

~~pe~~
G. N. 4.2

30, 1959

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.

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT OF</u> <u>TRINIDAD AND TOBAGO.</u>		
1	Writ of Summons	25th May 1956	1
2	Statement of Claim and Annexure "A" Letter Ministry of Labour, Industry and Commerce to Plaintiffs.	16th June 1956 16th April 1956	4 7
3	Defence	10th October 1956	9
4	Letter Plaintiffs' Solicitors to Crown Solicitor.	16th October 1956	10
5	Letter Crown Solicitor to Plaintiffs' Solicitors.	25th October 1956	11

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED

LEG

- 9 MAR. 1950

25 RUSSELL SQUARE

LONDON, W.C.1

55462

	Description of Document	Date	Page
	Summons to strike out Defence	25th October 1956	12
7	Letter Crown Solicitor to Plaintiffs' Solicitors	23rd January 1957	13
8	Amended Defence	6th February 1957	14
9	Order of Mr. Justice Watkin-Williams	18th February 1957	15
10	Judges Notes of Plaintiffs' Opening Address	8th October 1957	16
	<u>PLAINTIFFS EVIDENCE</u>		
11	Ronald Styan Leinster	8th and 9th October 1957.	19
12	Judges Notes of Defendants Opening Address	9th October 1957	24
	<u>DEFENDANTS EVIDENCE</u>		
13	Arthur Siblal	9th October 1957	25
14	Vincent Hartley Edwards	9th October 1957	28
15	Carlton Stephen	9th October 1957	31
16	Vincent Hartley Edwards (Recalled)	9th October 1957	32
17	Judges Notes of Defendants Final Address	9th, 10th, 11th October 1957	32
18	Judges Notes of Plaintiffs Final Address	11th and 14th October 1957	43
19	Judgment of Mr. Justice Archer	14th November 1957	49
20	Formal Judgment	14th November 1957	75

No.	Description of Document	Date	Page
21	Affidavit verifying Petition for leave to appeal to Her Majesty in Council	5th December 1957	76
22	Petition for leave to Appeal to Her Majesty in Council and Annexure "A" Minute of Appointment	5th December 1957	77
23	Order granting conditional leave to appeal to Her Majesty in Council	7th January 1958	82
24	Order granting final leave to appeal to Her Majesty in Council	3rd June 1958	84

E X H I B I T S.

Exhibit Mark	Description of Document	Date	Page
R.S.L.I.	(a) Letter Federated Workers' Trade Union to Plaintiffs	10th August 1954	85
	(b) Letter Federated Workers' Trade Union to Plaintiffs	19th October 1955	86
	(c) Letter Federated Workers' Trade Union to Plaintiffs	1st November 1955	87
	(d) Letter Federated Workers' Trade Union to Acting Commissioner of Labour	9th November 1955	88

Exhibit Mark	Description of Document	Date	Page
	(e) Letter Federated Workers' Trade Union to Acting Commissioner of Labour	15th November 1955	89
	(f) Letter Acting Commissioner of Labour to Plaintiffs	29th November 1955	90
	(g) Letter Plaintiffs to Acting Commissioner of Labour	10th December 1955	90
	(h) Letter Acting Commissioner of Labour to Plaintiffs	13th December 1955	91
	(i) Letter Plaintiffs to Minister of Labour, Commerce and Industry	9th January 1956	92
	(j) Letter Federated Workers' Trade Union to Plaintiffs	26th March 1956	93
	(k) Letter Commissioner of Labour to Plaintiffs	4th April 1956	94
	(l) Letter Plaintiffs to Commissioner of Labour	14th April 1956	95
R.S.L.2.	Extract from Minutes of Works Committee meeting.	28th October 1955	96
R.S.L.3.	Minutes of Works Committee Meeting	29th May 1956	97
A.S.1.	Rules of the Federated Workers' Trade Union	(Separate document)	
V.H.E.1.	Secretariat Circular No.21	19th October 1955	99
A.	Report in Trinidad Guardian on recognition of Federated Workers' Trade Union.	15th September 1954	100

List of Documents not Transmitted

Description of Documents	Date
1. Entry of Appearance by Defendants.	30th May 1956
2. Affidavit of F.R.L. Power and exhibits attached thereto sworn.	25th October 1956
3. Summons for Directions issued.	27th March 1957
4. Letter from Registrar to Plaintiffs' Solicitors.	5th April 1957
5. Letter from Plaintiffs' Solicitors to Registrar.	5th April 1957
6. Order for Directions	5th April, 1957
7. Registrar's Certificate of Taxation of Plaintiffs bill of 5th April 1957	12th April 1957
8. Entry of action for trial	17th April 1957
9. Summons by Plaintiffs to fix trial issued.	15th May 1957
10. Affidavit of F.R.L. Power in support sworn.	15th May 1957
11. Order of Watkin-Williams J. fixing date of hearing.	20th May 1957
12. Letter Plaintiffs' Solicitors to Registrar	21st May 1957
13. Praecipes for Writs of Subpoenas	
14. Affidavit of G.E.Thompson, of service, Exhibit thereto sworn.	7th October 1957
15. Registrar's Certificate of taxation of Plaintiffs' costs of suit.	31st January 1958
16. Plaintiffs' bill of costs filed.	12th December 1957
17. Exhibit listed hereunder. V.H.E. 2 General Industrial Trade Unions and Labour Relations in Trinidad (Dally Report)	

IN THE PRIVY COUNCIL

No. 29 of 1958

ON APPEAL

FROM THE SUPREME COURT OF TRINIDAD
AND TOBAGO

BETWEEN

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)

10

APPELLANTS.

- and -

TRINIDAD CEMENT LIMITED (Plaintiffs)

RESPONDENTS.

RECORD OF PROCEEDINGS

NO.1

WRIT OF SUMMONS

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD
AND TOBAGO

20

No.425 of 1956

BETWEEN

TRINIDAD CEMENT LIMITED Plaintiffs

And

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.

30

ELIZABETH II by the Grace of God
of the United Kingdom of
Great Britain and Northern
Ireland and of Her other
Realms and Territories, Queen,
Head of the Commonwealth,
Defender of the Faith.

In the
Supreme Court
of Trinidad
and Tobago.

No.1
Writ of Summons
25th May 1956.

To: SIR EDWARD BETHAM BEETHAM, K.C.M.G., C.V.O.
O.B.E., Governor and Commander in Chief in and

In the
Supreme Court
of Trinidad
and Tobago.

over the Colony of Trinidad and Tobago, and
To BERNARD BENJAMIN GILLIS Q.C., M.A., 1, Hare
Court Temple, E.C. London.

No.1
Writ of Summons
25th May 1956
continued.

We command you that within eight days after
the service of this Writ on you, inclusive of
the day of such Service, you do cause an appear-
ance to be entered for you in our Supreme Court,
Port-of-Spain, in an action at the suit of
TRINIDAD CEMENT LIMITED and take notice that in
default of your so doing, the Plaintiffs may pro- 10
ceed therein, and judgment may be given in your
absence.

Witness: The Honourable Sir Joseph Leon
Mathieu-Perez, Kt., Chief Justice of our said
Court at Port-of-Spain, in the said Island of
Trinidad, this 25th day of May, 1956.

N.B. - This Writ is to be served within
twelve calendar months from the date hereof, or
if renewed within six calendar months from the
date of the last renewal, including the day of 20
such date and not afterwards.

The Defendant may appear hereto by enter-
ing an appearance either personally or by Soli-
citor at the Registrar's Office, at the Court
House, in the Town of Port-of-Spain.

If the Defendant enter an appearance
must also deliver a defence within four-
teen days from the last day of the time limited
for appearance, unless such time is ex- 30
tended by the Court or a Judge, otherwise judg-
ment may be entered against without
notice, unless in the meantime been
served with a summons for
judgment.

The Plaintiffs' claim is.

1. A declaration that the appointment by the
Defendant Sir Edward Betham Beetham (hereinafter
referred to as "His Excellency the Governor) in
purported exercise of the powers conferred upon
him by Section 8 of the Trade Disputes (Arbitra- 40
tion and Inquiry) Ordinance, Chapter 22 No.10, of a
Board of Inquiry as set out in the Notice to the
Plaintiff company dated the 16th day of April
1956 is ultra vires, and, therefore, null and

void and of no effect for all or any of the following reasons :-

In the
Supreme Court
of Trinidad
and Tobago.

- (a) that the same was not made in accordance and/or in conformity with the requirements of the statute;
- (b) that the powers and duties conferred upon His Excellency the Governor were not duly or properly exercised;
- (c) that the said appointment constitutes, in the true circumstances of the case an abuse of the said statute.

No.1

Writ of Summons

25th May 1956.
continued.

10

2. An injunction restraining the Defendant Bernard Benjamin Gillis from entering upon, proceeding (or, alternatively, further proceeding) with or otherwise acting in pursuance of, the said appointment.

3. Costs.

4. Such further or other relief as the nature of the case may require.

20

The Defendant Sir Edward Betham Beetham, K.C.M.G., C.V.O., O.B.E., is and was at all material times the Governor of the Colony of Trinidad and Tobago and the person authorised to appoint a Board of Enquiry and to give consequential directions by virtue of the said Ordinance and is so sued.

30

The Defendant Bernard Benjamin Gillis, Q.C. M.A., is sued as the person appointed to constitute the said Board of Enquiry and threatening and intending to proceed under the said appointment.

This Writ was issued by Messrs. J.D.SELLIER & COMPANY of Nos.11a & 13 St.Vincent Street, Port of Spain (and whose address for service is the same) Solicitors for the said Plaintiffs whose registered office is situate at No.11 Park Street, in the City of Port of Spain.

Sgd: J.D.Sellier & Co.
Plaintiffs' Solicitors.

40

This Writ was served by me
at
on the Defendant on the
day of
Endorsed the day of

In the
Supreme Court
of Trinidad
and Tobago.

NO.2

STATEMENT OF CLAIM AND ANNEXURE

TRINIDAD

No.2

IN THE SUPREME COURT OF TRINIDAD
AND TOBAGO

Statement of
Claim and
Annexure.

No.425 of 1956

16th June 1956

Writ issued the 25th day of May 1956

BETWEEN

TRINIDAD CEMENT LIMITED Plaintiffs

And

10

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.

1. The Plaintiff Company, is duly incorporated under the Companies Ordinance Chapter 31 No.1 of the revised laws of the Colony and has its registered office at No.11 Park Street, in the City of Port of Spain, acquired in pursuance of an order made under the provisions of the Cement Industry (Development) Ordinance Chapter 33 No.17 by the Governor in Council and published in a supplement to the Royal Gazette dated the 10th day of December 1951 and has at all times material to this action owned and operated certain quarries and a factory for the manufacture of cement at Claxton Bay in the Island of Trinidad.

20

2. The Defendant Sir Edward Betham Beetham, K.C.M.G., C.V.O., O.B.E., (hereinafter referred to as "His Excellency the Governor") is (and was at all material times) the Governor of this Colony and as such the person empowered by the provisions of the Trade Disputes (Arbitration and Enquiry) Ordinance Chapter 22 No.10 inter alia, to appoint Boards of Enquiry thereunder and is so sued.

30

3. The Defendant Bernard Benjamin Gillis is one of Her Majesty's Counsel, exercising the practice of his profession in England.

In the
Supreme Court
of Trinidad
and Tobago.

4. By a letter dated the 16th April, 1956, the Plaintiff Company was informed (and the fact was) that his Excellency the Governor had appointed the Defendant Bernard Benjamin Gillis to be a Board of Enquiry under the provisions of the said Ordinance in the terms therein more fully set forth.

No.2

Statement of
Claim and
Annexure.

10

A copy of the said letter is hereto attached and marked "A".

16th June 1956
continued.

5. In truth and in fact,

(a) No dispute or alternatively, no trade dispute within the meaning of the Ordinance exists (or ever existed) between the Plaintiff Company and any of its workmen;

(b) The Plaintiff Company has never accorded recognition to the Federated Workers' Trade Union in the said letter referred to;

20

(c) His Excellency the Governor has (himself) never duly or at all inquired into the causes or the circumstances of the alleged (or any) dispute between the Plaintiff Company and any of its workmen, but

(d) His Excellency the Governor has wrongly delegated to the Defendant Bernard Benjamin Gillis the duty and burden of making the said enquiries; and

30

(e) There in fact exists no question which falls properly (or at all) to be enquired into under the said Ordinance in so far as the Plaintiff Company and any of its workmen are concerned.

The Plaintiff Company contends :-

(a) That it is a condition precedent to the appointment of any such Board of Enquiry

(1) That a trade dispute within the meaning of the Ordinance should exist, and

In the
Supreme Court
of Trinidad
and Tobago.

No.2
Statement of
Claim and
Annexure.
16th June 1956
continued.

(2) That His Excellency the Governor should personally and duly enquire into the causes and circumstances of any such (or any such alleged) dispute;

(b) That it is not competent for His Excellency the Governor to delegate the said enquiries to a Board or to any other person or persons; and

(c) That any matter or matters connected with the economic or industrial conditions in the Colony, which may be referred to a Board of Enquiry under the said Ordinance must be relevant to (and arise out of) a trade dispute within the meaning of the Ordinance, and, therefore, 10

(d) That His Excellency the Governor could not lawfully and/or properly refer either of the said matters under the provisions of the said Ordinance. 20

The Defendant Bernard Benjamin Gillis entered upon the said enquiries on the 17th day of April, 1956, and threatens (and intends) to proceed therewith and otherwise act under the said appointment, unless restrained by order of this Honourable Court.

The Plaintiff Company, therefore, claims:-

1. A declaration that the appointment by His Excellency the Governor in purported exercise of the powers conferred upon him by Section 8 of the Trade Disputes (Arbitration and Inquiry) Ordinance, Chapter 22 No.10, of a Board of Inquiry as set out in the Notice to the Plaintiff Company dated the 16th day of April 1956 is ultra vires, and, therefore null and void and of no effect for all or any of the following reasons:- 30

(a) that the same was not made in accordance and/or in conformity with the requirements of the statute;

(b) that the powers and duties conferred upon His Excellency the Governor were not duly or properly exercised. 40

(c) that the said appointment constitutes, in the true circumstances of the case an abuse of the said statute.

In the
Supreme Court
of Trinidad
and Tobago.

2. An injunction restraining the Defendant Bernard Benjamin Gillis from entering upon, proceeding (or, alternatively, further proceeding) with, or otherwise acting in pursuance of, the said appointment.

No.2

Statement of
Claim and
Annexure.

3. Costs.

10

4. Such further or other relief as the nature of the case may require.

16th June 1956
continued.

Sgd: Eric Butt,
Of Counsel.

Delivered this 16th day of June 1956 by Messrs. J.D.Sellier & Company, of Nos.11a and 13, St. Vincent Street, Port of Spain, Solicitors for the Plaintiffs.

Sgd: J.D.Sellier & Co.
Plaintiffs' Solicitors.

20

ANNEXURE "A" - Letter Ministry of Labour,
Industry and Commerce to Plaintiffs.

No.2

Ministry of Labour,
Industry and Commerce,
Government Buildings,
Knox Street,
PORT OF SPAIN.

Annexure "A"
to Statement
of Claim.

16th June 1956

16th April, 1956.

30

R.L.Leinster, Esq.,
Resident Director,
Trinidad Cement Limited,
Park Street,
PORT OF SPAIN.

Sir,

I have the honour to inform you that Mr.

In the
Supreme Court
of Trinidad
and Tobago.

Bernard B. Gillis, Q.C., has been appointed in
the terms of the following Minute of Appointment
to be a Board of Inquiry under the Trade Disputes
(Arbitration and Inquiry) Ordinance:

No.2

Annexure "A"
to Statement
of Claim.

16th June 1956
continued.

Minute of Appointment

WHEREAS by the Trade Disputes (Arbitration
and Inquiry) Ordinance Ch. 22 No.10 the Gov-
ernor is empowered to 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, as well as
any matter connected with the economic or in-
dustrial conditions in the Colony: 10

AND WHEREAS a dispute exists between Trini-
dad Cement Limited and certain of its work-
men, members of the Federated Workers' Trade
Union:

NOW THEREFORE the Governor by virtue of
the powers vested in him by the said Ordin-
ance and of all other powers enabling him in
that behalf, appoints Mr. Bernard B. Gillis,
M.A. (Cantab.), one of Her Majesty's Counsel,
to constitute a Board of Inquiry. 20

AND the Governor directs that the terms of
reference to the Board shall be as follows:-

- (a) To inquire into and report on the
causes and circumstances of the said
dispute;
- (b) to inquire into and report on the like-
ly effect (if any) of the said dispute
and the causes and circumstances there-
of upon industrial relations between
employers and employed in the Colony
generally or any specified class there-
of, having regard to the fact (inter
alia) that Trinidad Cement Limited en-
joys the status of a pioneer manufac-
turer under the Aid to Pioneer Indus-
tries Ordinance Ch.33 No.3. 30

2. His Excellency the Governor has been pleased
to appoint Mr. Peter Grannum, Labour Officer, to
be Secretary to the Board of Inquiry. 40

3. A Similar letter has been sent to the General Secretary Federated Workers' Trade Union.

In the Supreme Court of Trinidad and Tobago.

I have the honour to be,

Sir,

Your obedient servant,

Sgd: G. McEachrane

For Minister of Labour,
Industry and Commerce.

No.2

Annexure "A"
to Statement
of Claim.

16th June 1956
continued

"A"

10 This is the copy letter referred to in the prefixed Statement of Claim as thereto attached and marked "A".

Sgd: J.D.Sellier & Co.,
Plaintiffs' Solicitors.

NO. 3

No.3

DEFENCE

Defence.

10th October
1956.

TRINIDAD.

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.

20 No. 425 of 1956

BETWEEN

TRINIDAD CEMENT LIMITED Plaintiff

And

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.

30 Defence of the above-named Defendants, delivered by their Solicitor, the Crown Solicitor of No.7 St.Vincent Street, Port of Spain, this 10th day of October, 1956.

Sgd: J.A.V. Harper,
for Crown Solicitors,
Solicitor for the Defendants.

1. The Defendants admit the allegations of fact

In the
Supreme Court
of Trinidad
and Tobago.

No.3

Defence
10th October
1956.
continued

contained in paragraphs 1, 2, 3, 4 and 5(b)
of the Statement of Claim herein.

- 2. The Defendants specifically deny each and every allegation in paragraph 5 (save the allegation in (b) thereof) of the said Statement of Claim.
- 3. The Defendants specifically deny each and every contention or allegation contained in paragraph 6 of the said Statement of Claim.
- 4. The said Statement of Claim discloses no cause of action against either Defendant. 10
- 5. The Plaintiff Company is not, on the allegations contained in the said Statement of Claim or in the circumstances of the case or at all entitled to any of the relief therein claimed.

Sgd: Ellis Clarke,
of Counsel.

No.4

Letter - Plain-
tiffs Solicitors
to Crown
Solicitor.

16th October
1956.

No.4

LETTER - Plaintiffs Solicitors to
Crown Solicitor.

20

FRLP:VB.
P.O. BOX 116.

13 St.Vincent Street,
Port of Spain,
Trinidad,
16th October, 1956.

The Crown Solicitor,
7 St. Vincent Street,
Port of Spain.

Dear Sir,

Supreme Court Action No.425 of 1956.

30

Trinidad Cement Limited vs. Sir Edward
Betham Beetham and Bernard Benjamin Gillis

We have been directed by Counsel to draw your attention to the fact that your Defence is a series of mere denials and sets up no affirmative case, particularly with reference to the allegations contained in paragraph 5 (a), (c) and (e).

We have, therefore, to inquire whether it is your intention to set up any affirmative case on any of these matters because, if you do, we wish to be informed of the nature of each such case with full particulars thereof.

In the Supreme Court of Trinidad and Tobago.

Please oblige us by giving this matter your attention before the 20th instant.

No.4

Yours faithfully,

Sgd: J.D.Sellier & Co.

Letter -
Plaintiffs
Solicitors to
Crown Solicitor

16th October
1956.
continued.

10

No.5

LETTER - Crown Solicitor to
Plaintiffs Solicitors.

No.5

Letter -
Crown Solicitor
to Plaintiffs
Solicitors.

CROWN SOLICITOR'S DEPARTMENT,
7 ST.VINCENT STREET,
PORT OF SPAIN.

25th October
1956.

3745/56
JAVH/WJ:

25th October, 1956.

Messrs.J.D.Sellier & Co.,
Solicitors and Conveyancers,
13 St. Vincent Street,
Port of Spain.

20

Dear Sirs,

Re Supreme Court Action No.425 of
1956 - Trinidad Cement Ltd. v. Sir
Edward Betham Beetham and Anor.

I have been directed by Counsel to acknowledge with thanks your letter of 16th instant.

I have been advised that the Defence sets up no affirmative case because, in Counsel's opinion, the onus of proving all the issues raised by the Statement of Claim lies on the Plaintiff Company and it is unnecessary for the Defendants to do anything but seek to destroy whatever the Company may have succeeded in establishing.

30

Yours faithfully,

Sgd: J.A.V.Harper,
for Crown Solicitor.

In the
Supreme Court
of Trinidad
and Tobago.

No.6

SUMMONS TO STRIKE OUT DEFENCE

No.6

Summons to
strike out
Defence.

25th October
1956.

LET all parties concerned or their Solicitors attend The Honourable the Sitting Judge in Chambers at the Court House, Port of Spain, on Thursday the 8th day of November 1956 at the hour of 10 o'clock in the forenoon on the hearing of an application on the part of the Plaintiffs for

(i) an order

(a) That the Defence herein be struck out as being evasive or, alternatively,

10

(b) That the Defendants do deliver a further and better statement of the nature of their Defence with full particulars thereof.

(ii) Such further or other order as to the Court may seem fit.

(iii) An order that the Defendants do pay the costs of and incidental to this application in any event.

20

Dated this 25th day of October, 1956.

This Summons was issued by Messrs. J. D. SELLIER & COMPANY of Nos. 11a & 13, St. Vincent Street, Port of Spain, Solicitors for the Plaintiffs.

Sgd: J.D.Sellier & Co.,

Plaintiffs' Solicitors.

Note - If you do not attend either in person or by your Solicitor at the time and place mentioned such order shall be made and proceedings taken as to the Judge may seem just and expedient.

30

To: THE CROWN SOLICITOR,
Solicitor for the Defendants.

No.7

LETTER - Crown Solicitor to Plaintiffs
Solicitors.

In the
Supreme Court
of Trinidad
and Tobago.

CROWN SOLICITOR'S DEPARTMENT,
7 ST.VINCENT STREET,
PORT OF SPAIN.

No.7

Letter - Crown
Solicitor to
Plaintiffs
Solicitors.

23rd January, 1957.

23rd January
1957.

10

Messrs.J.D.Sellier & Co.,
Solicitors & Conveyancers,
13 St.Vincent Street,
Port of Spain.

Dear Sirs,

Trinidad Cement Co.Ltd. v. Sir Edward
Beetham. et al.

20

In compliance with Counsel's undertaking, I
am now to inform you that the trade dispute which
gave rise to the appointment of the Defendant
Gillis as a Board of Inquiry under the provi-
sions of the Trade Disputes (Arbitration and
Enquiry) Ordinance, Ch. 22 No.10, was (and is)
as follows :-

30

Whether workmen, being hourly-paid employees
in the employment of the Plaintiff Company
(which is a company enjoying special privi-
leges by statute as a pioneer manufacturer)
should be permitted to have as their bargain-
ing 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 properly be the subject of Union
representation, including the terms of their
employment and the conditions affecting their
labour.

Yours faithfully,

Sgd: J.A.V.Harper,

for Crown Solicitor.

In the
Supreme Court
of Trinidad
and Tobago.

No.8

AMENDED DEFENCE

TRINIDAD.

No.8

IN THE SUPREME COURT OF TRINIDAD
AND TOBAGO

Amended Defence.

No.425 of 1956.

6th February
1957.

BETWEEN

TRINIDAD CEMENT LIMITED Plaintiff

And

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.

10

Amended Defence of the above-named Defendants,
delivered by their Solicitor, the Crown Solicitor
of No.7 St.Vincent Street, Port of Spain, this
Sixth day of February 1957.

Sgd: J.A.V. Harper,
for Crown Solicitor,
Solicitor for the Defendants.

20

1. The Defendants admit the allegations of fact contained in paragraphs 1, 2, 3, 4 and 5(b) of the Statement of Claim herein.
2. The Defendants specifically deny each and every allegation in paragraph 5 (save the allegation in (b) thereof) of the said Statement of Claim.
- 2A. The Defendants say that a trade dispute did exist between the Plaintiff Company and some (if not all) of its workmen, to wit: 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

30

40

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

In the
Supreme Court
of Trinidad
and Tobago.

No.8

Amended Defence

6th February
1957.
continued.

10

2. The defendant Beetham says that, as Governor of the Colony of Trinidad and Tobago he did in his Executive Council on the 13th and 17th days of March and the 10th day of April 1956, before appointing the Defendant Gillis as a Board of Inquiry under the provisions of the Trade Disputes (Arbitration and Enquiry) Ordinance Ch.22 No.10 inquire into the cause and circumstances of the said trade dispute hereinbefore alleged.

3. The Defendants specifically deny each and every contention or allegation contained in paragraph 6 of the said Statement of Claim.

20

4. The said Statement of Claim discloses no cause of action against either Defendant.

5. The Plaintiff Company is not, on the allegations contained in the said Statement of Claim or in the circumstances of the case or at all entitled to any of the relief therein claimed.

Sgd: H.O.B. Wooding,

Of Counsel.

No.9

No.9

30

ORDER OF MR. JUSTICE WATKIN-WILLIAMS
TRINIDAD
IN THE SUPREME COURT OF TRINIDAD AND TOBAGO
No.425 of 1956

Order of Mr.
Justice Watkin-
Williams

18th February
1957.

BETWEEN

TRINIDAD CEMENT LIMITED Plaintiffs.

And

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
40 BENJAMIN GILLIS, Q.C., M.A. Defendants.

IN CHAMBERS:

Entered the 21st day of February 1957.

Dated the 18th day of February, 1957.

Before The Honourable Mr. Justice P. Watkin-Williams

On the hearing of the Summons issued herein

In the
Supreme Court
of Trinidad
and Tobago

No.9
Order of Mr.
Justice Watkin-
Williams.

18th February
1957.
continued.

on the 25th day of October, 1956 upon reading the said Summons and the Affidavit of Francis Reginald Power, sworn to on the 25th day of October 1956, with the exhibits attached thereto and marked "A" "B" and "C" respectively, all filed herein and upon hearing Counsel for the Plaintiffs and the Solicitor for the Defendants :

IT IS BY CONSENT ORDERED

That leave be and the same is hereby granted to the Plaintiffs to withdraw the said Summons and that the Defendants do pay to the Plaintiffs, the costs of this application to be taxed, fit for Counsel.

10

Sgd: J.B.McDowell,
Ag. Deputy-Registrar.

No.10

Judges Notes
of Plaintiffs
Opening
Address.

8th October
1957.

No.10

JUDGES NOTES OF PLAINTIFFS OPENING ADDRESS

Tuesday 8th October, 1957.

Hannays, Q.C., Butt, Q.C., and Butt for Plaintiff
Wooding, Q.C. and Wooding for Defendants.

20

Wooding, Q.C. Leave to amend para.2A of Defence as in copy tendered.

Butt, Q.C. Sec.8 of Ch.22 No.10.

Objection to proceedings by Boara of Inquiry. Proceedings stayed to enable Company to take steps to question validity of appointment of Board.

Statement of Claim on 16th June 1956. Defence on 10th October 1956. Letter of 16th October 1956 by Plaintiffs' Solicitor. Letter of 25th October 1956 by Crown Solicitor, Plaintiffs took out Summons on 25th October 1956. Summons heard by Gomes, J. Counsel for Crown argued "not evasive pleading." Gomes, J. intimated Crown should not hedge. Argument discontinued by consent and undertaking to supply particulars given. On 23rd

30

January 1957 Crown Solicitor wrote saying what trade dispute was. On 6th February 1957 Defence amended. Para.2A repeats contents of letter of 23rd January 1957. On 21st May 1957 report of Bird and ors. v. O'Neal in West Indian Court of Appeal published in press. This case disposes of issue raised in pleadings up to that point.

In the
Supreme Court
of Trinidad
and Tobago.

No.10

10 On 3rd October 1957 letter from Crown Solicitor (received on Friday 4th October 1957 at 3.00 p.m.) notifying intention to ask for amendment now sought.

Judges Notes
of Plaintiffs
Opening Address

8th October
1957
continued.

Order 19, rule 7A: Request for particulars: Amending or adding to particulars.

Order 28, rule 1: Amendment at the hearing.

Moss v. Malings, 33 Ch. D604; (1887) 56 L.J. Ch.126.

20 Wooding, Q.C. Issue raised at Board of Inquiry and before that in correspondence. View taken that what now appears as (a) and (b) in new para. 2A had become merged into one. Application made before hearing begun.

Order 28, rule 1: Before the hearing.

Order 19, rule 7A: Amending or adding to particulars.

Butt, Q.C. Minute of appointment of 16th April 1956 refers to "a dispute" and letter of 23rd January 1957 refers to "the dispute." Application is against the reality of the situation.

30 Ruling deferred. But Court intimates that it is minded to refuse application.

Hannays, Q.C. Company operating under pioneer status. Gillis actually started on inquiry. Informed by Leinster and Sellier that company had no dispute with anybody. Gillis referred to Sec.10 of Ch.22 No.10. Paras. 5 and 6 of Statement of Claim. Paras.2A and 2B of Defence. Sec.8 (1) of Ch.22No.10. Opening words control the whole section:

40 R. v. Imperial Tobacco Co. (1943) 2 A.E.R. 162 at p.166. First issue is: Was there a Trade dispute?

In the
Supreme Court
of Trinidad
and Tobago.

No.10

Judges Notes
of Plaintiffs
Opening Address.

8th October
1957
continued.

Flanders and Clegg on System of Industrial Relations in G.B. pp.52 et seq. Not a single workman has made a single demand or representation of any kind: They have not said they want to be represented by any union. Quinn v. Leatherm (1901) A.C. pp.541, 542 (Lindley).

Conway v. Wade (1909) A.C. pp.509, 510, 512, 517, 518, 522.

Larkin v. Long (1915) A.C. 829, 830.

R. v. Nat. Arbitration Tribunal (at p. 814)
(1941) 2 A.E.R. 800.

10

Flanders and Clegg, p.55.

Company never gave recognition to Federated Workers Trade Union. No strike or threat of strike. No agitation by men. All men still on job. No dissatisfaction among them.

What Gillis required to do in para. (a) of minute of appointment is what Governor must do under Sec.8 of Ch.22 No.10. He must, in doing that, give Plaintiff opportunity of being heard.

20

De Verteuil v. Knaggs (1918) A.C.557 at pp.560-561. "Inquire" means that you must listen to both sides and consider.

Adjourned at 11.45 a.m.

Resumed at 1.40 p.m.

Governor himself must make inquiry. All he has referred is the cause and circumstances of dispute. Delegation of functions.

Sec.8(2) is governed by opening words of Sec.8(1). Esugbagi Eleko v. OAG of Nigeria (1931) A.C.662. Governor must follow statute. Bird v. O'Neal (Trinidad Chronicle 21st May 1957) West Indian Court of Appeal: Dispute between union and employer not a trade dispute.

30

No.11

EVIDENCE OF RONALD STYAN LEINSTER.

In the
Supreme Court
of Trinidad
and Tobago.

Ronald Styan Leinster, sworn, says :

Plaintiffs
Evidence.

No.11

Ronald Styan
Leinster.

Examination.

10 Examined by Butt: Director of Plaintiff Company Ordinarily resident in England but I was in Trinidad from 25th February 1956 to 7th July 1956 on the Company's business. I came to act as resident director in place of E.B. Mount who was absent through illness. While here I knew that the Federated Workers Trade Union was asking for union recognition. The Company were not prepared to recognise that particular union. No application, as far as I am aware, was made to the Company by any workmen to have that union or any other recognised. If there had been I would have known as the works manager and supervisors were under strict instructions to report anything of the kind and as resident director I would have had to give the matter consideration and deal with it. Up to the present time there has been no such application. There has been no dissatisfaction among workmen attributable to any refusal by the Company to recognise the Federated Workers Trade Union. No agitation or expression of displeasure with the Company. A very happy atmosphere between the company and its employees. That atmosphere has always existed. These conditions existed on 16th April 1956 when Board of Inquiry was convened. His Excellency never invited me or anybody in the company to come to any inquiry into the dispute that was alleged nor asked me or the company to make any statement in the matter nor did he make any statement to me, the company or anyone in the company.

20

30

40 I was present at Board of Inquiry convened as result of minute of 16th April 1956. Defendant Gillis sat as Board of Inquiry. Objection was taken by company to Board of Inquiry proceeding because there was no dispute. Gillis outlined programme to take effect if our objection did not go through. He gave me 7 days in which to determine what course we would take to prevent the Board proceeding. If no action taken during those 7 days he proposed to proceed according to his programme. We took legal advice and before expiration of the 7 days we gave notice through our solicitor of our intention to challenge validity of Board.

In the
Supreme Court
of Trinidad
and Tobago.

Plaintiffs
Evidence.

No.11

Ronald Styan
Leinster

Cross-
Examination.

Cross-examined by Wooding, Q.C. Company given pioneer industry status under Ch.33 No.17. Received letters from Federated Workers Trade Union. I produce letters dated 10th August 1954, 19th October 1955, 1st November 1955, 29th November 1955, 13th December 1955, 26th March 1956, 4th April 1956 and 14th April 1956.

Letters together with original letters from company dated 10th December 1955 and 9th January 1956 put in and marked R.S.L.L. Johnson was works manager. Not now in Trinidad. I was not here in December or November 1955. Recorded that Johnson had interview with labour officer on 29th November 1955.

10

Company has in operation machinery by way of Works Committee. In opinion of company that machinery was working satisfactorily. I would not say that it was for that reason that we had no use for any trade union. We were not anti-union. I was not present so cannot say if Johnson told Edwards (Labour Officer) that company had no use for any trade union.

20

Pryor was chief accountant. He is in Trinidad. I was not in Trinidad in January 1956. Pryor had interview with Minister of Labour on 7th January 1956. Ministry did not send me a minute of the meeting.

When I said there is peace and harmony among workmen I am speaking from my own knowledge during 25th February 1956 to 7th July 1956 and from reports. I have no means of knowing whether there were signs of trade union activity among workmen. One workman used to come and inform our works manager of what took place at trade union meetings. We did not take him seriously and he stopped. The meetings took place near the works and included persons working with us. Not within my knowledge that the meetings were entirely of persons working with us. I understand that meetings were poorly attended. I never enquired.

30

40

I do not know if persons called Sooklal and Barnett worked with us. I can check. Records would not shew any activities carried on by workmen of which we disapproved.

Bobb and Simon were employees of company. I

did not know that Bobb was a member of Branch union when I dismissed him (on 15th October 1955) I did not know at the time of dismissal of either Bobb or Simon that he was a member of a union. I cannot say whether there were any reports of any union meetings about the time of these dismissals. I think there was one report after my arrival and I then enquired and learnt that there had been reports before my arrival.

In the
Supreme Court
of Trinidad
and Tobago

Plaintiffs
Evidence.

No.11

Ronald Styan
Leinster

Cross-
Examination
continued.

10 I cannot say what attitude was taken up at meetings. Never suggested to me that some workmen felt that Bobb and Simon had been dismissed because of union activity. No workmen dissatisfied with dismissal of Bobb and Simon.

I never made any enquiry to discover who were the workmen whom Bobb said could substantiate that he was not sleeping (for which he had been dismissed).

20 System of liaison referred to by Sellier (my solicitor) before Board of Inquiry was Works Committee. Not so that company objected to all unions; only Federated Workers Trade Union. I remember that O'Connor (for Federated Workers Trade Union) said before Board of Inquiry that if company did not obey Board's award Government would have to consider what steps to take in face of company's refusal to recognise trade unions. I said nothing to that. O'Connor implied that there were workmen of the company who were members of Federated Workers Trade Union. I gave assurance that any who were needed as witnesses would be facilitated.

30

O'Connor intimated that the 2 ex-employees were members of Federated Workers Trade Union. Reference to these ex-employees came after discussion about recognition of Federated Workers Trade Union.

40 Company made it clear to Minister of Labour and Commissioner of Labour that it would not recognise Federated Workers Trade Union. I don't think that company's representatives said in conversation that the company would not recognise any union but the Company's view was that Works Committee was functioning well and there was no need for a union. It is still the Company's view. Works Committee still functioning properly

In the
Supreme Court
of Trinidad
and Tobago.

Plaintiffs
Evidence.

No.11

Ronald Styan
Leinster

Cross-
Examination
continued.

Re-examination.

I did not investigate statement in para.1 of letter of 4th April 1956. Not in a position to say whether they are true or not.

We rejected proposal in para.2 of letter of 4th April 1956. Our only reply is letter of 14th April 1956 (which I myself wrote).

Further cross-examination (with reference to Sooklal and Barnett) deferred.

Re-examined: Federated Workers Trade Union never represented to company that workmen were dissatisfied because not allowed by company to be represented by Federated Workers Trade Union. Dismissal of Bobb mentioned at Works Committee meeting and explanation given. Explanation accepted and Company never heard anything more about it.

10

Not to my knowledge that any workmen considered Simon's dismissal unjustified. Company believes Works Committee is excellent machinery for maintaining contact between company and employees. We neither prevent employee from joining or urge employee to join a union and we would resist strongly either way any attempt to force any workman to join or not to join. We felt that Federated Workers Trade Union was not a union we should have. We regarded any union as unnecessary in view of our Works Committee.

20

Adjourned at 3.20 p.m.

Wednesday 9th October, 1957.

Ronald Styan Leinster (continuing): I produce extract from minutes of Works Committee Meeting of 28th October 1955 in connection with dismissal of Bobb. Minute No.31.

30

Marked R.S.L.2.

I also produce minutes of meeting of 29th May 1956 at which I was present. Minute No.17. Marked R.S.L.3.

My statement in exhibit R.S.L.3. about the company having no intention of having the men represented by a union had reference only to Federated Workers Trade Union.

40

Had there been need for it or representations from the men for representation by an outside organisation I would have considered giving recognition to the union of the men's choice.

In the
Supreme Court
of Trinidad
and Tobago.

10 I made no attempt to find out if men had been coerced to join a union. I do not regard Federated Workers Trade Union as a responsible union. My statement that the company would remain loyal to the Committee, I consider a reasonable, general statement.

Plaintiffs
Evidence.

No.11

Ronald Styan
Leinster.

20 I was making the point that we would not have trade union representation thrust on us. My view was that the Board of Inquiry proceedings were such an attempt. I don't know that I specifically considered the point whether the Board of Inquiry would have been able to determine if workmen had or had not been coerced to join Federated Workers Trade Union. I was not prepared to deal with Federated Workers Trade Union in any circumstances.

Re-
examination
continued.

Not to my knowledge that management sought to persuade men to join Works Committee. At first the men had to be educated to the idea. I would not say they had to be persuaded. I see no reason why a union should not also seek to persuade.

30 Sooklal first engaged on 3rd June 1953. Services dispensed with on 28th October 1955. I don't know if he was a member of Federated Workers Trade Union.

Barnett employed from 9th February 1954. Services dispensed with on 16th October 1954.

To Court: 500 odd hourly paid employees in 1953:
300 odd in 1956.

Further re-examined: The 500 odd in 1953 were employed during period of construction. Sooklal and Barnett discharged because no further work for them.

40 In letter of 14th April 1956 from me to Commissioner of Labour I refer to suggestion to check Federated Workers Trade Union membership among workmen. Board of Inquiry instituted on 16th April 1956. Next Works Committee on 29th May 1956 when I made statement on company's attitude to union representation and to Board of Inquiry which had been set up.

In the
Supreme Court
of Trinidad
and Tobago.

Plaintiffs
Evidence.

No.11

Ronald Styan
Leinster.

Re-
examination
continued.

I considered that company's hands were being forced by appointment of Board of Inquiry following so quickly after request for a count of members. At that time Works Committee functioning satisfactorily. Report to Works Committee was report to men. There was no demur by representatives.

There were 4 representatives on Works Committee: one from each section. Approximately 90% men had voted for the representatives some-time about middle of 1955. Annual voting for representatives. First elections had been in September 1954.

10

Exhibit R.S.L.1. is complete minute of Works Committee meeting of 28th October 1955. Minutes of Works Committee meetings exhibited on 4 notice boards after meetings. Exhibit R.S.L.1. so exhibited.

Case for Plaintiff closed.

No.12

Judges Notes
of Defendants
Opening
Address.
9th October
1957

No.12

JUDGES NOTES OF DEFENDANTS OPENING ADDRESS

20

Wooding, Q.C. Entirely beside point whether employer recognises trade union in so far as union's authority to act is concerned. Authority of agent derived from principal. If Court finds that union was acting on behalf of such workmen as had joined it that would suffice.

In trade union practice, union does not become entitled to act unless representing substantial number of workmen; a majority. Independent authority determines if a union has a majority.

30

In this case it makes no difference whether union represented a majority or not. Dispute is: In the event of union having majority, ought company to recognise it?

No legal obligation on employer to recognise a trade union. Moral obligation of employer to recognise to be re-enforced by public opinion ventilated in Board of Inquiry examining causes and circumstances.

When union asks for recognition as bargaining agent that is a trade dispute. Governor not required to do any searching, detailed investigation. He must inform himself that there is a trade dispute and about causes and circumstances so as to decide if he should set up Board of Inquiry. Detailed and exhaustive enquiry to be left to that Board.

In the
Supreme Court
of Trinidad
and Tobago.

No.12

Judges Notes
of Defendants
Opening Address
9th October,
1957
continued

10 Membership of Federated Workers Trade Union.
Branch formed specially for cement workers.

DEFENCE

No.13

EVIDENCE OF ARTHUR SIBLAL.

Defendants
Evidence.

No.13

Arthur Sibalal, sworn, says:

Arthur Sibalal.
Examination.

20 Examined by Wooding: 8 Clifford Street, Curepe.
Work at San Fernando. Member of Federated Workers Trade Union. Trustee of that organisation, organiser and area representative of the union in the South. Union registered around 1934 and in active existence since then. It has rules which are registered under Trade Unions Ordinance. I produce copy of rules. Marked A.S.1.

30 Union represents workers in various departments of industry in the Colony. We also represent Government employees; Works & Hydraulics, Local Health Authority, County Councils, Electricity Commission, Telephone Company etc. employees. We also have cement workers in our organisation. They are employed at Cement Factory, Claxton Bay. This, as far as I know, is the only cement factory in the Colony.

We first started to organise cement workers around June or July, 1954. We had meetings and put to the workers the value of trade unionism and what it stands for. We explained to them that we would take up their grievances, that their working conditions would be bettered, and that when we gained a majority we would ask for bargaining status to ask for increase in wages.

40 Objects stated in rules. We brought these to the notice of the persons we were organising.

In the
Supreme Court
of Trinidad
and Tobago.

Defendants
Evidence.

No.13

Arthur Siblal

Examination
continued.

By the end of 1954, over 200 cement workers had joined our union. Each filled our application form which was sent by me to head office. Early in 1955 membership went down gradually: I cannot say to what figure. Late in 1955 it went up again. In April 1956 the membership was about 88. These were hourly paid workers.

Twice branches were formed at Claxton Bay. In 1954 and in 1956. When we first started we had a lot of construction workers together with maintenance workers. Later, when company released construction workers the branch fell in numbers but the branch still continued.

10

Meetings of the branch were held, sometimes weekly, and sometimes fortnightly. Committee meetings were held as occasion warranted. Sometimes, if there was no need for a committee meeting, none was held. Besides officers from Port-of-Spain officers from oilfields attended branch meetings. Otherwise, only branch members. Carlton Stephen (Assistant Secretary of the Union), Dudley Mahon (Vice President of the Union) and other officers attended and general purpose of union was discussed. Those workers who were not yet members would also attend.

20

The union took up matter of Bobb (President of the branch) before he was dismissed, and that of Simon (ordinary member of branch). Bobb had been a member of the branch from its inception and Simon at a later stage. When Simon's matter was taken up he was a member.

30

Bobb had done organising work: i.e., encouraging workers to join, and so had Simon.

I don't remember Sooklall. Barnett was a member of the union. Bobb was dismissed. I spoke with him and communicated with head office. As a result of his dismissal the workers were very dissatisfied. His matter was discussed at a branch meeting attended by Stephen (Assistant General Secretary). Stephen made certain proposals and the meeting authorised that the matter should be taken up immediately.

40

Simon's matter was also discussed at a branch meeting and the branch advised that it be taken up.

Both matters were taken up by the head office. At other regular branch meetings these matters were also discussed. Branch meetings were held in March, 1956. Installation of Officers was on 15th March 1956. Simeon Alexander (General President), Quinton O'Connor (General Secretary) and other officers and members from Port of Spain attended. I don't remember if Stephen (Assistant General Secretary) was present. My recollection is that he was not there. A resolution was moved at that meeting by a branch member to the effect that as there had been a long delay in appointment of Board of Inquiry that head office of union write Government (through appropriate channel) to have the matter expedited. No one objected and resolution was passed unanimously. Copies of correspondence on the 2 matters taken up by head office, were sent to me and read at the branch meetings. The workers were pleased with the information.

In the
Supreme Court
of Trinidad
and Tobago

Defendants
Evidence.

No.13

Arthur Siblal
Examination
continued.

Cross-examined by Hannays, Q.C. The Claxton Bay branch is now dead. No members. It went out of existence sometime last year. I meant when I spoke about 2 branches having been formed in 1954 and in 1956: that the branch was revived in 1956. It had been dormant for a while but we still had a few members.

Cross-
examination.

Up to April 1956 we had taken up only 2 matters:- in respect of Bobb and Simon. Neither has taken any action in court for wrongful dismissal. Bobb's matter came up at end of October 1955 and Simon's on 9th November 1955. At the meeting on 15th March 1956 members found that appointment of Board of Inquiry to deal with Bobb and Simon matters (nothing else) was too long delayed. The Board of Inquiry was to consider the validity of the Governor's appointing a Board of Inquiry. The Board of Inquiry was to enquire into the dismissal of Bobb and Simon. My branch never wanted the Board of Inquiry to discuss anything else. I have never heard of any disturbance taking place in the factory: any fighting or incident.

Re-examined: The Claxton Bay branch union was alive in April 1956. It died because the workers found that the union was not effective or powerful enough to take up their matters. This

Re-examination.

In the Supreme Court of Trinidad and Tobago.

was because of the long delay in appointing the Board of Inquiry. The members had wanted the union to take up matters on their behalf before that and represent them.

Defendants Evidence.

Adjourned at 11.45 a.m.

No.13

Resumed at 1.40 p.m.

Arthur Siblal

Re-examination continued.

No.14

No.14

Vincent Hartley Edwards.

EVIDENCE OF VINCENT HARTLEY EDWARDS

Examination.

Vincent Hartley Edwards, sworn, says :

Examined by Wooding, Q.C. Acting Deputy Commissioner of Labour. In April 1956, Acting Senior Labour Officer and in November and December 1955. As a consequence of correspondence with Federated Workers Trade Union I got in touch with Plaintiff Company. Mount was ill. I interviewed Johnson, Works Manager, at 11 Park Street, Port of Spain, company's head office, on 29th November 1955. I informed Johnson that Labour Department had correspondence from Federated Workers Trade Union to effect that union had written company requesting a meeting with the company to discuss dismissal of Bobb; that union had said they had had no reply from the company; that union had sought intervention of the Labour Department in the matter. 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. He also told me that in his view company was abundantly justified in action taken in dismissing Bobb and Simon. I pointed out to Johnson that fact that company felt justified was not a sufficient reason by itself for declining to discuss the matter with the union. I also pointed out that fact that Works Committee had worked satisfactorily in

10

20

30

the past did not deny the workers the right to representation in a different form, viz., through a trade union. Johnson maintained stand that company not willing to meet union to discuss dis-
missals. I told him that as it was possible that union would come forward at a later stage with a request for recognition for purposes of collec-
10 tive bargaining I thought it would be useful to let him know something of Government's Indus-
trial Relations policy. I proceeded to outline it: I told him that Government expects employers to accord recognition to and deal with trade uni-
ons representative of their work people on matters concerning terms and conditions of employment of those workpeople.

I wrote Johnson the very day. I had told him I would write him forwarding a copy of the union's representations and asked him whether he would be kind enough to confirm in writing the stand taken by his company. He agreed to accede to my request. Johnson replied on 10th December 20 1955. I made a note of what took place at our meeting.

I was present at office of Minister of Labour on 7th January 1956. Meeting between Minister and Pryor (representing company). Minister informed Pryor that he had had representations from Federated Workers Trade Union to effect that company had refused to meet union to dis-
30 cuss certain matters which union had expressed wish to discuss; that Government expected employers to afford trade unions opportunity of making representations on behalf of their members. He pointed out company's refusal to meet union was a source of embarrassment to Government and said that position was aggravated by fact that company enjoyed pioneer status and thus received assistance from public funds, or rather, enjoyed certain concessions from Govern-
40 ment, that he considered the matter to be a very serious one and that if company persisted in its attitude he would consider reporting matter to Executive Council with a view to having an enquiry instituted.

This was a Saturday and Minister told Pryor he would wish to place matter before Executive Council on the following Tuesday and would there-
fore wish to have a reply from company by Monday morning (9th January 1956). Pryor undertook to put to his principals statement made to him by
50 Minister.

In the
Supreme Court
of Trinidad
and Tobago

Defendants
Evidence.

No.14

Vincent Hartley
Edwards.

Examination
continued.

In the
Supreme Court
of Trinidad
and Tobago.

Defendants
Evidence.

No.14

Vincent Hartley
Edwards.

Cross-
Examination.

Cross-examined by Hannays, Q.C. Minister was Gomes. Government was at the time employers of daily paid labour. Federated Workers Trade Union presented demand for increase in wages but I do not remember if in 1954 Government withdrew recognition from Federated Workers Trade Union and themselves fixed increase which was approved by Legislative Council. I remember statement issued by Gomes and published in Trinidad Guardian on Wednesday 15th September 1954 in connection with the matter.

10

I do not know if Federated Workers Trade Union or W.I.I.P. is a communist organisation. There have been allegations to that effect.

The union referred to in Gomes' statement is the same union I discussed with Johnson. No change in leadership. When Government withdrew recognition from Federated Workers Trade Union they did not give any other union collective bargaining status. I was asking Johnson in 1955 to recognise Federated Workers Trade Union. It would have been a limited form of recognition but recognition none the less.

20

First talk of Board of Inquiry was on 7th January 1956 (by Gomes).

I interviewed Johnson in Port of Spain. I never went to Claxton Bay in connection with matter. Gomes' attitude on 7th January 1956 was: I am telling you what I want done. If you don't do it I am going to the Government on Tuesday morning.

30

Re-examination.

Re-examined: Government has since 15th September 1954 given Federated Workers Trade Union recognition for certain purposes. This was in either 1955 or 1956. These purposes were making representations on behalf of individual members. Interview with Johnson lasted about $\frac{1}{2}$ hour. I have not reproduced in detail all that was said.

Question: What did you understand Johnson to be objecting to? Federated Workers Trade Union or trade unions generally?

40

Butt, Q.C. Question does not arise out of cross-examination.

Wooding, Q.C. Witness after this lapse of time

can only be expected to give substance of conversation and what he understood by it. If cross-examination about withdrawal of recognition of Federated Workers Trade Union by Government is relevant, Court ought to be told whether company's objection was to Federated Workers Trade Union or to unions generally.

Ruling: Question disallowed.

In the
Supreme Court
of Trinidad
and Tobago.

Defendants
Evidence.

No.14

Vincent Hartley
Edwards.

Re-examination.
continued

No.15

No.15

10

EVIDENCE OF CARLTON STEPHEN

Evidence of
Carlton Stephen

Carlton Stephen, sworn, says:

Examination.

Examined by Wooding: 8 Benares Street, St.James. Member of Federated Workers Trade Union from June, 1943. Assistant General Secretary from August 1945. Branch of Federated Workers Trade Union formed at Claxton Bay for cement workers, all employed with Plaintiff Company. In October 1955 and November 1955 I was asked by members to take up certain matters for them. In course of taking matters up I saw correspondence and wrote letters. I saw letter of 26th March 1956 signed by O'Connor. It was brought to attention of branch. Copy sent to Secretary of branch and one to Organiser in South at same time original posted. I don't remember if I was present when copy was read to branch. I have records in connection with membership of branch. Records kept on cards. In April 1956, membership of branch was 147.

20

30

Cross-examined by Butt, Q.C. I have not checked the financial membership.

Cross-
examination

Re-examined: I checked about 196 cards. 49 cards were in respect of people in arrears for more than 26 weeks. Rule 4(1) and (f).

Re-examination

To Court: Branch ceased to exist around August or September 1956.

Further re-examined: I doubt very much if we have anybody at present time a member who was member of branch.

In the Supreme Court of Trinidad and Tobago.

To Court: Branch died because everybody was in arrears. As a result of people seeing no result from cases of Bobb and Simon they said "If we can't get any result from these 2 cases, what is the use of belonging to the union?"

Defendants Evidence.

No.15

Vincent Hartley Edwards.
Re-examination continued

No.16

Vincent Hartley Edwards
(Recalled)

Examination.

Cross-examination.

No.17
Judges Notes of Defendants Final Address.
9th 10th and 11th October, 1957.

No.16

EVIDENCE OF VINCENT HARTLEY EDWARDS (RECALLED)

Vincent Hartley Edwards (recalled), sworn, says:

Examined by Wooding, Q.C. Government accorded Federated Workers Trade Union limited recognition on 19th October 1955. I produce document marked V.H.E.1. Federated Workers Trade Union applied for limited recognition. No count taken at time of application. Not usual.

I produce Dalley report (pp.30 - 31, paras. 92 & 93). Marked V.H.E.2.

Cross-examined by Hannays, Q.C. Gomes referred to Dalley report in his statement published on 15th September 1954.

Not re-examined.

No.17

JUDGES NOTES OF DEFENDANTS FINAL ADDRESS.

Wooding, Q.C. (1) Court not Board of Inquiry.

By October 1955 Federated Workers Trade Union given by Government all recognition to which entitled. Taint of communism removed. Company satisfied with Works Committee. Not recognising unions: (a) Johnson's statement to Edwards.
(b) Letters except last letter (by Leinster).

10

20

30

Leinster did not display candour expected of him :-

His report (R.S.L.3.) to Works Committee. (1) "and had no intention of working with an outside organisation," (2) "whatever the circumstances company would remain loyal"

Adjourned at 3.25 p.m.

Thursday 10th October, 1957.

In the
Supreme Court
of Trinidad
and Tobago.

No.17

Judges Notes
of Defendants
Final Address.

10 Butt, Q.C. Copy of statement published in Trinidad Guardian on 15th September 1954 agreed and put in. Marked A.

9th 10th and
11th October,
1957.
continued

Wooding, Q.C. Government's attitude to Federated Workers Trade Union wholly irrelevant. At time when Federated Workers Trade Union by its letter of 26th March 1956 raised issue of recognition with company, was it acting on its own behalf or on behalf of its members in employment of company with authority and/or approval of its members?

20 Alternatively, was its raising of issue ratified, expressly or impliedly by its members?

Agency does not depend on recognition by company. In Bird v. O'Neal, no evidence that any member of union interested in Wynter's case and wanted union to act on their behalf. Union acting on behalf of dismissed employee and nobody else.

30 Beside point to ask if there was unrest in factory, or strikes or complaints. These are not the only ways in which union members can shew dissatisfaction.

First question to ask to determine if union had authority is: Are the workers members of the union?

40 Objects of union: rule 3. When branch asked that Bobb matter be taken up by union it implicitly asked that union be recognised and was authority for union to seek recognition. In industrial practice union cannot take up matters until recognised. Paramount dispute was recognition.

In the
Supreme Court
of Trinidad
and Tobago.

No.17

Judges Notes
of Defendants
Final Address.

9th 10th and
11th October,
1957.
continued

Subsidiary to that and dependant on it would be the Bobb and Simon matters.

Dispute is whether workers should be permitted to be represented by Federated Workers Trade Union. Governor could under Sec.8(2) also refer to Board larger question as to whether company should be allowed to deny workers trade union representation.

Workers would be interested not only in Federated Workers Trade Union representation but trade union representation generally.

10

Butt, Q.C. In letter of 23rd January 1957 Government clearly sets out what is trade dispute.

Wooding, Q.C. Letter of 26th March 1956 puts in express language what had been implied before. Letter of 10th December 1955 from Johnson to Commissioner of Labour made available a record shewing that union having asked implicitly for recognition of some sort is being met by attitude of non-recognition of any union.

Edwards may not have thought it necessary to disclose larger question to Federated Workers Trade Union. Letter of 9th January 1956 was complete rejection of all Minister of Labour had said on 7th January 1956. Letter of 14th April 1956 the only occasion on which company has sought to put any stress on union concerned. It was in reply to a letter with a particular request concerning Federated Workers Trade Union.

20

Language of item 17 in exhibit R.S.L.3 could not be clearer.

30

Summary: If union acts on authority expressed or implied, of its members who are workers at cement company, or if what they do is ratified subsequently, expressly or impliedly by these members, then they would be acting on behalf of such members and it will distinguish case from cases like Bird v. O'Neal in which, in fact, it has been found that a union has intermeddled or acted on a frolic of its own.

2. Very fact of joining union with objects as in rule 3 is implicit authority to union to seek recognition either in whole or to limited extent

40

so that union may be in a position to make representations on their behalf.

3. Very formation of branch union comprising workers employed with Plaintiff Company underlines and re-enforces submission 2.

4. Express request by branch union to take up cases of Bobb and Simon necessarily invested union with authority to seek recognition in whole or to limited extent.

10 5. Repeated inquiries by members of branch and resolution passed nem. con. at meeting on 15th March 1956 re-affirmed their authority to union to seek and obtain recognition in whole or to limited extent so as to enable union to make specific representations as regards Bobb and Simon.

20 6. Letter of 26th March 1956 from union: communication of copy to branch carried with it through non-protest of branch an implied ratification of union's authority to request recognition as stated in that letter.

30 7. Further, on facts available (a) through note made by Edwards (b) through correspondence (c) at interview between Minister of Labour and Pryor, there was clearly a "dispute" as to whether company would recognise union of workers' choice, viz. Federated Workers Trade Union, or any other union they might choose to join thereafter, because in company's view their Works Committee was adequate and satisfactory machinery.

40 8. Finally, it was a matter of interest to members of union who were workers employed by company, as well as to public at large, that here was a company enjoying substantial concessions at hands of public, maintaining intransigent attitude, that they would deny these members trade union representation such as they desired. That constituted a trade dispute sufficient to found jurisdiction of Governor to appoint Board of Inquiry.

Questions of Law:

1. Whether trade dispute did exist within meaning of Ordinance. In last analysis, question of fact. Not limited to what parties or either of them said or did but Court entitled to consider full implications of what they said or did.

In the
Supreme Court
of Trinidad
and Tobago.

No.17

Judges Notes
of Defendants
Final Address.

9th 10th and
11th October,
1957
continued.

In the
Supreme Court
of Trinidad
and Tobago.

Definition of trade dispute in Ordinance.
Note words "of any person". It is said that ser-
vices of Bobb and Simon lawfully dispensed with.
But there are no legal technicalities in indus-
trial practice.

Other workmen interested in question of non-
employment of Bobb and Simon.

No.17

Judges Notes
of Defendants
Final Address.

9th 10th and
11th October,
1957.
continued

Ordinance in pari materia with Industrial
Courts Act, 1919. Industrial Disputes Orders
1940 & 1951.

Conway v. Wade (1907) A.C., Wade acted on own 10
motion: pp.516-517: Lord Atkin.

Same position arises in Bird v. O'Neal.
Wynter no longer a workman when union got active.
Dispute arose after she ceased to be workman.
Executive of union acted entirely on its own with-
out reference to workman. Union acting on frolic
of its own.

Bennetts' judgment overruled in House of
Lords and dictum treated with scant courtesy: R.
v. N.A.T. (1942) 2 A.E.R.425 at p.428, 435. 20

N.A.T. ex parte Keable Press (1943) 2 A.E.R.633
C.A. at p.634.

N.A.T. ex parte S. Shields Corporation (1951)
2 A.E.R. 828: (1952) 1 K.B.46 at p.53.

R. v. I.D.T., ex parte Courage & Co. (1956) 3
A.E.R. 411 at p.415

1. Evidence which has come to light in court
(Ormerod, J.)

2. Of no consequence whether company knew
workers were supporting union. 30

R. v. I.D.T., Ex parte Q.M.College, University
of London (1957) 2 A.E.R.776 pp.778, 779, 780.

Adjourned at 11.55 a.m.

Resumed at 1.40 p.m.

Arising out of issues concerning Bobb and Simon

and recognition of Federated Workers Trade Union was dispute as to right of workers to union representation.

In the
Supreme Court
of Trinidad
and Tobago.

"or any other" in para.2A of Defence makes no difference. Board could have been entitled to get at underlying causes of dispute.

On question of recognition: Citrine's Trade Union Law pp.479 - 480.

No.17

10 Public has interest in smooth functioning of collective bargaining:

Judges Notes
of Defendants
Final Address.

(1) Goddard, L.J. in Evans v. N.U.Printing &c. Workers (1938) 4 A.E.R. 51 at p.54.

9th 10th and
11th October,
1957
continued.

(2) 1953 Industrial Relations Handbook. pp.142-3 (Fair Wages Resolution).

(3) I.L.O. Conventions. Vol.1 International Labour Code, 1951, Art 868 at p.1084. Right to conclude collective bargains.

20 (4) Flanders & Clegg on Industrial Relations in G.B., p.52. "Collective bargaining and the Law."

(5) Statutory obligation on public corporations to accept collective bargaining: Coal Industry Nationalisation Act, 1946, Sec. 46. Transport Act, 1947, Sec.95, Electricity Act, 1947, Sec.53. Gas Act 1948, Sec.57. Air Corporations Act, 1949, Sec.20. Railway Ordinance, 1952, Sec.33(4).

30 Growing public interest in processes of collective bargaining. By Industrial Disputes Order, 1951, provisions for compulsory arbitration. Peace time measure.

While not legal duty, it is moral obligation of employers to accept trade union representation on behalf of their workers. Works Committee: Flanders & Clegg: Joint Consultation p.329-330. Public opinion leans heavily in favour of trade unionism. Denial of recognition of a trade union is a trade dispute: Flanders & Clegg: p.254-255.

40 In English law, only recognition disputes

In the
Supreme Court
of Trinidad
and Tobago.

and economic disputes. Flanders & Clegg: p.53,99.

II. Did Governor before appointing Board of Inquiry enquire into causes and circumstances of dispute?

Question of fact.

Is Governor to undertake personally some formal, special kind of enquiry so as to enable him to determine finally causes and circumstances? Or does it mean that he is merely to seek information such as will enable him to exercise his discretion whether or not to refer any, and, if so, what matters to Board of Inquiry? Submitted that it is the latter.

10

No.17
Judges Notes
of Defendants
Final Address.
9th 10th and
11th October,
1957.
continued.

"Inquire" (Oxford Dictionary) may mean to investigate fully or to seek information.

Compare Sec.3(1) with Sec.8(1). Sec.3 contemplates dispute reported to Governor by one or other of the parties: Under Sec.8 if Governor gets to know that dispute exists or is apprehended he can act. If he knows the facts he has jurisdiction to appoint Board.

20

Secs.9 & 10 shew that public has interest. Information available disclosed request for recognition implicit in union's request to represent Bobb and Simon; Edwards' record of his conversation with Johnson; interview between Fryor and Minister of Labour.

Industrial Relations Handbook: pp.128-129
"Investigation & Enquiry."

Governor is guardian of public interest. Power to appoint Board even if parties do not want him to.

30

Tillyard on Worker & State, 3rd ed. p.282 (1948) Purpose of Court of Inquiry is to give report to Parliament and inform public opinion.

Sharp on Industrial Conciliation pp.360-1, 362.

Fundamental difference between Sec.3 and Sec.8 Under Sec.3 parties must consent: Governor

can only act on report by one or both parties. Under Sec.8 so long as Governor is satisfied that there is a difference between parties, even if not reported, he can act.

In the
Supreme Court
of Trinidad
and Tobago

Adjourned at 3.30 p.m.

Friday 11th October, 1957.

No.17

10 Wooding, Q.C. Before Governor has discretion to enquire into causes or circumstances of dispute it is necessary under Sec.8 that a trade dispute should exist or be apprehended. Existence or apprehension is foundation of coming into being of discretion. Existence or apprehension need not be reported. May be ascertained by Governor aliunde. Duty where not reported, to consider available evidence going to shew existence or apprehension of trade dispute.

Judges Notes
of Defendants
Final Address.

9th 10th and
11th October,
1957.
continued.

20 "Trade dispute" includes difference between workmen and employers. If Governor finds that there is a "difference" he comes to a conclusion on that whether a trade dispute exists or is apprehended or exists in part or is apprehended in part. All he need have before him is the divergent views of the parties on the matter in issue.

30 "Difference" (Oxford Dictionary) means condition, quality or fact of being different; relation of non-agreement or non-identity between 2 or more things; diversity or disagreement of opinion, sentiment or purpose: hence a dispute or quarrel caused by such disagreement.

40 On material available: request in respect of Bobb and Simon, refusal of request for specific reason that union not recognised by company, further stand by company that because of harmonious relations existing by reason of works Committee it was having nothing to do with unions though its workers might be members, specific request by Federated Workers Trade Union for recognition, specific rejection of that request. Governor could ascertain from material, on one side, claim for recognition in whole or to limited extent by company and claim by Federated Workers Trade Union to represent Bobb and Simon.

In the
Supreme Court
of Trinidad
and Tobago.

No.17

Judges Notes
of Defendants
Final Address.

9th 10th and
11th October,
1957.
continued.

On the other hand, refusal of recognition to any extent and for any purpose, not only of Federated Workers Trade Union but of any other union to which workers might turn and therefore denial of industrial right of workers in its employment to be represented by union of their choice. Pursuant to that, refusal of request that Federated Workers Trade Union should make representations on behalf of Bobb and Simon.

If Governor knowing true area of trade dispute which is existing and/or apprehended defines as existing a trade dispute comprehending the entire area, submitted that he nevertheless is in conformity with Ordinance so long as at date of appointment of Board of Enquiry there was in existence a trade dispute which is in fact contained within that area and particularly when, as here, it occupies the substantial part of that area, and even more particularly, when as here, on any proper investigation that which was said to be apprehended and not in existence would clearly come up for investigation and which he could have referred as an apprehended dispute, if he wished.

"Apprehension" would have been a matter properly referable under Sec.8(1). Governor by Interpretation Ordinance means Governor personally. But it does not matter where or how or from whom the Governor enquires. He has complete and unfettered discretion to enquire.

Trade dispute came into existence, at latest, when company made it clear to Edwards what their stand was. All that happened subsequently was merely a restatement of the difference, underscoring, emphasising, confirming and pinpointing it, but never altering its essential character.

De Verteuil v. Knaggs (1918) A.C.557 at p.560.

L.G. Board v. Arlidge (1915) A.C.120 at p.133.

In both cases, there was a lis. Even where judicial functions being performed, information can be got vicariously

R. v. Manchester Legal Aid Committee (1952) 1 A.E.R.480 at p.490: last para. Governor has no form of lis before him. All he is concerned with is policy and expediency.

10

20

30

40

III. Did terms of reference to Board go beyond or not arise out of or were they otherwise irrelevant to the trade dispute or, alternatively, such trade dispute as in fact existed?

In the
Supreme Court
of Trinidad
and Tobago

10 Governor can only inform himself generally. He cannot put persons on oath or call for documents. When he wants to get at underlying causes, Board of Inquiry does that. Ordinance requires that matters to be referred should be matters appearing to Governor to be connected with or relevant to dispute.

No.17

In the case referred to in Tillyard on Worker and State, inquiry was into causes and circumstances of stoppage of work in fishing industry.

Judges Notes
of Defendants
Final Address.

9th 10th and
11th October,
1957
continued.

R. v. L.D.T. ex parte Q.M. College, University of London (1957) 1 W.L.R.283 at pp.285-6.

20 IV. Did Governor cause enquiry to be made before appointing Board of Inquiry. Onus on Plaintiff. Omnia rite esse acta &c. Only evidence suggested contra is that no enquiry made by Governor himself of company. But letters and enquiries by department of Labour and Ministry of Labour.

Liversidge v. Anderson and or. (1941) 3 A.E.R. 338 at p.348-9.

Summary:

30 Paramount issue is whether or not there was a trade dispute in existence on 16th April 1956 and whether that trade dispute was within particulars pleaded in para.2 of Defence. Submitted that trade dispute existed having regard to meaning of "difference" and that Governor may ascertain area of dispute from: any source. Dispute extended to every point pleaded in that para. Alternatively, if it did not so extend, it extended at least to industrial right of workers in employment of Plaintiff Company who were at the time members of Federated Workers Trade Union to be represented by and have as their bargaining agent the Federated Workers Trade Union. 40 Substantially speaking, that trade dispute appears as the dispute in the plea. Whether or not pleading added an adjunct to substantial trade dispute, it makes no difference to fact

In the
Supreme Court
of Trinidad
and Tobago.

No.17

Judges Notes
of Defendants
Final Address.

9th 10th and
11th October,
1957.
continued.

that pleading alleges a trade dispute which did exist and concern of Court is not whether a trade dispute extended to the uttermost limits as pleaded but whether there was an existing trade dispute within the limits of that plea. Submitted further that adjunct is so connected with and relevant to substantial trade dispute that it was inevitable that it would have to be investigated upon any enquiry which might be made by Board. And, in any event, it could not make act of Governor in appointing a Board ultra vires the Ordinance.

10

As to whether substantial matter or adjunct is trade dispute, Federated Workers Trade Union clearly acting on behalf of members in employment of company and was authorised expressly or implicitly and authority ratified implicitly to raise with company question of its recognition in whole or in part as bargaining agent of those workers and in that context and for those reasons, dispute or difference between company as employer and workmen of that company in membership of union and was therefore a trade dispute within meaning of Ordinance.

20

Subsidiarily, other points arising. Enquiry contemplated by Sec.8 was not a formal or special kind of enquiry but rather one whereby Governor might obtain such information as should enable him, when considering question from point of view of policy and expediency and not judicially or quasi-judicially, to determine whether in public interest, he, as custodian of that interest, should set up a Board of Inquiry and refer to it such matters as appeared to him to be properly referable.

30

Submitted further that such questions might include under Sec.8 (1) any matters whatsoever that might appear to him to be in any way connected with or relevant to trade dispute and under Sec.8(2), any other matter which possibly arising thereout, might relate to or have some bearing upon economic or industrial conditions in these Islands.

40

So long as Governor appoints Board with specific terms of reference which may fall within scope of what is prescribed in Sec.8(1) and (2) Court cannot interfere with the exercise of his

discretion because matters to be included in those terms of reference are matters which must appear to him to be properly referable. Action misconceived.

In the
Supreme Court
of Trinidad
and Tobago

Adjourned at 11.30 a.m.

Resumed at 1.40 p.m.

No.17

10 Wooding: Just as Court is circumscribed by date 16th April, 1956, so would Board of Enquiry. Dispute or difference has to have an industrial connection: Citrine on Trade Union Law p.479: "Recognition disputes are included."

Judges Notes
of Defendants
Final Address.

9th 10th and
11th October,
1957.
continued.

No.18

No.18

JUDGES NOTES OF PLAINTIFFS FINAL ADDRESS

Butt, Q.C. Difference between workmen and a company as to whether or not there should be union representation is not per se a trade dispute because at that stage it has not impacted itself upon terms of employment or conditions of labour.

Judges Notes
of Plaintiffs
Final Address.

11th and 14th
October 1957.

20 But if issue is carried further stage either by workmen insisting on it as a term of employment or by company insisting as a term of their labour that they should, in the one case, and should not, in the other, have union representation, then issue becomes a trade dispute.

30 Minute of appointment (16th April 1956) of Gillis does not tell Board of Inquiry what dispute is. In fact, no trade dispute. But, even assuming that there was, under Sec.8 it became incumbent on Governor to enquire into causes and circumstances of it (which we say he did not).

Thirdly, having done so, if he should think fit, refer to Board any matters appearing to him connected with or relevant to it and also any matters economic or industrial conditions in Colony related to it (which we again say he did not do).

In the
Supreme Court
of Trinidad
and Tobago.

Appointment ultra vires: (a) statutory condition which founded jurisdiction for appointment in fact non-existent (b) so called appointment not made according to dictates of statute.

Three cardinal issues :-

No.18

Judges Notes
of Plaintiffs
Final Address

11th and 14th
October 1957.
continued.

1. Was there trade dispute.

2. Did Governor duly enquire into it.

3. Did he make reference sanctioned by law concerning it.

As to 1.

10

Was company in dispute with anyone? If so, with whom? If with the men, was dispute with men a trade dispute?

(1) No dissatisfaction on part of men. Harmonious relations.

Letter dated 23rd January 1957 from Crown Solicitor: First question is, was company in disagreement with anybody about matter raised in this letter." If they were not, that is an end of the case.

20

Company was never in disagreement with anybody about that. Never in disagreement about a policy matter.

(2) If company was in any disagreement about a policy issue or dispute with anyone it was with the Minister of Labour alone and not with Federated Workers Trade Union or with the men who in fact knew nothing about it.

In Bird v. O'Neal, union not acting for Wynter on behalf of members.

30

In R. v. I.D.T., ex parte Q.M.College, University of London, union made matter one of principle. Unions may act for individual member or for all supporters.

(3) In further alternative, assuming dispute was with the men: it was not a trade dispute.

Whether or not a dispute is a question of

fact. Evidence of Leinster and Edwards, and correspondence and minute of 29th May 1956. Seeing no need for a union not the same as refusing to recognise any union in the future.

In the Supreme Court of Trinidad and Tobago.

Policy of company has been distorted.

No issues on general policy in either interview between Edwards and Johnson or interview between Pryor and Minister of Labour.

No.18

Judges Notes of Plaintiffs Final Address

10 If difference was between company and Government it was not a trade dispute. Assuming so-called difference had been communicated to union it would automatically have become a dispute with the men. It would have also to have been communicated to the men and it would then depend on what their reaction was.

11th and 14th October 1957. continued

20 Differences are not, but may become, trade disputes: Conway v. Wade. Even if men knew of difference, it still is not a trade dispute because as long as merely inclination on one side and disinclination on the other, it is not a difference touching terms of employment or conditions of labour. 32 Halsbury, 2nd edition, pp.526-8. 34 Halsbury 2nd ed. p.518 notes (d) (f) and (g).

Adjourned at 3.20 p.m.

Monday 14th October, 1957.

Correspondence:

Letter of 10th August, 1954: Memo, regarding what union was doing:

30 Letter of 19th October 1955: Representation by union on behalf of Bobb. No allegation of dispute between company and anybody but Bobb.

Letter of 1st November 1955:

40 " " 29th November 1955: Enclosures: Dispute between company and union over dismissal of member. No mention of bargaining status.

In the
Supreme Court
of Trinidad
and Tobago.

No.18

Judges Notes
of Plaintiffs
Final Address

11th and 14th
October 1957
continued.

Letter of 10th December 1955: Johnson does not there-
fore deal with bargain-
ing status.

" " 13th December 1955: Again deals only with
Bobb and Simon

Not true that letter of 14th April 1956 was
first mention of company's non-recognition of
union.

Up to this point union only asking for dis-
cussion about Bobb and Simon. Nothing else in
issue. 10

Resolution of 15th March 1956 was in connec-
tion with Board of Inquiry to enquire into Bobb
and Simon matters.

At meeting of 7th January 1956 Pryor did not dis-
cuss anything at all.

Letter of 9th January 1956: "Certain matters" - Bobb
and Simon dismissals.

" " 26th March 1956: Union for first time apply-
ing for bargaining status. 20

" " 4th April
1956:

" " 14th April
1956:

Board of Inquiry thrust on company. At
no stage did company say "we are not prepared to
recognise any union whatever."

On 29th May 1956 Leinster reports to
Works Committee, representative of 90% of men.
Item 17 of Work. Committee meeting of 29th May
1956. Question of any other trade union not rais-
ed as such. 30

Pressure from the Government, not the
men.

Minutes of Works Committee published on
notice board. No protest by men. In fact, men
deserted union by August or September 1956. Works
Committee discussed Bobb and Simon matters and

men satisfied. If union not recognised, it cannot, without consent of men, make union issue of claim to be given right to represent men in dispute about non-recognition.

In the
Supreme Court
of Trinidad
and Tobago.

Men never made issue with Company about non-recognition of union.

No.18

To be a trade dispute a disagreement or difference must be one connected with the employment or non-employment or terms of employment of someone.

Judges Notes
of Plaintiffs
Final Address

10

Until an issue of recognition progresses into a stage in which it becomes issue touching thereon it does not become a trade dispute - e.g. company may decline to employ men if they continue union membership or men may refuse to work or continue to work unless union representation recognised.

11th and 14th
October 1957
continued.

As to 2:

20

Sec.8 of Ordinance: Existence or apprehension of trade dispute is foundation of Governor's jurisdiction to act. If Governor so thinks but there was no trade dispute, court can interfere.

Governor must do more than inform himself to see if trade dispute exists. He must inquire into causes and circumstances of it. That inquiry is designed to demonstrate to Governor the matters connected with Trade Dispute.

30

"Inquire" is more than "take into consideration." Cf. Sec.3. Governor may refer subject matter of dispute to Board of Inquiry and also connected matters. Not submitted that Governor cannot refer trade dispute to Board, e.g. whether or not A should be upgraded.

40

Wooding says dispute about non-recognition of Federated Workers Trade Union existed since 29th November 1955 but it did not. On 29th November 1955 what was in difference was whether company should meet Federated Workers Trade Union to discuss Bobb dismissal on behalf of Bobb. That was why men asked for Board of Inquiry into Bobb and Simon dismissals. Never any request by union for recognition until 26th March 1956.

In the
Supreme Court
of Trinidad
and Tobago.

No.18

Judges Notes
of Plaintiffs
Final Address

11th and 14th
October 1957
continued.

Not until 14th April 1956 that company re-plied (and not to union). Do not contest pre-sumption about due inquiry by Governor but on evidence he cannot have done so.

On pleadings not alleged that Governor made due inquiry between 14th to 16th April, 1956. No evidence by defendants that men not satisfied with way in which Bobb and Simon treated. Manifest that no due inquiry made.

As to 3:

10

One of the matters referable to Board of Inquiry could have been question of non-recognition of Federated Workers Trade Union. But Governor must formulate specifically to Board such matters as appear to him to be connected with or relevant to dispute. What he did was to delegate to Gillis the duty of inquiring into trade dispute.

Wooding, Q.C. Not raised in pleadings that there was defect in minute of appointment.

Butt, Q.C. Branch union not now existing. Any-thing referred (under Sec.8(2)) must be connected with and arise out of trade dispute.

20

If Parties agree about trade dispute, it does not matter whether trade dispute particularised in reference. Cmd. 8839: Austin Motor Co. Ltd. Cmd. 8607: Thomson & Co. Ltd. and Nat. Soc. of Printers.

C.A.V.

Adjourned at 11.40 a.m.

Thursday 14th November, 1957.

30

Sir Courtenay Hannays, Q.C. for Plaintiff (Butt with him). Wooding for Defendants.

Judgment read. Declaration made. Leave to move for injunction. Costs against both Defendants.

No.19

JUDGMENT OF MR. JUSTICE ARCHERIn the
Supreme Court
of Trinidad
and Tobago.

No.19Judgment of
Mr. Justice
Archer.14th November
1957.

There has been no dispute about the facts in this case and the argument has been restricted to the proper inferences to be drawn from the facts and the principles of law to be applied to them.

10 The Plaintiff Company which owns and operates quarries and a factory for the manufacture of cement at Claxton Bay enjoys certain privileges under the Cement Industry (Development) Ordinance, Ch.33 No.17. The company commenced construction of its factory in 1953, employing for the purpose about 500 hourly paid workmen. Construction of the factory was completed in 1956 and production began with a reduced labour force of about 300 hourly paid workmen.

20 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 company at its factory. On the 10th August, 1954, the general secretary of the Union informed the general manager of the company 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 company would at all times be amicable and that trade union organisation in the company would be lasting and beneficial.

30

40 The company 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 company 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 company. There is no evidence as to the response which

In the
Supreme Court
of Trinidad
and Tobago

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

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.

The union claims to have achieved a membership of 200 of the company's workmen by the end of 1954 but it took no steps then to seek recognition from the company as their bargaining agent. Its organiser 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 he fixed the membership in April 1956 at 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.

10

The company's workmen recruited as members of the Union formed a branch of the Union. Among them were Bobb (who was president of the branch) and Simon, an ordinary member. Bobb was dismissed from the service of the company on the 15th October, 1955, for alleged dereliction of duty and the general secretary of the Union wrote the general manager of the company on the 19th October, 1955, asking for an early interview with him to discuss the dismissal. To this letter the company made no reply and the general secretary of the Union wrote again, on the 1st November, 1955. This letter the company 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.

20

30

On the 9th November 1955, the Union wrote to the Commissioner of Labour complaining about the non-receipt of replies to its two letters to the company and asking the Commissioner to arrange a meeting under his chairmanship between the company and Union representatives to discuss Bobb's dismissal.

40

Simon was dismissed from the service of the company on a date which was 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 of 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 asked him to arrange to have Simon's dismissal discussed with the company 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.

10

On the 29th November, 1955, Edwards, an official of the Labour Department, interviewed Johnson, works manager of the company 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. Edwards was unable to reproduce in detail all that was said at the interview but he gave the gist of the conversation and, so far as Johnson was competent to express it, the company's attitude to the Union's approach. In Edwards' words: "Johnson took the stand broadly that the company did not recognise the Federated Workers' Trade Union and further that it had machinery by way of a works committee for dealing with the grievances of its 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 the company was abundantly justified in the action taken in dismissing Bobb and Simon."

20

30

40

50

In the
Supreme Court
of Trinidad
and Tobago

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

In the
Supreme Court
of Trinidad
and Tobago

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

the terms and conditions of employment of those work people."

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

Johnson replied to the Commissioner's letter on the 10th December, 1955. His reply was exceedingly brief and was confined to thanking the Commissioner for his letter of the 29th November, 1955, and stating that there was nothing which the company could usefully add to the information already given him. The Commissioner of Labour informed the Union that the company 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

On the 7th January, 1956, a meeting at which Edwards was present took place between the Minister of Labour and Pryor, the company's accountant. Edwards gave an account of the proceedings at this meeting from which it appears that Pryor contributed nothing to the discussion. The Minister told Pryor that the Union had complained to him that the company 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 company's 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 company enjoyed pioneer status, and that if the company 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 company 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.

30

40

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

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

10 On the 26th March, 1956, the general secretary of the Union wrote the general manager of the company informing him that the Union now represented a substantial majority of the company's employees and applying for bargaining status for the company's manual workers. This letter further informed the company that the Commissioner of Labour was being asked to obtain from the company the names and number of its employees for comparison with the Union's membership with a view to substantiating the Union's claim to

20 bargaining rights. The company did not reply to this letter. On the 4th April, 1956, the Commissioner of Labour wrote to the senior resident director of the company inquiring whether or not the company was agreeable to the Labour Department carrying out the check suggested by the Union. On the 14th April, 1956, the company 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

30 useful purpose would be served by a check of union membership among its employees by the Labour Department.

On the 16th April, 1956, the Governor, purporting to act under the provisions of the Trade Disputes (Arbitration and Enquiry) Ordinance, Ch.22 No.10, appointed a Board of Inquiry with certain terms of reference. The company appeared by solicitor before the Board on the 17th April, 1956, and objected to its jurisdiction.

40 The proceedings were stayed to enable the company to take steps to test the validity of the Board's appointment and the writ in this action was issued on the 25th May, 1956. The statement of claim was delivered on the 16th June 1956 and the defence was delivered on the 10th October, 1956. On the 16th October, 1956, the company's solicitors by letter requested particulars of the defence but these were refused upon which the company took out a summons on the 25th October

50 1956, for an order for delivery of particulars which came before Gomes., J. At the hearing

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

of the summons the Defendants undertook to supply the particulars requested and on the 23rd January 1957, the Crown Solicitor wrote to the Company's solicitors informing them of the nature of the trade dispute which had given rise to the appointment of the Board of Inquiry. The language used by the Crown Solicitor to describe the alleged trade dispute has been repeated in paragraph 2A of the amended defence which was delivered on the 6th February, 1957, and is:

10

"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."

20

Before the trial of the action commenced on the 8th October, 1957 the Defendants sought leave to amend paragraph 2A of their defence by including in a sub-paragraph to be lettered (a) reference to the dismissal of Bobb and Simon in the following terms: "(a) Whether the termination by the Plaintiff Company of its employment of Clifford Bobb and/or Edmund Simon, members of the Federated Workers' Trade Union, was justified by the facts relating thereto or alternatively was in accordance with good industrial relations and/or practice" and alleging the trade dispute to be and to have been what is contained in that sub-paragraph in addition to what had previously been pleaded as the trade dispute. I deferred a ruling on the application for amendment but intimated that I was of the opinion that it must be refused. The application was not pursued but in any event and as the case progressed it became clear that it would not have been proper to have granted it. As Lord Radcliffe said in Esso Petroleum Co. Ltd. v. Southport Corporation (1956) 2WLR81 at pages 90 and 91 when dealing with the desirability of confining parties to their pleadings:

30

40

"My Lords, I think that this case ought to be decided in accordance with the pleadings. If it is, I am of opinion, as was the trial judge that the Respondents failed to establish any claim to relief that was valid in law. If it is not, we might do better justice to the Respondents - I cannot tell since the evidence is incomplete - but I am certain that we should do worse justice to the Appellants, since in my view they were entitled to conduct the case and confine their evidence in reliance upon the further and better particulars of paragraph 2 of the statement of claim which had been delivered by the Respondents. It seems to me that it is the purpose of such particulars that they should help to define the issues and to indicate to the party who asks for them how much the range of his possible evidence will be relevant and how much irrelevant to those issues. Proper use of them shortens the hearing and reduces costs. But if an appellate court is to treat reliance upon them as pedantry or mere formalism, I do not see what part they have to play in our trial system."

10

20

30

40

50

In the
Supreme Court
of Trinidad
and Tobago

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

Lord Radcliffe was considering a case on appeal in which the Respondents were seeking to advance contentions neither pleaded nor made out in the course of the trial but his observations are a valuable indication of the range outside which parties should not be allowed to roam when they have deliberately defined the limits of their dispute.

The dismissal of Bobb was mentioned at a meeting of the works committee of the company 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 company for trade union activity by Bobb and Simon: the existence of such an attitude on the part of the company was denied by Leinster, acting resident director under cross-examination, and no workmen or other

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

person was called to give evidence in support of the suggestion. There was, further, no evidence that the men had been forced to take part in the elections of representatives on the works committee. Both Siblal, organiser and area representative of the Union, and Stephen, its assistant general secretary, indeed described an active branch union whose members were alive to their trade union rights and responsibility and who were incensed at the treatment meted out to Bobb and Simon, but this supposed awareness of the workers is a little difficult to reconcile with their dual role as members of the branch union and at the same time participants through their representatives in activities of the works committee except on the ground that they saw no conflict between the two roles and, indeed, added advantage in having representation in two places, but it may equally well be that they were exhibiting in the face of the proselytising zeal of the Union's organisers the not unusual characteristic of some people by joining a new organisation without appreciating or paying particular attention to its purpose or methods. Leinster said that a very happy atmosphere between the company and its workmen prevailed from the commencement of their employment up to the 16th April, 1956 and no workman has been called to say otherwise.

10

20

The company's contention is threefold. It says: (1) that no trade dispute between the Company and any of its workmen existed on the 16th April, 1956; (2) that if any such trade dispute did exist, the Governor made no due inquiry into the causes and circumstances of it; (3) that the Governor did not make a valid reference to the Board of Inquiry.

30

It was conceded by the Defendants that the foundation of the Governor's authority to appoint a Board of Inquiry is the existence on 16th April, 1956 of a trade dispute between the company and its workmen or some of them. The section of the Ordinance under which the Governor is empowered to act places existence and apprehension of a trade dispute on the same footing but whatever the precise difference between them it was not argued that the Governor apprehended a trade dispute when he appointed the Board of Inquiry but that a trade dispute was in existence when the

40

Board was appointed. If in fact no trade dispute existed when the Board of Inquiry was set up the company must succeed and it will be unnecessary to determine whether or not the Governor made due inquiry or to discuss in any detail the terms of reference embodied in the minute of appointment.

In the
Supreme Court
of Trinidad
and Tobago

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

10 The Defendants contend that the trade dispute was the company's policy of non-recognition of any trade union with which, had merged the company's non-recognition of the Federated Workers Trade Union as the bargaining agent of the workmen in the employment of the company who were members of that union. Alternatively, they say that the trade dispute was the company's non-recognition of the Federated Worker's Trade Union. On this basis, the Governor, they submit, was empowered to refer either the matter of non-recognition of any union to the Board of Inquiry under Section 8(1) of the Ordinance, or the question of non-recognition of the Federated Worker's Trade Union under Section 8(1) and that of non-recognition of any union under Section 8(2). They further say that the question of non-recognition of any union was so connected with and relevant to the question of the non-recognition of the Federated Worker's Trade Union that it was inevitable that it would have to be investigated by the Board of Inquiry. The controversy over the dismissal of Bobb and Simon if controversy is not too strong a word, was not pleaded as the trade dispute which gave rise to the appointment of the Board of Inquiry and having regard to the issues as they have emerged from the evidence it could hardly have been argued successfully that these dismissals constituted the trade dispute though the question of recognition of the Federated Workers' Trade Union could trace its origin to the early attempts by that union to discuss the Bobb and Simon matters with the company. It was not surprising, therefore, that the application to amend paragraph 2A of the defence which was made before any evidence was heard was not persisted with.

20

30

40

50 The Company did not deny that the onus lay on it to prove that the Governor had not made due inquiry into the causes and circumstances of the trade dispute before appointing the Board of Inquiry but submitted that from all the circumstances it was manifest that no due inquiry had been made.

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

The appointment of a Board of Inquiry appears to have been first mentioned by the Minister of Labour when he had the interview with Pryor on the 7th January, 1956. A Board of Inquiry can only act upon reference: neither employer, employee, employers' association or trade union can call it into being but at some stage the branch union appears to have discussed the appointment of such a Board and to have been impatient over the delay in setting it up. At a meeting held on the 15th March, 1956 a resolution was passed protesting against the delay but it is clear that up to that time the branch union had in mind only the Bobb and Simon matters and it was these which it wanted the Board of Inquiry to investigate. The evidence of Siblal, the branch union trustee and official is specific on this point. He said that the branch union was only interested in having Bobb's and Simon's cases inquired into by the Board and that the Union in fact only handled these two matters. He did not mention any other matter as having been entrusted to the Union or give any indication that there were other grievances which the branch union wanted the Union to take up, but Stephen, the assistant general secretary of the Union, said that the members of the branch union wanted the Union to handle other matters. He did not however, specify these matters and no member of the branch union was called to reconcile the conflict between his evidence and Siblal's. His evidence on this point is much too vague to warrant any reliance being placed upon it and I am of the view that Siblal who was in closer touch with the branch union than he was has accurately expressed the branch union's attitude in the matter.

10

20

30

The possibility exists that it never occurred to the branch union that, in accordance with trade union practice, the Union would first have to be recognised by the company before it could negotiate on behalf of Bobb and Simon. Its members may easily have assumed that recognition would be accorded as a matter of course and that there would be no need to authorise the Union specifically to seek recognition for this purpose. There is certainly no evidence of any specific authorisation and the most that can be said is that if the members of the branch union had been consulted when the Union realised that it was being rebuffed they would have approved the Union's

40

action in applying for such recognition as would enable it to represent Bobb and Simon.

10 It was not until the 26th March, 1956 that the Union applied to the company for recognition for collective bargaining purposes. The Defendants have argued that the branch union ratified this action on the part of the Union in that it did not protest when a copy of the Union's letter to the company containing the application was communicated to it.

10

20

30

40

I will assume that the branch union appreciated that recognition for collective bargaining purposes and not limited recognition for the purpose of putting Bobb's and Simon's cases was being asked for in the Union's letter for there had been no prior consultation with the branch union. 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. The branch union had meanwhile begun to lose faith in the Union as an effective bargaining instrument, its members were gradually withdrawing their support from it and the branch union though alive was moribund. The disintegration that had set in continued in spite of the appointment of the Board of Inquiry and by the end of August or September, 1956, not a single financial member remained. Stephen gave revealing evidence when he summed up the attitude of the branch union members in these words: "They said 'if we cannot get any result from these two cases, what is the use of belonging to the Union?'" Far from standing firm in their resolve to force the Bobb and Simon issue to a conclusion and having it inquired into they deserted the Union and the resolution of the 15th March, 1956, represented their last gesture of protest.

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

There is no evidence as to the reaction of the members of the branch union to the Union's letter of the 26th March, 1956, to the company beyond the negative circumstance that they made

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

no protest against the Union's claim to full bargaining rights. The Union could not of course be a disputant in its own right but even if the absence of a protest by the branch union constituted a ratification of the Union's action it must be borne in mind that the Union never received a reply from the company to its letter and there is no evidence that the contents of the company's letter to the Commissioner of Labour of the 14th April 1956 was ever communicated to it. Indeed, there was hardly any time in which this could have been done for the 14th April, 1956 was a Saturday and the Board of Inquiry was appointed on Monday the 16th April, 1956.

10

The issue which the Union was now seeking to raise was separate and distinct from the Bobb and Simon issue. With regard to this new claim there had merely been a proposal on the part of the Union. Its letter of the 26th March, 1956 is the complement of its letter of the 10th August, 1954, in which it announced the commencement of its drive for membership among the employees of the company and is couched in cordial terms. There is no hint of protest in it and it is quite impossible to say, as counsel for the Defendants argued, that it merely places formally on record an earlier protest and expresses what had been implied before. For the first time the Union was asking 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 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. 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

20

30

40

50

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. Nothing of the sort revealed itself on the 16th April, 1956: neither the Union nor the company's employees then knew that the company had refused the Union's application and the highest at which the matter can be put is that if the workmen had got to know of the company's stand they might have resisted it and their resistance might have resulted in a trade dispute.

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

Counsel for the Defendants referred to a number of authorities in support of his argument that a trade dispute existed on the 16th April 1956 but in each of the cases cited there was a well defined dispute acknowledged by the parties and known to the Minister of Labour. In National Arbitration Tribunal, ex parte Keable Press Ltd. (1943) 2 A.E.R. 633 it was not disputed that a trade dispute existed and that it related to subject matter of the kind which was referable to the tribunal and the only question was as to the parties to the dispute, whether they were employer and workmen or employer and trade union. Members of the trade union concerned had gone on strike in support of the union's action which had been taken in order to establish a principle and the controversy was as to whether it was the case of an intermeddling union or of workmen disputing with their employer. In National Association of Local Government Officers v. Bolton Corporation (1942) 2 A.E.R.425 the contest was between a trade union acting on behalf of officers of the corporation and the corporation. The reference to the tribunal specified the dispute and the contention of the corporation was that the reference was ultra vires of the Minister to make and in excess of the jurisdiction of the tribunal to entertain, because although there was a dispute, it was not a trade dispute. In R. v. National Arbitration Tribunal and another, ex parte South Shields Corporation (1951) 2 A.E.R. 828, the Society of Town Clerks was acting on behalf of a town clerk who had demanded

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

an adjustment of salary by the corporation and had made a claim in relation to his conditions of service. The decision in that case turned on the true construction of the Industrial Disputes Order, 1951 which replaced the Industrial Disputes Order, 1940 and was that there must be a dispute between the employer and more than one workman in his employ to constitute a trade dispute but it was not doubted that under the Industrial Disputes Order, 1940 a trade dispute could have existed between one workman and his employer. The argument had been mainly directed to that aspect of the case and no question of difficulty concerning what the dispute was arose. In R. v. Industrial Disputes Tribunal, ex parte Courage & Co. Ltd. (1956) 3 A.E.R.411, a trade union which represented a substantial proportion of workers in the brewing industry sought an increase of pay for their members employed by Courage & Co. and on the Company's refusal to pay, reported the matter as a dispute to the Minister of Labour who referred it to the Industrial Disputes Tribunal for settlement. On an application by the company for an order of prohibition against the tribunal, the question was as to whether or not the union represented a substantial proportion of the workers in the section of trade or industry, namely, the company's brewery, as required by the Industrial Disputes Order, 1951. The workers had authorised the group secretary of the union to make the report to the Minister and it could not therefore be said that the union had indulged in a frolic of its own and acted entirely independently. It is instructive to observe, too, that the Minister's reference to the tribunal contained a description of the dispute which clearly defined its subject-matter. R. v. Industrial Disputes Tribunal, ex parte Queen Mary College, University of London (1957) 2 A.E.R. 776 is another case of an application for an order of prohibition and was the sequel to R. v. National Arbitration Tribunal, ex parte South Shields Corporation. There was an undoubted dispute but whereas counsel for the applicant for the order of prohibition submitted that the parties to the dispute were the employer and one employee, the Court of Appeal held that although the dispute had arisen out of a difference between the employer and one employee it had become a dispute between the employer and other employees who had made themselves parties to it.

10

20

30

40

50

In Bird et al v. O'Neal et al in which judgment was delivered by the West Indian Court of Appeal on the 9th April, 1957, the trade union concerned was found to have been acting on its own and on behalf of a person who was not a workman at the time when the dispute or difference between the employer and the union arose: none of the employees took part in the dispute or complained or demonstrated in any way or voiced his disapproval of the employer's actions and it was accordingly held that no trade dispute existed between the union and the employer. The court adopted a passage from the judgment of Bennett, J. in R. v. National Arbitration Tribunal (1941) 2 A.E.R. 800 at page 814 in which he had said that a difference between a trade union and an employer cannot be a trade dispute but the judgment of the court on the point was based on the ground that no workman was a party to the dispute.

In the Supreme Court of Trinidad and Tobago.

No.19

Judgment of Mr. Justice Archer.

14th November 1957.
continued.

It was strenuously contended that the company had throughout evinced antagonism to trade unions generally and that its refusal to recognise the Federated Workers' Trade Union for any purpose was but a particular instance of its anti union policy. This was said to be evident from Johnson's statement to Edwards on the 29th November, 1955 from the letters from the company to the Commissioner of Labour, and from Leinster's report to the works committee of the company on the 29th May, 1956.

Counsel for the company did not repudiate the authority of Johnson to express the mind of the company but submitted that what he said and wrote did not constitute a denial by the company of their employees' right to trade union representation. For reasons which will become apparent it is unnecessary to determine the extent of Johnson's authority to bind the company but it is useful to bear in mind the observations of Denning, L.J. in H.L. Bolton (Engineering) Co. Ltd., v. T.J. Graham & Sons Ltd. (1956) 3 W.L.R. 804 when dealing with the question of proof of the state of mind of a company.

At pages 812 and 813 he said: "So the judge has found that this company, through its managers, intend to occupy the premises for their own purposes. Mr. Albey contests this finding,

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

and he has referred us to cases decided in the last century; but I must say that the law on this matter and the approach to it have developed very considerably since then. A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of the mind of the company and is treated by the law as such". And later: "So here the intention of the company can be derived from the intention of its officers and agents. Whether their intention is the company's intention depends on the nature of the matter under consideration, the relative position of the officer or agent and the other relevant facts and circumstances of the case."

10

20

In other circumstances Johnson's ability to commit the company by an expression of his views would have been subjected to scrutiny to ensure that they represented its firm and settled intention but it can be taken, in view of the company's apparent adoption of what he said and wrote, that his language accurately conveyed the company's state of mind.

30

The company undoubtedly felt that in its works committee its workmen had perfectly satisfactory bargaining machinery and it did not hesitate to extol the virtues of that committee or to stress its superiority over a trade union but what was said and written on its behalf cannot be removed from the context in which it appears nor divorced from the circumstances in which it came to be expressed. Edwards' interview with Johnson came about because the Union had reported to the Labour Department that the company had not replied to its letters concerning Bobb's dismissal. It appears to me to have been quite natural for Johnson in voicing the company's refusal to meet the Union to have added that the company's employees already possessed adequate machinery for the airing of grievances. I see no declaration of policy in what he said and certainly no statement of

40

the company's intention never to recognise any union of the workmen's choice. The letters written by Johnson are equally innocent of any such declaration. The letter of the 10th December, 1955, merely confirmed what he had said to Edwards on the 29th November, 1955; and the letter of the 9th January, 1956 re-iterated the company's refusal to discuss further the matters put before Pryor by the Minister of Labour on the 7th January 1956 - and these matters were the dismissal of Bobb and the dismissal of Simon and the claim of the Union to represent them - The letter written by Leinster on the 14th April, 1956 to the Commissioner of Labour (which was received in the Labour Department on the 16th April, 1956) was in reply to the Commissioner's letter concerning a check of the company's employees to ascertain the number of members of the Union. It dealt with that particular union and contains nothing that can be construed as a statement on policy regarding unions.

The meeting between the Minister of Labour and Pryor was for the purpose of discussing the Union's claim to represent Bobb and Simon. Pryor said nothing at all at the interview and the matters he promised to refer to his principals were the Bobb and Simon dismissals and the question of the Union's application to the company for an interview to discuss them.

It is well to bear in mind that whatever construction is sought to be put upon Johnson's words and his Leinster's letters, the Union was in complete ignorance (and so were the members of the branch union) of all that was said and written and only knew through the Commissioner of Labour that the company had refused to recognise it and was not prepared to attend the meeting to discuss the dismissal of Bobb and Simon which it had suggested.

Leinster's report to the works committee which is said to have betrayed the company's policy of non-recognition of trade unions was made long after the Board of Inquiry had been appointed. It emphasises the company's refusal to recognise the Union and restates the company's view that its works committee was serving its purpose admirably. It stresses the amicable relationship between the management and the workmen

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

and it is in this part of the report (which itself is contained in the minutes of the meeting presumably written up by some person other than Leinster) that certain words to which counsel for the defendants ascribes a sinister meaning appear. They are: "The company intended to continue to work with its employees on this amicable basis through the Committee and had no intention of working with an outside organisation."

If these words had stood alone there would undoubtedly have been substance in Counsel's contention but they are the concluding words in a paragraph of the minutes which commence with a statement indicating the scope of the paragraph. The company was insisting that no trade dispute existed and that the appointment of a Board of Inquiry was improper. It was saying that its attitude had come about because what had started as the dismissal of the employees without complaint by its workmen had grown into a struggle with the Federated Workers' Trade Union and that it did not intend to deal with that organisation. No question of dealing with any other organisation arose and the expression "and had no intention of working with an outside organisation" clearly had reference to the organisation which was seeking recognition.

The view expressed by Leinster at the end of his remarks is equally inoffensive. Having said that the works committee was operating satisfactorily he concluded by saying that he was sure that the spirit of co-operation between it and the company would continue. It is impossible to read into his words a determination not to countenance recognition of any trade union in the future, whatever the circumstances.

Leinster was accused by Counsel for the Defendants of a lack of candour in giving his evidence and it was said that his statement that the company had no anti-union policy could not be reconciled with his report to the works committee on the 29th May, 1956. In my view there is no conflict between the two. The report dealt with the specific question of non-recognition of the Federated Workers' Trade Union: what Leinster said in evidence was that the company had never had to determine a policy towards trade unions much less to arrive at an anti-union policy because it had a works committee and the Federated

10

20

30

40

Workers' Trade Union was the only union that had ever approached the company; that if its employees became dissatisfied with the works committee and wanted to be represented by a trade union the company would give the matter consideration but that meanwhile, as the company considered the Federated Workers' Trade Union to be irresponsible, it would have nothing to do with that union.

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.

continued.

10 Not only is there no evidence that the company evinced an anti-union policy but even if it had there is no evidence that the Federated Workers' Trade Union or the workmen in the employ of the company could have known of it on the 16th April, 1956. If such a policy could be deduced from correspondence passing between the company and the Labour Department and from Johnson's interview with Edwards' and Pryor's interview with the Minister of Labour it would, according to the evidence, have been known only to the Labour Department and the Minister. But even if it could have been known to the Federated Workers' Trade Union and the company's workmen no trade dispute would automatically have resulted from that knowledge. Counsel for the Defendants cited a passage from Citrine on Trade Union Law in support of his submission that denial of recognition of a trade union gave rise to a trade dispute and relied on the case between D.C. Thomson & Co.Ltd. and the National Society of

20

30 Operative Printers and Assistants which concerned a dispute about the policy of non-recognition of trade unions adopted by D.C.Thomson & Co.Ltd. But in that case, the company and its workmen had made an issue of non-recognition of trade unions. The company had insisted that its employees be non-union men, there had been dismissals for unionism and some, at least, of the men, had resisted this attempt to make non-union membership a term of their employment. The dispute had been reported to the Minister of Labour whose intervention had been sought with a view to trying to persuade the company not to insist on a non-union promise by its employees and there had been a strike which later spread to other workmen not immediately concerned in the dispute.

40

A stage was never reached at which the Plaintiff Company made it a term of employment

In the
Supreme Court
of Trinidad
and Tobago

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued

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. A trade dispute must concern the employment or non-employment or the terms of employment or the conditions of labour of workmen or other persons. Neither Bobb nor Simon gave evidence and there is nothing to suggest that either was dismissed from the service of the company because he was a union member. This accusation must have emanated from the Minister of Labour. The letter of the 9th January, 1956 rejected what he had said on the 7th January, 1956, but what he had said on the 7th January, 1956 was that the company ought to recognise the Federated Workers' Trade Union as advocates for Bobb and Simon: the question of the Union's being recognised for any other purpose had not yet been raised and was not raised until the 26th March 1956, and the general question of trade union representation was never raised by the workmen at any time. It was clear, even before the company wrote the letter of the 14th April 1956, that it was rejecting the Union's claim and even if the language used in Leinster's report to the Works committee on the 29th May, 1956 has the meaning contended for by the Defendants it had not yet been used when the Minister spoke with Pryor and is irrelevant to a consideration of the events which terminated in the appointment of the Board of Inquiry.

10

20

30

The Government through the Minister of Labour had withdrawn recognition from the Union as representative of its daily paid workers in September, 1954 because it represented only a small minority of Government employees but also because the Government considered it to be irresponsible. The Union was restored to favour in October, 1955, but even then it was granted only partial recognition as a minority union: it had not requested and was not accorded full bargaining rights on general questions of wages and working conditions which it had previously enjoyed. The Minister's action in bringing pressure to bear on the company to induce it to recognise the Union in January 1956 displayed a measure of intolerance for if the Government's confidence in the Union had only a short while before been restored it ought not to have appeared to him that the company's lack of confidence in the Union was necessarily capricious. But he seems to have taken that view and the

40

50

appointment of the Board of Inquiry followed closely on the heels of the company's letter of the 14th April, 1956.

In the
Supreme Court
of Trinidad
and Tobago

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

10 As I have already observed, that letter was received in the Labour Department on the 16th April, 1956, and the Board of Inquiry was appointed the same day. I find it extremely significant that the Board sat the very next day. It must have been in the mind of somebody before the 14th April, 1956, that the company, whenever it replied to the letter of the 4th April, 1956, from the Commissioner of Labour, would reject the request for a check of union members among its workmen and preparations for the appointment of the Board of Inquiry must have been well in hand sometime before the 14th April, 1956 and at a time when the trade dispute which was subsequently alleged did not exist. The dates on which the Governor was said to have enquired into the causes and circumstances of the existing trade dispute as set out in paragraph 2B of the amended defence (but in respect of which no evidence was led) are the 13th March and 27th March and the 10th April, 1956. This can mean no more than that the Governor was keeping abreast of development from the 13th March but this was before the Union had sought full bargaining rights and the company had not yet on the 10th April rejected its application.

20

30 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. However convenient it might be to have these claims investigated together and however closely connected they were they remained separate and distinct claims each of which by itself contained only the germ of a trade dispute. The Minister's charge against the company was another and different question and had no basis in fact. Non-recognition of trade unions was something that neither of the parties had fought about and it had been brought into the arena by the Minister without their knowledge or consent. It matters not therefore whether it was the Union's latter claim or the Minister's charge or both that the Governor referred to the Board of Inquiry. In neither case did a trade dispute exist at the date when he appointed the Board.

40

In the
Supreme Court
of Trinidad
and Tobago

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

Whether an official who acts under statutory powers in any given case performs quasi-judicial functions or not is often a difficult question and the cases dealing with the subject are not easy to reconcile. In De Verteuil v. Knaggs (1918) A.C. 557 to which senior counsel for the company referred in opening the case the duty of the officer administering the government was to come to a final determination and he was held to have heard both sides and to have made due inquiry. Esugbagi Eleko v. O.A.G. of Nigeria (1931) A.C. 662 in which the Privy Council held that the powers of the Governor of Nigeria under a particular Ordinance were purely executive also shows that the official must obey the statute while Local Government Board v. Arlidge (1915) A.C. 120 is a decision emphasising the duty of a body authorised to hear an appeal to act judicially though following its own procedure. Nakkudi Ali v. Jagaratine (1950) 66 T.L.R. (Pt.2) 214 was a determination on the proper construction to be placed on the expression "if he had reasonable grounds to believe" contained in wartime regulations empowering the controller of textiles in Ceylon to revoke textile licences if he had reasonable grounds to believe that any dealer was unfit to be allowed to continue as a trader. The Privy Council held that the Controller's powers were not judicial, that he was not a tribunal but an executive official who need hold no hearing or inquiry before revoking a licence. In R. v. Manchester Legal Aid Committee (1952) 2 Q.B. 413 in which many of the authorities are reviewed Parker, J., delivering the judgment of the court said at page 428:

"The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and indeed, inadvisable, to attempt to define exhaustively. Where the decision is that of a court, then, unless, as in the case, for instance, of justices granting excise licences, it is acting in a purely ministerial capacity, it is clearly under a duty to act judicially. When on the other hand, the decision is that of an administrative body and is actuated in whole or in part by questions of policy, the duty to act judicially may arise in the course of arriving at that decision. Thus, if, in order to arrive

at the decision, the body concerned had to consider proposals and objections and consider evidence, then there is the duty to act judicially in the course of that inquiry."

In the
Supreme Court
of Trinidad
and Tobago

And at page 431 he said:

No.19

10 "If, on the other hand, an administrative body in arriving at its decision at no stage has before it any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially".

Judgment of
Mr. Justice
Archer.

14th November
1957
continued.

20 The Governor is required to reach a decision on fact when exercising his functions under section 8(1) of the Trade Disputes (Arbitration and Inquiry) Ordinance, and, dependent on his conclusion of fact, is his act of reference to a Board of Inquiry which affects the legal rights of others. He is required to inquire into the causes and circumstances of the trade dispute and the Board is required to inquire into the matters referred to it. There can hardly be any doubt that the Board must act on the audi alteram partem principle when inquiring into the matters referred to it and there is no obvious reason why the words "inquire into" when used in relation to the Governor's investigation preparatory to a reference to the Board should receive a different interpretation. 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. But for the reasons which I have attempted to formulate no trade dispute as pleaded in fact existed on the 16th April, 1956 and the question of whether or not he made due enquiry does not arise.

30

40

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957
continued.

The minute of appointment constituting the second defendant the Board of Inquiry does not specify the trade dispute which was said to exist between the company and some of its workmen. Section 8 of the Trade Disputes (Arbitration and Inquiry) Ordinance contemplates inquiry by the Governor into the causes and circumstances of a trade dispute and reference to a Board of Inquiry of matters in his opinion connected with or relevant to the dispute and also matters in his opinion connected with the economic or industrial conditions in the Colony. The section does not provide for reference of the trade dispute itself to a Board of Inquiry but counsel for the company did not argue that such reference would have been ultra vires. He submitted that even assuming that a trade dispute existed on the 16th April, 1956 and that the Governor had made due inquiry into its causes and circumstances, yet he had made no valid reference to the Board of Inquiry because he had not specifically formulated the trade dispute or the matters which appeared to him to be connected with or relevant to it but had delegated to the Board the duty of inquiring into the causes and circumstances of the unnamed disputes and that that was the reason why no trade dispute had been particularised in the minute of appointment. Objection was taken by Counsel for the Defendants to this line of argument on the ground that the company had not pleaded that the minute of appointment was defective but the argument is, in my view, unobjectionable for it is at least germane to the company's contention that no trade dispute did in fact exist or that the Governor had not clearly in mind what the dispute was and was deputing the Board of Inquiry to ascertain what it was.

10

20

30

In D.C.Thomson Ltd. v. The National Society of Operative Printers and Assistants Cnd. 8607 in Austin Motor Co Ltd. v. Members of the National Union of Vehicle Builders. Cnd. 8839 and in other cases referred to in the course of argument the minute of appointment merely recited that a trade dispute existed but without naming it and directed the Court of Inquiry to inquire into the causes and circumstances of the dispute, and to report. There could, however, have been no possible doubt in any of these cases as to what the trade dispute was. In the D.C.Thomson case the Minister of Labour had been fully informed about the dispute

40

50

10 while in the Austin Motor Company case Counsel for the parties agreed at the beginning of the proceedings on what the main issues of the dispute were. In no case is there any indication that the Minister deputed the Court of Inquiry to carry out the duty imposed on him by law. 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.

20 No assistance can be obtained from the wording of the terms of reference to determine whether the Governor was referring only the question of non-recognition of trade unions to the Board of Inquiry or he was referring to the Board that question and the question of non-recognition of the Federated Workers' Trade Union as well. The Crown Solicitor's letter of the 23rd January, 1957 to the company's solicitors cures the omission to mention the trade dispute in the minute of appointment to some extent but does not sufficiently clarify it. Having regard to the conclusion at which I have arrived, namely, that no trade dispute existed on the 16th April 1956, the uncertainty surrounding the precise meaning of paragraph 2 of the amended defence which repeats the language of the Crown Solicitor's letter becomes of no account but there may be significance in the failure to define the trade dispute in the minute of appointment when coupled with the obscure wording of the Crown Solicitor's letter and the extreme reluctance on the part of the Defendant's Solicitors to give particulars of the trade dispute when pressed by the company. If the Crown Solicitor's letter was intended to designate the trade dispute as the non-recognition of trade unions it would have been a simple matter to have worded his letter accordingly; if, on the other hand, which is more probable, the intention was to allege that the trade dispute was the non-recognition of trade unions and that that trade dispute was the enlargement of the non-recognition of the Federated Workers' Trade Union and contained that earlier dispute within itself, it is unfortunate that that intention was not expressed more clearly.

50 The contest between the parties is as to whether or not a trade dispute existed and the

In the
Supreme Court
of Trinidad
and Tobago

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957.
continued.

In the
Supreme Court
of Trinidad
and Tobago.

No.19

Judgment of
Mr. Justice
Archer.

14th November
1957
continued.

non-existence of a trade dispute on the 16th April, 1956 would have negatived the authority of the Governor to make a valid reference to a Board of Inquiry. While strict rules of pleading do not apply to the construction of a minute of appointment the need for clarity is apparent where, as in this case, there is controversy concerning the reality of an issue between the parties. Counsel for the Defendants said that the addition of the words "or any other" in paragraph 2A of the amended defence made no difference because the Board of Inquiry would have been entitled to get at the underlying causes of the dispute but this argument begs the question and ignores the company's contention that no trade dispute existed and that it was not proper for the Governor to refer to the Board some vague and undefined matter in the hope that the Board would find out if there was a trade dispute, and, if there was, what it was. It appears to me, however, that a faulty worded minute of appointment could without any injustice being done to the parties, be amended where a trade dispute exists and is acknowledged to exist by the parties and consequently power resides in the Governor to affect a reference to a Board of Inquiry. That is not of course the case here and the foundation for a reference being unreal the reference made by the Governor could not in any event be valid.

10

20

The dissolution of the branch union has created an anomalous situation. The threat by the second Defendant to continue the proceedings which prompted the bringing of this action, if not now insubstantial, must have lost a great deal of its force and the injunction sought by the Company would probably be inappropriate at this stage. The company is however entitled to the declaration claimed and I give judgment accordingly. The declaration will be that the appointment by the Governor in purported exercise of the powers conferred upon him by Section 8 of the Trade Disputes (Arbitration and Inquiry) Ordinance, Ch.22 No.10 of a Board of Inquiry as set out in the minute of appointment dated the 16th April, 1956, which was communicated to the company in the notice to the company bearing the same date is null and void. I give leave to the company to move for an injunction restraining the second Defendant, if it should become necessary by reason of any further action on his part, from entering upon, proceeding

30

40

50

with or otherwise acting in pursuance of such appointment.

No argument was addressed to me on the question of costs. The second Defendant elected to resist the company's claim and to associate himself with the contentions of the first Defendant. Perhaps this was unavoidable but I do not consider that there should be any special order as to costs and I order that both Defendants pay the costs of the action.

10

(Sgd). C.V.H. ARCHER,
PUISNE JUDGE.

14th November, 1957.

In the
Supreme Court
of Trinidad
and Tobago

No.19
Judgment of
Mr. Justice
Archer.
14th November
1957
continued.

No.20

FORMAL JUDGMENT

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.

No.425 of 1956

BETWEEN

TRINIDAD CEMENT LIMITED Plaintiffs

And

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

20

No.20

Formal Judgment

14th November,
1957.

Entered on the 14th day of November 1957
Dated the 14th day of November, 1957
Before The Honourable Mr. Justice C.V.H.Archer.

This action coming on for trial on the 8th, 9th, 10th, 11th and 14th, days of October, 1957 in the presence of Counsel for the Plaintiffs and Counsel for the Defendants, upon reading the pleadings filed herein and the exhibits put into

30

In the
Supreme Court
of Trinidad
and Tobago

No.20

Formal Judgment
14th November,
1957.
continued.

evidence at the trial and marked "R.S.L.1.", "R.S.L.2", "R.S.L.3", "A.S.1", "V.H.E.1", "V.H.E.2", and "A" respectively, upon hearing the evidence of Ronald Styan Leinster, Arthur John Siblal, Vincent Hartley Edwards and Carlton Stephen, taken upon their oral examination at the said trial and upon hearing what was alleged by Counsel for the Plaintiffs and Counsel for the Defendants, the said Judge ordered that judgment in this matter be reserved and the matter coming on for judgment in the paper this day:

10

THE COURT DOTH ORDER AND DECLARE

That the appointment by the Governor, Sir Edward Betham Beetham, in purported exercise of the powers conferred upon him by Section 8 of the Trade Disputes (Arbitration and Inquiry) Ordinance, Chapter 22 Number 10, of a Board of Inquiry as set out in the Minute of Appointment dated the 16th day of April 1956 and filed herein is null and void.

20

AND THE COURT DOTH FURTHER ORDER

That leave be and the same is hereby granted to the Plaintiffs to move for an injunction restraining the Defendant, Bernard Benjamin Gillis, from entering upon, proceeding with or otherwise acting in pursuance of the said Minute of Appointment, if it should become necessary by reason of any further action on his part.

AND THE COURT DOTH FURTHER ORDER

That the costs of this action be taxed and paid by the Defendants to the Plaintiffs.

30

J. B. McDOWELL,
Ag. Dep-Registrar.

No.21

Affidavit verifying
Petition for leave to
Appeal to Her
Majesty in
Council.
5th December
1957

No.21

AFFIDAVIT VERIFYING PETITION FOR LEAVE
TO APPEAL TO HER MAJESTY IN COUNCIL.

I, OSWALD JOSEPH WILSON, of No.77 Fifth Street, Barataria in the Ward of St.Anns in the Island of Trinidad, Solicitor make oath and say as follows :-

40

1. I am an Assistant Crown Solicitor employed at the department of the Crown Solicitor, Solicitor for the Petitioners herein and I

have the conduct of this matter on behalf of the said Petitioners.

Doc. No.22

- 2. The Statements made in the Petition hereto annexed and marked "A" are true in substance and in fact.
- 3. The questions in dispute are ones which by reason of their general or public importance ought to be submitted to Her Majesty in Council for decision.

10

SWORN at 2 Sackville Street)
Port of Spain, this 5th day) Sgd: Oswald J.Wilson
of December, 1957.

Before me,
Sgd: A.E. St. Omer,
Commissioner of Affidavits.

FILED ON BEHALF OF THE PETITIONERS HEREIN.

In the
Supreme Court
of Trinidad
and Tobago.

No.21

Affidavit veri-
fying Petition
for leave to
Appeal to Her
Majesty in
Council
5th December
1957
continued

No.22

PETITION FOR LEAVE TO APPEAL TO HER MAJESTY
IN COUNCIL AND ANNEXURE

20

"A"

This is the Petition referred to as marked "A" in the Affidavit of Oswald Joseph Wilson, Solicitor for the Petitioners, sworn to before me this 5th day of December, 1957.

Sgd: A.E.St.Omer.
Commissioner of Affidavits.

No.22

Petition for
leave to Appeal
to Her Majesty
in Council and
Annexure.

5th December
1957.

TRINIDAD.

30

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.
No.425 of 1956.

BETWEEN

TRINIDAD CEMENT LIMITED Plaintiffs (Respondent)

And

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 (Petitioners)

40

TO: The Honourable The Chief Justice
And the Honourables the Puisne Judges of
The Supreme Court of Trinidad and Tobago.

The Humble Petition of the above-named
Defendants, Sir Edward Betham Beetham, K.C.M.G.,

In the
Supreme Court
of Trinidad
and Tobago

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., sheweth as
follows :-

No.22

Petition for
leave to Appeal
to Her Majesty
in Council and
Annexure.

5th December
1957
continued.

1. The Petitioner Sir Edward Betham Beetham, K.C.M.G., C.V.O., O.B.E. (hereinafter called the first named Petitioner) is and was at all material times Governor and Commander-in-Chief in and over the Colony of Trinidad and Tobago and as such the person authorised to appoint a Board of Inquiry and to give consequential directions by virtue of the Trade Disputes (Arbitration and Inquiry) Ordinance, Ch.22 No.10 (hereinafter called the said Ordinance) and was sued herein in his said capacity of Governor. 10

2. The Petitioner Bernard Benjamin Gillis, Q.C., M.A., (hereinafter called the second-named Petitioner) is one of Her Majesty's Counsel exercising the practice of his profession in England.

3. The Respondent is a company duly incorporated under the Companies Ordinance Ch.31 No.1 and has at all times material to this action owned and operated certain Quarries and a factory for the manufacture of cement at Claxton Bay in the Island of Trinidad and is enjoying certain privileges and concessions granted to it by virtue of the Cement Industry Development Ordinance Ch.33 No.17 and the Aid to Pioneer Industries Ordinance Ch.33 No.3. 20

4. In the intended exercise of his powers under the said Ordinance, the first-named Petitioner by minute of appointment dated the 16th day of April 1956 appointed the second-named Petitioner a Board of Inquiry on the terms set forth in the copy of the said minute of appointment annexed hereto and marked "A". 30

5. The Respondent challenged the validity of the said appointment and by its action herein sought the following among other relief:-

- (i) A declaration that the appointment by His Excellency the Governor in purported exercise of the powers conferred upon him by Section 8 of the Trade Disputes (Arbitration and Inquiry) Ordinance, Chapter 22 No.10, of a Board of Inquiry as set out in the 40

Notice to the Plaintiff Company dated the 16th day of April 1956 is ultra vires, and therefore, null and void and of no effect for all or any of the following reasons :-

In the
Supreme Court
of Trinidad
and Tobago.

No.22

Petition for
leave to Appeal
to Her Majesty
in Council and
Annexure.

5th December
1957
continued.

- 10 (a) that the same was not made in accordance and/or in conformity with the requirements of the statute;
- (b) that the powers and duties conferred upon His Excellency the Governor were not duly or properly exercised;
- (c) that the said appointment constitutes in the true circumstances of the case an abuse of the said statute
- 20 (ii) An injunction restraining the Defendant Bernard Benjamin Gillis from entering upon, proceeding (or alternatively further proceeding) with or otherwise acting in pursuance of the said appointment.

6. The said action was heard by the Honourable Mr. Justice C.V.H. Archer, Judge of the Supreme Court aforesaid, on the 8th, 9th, 10th, 11th and 14th days of October 1957 and in the result he gave judgment making the said declaration claimed by the Respondent and granting leave to move for an injunction if at any time this should become necessary. A copy of the said judgment is hereto annexed and marked "B".

Doc. No. 30 19

7. The principal questions involved in the appeal, which are of great general and/or public importance, include the following :-

- 40 (a) Is it essential to constitute a "trade dispute" within the meaning of the said Ordinance that there should be a dispute between the parties thereto in the sense defined by the learned Judge or does it suffice that there should be some difference between the said parties which has been and remains unresolved?
- (b) Is it a condition precedent to the

In the
Supreme Court
of Trinidad
and Tobago.

No.22

Petition for
leave to Appeal
to Her Majesty
in Council and
Annexure.

5th December
1957
continued

existence of a trade dispute that both the employer and the workman by themselves and in their own behalves should have expressed the one to the other the disputed matter or does it suffice that the fact that there is a difference between the parties is known to the Governor to exist?

(c) Is it essential that an employer should make it a term of condition of employment that workmen engaged by him should not be members of a trade union in order that the non-recognition of a union to which workmen of the employer belong can be or become a trade dispute?

10

(d) What is the nature of the inquiry necessary to be effected by a Governor prior to the appointment by him of a Board of Inquiry under the said Ordinance?

WHEREFORE YOUR PETITIONERS HUMBLY PRAY that this Honourable Court will be pleased to exercise its discretion in their favour and to accede to their application for leave to appeal to Her Majesty in Council from the said judgment. That this Honourable Court will make such further or other Order as in the premises may seem just.

20

AND YOUR PETITIONERS WILL EVER PRAY.

Dated this 5th day of December, 1957.

Sgd: Oswald J. Wilson,
for Crown Solicitor.
Solicitor for the Petitioners.

30

Sgd: Hugh A.S. Wooding,
Counsel for the Petitioners.

This Petition is filed by the Crown Solicitor of No.7 St.Vincent Street, Port of Spain, Solicitor for the Petitioners herein.

NOTE. It is intended to serve this Petition on Messrs. J.D.Sellier & Co. of No.13 St. Vincent Street, Port of Spain, Solicitors for the Respondent Company.

40

This Petition is set down for hearing at the Court House, Port of Spain, on Tuesday the 17th day of December 1957 at the hour of 9.30 o'clock, in the forenoon.

ANNEXURE "A" - MINUTE OF APPOINTMENT

In the
Supreme Court
of Trinidad
and Tobago.

"A" This is the copy of the Minute of Appointment referred to as marked "A" in the Petition of Sir Edward Betham Beetham, K.C.M.G., C.V.O., O.B.E., and Benjamin Gillis, Q.C., M.A. dated 5th December, 1957.

Sgd: Oswald J. Wilson,
for Crown Solicitor,
Petitioners' Solicitor.

No.22
Annexure "A"
to Petition
for leave to
Appeal to
Her Majesty
in Council

10

MINUTE OF APPOINTMENT

5th December
1957.

WHEREAS by the Trade Disputes (Arbitration and Inquiry) Ordinance, Ch.22 No.10 the Governor is empowered to 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, as well as any matter connected with the economic or industrial conditions in the Colony:

20

AND WHEREAS a dispute exists between Trinidad Cement Limited and certain of its workmen, members of the Federated Workers' Trade Union:

NOW THEREFORE the Governor by virtue of the powers vested in him by the said Ordinance and of all other powers enabling him in that behalf, appoints Mr. Bernard B. Gillis, M.A. (Cantab)., one of Her Majesty's Counsel, to constitute a Board of Inquiry.

30

AND THE GOVERNOR directs that the terms of reference to the Board shall be as follows :-

- (a) To inquire and report on the causes and circumstances of the said dispute;
- (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.

40

In the
Supreme Court
of Trinidad
and Tobago

ORDER GRANTING CONDITIONAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNCIL.

TRINIDAD.

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO
(APPELLATE JURISDICTION)

No.23

Order granting
conditional
leave to appeal
to Her Majesty
in Council.

7th January
1958.

No.425 of 1956

BETWEEN

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.

10

(Defendants) Petitioners

And

TRINIDAD CEMENT LIMITED
(Plaintiff) Respondent.

Entered the 7th day of January 1958
On the 7th day of January 1958
Before the Honourable Mr. Justice Fabien
J. Camacho and the Honourable Mr.
Justice Maurice Corbin.

20

UPON the Petition of the above-named
Petitioners Sir Edward Betham Beetham, K.C.M.G.,
C.V.O., O.B.E., and Bernard Benjamin Gillis, Q.C.,
M.A., preferred into the Court this day for leave
to appeal to Her Majesty in Her Privy Council
against the judgment of the Honourable Mr. Justice
C.V.H. Archer made herein on the 14th day of No-
vember 1957, upon reading the said Petition, the
affidavit of Oswald Joseph Wilson sworn to on the
5th day of December 1957 and the said judgment of
the Honourable Mr. Justice C.V.H. Archer, all filed
herein, and upon hearing Counsel for the Petition-
ers and Counsel for the Respondent

30

THE COURT DOTH ORDER

That subject to the performance by the Petitioners
of the conditions hereinafter mentioned and sub-
ject also to the Final Order of this Honourable
Court upon the due compliance with the said con-
ditions, leave to appeal to Her Majesty in Her
Privy Council against the said judgment of the
Honourable Mr. Justice C.V.H. Archer be and the
same is hereby granted.

40

AND THIS COURT DOTH FURTHER ORDER

That the said Petitioners do within a period of three months from the date of the hearing of this Petition enter into good and sufficient security to the satisfaction of the Court in the sum of £500 for the due prosecution of the said appeal and for the payment of all such costs as may become payable to the Respondent, the said Trinidad Cement Limited in the event of the Petitioners not obtaining an order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Petitioners to pay the Respondent's Costs of the Appeal

In the
Supreme Court
of Trinidad
and Tobago

No.23

Order granting
conditional
leave to appeal
to Her Majesty
in Council.

7th January 1958
continued

AND THIS COURT DOTH ALSO FURTHER ORDER

That the Petitioners do within four months from the date of this order in due course take out all appointments that may be necessary for settling the transcript record in such Appeal to enable the Registrar of the Supreme Court of Trinidad and Tobago to Certify that the said transcript record has been settled and that the provisions of this order on the part of the said Petitioners have been complied with

AND THIS COURT DOTH ALSO FURTHER ORDER

That the said judgment of the Honourable Mr. Justice C.V.H. Archer be carried into execution subject to the Respondent entering into good and sufficient security to the satisfaction of the Court in the sum of £700 for the due performance of such order as Her Majesty in Council shall think fit to make thereon on the hearing of the said Appeal

AND THIS COURT DOTH ALSO FURTHER ORDER

That the said Petitioners be at liberty to apply at any time within five months from the date of this order for a Final Order for leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of the Supreme Court of due compliance with the conditions of this order.

Sgd: Eric J.A.McCarthy,
Acting Registrar.

In the
Supreme Court
of Trinidad
and Tobago

No.24

ORDER GRANTING FINAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

TRINIDAD

No.24

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO

No. 425 of 1956

Order granting
final leave to
appeal to Her
Majesty in
Council.

3rd June 1958

BETWEEN

TRINIDAD CEMENT LIMITED Plaintiff (Respondent)

And

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)

10

Entered the 3rd day of June 1958
On the 3rd day of June 1958
Before The Honourable Mr. Justice Fabian J. Camacho,
Ag. Chief Justice and The Honourable Mr.
Justice P. Watkin Williams.

UPON MOTION made unto the Court this day by
Counsel for the above-named Defendants (Appellants)
for an order granting the said Defendants (Appellants)
final leave to appeal to Her Majesty in Her
Privy Council against the judgment of the Honourable
Mr. Justice C.V.H. Archer delivered herein on
the 14th day of November 1957, Upon reading the
Notice of Motion filed herein the 30th day of May
1958 the Affidavit of Oswald Joseph Wilson sworn
the 30th day of May 1958 and filed herein and the
Certificate of the Acting Registrar of the Supreme
Court dated the 30th day of May 1958 and filed
herein and upon hearing Counsel for the Defendants
(Appellants)

20

30

THE COURT DOTH ORDER

That Final Leave be and the same is hereby
granted to the said Defendants (Appellants) to
appeal to Her Majesty in Her Privy Council against
the said judgment of the Honourable C.V.H. Archer

AND THE COURT DOTH FURTHER ORDER

That the costs of this Motion be costs in the
cause.

40

G. E. Clarke
Acting Deputy Registrar

EXHIBITSExhibits

R.S.L.1.- (a) LETTER FEDERATED WORKERS TRADE
UNION TO PLAINTIFFS

R.S.L.1.
(a) Letter
Federated
Workers' Trade
Union to
Plaintiffs.

FEDERATED WORKERS' TRADE UNION

R.S.L.1.

H. Howard

8.10.57.

10th August
1954.

61 Charlotte Street,
Port of Spain,
Trinidad, B.W.I.
10th August, 1954.

10

The General Manager,
Trinidad Cement Ltd.,
Claxton Bay,
Pointe-a-Pierre.

Dear Sir,

The above named Union is now organising the workers employed at your Factory and has made considerable progress amongst your employees.

20

As you may have read Mr. Dalley's report it would be useless to inform you of the ability and integrity of this Union and its leaders.

The Union is in touch with M.P'S in Great Britain, and as they have inquired about the Cement Factory in Trinidad, I am sure they will be pleased to know that the workers of the Factory are being organised by a Union of this calibre.

30

The Union is sure that its relations with you will at all time, be amicable and that trade union organisation in your Firm will be lasting and beneficial.

Yours faithfully,

(Sgd). Quintin O'Connor

GENERAL SECRETARY.

Q O'C/vp.

Exhibits

R.S.L.l.- (b) LETTER FEDERATED WORKERS' TRADE UNION TO PLAINTIFFS.

R.S.L.l.
continued

(b) Letter
Federated
Workers'
Trade Union
to Plaintiffs.

FEDERATED WORKERS' TRADE UNION

61 Charlotte Street,
Port of Spain,
Trinidad.

19th October
1955.

B.W.I.

19th October, 1955.

The General Manager,
Trinidad Cement Ltd.,
Claxton Bay.

10

Dear Sir,

Mr. Clifford Bobb, a member of the above named Union stated that he was dismissed as a result of a report by Mr. Shaw who claims that he (Bobb) was found sleeping.

Mr. Bobb denies that he was ever sleeping which story can be borne out by others who were working around at the time Mr. Shaw made his rounds.

20

I am directed by the Executive Committee of the Union to kindly ask you for an early interview along with Mr. Bobb and his witnesses so that an amicable settlement can be reached.

Thanking you for your kind consideration in this matter.

Yours faithfully,

Sgd: Carlton Stephen.

for General Secretary

30

CA/vp.

R.S.L.l.- (c) LETTER FEDERATED WORKERS' TRADE
UNION TO PLAINTIFFS.

Exhibits
R.S.L.l.
continued

FEDERATED WORKERS' TRADE UNION

61 Charlotte Street,

Port of Spain,

Trinidad,

B.W.I.

1st November, 1955.

(c) Letter
Federated
Workers'
Trade Union
to Plaintiffs.
1st November
1955.

10

The General Manager,
Trinidad Cement Ltd.,
Claxton Bay.

Dear Sir,

I have to refer to a letter from the above named Union dated 19th October 1955, addressed to you requesting an early interview to discuss the dismissal of Mr. Clifford Bobb, a member of the Union and to state that up to the time of writing no reply has been received.

20

As your delay in replying might be due to pressure of work, I am directed by the Executive Committee of the Union to send this reminder hoping for an early reply.

Yours faithfully,

Sgd: Carlton Stephen

for General Secretary,

CS/vp.

Exhibits
R.S.L.1.
continued

R.S.L.1.- (d) LETTER FEDERATED WORKERS' TRADE
UNION TO ACTING COMMISSIONER OF
LABOUR

(d) Letter
Federated
Workers'
Trade Union
to Acting
Commissioner
of Labour.

9th November
1955.

FEDERATED WORKERS' TRADE UNION

61 Charlotte Street,
Port of Spain,
Trinidad, B.W.I.

9th November 1955.

The Ag. Commissioner of Labour,
Post Office Box 526,
Port of Spain.

10

Dear Sir,

I am directed by the Executive Committee of the above named Union to refer to you a dispute between the Management of Trinidad Cement Ltd., and the Union over the dismissal of one of its members Mr. Clifford Bobb.

Mr. Bobb was dismissed on Saturday 15th October, 1955, the Union wrote the Management two letters, copies of which are attached, seeking a meeting to discuss the matter but to date no reply has been received.

20

The Union would be grateful if you could arrange a meeting between both parties under your chairmanship at the earliest possible opportunity to go into this most important matter.

Your usual kind and early attention would be highly appreciated.

Yours faithfully,

Sgd: Carlton Stephen

30

for General Secretary.

CS/vp.

R.S.L.1.- (e) LETTER FEDERATED WORKERS' TRADE UNION TO ACTING COMMISSIONER OF LABOUR

Exhibits
R.S.L.1.
continued

FEDERATED WORKERS' TRADE UNION

61 Charlotte Street,
Port of Spain,
Trinidad, B.W.I.

(e) Letter
Federated
Workers'
Trade Union
to Acting
Commissioner
of Labour.

15th November
1955.

15th November, 1955.

10 The Ag. Commissioner of Labour,
Post Office Box 526,
Port of Spain.

Dear Sir,

I am directed to refer to correspondence dated 9th November 1955, on the question of a dispute between the Management of Trinidad Cement Ltd., and the Union over the dismissal of one of its members, Mr. Clifford Bobb.

20 Since writing, a further report has reached the Union of the dismissal of Mr. Edmund Simon a member who was employed as Rigger Loader at the Company's Quarries at Mayo.

Mr. Simon states that on receiving his dismissal slip, he enquired from Mr. Elson the reason for his dismissal, who replied that the Company does not give reasons.

The Union would be very grateful if you could arrange to have this matter discussed on the same date as that of Mr. Bobb.

30 Your kind consideration to this important matter would be most welcome.

Yours faithfully,
Carlton Stephen
for General Secretary.

CS/vp.

Exhibits
R.S.L.1.
continued
(f) Letter
Acting
Commissioner
of Labour to
Plaintiffs.
29th November
1955.

R.S.L.1.- (f) LETTER ACTING COMMISSIONER OF
LABOUR TO PLAINTIFFS

VHE/so

P.O. Box 526.

LABOUR DEPARTMENT,
PORT OF SPAIN,
TRINIDAD.

29th November, 1955.

The Resident Director,
Trinidad Cement Limited,
11 Park Street,
Port of Spain.

10

Dear Sir,

In pursuance of a conversation today between your Mr. Johnson and Mr. Edwards of this Department, I enclose for the kind favour of your comments copies of two letters I have received from the Federated Workers' Trade Union requesting a meeting between your Company and the Union to discuss the dismissal of C. Bobb and E. Simon from your Company's employ.

Yours faithfully,

/s/ V.H. Edwards
for Ag. Commissioner of Labour.

20

R.S.L.1.
(g) Letter
Plaintiffs
to Acting
Commissioner
of Labour.
10th December
1955.

R.S.L.1.- (g) LETTER PLAINTIFFS TO ACTING
COMMISSIONER OF LABOUR

TRINIDAD CEMENT LIMITED

11 Park Street - Port of Spain - Trinidad, B.W.I.

3A/POL/34

10th December 1955.

The Acting Commissioner of Labour,
Labour Department,
P.O. Box 526,
PORT OF SPAIN.

30

Dear Sir,

Thank you for your letter of 29 NOVEMBER 1955.

There is nothing we can usefully add to the information already given to you.

Yours faithfully,

for TRINIDAD CEMENT LIMITED
Sgd: F. JOHNSON
Works Manager.

R.S.L.1.- (h) LETTER ACTING COMMISSIONER OF
LABOUR TO PLAINTIFFS.

Exhibits
R.S.L.1.
continued

VHE/mg

LABOUR DEPARTMENT,
PORT OF SPAIN,
TRINIDAD.

(h) Letter
Acting
Commissioner
of Labour to
Plaintiffs.

13th December
1955.

P.O. BOX 526.

13th December 55.

10 The Resident Director,
Trinidad Cement Limited,
11 Park Street,
Port of Spain.

Dear Sir,

20 I acknowledge receipt of your letter
3A/POL/74 of the 10th December. In accordance
with the conversation on the 29th November be-
tween your Mr. Johnson and Mr. Edwards of this
Department, I have informed the Federated
Workers' Trade Union that your Company do not
recognise the Union and are therefore not pre-
pared to accede to the Union's request for a
meeting to discuss the dismissal of Clifford
Bobb and Edmund Simon.

Yours faithfully,

Sgd: V.H. Edwards,
for Ag. Commissioner of Labour.

Exhibits
R.S.L.l.
continued

R.S.L.l.- (i) LETTER PLAINTIFFS TO MINISTER OF
LABOUR, COMMERCE AND INDUSTRY.

(i) Letter
Plaintiffs to
Minister of
Labour,
Commerce and
Industry.

3A/POL/90.

Trinidad Cement Limited,
11 Park Street,
Port of Spain.

9th January
1956.

9th January 1956.

The Honourable A.Gomes C.M.G.,
The Minister of Labour Commerce and
Industry,
Government Buildings,
Knox Street,
Port of Spain.

10

Dear Sir,

1. On my return from Venezuela I was informed that our Mr. Pryor had visited your office at your request and that certain matters had been put before him, details of which he promised to place before Mr. E.B. Mount.

2. These have not been referred to Mr. Mount as his medical adviser considers he is not yet sufficiently recovered to resume his normal duties.

20

3. On behalf of the Company I wish to say that we are quite unable to discuss the matters referred to any further.

I have the honour to be Sir,

Your obedient Servant,

F. Johnson,

Works Manager.

30

R.S.L.I.- (j) LETTER FEDERATED WORKERS' TRADE UNION TO PLAINTIFFS.

Exhibits
R.S.L.I.
continued

All Correspondence to be addressed to the
General Secretary.

FEDERATED WORKERS' TRADE UNION

Registered Under the Trade Unions Ordinance,
Chap.22 No.9 Registered 21st September,1937
No.7.

'Phone 5504

61 Charlotte Street,
Port of Spain,
Trinidad, B.W.I.

(j) Letter
Federated
Workers'
Trade Union
to Plaintiffs.

26th March
1956.

10 QUINTIN O'CONNOR,
General Secretary.

26th March 1956.

By registered post.

The General Manager,
Trinidad Cement Limited,
Claxton Bay,
Pointe a Pierre.

Dear Sir,

20 I am directed by the Executive Committee of
the above named Union to inform you that the
Union now represents a substantial majority of
your employees and is applying for bargaining
status for the manual workers of your Company.

As you may be aware this Union is organized
for the past 19 years and has had considerable
dealings with employers. This Union strictly
follows British Trade Union practices and is
recognised by a number of large employers.

30 I am very sure that if this Union is recog-
nised by your Company that the benefits of trade
unionism would be mutual.

I am sending a copy of this letter to the
Commissioner of Labour with the request that he
obtain from your Company as is the usual prac-
tice the names and number of the manual employees
so that he may check the list against our member-
ship to substantiate the claim of the Union.

Your kind attention to this matter will be
highly appreciated.

Yours faithfully,

40 Quintin O'Connor,
General Secretary.

Exhibits
R.S.L.l.-
continued

R.S.L.l.- (k) LETTER COMMISSIONER OF LABOUR
TO PLAINTIFFS

(k) Letter
Commissioner
of Labour to
Plaintiffs

JAMB/ck

LABOUR DEPARTMENT,
PORT OF SPAIN,
TRINIDAD.

4th April 1956.

4th April, 56.

P.O. BOX 526

Brig. E.B.Mount, O.B.E., T.D.,
Senior Resident Director,
Trinidad Cement Ltd.,
11 Park Street,
Port of Spain.

10

Dear Sir,

The Federated Workers' Trade Union has informed me that it has written your Company requesting that it be recognised as bargaining agent for the manual employees of the company on the basis that a substantial majority of those employees have become members of the Union and desire that questions relating to their wages and working conditions should in future be regulated by agreement with their Union acting on their behalf.

20

The Union has also informed me that it has been suggested to your company that this department should carry out a check of the percentage membership in the Union of the Workers concerned. This is the normal course adopted in cases in which an employer wishes to have a Union's claim to representative status verified.

30

I should be glad to learn whether you are agreeable to this department carrying out the check as proposed.

Yours faithfully,
Sgd: M. Braithwaite,
Commissioner of Labour.

R.S.L.1.- (1) LETTER PLAINTIFFS TO COMMISSIONER
OF LABOUR

Exhibits
R.S.L.1.
continued

TRINIDAD CEMENT LIMITED

(1) Letter
Plaintiffs to
Commissioner
of Labour.

11 Park Street - Port of Spain - Trinidad
B.W.I.

14th April
1956.

3A/POL/119

14th April, 1956.

10

J.A.M.Braithwaite, Esq.,
Commissioner of Labour,
Labour Department,
P.O.Box 526,
PORT OF SPAIN.

Dear Sir,

We have your letter of the 4th April address-
ed to Mr. E.B. Mount who is at present on leave.

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.

Yours faithfully,

20

for TRINIDAD CEMENT LIMITED

Sgd: R.S.Leinster,

Resident Director.

Exhibits

R.S.L.2. - EXTRACT FROM MINUTES OF WORKS
COMMITTEE MEETING

R.S.L.2.

Extract from
Minutes of
Works
Committee
Meeting.Extract from Minutes of WORKS COMMITTEE
MEETING held on FRIDAY 28 OCTOBER, 1955
at 2.30 p.m.

Chairman F. Johnson

28th October,
1955.

Exhibit "R.S.L.2"

H. Howard
9.10.57.

- "30. Mr. Howard and Mr. Lawson referred to the dismissal of one of the workers in the Kiln House. 10
31. The Chairman said he was pleased this matter had been brought forward.

On the shift in question the Kiln had been running badly all night. When the Shift Supervisor approached the Kiln House at the time of the incident, he heard the Kiln speed being reduced and on arriving at the burning platform, found the Kiln Burner sitting down with his eyes closed, away from the Kiln hood and kiln controls. The Shift Supervisor waited about 1½ minutes until the Burner opened his eyes and then asked him what the Kiln was doing, but the Burner was unable to give a satisfactory answer. The Shift Supervisor then told him that the kiln was on slow speed and he should know something about it and he would be reported to the Works Manager. 20

The man was interviewed by the Chairman in the presence of the Shift Supervisor. He denied being asleep but admitted that his eyes were closed and that he was not aware that the Kiln speed had been reduced, adding, that the Trainee Burner was looking after the Kiln. The Chairman replied that the Burner and not the Trainee Burner was in charge of the Kiln, the latter had no authority to alter the speed of the Kiln when the Burner was available. If the Burner had not been asleep he would have heard the Kiln speed being changed and should have investigated the 30 40

reason. The Chairman said he had had occasion to warn the Burner in question some months ago regarding the quantity and number of times he had produced under burnt Clinker, which was much greater than that of the other Burners. The quantity and number of times could be reduced by more vigilant observation and earlier or more frequent reduction of the Kiln speed. The Chairman continued that he was satisfied that the man was either asleep or dozing and not looking after his job. In view of the value of the machinery involved, and the fact that the quality of our product depended to a large extent upon the correct operation of the Kiln, he was compelled to take a serious view of the matter. He had lost confidence in the man and was obliged to discharge him."

Exhibits

R.S.L.2.

Extract from
Minutes of
Works
Committee
Meeting.

28th October,
1955.
continued.

10

20

R.S.L.3. - MINUTES OF WORKS COMMITTEE
MEETING.

TRINIDAD CEMENT LIMITED

WORKS COMMITTEE MEETING HELD ON TUESDAY
29th MAY 1956 at 2.30 p.m.

R.S.L.3.

Minutes of
Works
Committee
Meeting,

29th May 1956.

R.S.L.3.
H.Howard
9.10.57.

MEMBERS PRESENT:

30

G.P.FYSON - Works Manager -- in the Chair
H. CHAMBERLAIN - Works Engineer
G. HOWARD representing Shift Workers
S. RAMNANANSINGH representing Packing
and Loading
C. LAWSON representing Maintenance Dept.

ALSO PRESENT :

R.S.LEINSTER - Resident Director

ABSENT :

K. LUCIEN was away on annual leave.

40

"17. Mr. R.S. Leinster informed the Committee of the attitude of the Company towards the Board

Exhibits of Inquiry which had been set up by the Governor.

R.S.L.3.

Minutes of
Works
Committee
Meeting,

29th May 1956.
continued.

He said that the Company had no intention OF RECOGNISING THE F.W.T.U. The Rugby group of companies had always maintained a very close and human touch with employees through the Works Committees and the experience they had had in other countries was being borne out here in Trinidad where the atmosphere is a very happy one. The Works Committee provided a means by which suggestions for improvement could be properly aired and given a sympathetic hearing and he felt sure that their experience was that a great many constructive suggestions had been accepted and put into effect. The Company intended to continue to work with its employees on this amicable basis through the Committee and had no intention of working with an outside organisation.

10

As the members had probably seen in the press, the Board of Inquiry had been appointed because of an alleged "dispute" between the Company and its employees. As it was completely untrue to say that there was any such dispute, the Company had challenged the validity of the Board by serving a Writ on the Governor and the case would in due course come before the Court.

20

Mr. Leinster made it clear that, whatever the circumstances, the Company would remain loyal to the Committee and he felt sure that the Committee would be equally loyal to the Company. Mr. Howard said that he felt the Committee had achieved good results which he believed were generally appreciated. As a measure of the support it had he mentioned that while it had been difficult to persuade the men to vote at the first election of Members, he believed that 90% had voted last time.

30

G. P. FYSON

Works Manager,

28.6.56.

V.H.E.1. - SECRETARIAT CIRCULAR No.21

Exhibits

19th October, 1955

V.H.E.1.

V.H.E.1.
H. Howard
9.10.57Secretariat
Circular
No.21

To:

HEADS OF DEPARTMENTS

19th October
1955.

Subject:

10 RECOGNITION OF THE FEDERATED WORKERS' TRADE
UNION AS A MINORITY UNION

20 I am directed to refer to Secretariat Circular No.70 of 1950 in which you were informed that Government had recognised the Federated Workers' Trade Union as bargaining Agent on general questions of the wages and working conditions of daily-paid Government employees, and to the official statement subsequently issued by Government as a Press release on 15th September, 1954, withdrawing all recognition previously granted to the Federated Workers' Trade Union.

2. In consequence of representations received from the Union, Government has now decided to grant it partial recognition as a minority union. The Union has not requested, and has not been accorded full bargaining rights on general questions of wages and working conditions which it previously enjoyed.

30 3. The recognition now granted limits the Union to making representations on behalf of its members in cases of individual grievances, including those common to a group of members, arising from action taken by a department of Government in disciplinary matters or matters concerned with the observance of the wages and working conditions approved by Government. Departments should now receive representations and deal with the officers of the Union on these day to day matters, but should not entertain representations which seek to alter the general conditions of employment approved for daily-paid workers as a whole.

40

M.H. DORMAN

Colonial Secretary.

Secretariat Circular No.20 issued to Heads of
Departments - (P.37/4/2).

Exhibits

A. - REPORT IN TRINIDAD GUARDIAN ON
RECOGNITION OF FEDERATED WORKERS'
TRADE UNION.

A.

Report in
Trinidad
Guardian on
recognition
of Federated
Workers' Trade
Union.

Exhibit "A"

H. Howard
10.10.57.

1st September
1954.

Government wishes to announce:-

- (a) "That it has decided to withdraw all recognition previously granted to the Federated Workers' Trade Union as representative of the daily-paid workers employed by the Government and to sever relationships completely with the Union; and 10
- (b) "that since it is impossible in the circumstances to conduct any negotiations with the Union, Government has come to its own decision to grant, subject to the approval of Legislative Council, thirty-six (36) cents a day to all of its daily-paid employees with effect from January 1, 1953. 20

TRUE POSITION

"For some time past Government has been doubtful whether the Federated Workers' Trade Union really had a sufficient number of its daily-paid workers as members to justify being recognised as representative of the workers.

"It was therefore decided to call for a check of the membership to find out the true position.

"The Union submitted a list of names of persons who it claimed were daily-paid employees of Government and members of the Union. 30

"Over a third of these could not be found on the pay lists of the departments and no check was made of the Union's records to ascertain whether any of the names on the Union's list were in fact members of the Union as claimed.

"However, even when the Union was given the benefit of all possible doubt, and all the persons on the Union's list were counted, it was found that the whole total amounted to only 19 per cent of the workers employed by Government. 40

RED DOCTRINE

Exhibits

"Government has also for some time past been concerned over the affiliation of the Trinidad & Tobago Trades Union Council with organisations both local and abroad whose purpose it is to propagate the doctrine of Communism.

A.

Report in Trinidad Guardian on recognition of Federated Workers' Trade Union.

10 "Mr. Dalley in his report has denounced these organisations, in particular, the World Federation of Trade Unions (W.F.T.U.) and the West Indian Independence Party, and has condemned as irresponsible all trade unions and trade union leaders who associate with them.

1st September 1954.
continued.

20 "It is true that the Trinidad and Tobago Trades Union Council, of which the Federated Workers' Trade Union is a member, has ceased its affiliation with the W.F.T.U. but at the time this dis-affiliation was announced it was stated to have been done to avoid misrepresentation, and the leadership of the Federated Workers' Trade Union publicly stated that the sympathies of the Union remained with the W.F.T.U.

REAL ISSUE

"Mr. Dalley in his report stated that the episode should be forgotten provided that there should be no further talk of this nature and no evasion of the real issue.

30 "But Mr. Dalley had no sooner left the shores of the Colony than some of the leaders of the Union began a series of public statements in which continued sympathy with the W.F.T.U. is clearly expressed and propagated.

"And that is not all. Some of the leaders of the Union have continued to associate with the West Indian Independence Party and to participate regularly in its activities from public platforms.

NO MACHINERY

40 "Having regard to its very small membership among Government employees and to the fact that some of its leaders continue to pursue the Communist line, Government cannot have any further dealings with the Federated Workers' Trade Union.

Exhibits

A.

Report in
Trinidad
Guardian on
recognition
of Federated
Workers' Trade
Union.

1st September
1954.
continued.

"As stated above, Government has therefore come to its own decision, without reference to the Union, to grant an increase of $4\frac{1}{2}$ cents per hour (36 cents per day) to all its daily-paid employees.

"The increased wage and back pay from January 1, 1953, will be paid subject to approval of Finance Committee.

"Since there is no adequate trade union machinery to provide a channel for consultation with the Workers, Government has made arrangements to introduce a procedure for dealing with individual grievances and a system of joint committees for the purpose."

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.

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2.

Solicitors for the Appellants.

BRABY & WALLER,
Dacre House,
Arundel Street,
Strand, London, W.C.2.

Solicitors for the Respondents.