 1955, the Respondents dismissed Clifford Bobb, one of their workmen, a member of the Union, and President of the Cement Workers Branch. His dismissal caused serious dissatisfaction among the workers. The matter was discussed at a meeting of the Branch. On the 19th October, 1955; as a result of this discussion, Carlton Stephen, the General Secretary, wrote to the Respondents asking for an interview to discuss Bobb's case. No reply was sent to this letter. On the 1st November, 1955, a reminder was written. This letter also went unanswered.

p.26 1.25

p.21 1. 2

p.26 1.36

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30 9. On the 9th November, 1955, the Union wrote to the Acting Commissioner of Labour asking him to arrange a meeting between the Union and the Respondents for the purpose of discussing the dispute over Bobb's dismissal. On the 15th

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November, 1955, the Union wrote again to the Acting Commissioner reporting the dismissal by the Respondents of another of their members, one

p.89

40 Edmund Simon, and asking him to arrange with the Respondents to have this matter discussed at the same time as the dispute about Bobb. This matter had been taken up by the Union at the Branch's request.

p.26 1.43

10. On the 29th November, 1955, one Vincent Hartley Edwards, the Acting Senior Labour Officer of the Ministry of Labour, visited the Respondents' office, where he had a conversation with one Johnson, the Respondents' Works Manager. Edwards gave evidence about this meeting at the trial of the action :-

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- p.28 1.24 " I endeavoured to persuade Johnson to agree to the meeting requested. He took the stand broadly that company did not recognise Federated Workers Trade Union and further that it had machinery by way of a Works Committee for dealing with grievances of workmen. He expressed view that this machinery had been working satisfactorily and considered that there was no need for a trade union "
- p.90 On the same day (29th November) Edwards wrote to the Respondents enclosing the Union's letters to the Acting Commissioner and asking for the Respondents comments. On the 10th December, 1955, the Respondents replied stating that they had nothing to add. 10
- p.91 11. On the 13th December, 1955, Edwards wrote to the Union informing them of the Respondents' refusal to recognise the Union and of their consequential unwillingness to discuss with the Union the dismissals of Bobb and Simon. 20
- p.29.1.24 12. On the 7th January, 1956, there was a meeting between the Minister of Labour and one Pryor on behalf of the Respondents. At this meeting, the Minister informed Pryor that he had had representations from the Union complaining about the Respondents' refusal to meet the Union to discuss certain matters, and that the Company's refusal was embarrassing to the Government, which expected employers to afford trade unions opportunity of making representations on behalf of their members. 30
- p.92 13. On the 9th January, 1956, the Respondents wrote to the Minister stating that they were "quite unable to discuss the matters referred to any further".
- p.27 1.5 14. On the 15th March, 1956, there was a meeting of the Cement Workers Branch attended by leading officers of the Union. A resolution was moved that the Head Office of the Union should ask the Government to expedite the appointment of a Board of Inquiry. One witness (Siblal) said at the hearing that the Branch only wanted the Board to enquire into the dismissal of Bobb and Simon. Another witness (Stephen), according to the learned Judge, said that members of the Branch wanted the Union to handle other matters. 40

15. On the 26th March, 1956, the Union's Head Office wrote to the Respondents informing them that the Union represented a substantial majority of the employees and asking to be recognised by the Respondents and to be given bargaining status for the manual workers. A copy of this letter was sent to the Branch. The Respondents did not answer the letter.

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p.31 1.23

10 16. The Union brought the matter of their desire for recognition by the Respondents and of their letter of the 26th March, 1956 to the Commissioner of Labour's attention. On the 4th April, 1956, the Commissioner wrote to the Respondents asking for their co-operation in making a check to ascertain the percentage memberships in the Union of the Respondents' workers.

p.94

17. On the 14th April, 1956, the Respondents replied to the Commissioners :-

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20 "As we have no intention of becoming involved in any way with the Union concerned, we do not feel that any useful purpose would be served by adopting the suggestion contained in your letter."

18. On the 16th April, 1956, the Appellant, Sir Edward Betham Beetham appointed the Appellant, Bernard Benjamin Gillis to be a Board of Inquiry. The Minute of Appointment contained a recital in these terms :-

p. 8

30 "And whereas a dispute exists between Trinidad Cement Limited and certain of its workmen, members of the Federated Workers' Trade Union".

The terms of reference were :-

"(a) To inquire into and report on the causes and circumstances of the said dispute;

40 (b) To inquire into and report on the likely effect (if any) of the said dispute and the causes and circumstances thereof upon industrial relations between employers and employed in the Colony generally or any specified class thereof, having regard to the fact (inter alia) that Trinidad Cement Limited enjoys the status of a pioneer manufacturer under the Aid to Pioneer Industries Ordinance."

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19. Upon the foregoing facts it is submitted that there was abundant evidence of a dispute or difference between the Respondents and their workmen who were members of the Union. The dispute or difference was whether these workmen should be permitted by the Respondents to have as their bargaining agent, or otherwise to be represented by, the Union in respect of any matters which might be the subject of Union representation, such as terms of employment, the conditions affecting labour etc. The dispute or difference was in other words whether the workmen's Union should be "recognised", and was a dispute "connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour" of the workmen within the meaning of the Ordinance.

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p.19 1.35

20. The Respondents appeared before the Board of Inquiry on the 17th April, 1956, and objected to its jurisdiction. The second Appellant then stayed the proceedings, to enable the Respondents to test the validity of the appointment of the Board. On the 25th May, 1956, the Respondents issued a Writ claiming a declaration that the appointment of a Board of Inquiry was ultra vires. By their Statement of Claim, delivered on the 16th June, 1956, the Respondents alleged that no trade dispute within the meaning of the Ordinance had ever existed between them and any of their workmen; they had never accorded recognition to the Union; the first Appellant had never inquired duly, or at all, into the causes or circumstances of the alleged dispute, but had wrongly delegated such enquiries to the second Appellant; and there existed no question, so far as the Respondents and any of their workmen were concerned, which could properly be the subject of an inquiry under the Ordinance. The Respondents therefore claimed a declaration that the appointment of the Board of Inquiry was ultra vires and of no effect, on the grounds that it was not made in accordance with the requirements of the Ordinance, the powers conferred upon the first Appellant had not been properly exercised and the appointment constituted an abuse of the Ordinance. By their Amended Defence, dated the 6th February, 1957, the Appellants contended that a trade dispute did exist between the Respondents and some of their workmen, to wit, whether workmen, being hourly paid employees in the employment of the Respondents, should be permitted to have as their bargaining agent, or otherwise to be represented by, the Federated

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pp. 4-9

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10 Workers' (or any other) Trade Union of which a number of such employes had been and were (or might for the time being be) members in respect of all or any matters which might possibly be the subject of Union representation, including the terms of their employment and the conditions affecting their labour. The Appellants also contended that the first Appellant in his Executive Council on the 13th and 27th March and the 10th April, 1956, before appointing the second Appellant as a Board of Inquiry, inquired into the causes and circumstances of the said trade dispute.

21. The trial was held before Mr. Justice Archer. He gave judgment for the Respondents, and granted a declaration that the appointment of the Board of Inquiry was null and void. He did so upon the ground that there was no dispute. His reasons for this conclusion can be summarised thus :-

20 (a) "He (Siblal, a Branch member and a witness) p.58 11.1-35 said that the branch union was only interested in having Bobb's and Simon's cases enquired into by the Board (of Inquiry) and that the Union in fact only handled these to matters,"

30 (b) "It was not until the 26th March, 1956 that p.59 1.3 the Union applied to the Company for recognition for collective bargaining purposes At this juncture however the Union and the branch union were at cross purposes. The branch union had wanted the Bobb and Simon matters investigated and, let it be assumed, limited recognition extended to the Union for the purpose, but the Union was now more ambitious and wanted full recognition: it had, for the time being at least, relegated the Bobb and Simon dispute to the background and was concentrating on its own claim."

40 (c) "For the first time the Union was asking p.60 1.28 for collective bargaining status and on the ground that it represented a substantial majority of the Company's workmen. This new claim had to be substantiated and until the Company specifically rejected it or it otherwise became clear that the Company did not intend to entertain it despite the altered situation there could not be a trade dispute. There were the potentialities of a trade dispute in the situation dependent upon the

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Company's attitude when it became known to the workmen and upon the workmen's reaction to that attitude, manifested in some way, but the Company's attitude was not known to the workmen on the 16th April, 1956, and there was consequently no opportunity for them to react to it."

- p.60, 1.44 (d) "Further, the point had not been reached at which a difference between the Company and the workmen touched the terms of their employment or the conditions of their labour. There had been no ultimatum on either side and the negotiations had not progressed beyond the initial bargaining stage. If therefore the Union was in fact acting on behalf of the members of the branch union its application for collective bargaining status was in order but it did not give birth to a trade dispute. The prime characteristic of a trade dispute is deadlock and the determination on the part of both sides to the dispute to stand firm. A mere difference in point of view cannot by itself constitute a trade dispute and it is necessary that the view on each side should be persisted in to the point of rigidity." 10
- p.67 1.48 (e) "A stage was never reached at which the Plaintiff Company made it a term of employment of its workmen that they should not be members of a union or the workmen disputed with the Company over such a term of employment." 20
- p.69 1.30 (f) "The Union's two claims could have led to trade disputes but the former was submerged by the latter and the latter was not allowed to develop into a trade dispute." 30

22. As to these reasons the Appellants respectfully submit as follows :-

(i) The matter in dispute throughout had been whether the Respondents should recognise the Union. It was the same matter, whether in the context of the Bobb and Simon cases, or in the context of the letter of the 26th March, 1956. 40

(ii) If the learned judge meant to hold that the Union had no authority from its members employed by the Respondents to make the claim contained in the letter of the 26th March, 1956, the learned judge (it is submitted) was wrong. In this connection

the Appellants will refer to the Rules quoted in paragraph 4 of this Case. Apart from any special provision of the Rules, a Trade Union has implied authority to make such claims on its members' behalf. If ratification were needed, there was evidence of it in the circumstances that a copy of the letter of the 26th March, 1956 was sent to the Branch and that the Branch had at least tacitly approved.

10 (iii) When the Respondents turned down the claim made in the letter of the 26th March, 1956, there was more than "the potentialities" of a dispute. There was a real dispute. So far as the learned judge held that something was needed of the nature of a "deadlock" or of a hardening "to the point of rigidity" he was, (it is submitted) wrong.

20 (iv) There can be a dispute about non-recognition within the meaning of the Ordinance, even though the employer does not go so far as to make it a term of employment that the workmen shall not belong to the union.

(v) If there is a distinction between a "dispute" and a "difference", as the learned judge appears to hold, the provisions of the Ordinance apply both to disputes and to differences.

23. The learned judge found it unnecessary to reach any conclusion upon the question whether the Appellant, Sir Edward Betham Beetham had made due enquiry before appointing the Board of Inquiry.

30 "The Governor, however, it can readily be assumed, had access to all the information afforded by the correspondence between the Federated Workers' Trade Union and the Company, the Company and the Commissioner of Labour and the Union and the Commissioner of Labour, and had been supplied with reports of Edwards' interview with Johnson and Pryor's interview with the Minister of Labour. A possible view is that he had before him enough material to enable him to ascertain the point of view of each side and to determine whether or not a trade dispute existed."

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p.71 1.31

It is submitted that this view is not only possible but right.

RECORD

p.73 l.7

24. The learned judge dealt as follows with the Respondents' contention that the Minute was invalid because it did not sufficiently define the referred dispute :-

"The minute of appointment in this case follows what appears to be common form but the omission to name the trade dispute while perhaps unobjectionable did not dispense with the necessity for its existence nor confer jurisdiction where there was none."

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25. The Appellants respectfully submit that the Order of the Supreme Court of Trinidad and Tobago was wrong and ought to be reversed, and that this appeal ought to be allowed, for the following (among other)

R E A S O N S

- (1) BECAUSE there was a dispute, alternatively a difference, between the Respondents and such of their workmen as were members of the Union, whether the workmen should be permitted to have as their bargaining agent, or otherwise to be represented by, the Union, in respect of all or any matters which might possibly be the subject of Union representation, including the terms of their employment and the conditions affecting their labour. 20
- (2) BECAUSE the Union acted throughout as the agent of the members of the Union employed by the Respondents..
- (3) BECAUSE the dispute or difference was "connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour" of the said workmen. 30
- (4) BECAUSE the appointment by the first Appellant of the second Appellant to be a Board of Inquiry was in every respect regular and proper and in accordance with the Ordinance.

B. MacKENNA

J.G. Le QUESNE

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B E T W E E N :

SIR EDWARD BETHAM BEETHAM, K.C.M.G.,
C.V.O., O.B.E., and
BERNARD BENJAMIN GILLIS, Q.C., M.A.
Appellants

-- and --

TRINIDAD CEMENT, LIMITED
Respondents

C A S E

for the

A P P E L L A N T S

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