



30, 1959

1.

IN THE PRIVY COUNCIL

No. 29 of 1958

O N A P P E A L

55463

FROM THE SUPREME COURT OF TRINIDAD AND TOBAGO

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.
... (Defendants) Appellants

and

TRINIDAD CEMENT LIMITED (Plaintiffs) Respondents

C A S E for the RESPONDENTS

Record

10 1. THIS is an Appeal, by leave of that Court, from
a Judgment of the Supreme Court of Trinidad and
Tobago (Archer J.) dated the 14th day of November,
1957, whereby it was declared that the appointment
by the Appellant Sir Edward Betham Beetham, K.C.M.G.,
C.V.O., O.B.E., the Governor of the Colony of
Trinidad and Tobago (hereinafter called "the
Governor") in purported exercise of the powers
conferred upon him by Section 8 of the Trade Disputes
(Arbitration and Inquiry) Ordinance, Chapter 22
20 No.10 of a Board of Inquiry as set out in a certain
Minute of Appointment dated the 16th day of April,
1956, was null and void, and whereby leave was
given to the Respondents to move for an injunction
restraining the Appellant Bernard Benjamin Gillis
from entering upon proceeding with or otherwise,
acting in pursuance of the said Minute of Appoint-
ment, if it should become necessary by reason of
any further action on his part.

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pp. 49-75

30 2. THE said Section 8 of the Trade Disputes
(Arbitration and Inquiry) Ordinance provides inter
alia as follows:-

"(1) Where any trade dispute exists or is appre-
hended the Governor may, whether or not the
dispute is reported to him under this
Ordinance, inquire into the causes and cir-
cumstances of the dispute, and, if he thinks
fit, refer any matters appearing to him to be
connected with or relevant to the dispute to
40 a Board of Inquiry (hereinafter referred to
as "the Board") appointed by him for the

Record

purpose of such reference, and the Board shall inquire into the matters referred to it and report thereon to the Governor.

(2)

(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) The Board may act notwithstanding any vacancy in their number." 10

P.49
Ll. 1-4

3. THERE is no dispute as to the facts: and the sole questions for determination upon this Appeal are whether having regard to the proper inferences to be drawn from the facts and the principles of law to be applied to them

(a) There was in existence a trade dispute between the Respondents and any of their workmen on the 16th day of April, 1956;

(b) If any such dispute did exist, whether the Governor made due inquiry into the causes and circumstances thereof before appointing a Board of Enquiry into such dispute on that day; and 20

(c) If so, whether in any event the Governor made a valid reference to the said Board of Inquiry.

The Respondents have throughout contended that each of these questions should be answered in the negative.

Pp.49-55

4. THE undisputed facts, substantially as set out in the Judgment of Mr. Justice Archer, are as follows: 30

(i) The Respondents who own and operate quarries and a factory for the manufacture of cement at Claxton Bay in the said Colony enjoy certain privileges under the Cement Industry (Development) Ordinance Ch. 33 No. 17. The Respondents commenced construction of their factory in 1953, employing for the purpose about 500 hourly paid workmen. Construction of the factory was completed in 1954 and production began with a reduced labour force of approximately 300 hourly paid workmen; 40

- 10 (ii) About June or July 1954 the Federated Workers Trade Union (hereinafter sometimes referred to as "the Union") which had been registered under the Trade Unions Ordinance Ch.22 No. 9 since 1934 and embraced among its members persons engaged in various industrial undertakings as well as public employees, started organising the workers employed by the Respondents at their factory. On the 10th. August, 1954 the general secretary of the Union informed the general manager of the Respondents by letter that it was organising these workers and had made considerable progress in its drive for membership in the Union and expressed the conviction that its relations with the Respondents would at all times be amicable and that trade union organisation in the Respondents would be lasting and beneficial:
- 20 (iii) The Respondents had meanwhile established a works committee, the first elections to which took place in September, 1954. The Committee comprised representatives of the management of the Respondents and of the workmen, one representative being elected from each of the four sections or categories of workmen, and was a body set up to receive and consider suggestions for improvement in the working conditions of the men and to provide a liaison between them and the Respondents. There was no evidence as to the response which the creation of the committee evoked, but by the middle of 1955, when the second annual election of workers' representatives took place, 90% of the workmen voted for the four representatives;
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- 40 (iv) The Union claimed to have achieved a membership of 200 of the Respondents' workmen by the end of 1954 but it took no steps then to seek recognition from the Respondents as their bargaining agent. Their organised and area representative for the South, Siblal, said that there was a gradual decline in membership in the early part of 1955 but that late in 1955 membership improved and that the membership in April 1956 was 88 workmen. In this he was at variance with Stephen, the assistant general secretary of the Union, who said that there were 147 members in April 1956;

- (v) The Respondents' workmen recruited as members of the Union formed Branch of the Union. Among them was Bobb (who was president of the Branch) and Simon, an ordinary member. Bobb was dismissed from the service of the Respondents on the 15th October, 1955 for alleged dereliction of duty and the general secretary of the Union wrote to the general manager of the Respondents on the 19th October 1955 asking for an early interview with him to discuss the dismissal. To this letter the Respondents made no reply and the general secretary of the Union wrote again on the 1st November, 1955. This letter the Respondents also ignored. Meanwhile the question of the dismissal was discussed at a meeting of the Branch union which authorised the matter to be taken up immediately, presumably by the executive of the Union; 10
- (vi) The dismissal of Bobb was mentioned at a meeting of the works Committee of the Respondents on the 28th October, 1955 and the reason for the dismissal given. There was no demur by the representatives of the workmen nor any protest or sign of dissatisfaction from the workmen when the minutes of that meeting were later displayed on notice boards to which they had access. There was no evidence that the dismissals were retaliatory on the part of the Respondents for trade union activity by Bobb and Simon; 20 30
- (vii) On the 9th November, 1955, the Union wrote to the Acting Commissioner of Labour complaining about the non-receipt of replies to its two letters to the Respondents and asking the Commissioner to arrange a meeting under his chairmanship between the Respondents and Union representatives to discuss Bobb's dismissal;
- (viii) Simon was dismissed from the service of the Respondents on a date not given in evidence but which must have been subsequent to the dismissal of Bobb. The Union was apprised of Simon's dismissal after its letter to the Commissioner for Labour had been despatched, and on the 15th November, 1955 it wrote to the Commissioner informing him of the report it had received concerning Simon and asking 40

10 him to arrange to have Simon's dismissal discussed with the Respondent on the same day on which Bobb's dismissal was, as it had suggested in its letter of the 9th November, 1955, to be discussed. Simon's dismissal, like Bobb's dismissal, was discussed by the Branch union and the Branch union directed that the matter be taken up. At subsequent meetings of the Branch union both dismissals were discussed;

20 (ix) On the 29th November, 1955 Edwards, an official of the Labour Department, interviewed Johnson, works manager of the Respondents in connection with the two letters which the Union had written the Commissioner of Labour and endeavoured to persuade him to agree to the holding of the meeting which the Union had suggested. So far as Johnson was competent to express it, the Respondents' attitude to the Union's approach was, in Edwards' words, : "Johnson took the stand broadly that the Respondents did not recognise the Federated Workers' Trade Union and further that they had machinery by way of a works committee for dealing with the grievances of their workmen. He expressed the view this machinery had been working satisfactorily and considered that there was no need for a trade union. He also said that

30 the Respondents were abundantly justified in the action taken in dismissing Bobb and Simon."

40 (x) Edwards told Johnson that the fact that the Respondents felt justified over the dismissals was not a sufficient reason for declining to discuss the matter with the Union and added that the fact that the works committee had functioned satisfactorily in the past was not enough to deny the workers the right to be represented by a trade union. Johnson maintained his stand, namely that the Respondents were not willing to meet the Union to discuss the dismissals. Edwards told him that it was possible that the Union would at a later stage request recognition for purposes of collective bargaining and outlined the Government's industrial relations policy to him. Edwards summarised that policy in these words: "Government

expects employers to accord recognition to, and deal with, trade unions' representative of their work people on matters concerning the terms and conditions of employment of those work people."

- (xi) Subsequent to Edwards' conversation with Johnson and later the same day the Commissioner of Labour wrote to the resident director of the company forwarding copies of the Union's letters of the 9th and 15th November, 1955, to him and asking for his comments on them. The resident director, Mount, was ill and away from work on the 29th November, 1955 and it was because of his absence that Edwards had spoken with Johnson; 10

- (xii) Johnson briefly replied to the Commissioner's letter on the 10th December, 1955, thanking the Commissioner for his letter of the 29th November, 1955 and stating that there was nothing which the Respondents could usefully add to the information already given him. The Commissioner of Labour informed the Union that the Respondents did not recognise it and was not prepared to meet its representatives to discuss the dismissal of Bobb and Simon and on the 13th December, 1955 he wrote to the resident director of the company telling him that he had so informed the Union; 20

- (xiii) On the 7th January, 1956, a meeting at which Edwards was present took place between the Minister of Labour and Pryor, the Respondents' accountant, who contributed nothing to the discussion. The Minister told Pryor that the Union had complained to him that the Respondents had refused to discuss certain matters with it, that the Government expected employers to afford trade unions the opportunity of making representations on behalf of their members, that the Respondents' refusal to meet the Union was a source of embarrassment to the Government and that the position was aggravated by reason of the fact that the Respondents enjoyed pioneer status, and that if the Respondents persisted in its attitude he would consider reporting the matter to the Executive Council of the Government with a view to having an inquiry instituted. He requested a reply from the 30
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Respondents by the 9th January, 1956 so as to be in a position to make a report, if necessary, to the Executive Council, on the 10th January, 1956, and Pryor undertook to place before his principals what the Minister had said to him;

10 (xiv) On the 9th January, 1956, Johnson wrote to the Minister explaining that Pryor had been unable to communicate to the resident Director of the Respondents what the Minister had told him because the resident director was absent from office but re-iterating that the Respondents were quite unable to discuss the matters referred to any further;

20 (xv) On the 26th March 1956 the general secretary of the Union wrote to the general manager of the Respondents informing him that the Union now represented a substantial majority of the Respondents' employees and applying for bargaining status for the Respondents' manual workers. This letter further informed the Respondents that the Commissioner of Labour was being asked to obtain from the Respondents the names and number of their employees for comparison with the Union's membership with a view to substantiating the Union's claim to bargaining rights. The Respondents did not reply to this letter. On the 4th April 1956, the Commissioner of Labour wrote to 30 the senior resident director of the Respondents inquiring whether or not the Respondents were agreeable to the Labour Department carrying out the check suggested by the Union. On the 14th April, 1956 the Respondents in a letter to the Commissioner of Labour, stated that it had no intention of becoming involved in any way with the Union and that accordingly no useful purpose would be served by a check of union membership 40 among their employees by the Labour Department;

(xvi) The Claxton Bay Branch of the Union is no longer in existence.

P.27
Ll.45-48

5. ON the 16th day of April, 1956 the Governor by a Minute of Appointment which recited that under the Trade Disputes (Arbitration and Inquiry) Ordinance Ch.22 No.10 the Governor was empowered to

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refer to a Board of Inquiry any matters appearing to him to be connected with or relevant to a trade dispute whether existing or apprehended and that a dispute existed between the Respondents and certain of its workmen, members of the Federated Workers' Trade Union, the Governor appointed or purported to appoint the Appellant Gillis to constitute a Board of Inquiry, with the following terms of reference:

- (a) To inquire into and report on the causes and circumstances of the said dispute; 10
- (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 Ch.33 No.3

P.53
Ll.37-39

6. THE Respondents appeared by solicitor before the Board on the 17th day of April, 1956, and objected to its jurisdiction, whereupon its proceedings were stayed to enable the Respondents to test the validity of the Board's appointment. 20

Pp.1-3

7. THE Writ in this action was accordingly issued on the 25th day of May, 1956, claiming a declaration that the appointment of the said Board of Inquiry was ultra vires, and an injunction restraining the Appellant Gillis from entering upon, proceeding (or alternatively, further proceeding) with or otherwise acting in pursuance of the said appointment. 30

P.14 1.29-
P.15 1.5

8. IN paragraph 2A of their amended Defence herein the Appellants allege that on the 16th day of April 1956 a trade dispute did exist between the Respondents and some (if not all) of their workmen, namely whether workmen, being hourly-paid employees in the employment of the Plaintiff Company (which is a company enjoying special privileges by statute as a pioneer manufacturer) should be permitted to have as their bargaining agent, or otherwise to be represented by, the Federated Workers (or any other) Trade Union of which a number of such employees were and are (or may 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. 40

9. IN paragraph 2B of their amended Defence herein the Appellants allege that the Governor did in his Executive Council on the 13th and 27th days of March and the 10th day of April, 1956, before appointing the Appellant Gillis as a Board of Inquiry under the provisions of the Trade Disputes (Arbitration and Enquiry) Ordinance Ch.22 No. 10 inquire into the causes and circumstances of the said trade dispute thereinbefore alleged. P.15
Ll.6-15
- 10 10. AS is apparent from the narrative of fact as set out in paragraph 4 hereof, on the 16th day of April, 1956 there was no dispute of any nature whatsoever between the Respondents and their workmen and even if there was a disagreement between the Respondents and the Union as to the bargaining status of the Union (a matter raised for the first time in their letter of the 26th March, 1956) there is no evidence that the Union's claims were supported by the employees of the Respondents, or that the disagreement had reached the stage of being a trade dispute. 20
11. IT is also apparent from the said narrative of fact that it was not until the 14th day of April, 1956, that the Respondents made their reply to the Union's request for bargaining status, and then such reply was made to the Commissioner of Labour and not direct to the Union. It would neither have been physically possible nor indeed is it pleaded on behalf of the Appellants that the Governor made due inquiry into the causes and circumstances of the dispute between the 14th day of April, 1956 (which is the earliest possible day upon which any such dispute as was subsequently alleged or pleaded could have arisen) and the 16th day of April, 1956, when he appointed the Board of Inquiry. 30
12. IT is also apparent from the terms of reference of the Board of Inquiry that the trade dispute into which the Board was ostensibly appointed to enquire was not formulated in any manner whatsoever.
- 40 13. Mr. Justice Archer in his Judgment herein held that there was on the 16th day of April, 1956, no trade dispute between the Respondents and their workmen in existence; that as there was no such trade dispute the question of whether the Governor made due enquiry before appointing the Board of Inquiry did not arise; and that under these circumstances the question whether the actual reference P.69
Ll.47-49
P.71
Ll.43-47
P.74
Ll.26-29

itself was ultra vires also did not arise for discussion as the foundation for the reference was unreal and the reference consequently invalid.

Pp.75-76

13. THE Supreme Court of Trinidad and Tobago accordingly granted the declaration claimed by the Writ herein, but, having regard to the dissolution of the Branch of the Union, which robbed the threat by the Appellant Gillis to continue the proceedings of a great deal of its force, did not grant the injunction claimed, but in lieu thereof gave the Respondent liberty to apply for one, if this should become necessary owing to any further activity on his part.

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P.74
Ll.30-36

P.84

14. AGAINST the said Judgment of the Supreme Court this Appeal is now preferred, final leave so to do having been granted by the Supreme Court on the 3rd day of June, 1958.

15. THE Respondents humbly submit that this Appeal should be dismissed for the following among other

R E A S O N S

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(1) Because there was not on the 16th day of April, 1956, any such trade dispute as alleged by the Appellants concerning the Respondents in existence.

(2) Because if any such dispute did exist the Governor had made no inquiry into the causes and circumstances thereof as required by Section 8 (1) of the Trade Disputes (Arbitration and Inquiry) Ordinance before appointing the said Board of Inquiry.

(3) Because the reference to the said Board of Inquiry could not in any event be valid, since the subject matter of the said inquiry was not formulated with sufficient precision.

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(4) Because, for the reasons therein stated, the Judgment of the Supreme Court was right.

RAYMOND WALTON

IN THE PRIVY COUNCIL

No. 29 of 1958

ON APPEAL

FROM THE SUPREME COURT OF TRINIDAD
AND TOBAGO

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.
(Defendants) ... Appellants

— and —

TRINIDAD CEMENT LIMITED
(Plaintiffs) ... Respondents

C A S E

FOR THE RESPONDENTS.

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