

PC
GNS-G-1.

23, 1960

IN THE PRIVY COUNCIL

No.22 of 1958

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL

B E T W E E N :-

- (1) VERE CORNWALL BIRD
- (2) EDMUND HAWKINS LAKE
- (3) NOVELLE RICHARDS
- (4) ERNEST WILLIAMS
- (5) BRADLEY CARROTT
- (6) JOHN IRELAND
- (7) LEVI JOSEPH
- (8) JOSEPH SAMUEL
- (9) LIONEL HURST

Appellants

= and -

- (1) JOSEPH REYNOLD O'NEAL
- (2) GERTRUDE O'NEAL

Respondents

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

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C A S E F O R T H E R E S P O N D E N T S

1. This is an appeal from a judgment, dated the 9th April, 1957, of the West Indian Court of Appeal (Mathieu-Perez, Jackson and Holder, C.JJ.), dismissing an appeal from a judgment, dated the 3rd January, 1956, of the Supreme Court of the Windward Islands and Leeward Islands (Date, J.), awarding the Respondents an injunction restraining the Appellants, their servants and agents from watching and besetting certain business premises of the Respondents, and damages in the sum of £80.0.0d. On a cross-appeal of the Respondents the Court of Appeal increased the damages to £100. 0. 0.
2. The following statutory provisions of Antigua are relevant to this Appeal :-

Record
pp.121-
138

pp.78-
115

Trade Unions Act, 1939.

Section 2 In this Act -

.....
"Workmen" includes labourers.

"Trade dispute" means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person.

.....

Section 6(A)(1)

(2) An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable. 10

.....

Section 7 It shall be lawful for one or more persons, acting on their own behalf or on behalf of a Trade Union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working. 20

Trade Disputes (Arbitration and Inquiry) Act, 1939

Section 2(1) For the purposes of this Act "trade dispute" means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person. 30

The expression "workmen" means any person who has entered into or works under a contract with an employer whether the contract be by way of manual labour, clerical work or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour. 40

.....

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

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

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Record
p.15 11.6-13

3. The Respondents carry on in partnership a business known as O'Neal's Drug Store on the corner of Long Street and Thames Street in St. John, Antigua. In an adjacent building the second Respondent runs a curio shop. All the Appellants except the eighth Appellant are members of the Executive Committee of the Antigua Trades and Labour Union.

p.15 11.14-16

4. In May, 1949, the Respondents took into their service at the Drug Store a clerk named Averil Winter, on a weekly basis. On the 11th June, 1955, the second Respondent dismissed her and paid her one week's wages in lieu of notice. On the 13th June, 1955, an official of the Antigua Trades & Labour Union called on the second Respondent and asked the reason for Miss Winter's dismissal, which the second Respondent declined to give. The official demanded one year's pay for Miss Winter and the second Respondent refused this. The Union then reported the matter to the Labour Commissioner of Antigua, and conciliation meetings between representatives of the Respondents and of the Union were held under the Commissioner's Chairmanship on the 23rd June and the 7th July, 1955. At these meetings the Respondents insisted that they had been acting within their rights in dismissing Miss Winter with a week's wages, and were not bound to give any reasons. At the second meeting, however, they did state the reasons why Miss Winter had been dismissed. The representatives of the Union criticised these reasons, but the Respondents were not prepared either to re-instate Miss Winter or to settle the matter on a basis other than re-instatement. The Union then approached the Governor, and on the 16th August, 1955. the acting Governor of the Leeward Islands appointed a Board of Inquiry under Section 8 (1) of the Trade Disputes (Arbitration and Inquiry) Act, 1939, "to inquire into the causes of the dispute that arose over the dismissal of Miss Averil Winter by the proprietors of O'Neal's Drug Store". The Respondents appeared at the enquiry by Counsel, and submitted that the

p.31 line 1

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p.25 11.22-23
11.27-28

11.29-31

p.54 11.43-44

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p.54 line 45
p.55 line 7
p.140 11.28-32
p.142 11.11-14

p.144 line 1
- p.145 line 6
p.145 line 7 -
p.146 line 31

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p.139 11.12-16

p.139 line 30-
p.140 line 10

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p.148 11.22-43

<u>Record</u>	appointment of the Board was invalid because	
p.149	there was no trade dispute. The Board having	
ll. 3-13	rejected this submission, Counsel for the	
p.155	Respondents withdrew. The Board reported to the	
ll.18-50	acting Governor on the 31st August, 1955, and	
	recommended that the Respondents should pay to	
pp.64	Miss Winter 13 weeks' wages. On the 9th	
line 41 -	September, 1955, the Executive Committee of the	
66 line 18	Union met and resolved that "provided up to the	10
	time of the publication of the Board's award the	
	dispute between Miss Winter ^{o'neal} and the Trade Union	
	is not settled the General Secretary should take	
	the necessary steps to picket the business	
p.26 line 18	premises". The Respondents did not take any	
	action upon the report, which was published in	
	the Press on the 16th September. There then	
	followed the events giving rise to these proceed-	
	ings.	
p.1	5. On the 19th September, 1955, the Respondents	
	issued a Writ in the Supreme Court of the Windward	20
p.3	Islands and Leeward Islands, claiming an	
	injunction restraining the Appellants, their	
	servants and agents from unlawfully watching and	
	besetting the Respondents' business premises, and	
	damages for injury to the Respondents' trade. By	
p.14	their Statement of Claim, delivered on the 21st	
	October, 1955, the Respondents alleged that the	
pp.15-16	Appellants other than the eighth Appellant had	
	wrongfully and maliciously conspired and	
	combined, with intent to injure the Respondents	30
	and thereby compel them to pay compensation to	
	Miss Winter, wrongfully to watch and beset the	
	Respondents' place of business and the approaches	
	thereto so as to intimidate customers and	
p.15 ll.	prospective purchasers. They had caused or	
32-44	procured the eighth Appellant and other persons	
	so to watch and beset the Respondents' places of	
p.16 ll.	business from the 17th September, 1955. The	
8-12	seventh Appellant and the pickets had by threats	
	and acts of violence and intimidation prevented	40
	customers and prospective purchasers from entering	
p.16 line 13	the Respondents' premises and making purchases;	
-p.17 line 7	the Statement of Claim contained particulars of	
p.17 ll.	a number of such acts. Alternatively, the	
8-17	Appellants had wrongfully and maliciously	
	conspired to create a nuisance with intent to	
	injure the Respondents, and in pursuance of that	
	conspiracy had created a nuisance by the shouts	
	and other noise of the pickets and by obstructing	
	the approaches to the Respondents' premises.	50
	In the premises the Respondents had suffered	

		<u>Record</u>
	damages.	
	6. By their Defence, dated the 2nd November, 1955, the Appellants denied the allegations against them, and alleged that since the 11th June, 1955. a trade dispute had existed between the Antigua Trades & Labour Union and the Respondents. The premises of the Respondents had been picketed in furtherance of this dispute.	p.18 p.19 ll. 35-42 pp.19-20 line 11
10	The Appellants denied that the pickets were the servants or agents of the Appellants or any of them, and also denied that the Appellants or any of them had authorised or connived at any unlawful act.	
	7. The action was tried by Date, J., on the 30th November and the 1st, 2nd, 3rd, 5th and 6th December, 1955. On the evidence given at the trial, the following concurrent findings of fact were made by Date, J., and the Learned Judges of the West Indian Court of Appeal:	pp.23-77 pp.109; } 11.31-43 } 131 Line 40 132 Line 20 p.99 ll. 26-33
20	(a) At 8 a.m. on Saturday the 17th September, 1955, the pickets, accompanied by a band, were led to the Respondents' premises by the seventh Appellant. (The ninth Appellant, who is the General Secretary of the Union, admitted in evidence that he had engaged the pickets, who were paid.) The installation of the pickets was attended by much flourish, fanfare and noise. The uproar was so great that Mr. Cardigan Stevens, the Comptroller of Customs,	p.57 ll.1-3 p.99 ll.39-41 p.99 ll.41-44
30	whose office was opposite the Respondents' premises, telephoned to the Commissioner of Police to complain. The pickets were carrying placards marked "Workers must be respected", "Strike on here: Protest against unjust dismissal", "Hold the line, the workers' security is challenged", and "Join the fight against injustice". They repeated these words as they walked to and fro outside the premises.	p.100 ll.5-9
40	(b) In addition to repeating these words, the pickets were shouting, "Don't buy from O'Neal's Drug Store". Some of them surrounded people trying to enter the Store, and one of them threatened to knock down several such people. The eighth Appellant was shouting, "Don't buy from O'Neal's Drug Store." The Seventh Appellant was also shouting this, and told one of the pickets that he should shout behind the people going into the shop. The pickets shouted	p.100 ll.32- 47 p.101 ll. 1-35

Record

accordingly, and the people did not go into the shop. The first, second, fourth, fifth and sixth Appellants were also in the vicinity of the Respondents' premises, speaking to pickets. The witness named Iris Barrow went to the shop to buy something that day, and one of the pickets shouted at her, "Hold the line. Don't go in",

(c) On the 19th September, the eighth Appellant, who is a local Constable, was acting as a picket. Some people said to him that they would like to go into the shop but did not want to get into trouble with the Police, and he answered they would get into trouble if they went in. 10

p.102
11.4-20

(d) The Union publish an official organ called "The Workers' Voice". The third Appellant was the Editor of this publication. On the front page of the issue of the 18th September, 1955. there was an article attacking the Respondents and reporting the picketing. The heading of this article includes the following sentence: "The Executive of the Antigua Trades & Labour Union have broken off trade relationship with O'Neal's Drug Store and open conflict now wages". 20

p.103
11.13-26

(e) On Saturday, the 25th September, 1955, the pickets were particularly noisy, shouting "Hold the line. Don't go into O'Neal's." Some of them threatened to beat people if they went in, and only a few "brave ones" did dare to go in. The seventh Appellant was there, urging the pickets to shout louder. In the afternoon Iris Barrow saw a picket telling a woman on the steps of the shop not to go in, and the woman went away. The first, second, fourth, fifth, sixth and ninth Appellants came to the premises that day. 30

p.104
11.5-9

p.104
11.10-15

(f) One day soon after the picketing began a regular customer, while approaching the shop, was stopped by a picket and told she was not supposed to go in. After that she had never returned.

p.104
11.16-29

(g) Mr. Cardigan Stevens was entering the shop one day, with an elderly woman going into it in front of him. Two pickets, one a Dominican, approached her and shouted at her in a most threatening and intimidating manner. 40

p.104
11.30-34

(h) On the 15th October a young woman going to the shop was surrounded by pickets shouting

- loudly at her, and when she entered the shop she was almost in a state of collapse. Record
- (i) On the 22nd October Mr. Cardigan Stevens saw three pickets, including the Dominican whom he had seen before, approach a woman who was entering the shop in a threatening attitude, the Dominican shouting as though he would strike her. The woman went back into the street. p.104
11.35-43
- 10 (j) On the 1st November Mr. Cardigan Stevens heard an Assistant Superintendent of Police reprimanding this Dominican. p.105
11.11-14
- (k) On the 26th November the eighth Appellant said something to a customer of the shop, who then asked him what "Hold the line" meant, and he answered that it meant that nobody was supposed to go into the shop to buy. p.105
11.25-33
- 20 8. Date, J. gave judgment on the 3rd January, 1956. He set out the events leading up to the issue of the Writ and the pleadings. He said that Counsel for the Respondents had repeated the submission which he had made to the Board of Inquiry, that there was no trade dispute within the legal meaning of that term. The learned Judge discussed the Statutes and certain authorities, and concluded that at all material times a trade dispute had existed between the Respondents and Averil Winter represented by the Antigua Trades & Labour Union. It was therefore necessary to bear in mind Sections 6 (A)(2) and 30 7 of the Trade Unions Act, 1939. The learned Judge said it was well settled that at common law a combination of two or more persons wilfully to injure another in his trade or business was unlawful, and, if it resulted in injury to that other, actionable. If, however, the predominant purpose of the combination was to defend the legitimate interests of those combining, no wrong was committed. Section 6 (A)(2) of the Trade Unions Act provided in 40 substance that persons acting in contemplation or furtherance of a trade dispute were relieved of the onus of showing that the predominant object of their combination was to forward or defend their own interests, but the protection of the Section did not extend to the adoption of means, themselves unlawful, for carrying out the objects of the combination. Section 7 of the Act gave protection only when the picketing was for one or
- pp.78-115
pp.78-85
p.85
- pp.86-94
- pp.94-98

Records
p.98
11.7-30

more of the purposes set out in the Section. The Minutes of the meeting of the Executive Committee of the Union held on the 9th September, 1955 showed that the decision to picket the Respondents' premises was taken, the first, second, third, fifth, seventh and ninth Appellants being present. The sixth Appellant was not present then, but attended subsequent meetings at which the picketing was discussed. Date, J., then summarised the evidence given on both sides, and made the findings of fact set out above. He

pp.98-110

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p.110
11.8-23

then said that none of the Respondents' employees were members of the Union, and there was no evidence that they required more employees, but the picketing was still going on. Although its predominant object was the furthering by the Appellants of their own interests, it was clear that they had other objects in mind and unlawful means amounting to obstruction, coercion, intimidation and threats of personal violence had been used. The learned Judge held that the relationship of master and servant existed between the Appellants, other than the eighth Appellant, and the pickets, and they were responsible in law for the pickets' actions.

pp.110-111

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p.113
11.13-45

There was abundant evidence of persuasion other than persuasion "to work or abstain from working", and the repeated shouts and noise of the pickets and the nuisance which they inflicted on the Respondents clearly went beyond what was reasonably necessary for lawful picketing. The evidence pointed conclusively to connivance at this on the part of the Appellants. The eighth Appellant was not a member of the Union's Executive Committee, but it was not disputed that he combined with the other Appellants for the picketing of the Respondents' premises. The learned Judge said that it was manifest that the unlawful means employed had caused damage to the Respondents, and he assessed this damage at £80. He accordingly awarded damages of £80, and an injunction restraining the Appellants, their servants and agents from watching and besetting the business places of the Respondents.

pp.113-115

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pp.117-119

9. The Appellants appealed to the West Indian Court of Appeal. By their Notice of Appeal, dated the 1st February, 1956, they contended that Date, J. had been wrong in holding that they were responsible for the acts of the pickets, and had not directed himself about the law relating to nuisance. They also raised a number of grounds

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concerning the learned Judge's findings of fact. By a Notice of the 9th February, 1956, the Respondents gave notice that they would contend on the hearing of the appeal :-

Records
p.120

(i) That the expression "workmen" in the Trade Unions Act did not include a clerk.

10 (ii) That the learned Judge had been wrong in holding that a trade dispute existed between the Respondents and the Antigua Trades & Labour Union representing Averil Winter; and

(iii) That the damages awarded were inadequate.

10. The appeal was argued on the 28th and 29th March and the 1st and 2nd April, 1957. Judgment was given on the 9th April, 1957. The learned Judges first set out the facts and summarised the pleadings and the relevant Statutes. They then referred to the evidence, and said that Date, J. had been fully justified in his findings of fact, which they endorsed. There was no doubt that the Appellants had adopted unlawful means for carrying out the objects of their combination. It was for the Appellants to prove that their acts fell within the ambit of Section 7 of the Trade Unions Act. They had failed to produce evidence to show that the purpose of the picketing was peacefully to obtain or communicate information or peacefully to persuade any person to work or abstain from working. The learned Judges were not satisfied that Date, J. had definitely found that the main purpose of the alleged conspiracy was to further the Appellants' legitimate interests. However that might be, Date, J. could only be understood to have found that the picketing had other objects than those mentioned in Section 7, and therefore the Appellants could not enjoy the protection of that Section. The learned Judges referred to the Minutes of the meeting of the Executive Committee of the Union held on the 9th September, 1955, and said it was clear from the agreement of the Appellants at the material time and from external acts and conduct that they had a common purpose to cause injury to the Respondents and to bring them into subjection by employing means which were manifestly unlawful. It had then to be decided whether a trade dispute had arisen out of the dismissal of Miss Winter. It was common

pp.121-138
pp.121-128

pp.128-132

p.132,1.20
-p.133,1.24

p.133,1.25
-p.134,1.24

p.134,1.25
-p.135,1.25

p.135,1.26
-p.137,1.7

Records

ground that before the 11th June, 1955 there had been no dispute or difference between the Respondents and Miss Winter or between any other employer or employee. After the dismissal a difference did arise between the Union and the Respondents, but none of the Respondents' employees took any part in it nor did any employee or employer show any disapproval of the Respondents' actions. There had been no difference subsisting at the date of Miss Winter's dismissal, and no employer or employee showed any dissatisfaction over any terms of employment or non-employment connected with it. There had therefore been no trade dispute within the meaning of the Act. The Appellants in their pleading relied on a dispute between the Antigua Trades & Labour Union and the Respondents, but there could not within the language of the Act be a trade dispute between the Union and the Respondents. The learned Judges went on to say that a workman was one who earned his living by manual labour, and Miss Winter did not fall within this definition. She had therefore not been a workman as defined by the Trade Unions Act. The learned Judges found that an actionable conspiracy had been proved; the picketing had been illegal and carried out by unlawful means; no trade dispute had ever existed; and Miss Winter had not been a workman within the meaning of the Trade Unions Act. They considered that Date, J., in assessing the damages at £80, must have taken into consideration his view that a trade dispute had existed. Taking the opposite view on this question, the learned Judges increased the damages to £100 and varied the judgment of the Supreme Court accordingly.

p.137,11.
8-46

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p.138,11.
3-13

p.138,11.
14-49

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11. The Respondents respectfully submit that the concurrent findings of fact made by the Supreme Court and the Court of Appeal show that the activities of the pickets outside the Respondents' premises went beyond peacefully obtaining or communicating information or peacefully persuading any person to work or abstain from working. The pickets tried to prevent, and in some cases prevented, people from entering the Respondents' premises. To this end they both used and threatened violence, addressed people in a loud and intimidating way, and made very great noise and disturbance in the streets. These were unlawful acts, for which, even if they were performed in contemplation or furtherance of a trade dispute, the Respondents were entitled to

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their remedy against the eighth Appellant and the other pickets. The pickets were acting on the orders and on behalf of the Executive Committee of the Antigua Trades & Labour Union. All the Appellants except the eighth Appellant, being members of that Committee, were, therefore, also liable for the pickets' acts.

10 12. The Executive Committee of the Antigua Trades & Labour Union gave the orders for the picketing of the Respondents' premises, and members of the Committee attended from time to time to supervise and encourage the activities of the pickets. The Respondents respectfully submit that the members of the Committee conspired together to injure the Respondents in the way of their trade. The acts done in execution of this conspiracy were, as set out in paragraph 11 above, acts which would have been actionable if done without any such agreement or combination; so
20 the conspiracy was itself actionable upon proof of damage, even if made in contemplation or furtherance of a trade dispute. The Respondents did suffer damage from the conspiracy, so all the Appellants, except the eighth Appellant, were, in the Respondents' respectful submission, liable to the Respondents for it.

30 13. The Respondents respectfully submit that the facts of this case disclose no trade dispute within the meaning of the Trade Unions Act, 1939, or the Trade Disputes (Arbitration and Inquiry) Act, 1939. The Respondents had lawfully dismissed Averil Winter before any dispute of any kind arose. If the subsequent dispute was between the Respondents and Miss Winter, it was not a dispute between employers and workmen; because Miss Winter by then was no longer a workman of the Respondents. The Respondents submit that a servant who is lawfully dismissed, and then makes quite unjustified demands upon his former master, does
40 not thereby become entitled to the special position conferred by the legislature upon a participant in a trade dispute. Alternatively, the Respondents submit that Miss Winter never was a workman within the meaning of the said Acts. If the dispute was between the Respondents and the Antigua Trades & Labour Union, it was again not a dispute "between employers and workmen" within the meaning of the Acts.

14. The Respondents respectfully submit that the

judgment of the West Indian Court of Appeal was right and ought to be affirmed, and this appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

1. BECAUSE the activities of the pickets, including the eighth Appellant, constituted a wrongful invasion of the Respondents' rights.
2. BECAUSE the said activities went beyond those permitted by the Trade Unions Act, 1939, Section 7. 10
3. BECAUSE the Appellants other than the eighth Appellant were responsible for the activities of the pickets.
4. BECAUSE the Appellants other than the eighth Appellant conspired together to injure the Respondents in the way of their trade.
5. BECAUSE the said acts of the pickets were done in pursuance of the said conspiracy, and caused damage to the Respondents.
6. BECAUSE there was no trade dispute. 20
7. BECAUSE of the other reasons set out in the judgment of the West Indian Court of Appeal.

J.G. LE QUESNE.

IN THE PRIVY COUNCIL

No. 22 of 1958

ON APPEAL
FROM THE WEST INDIAN COURT
ON APPEAL

B E T W E E N :-

(1) VERE CORNWALL BIRD
(2) EDMUND HAWKINS LAKE
(3) NOVELLE RICHARDS
(4) ERNEST WILLIAMS
(5) BRADLEY CARROTT
(6) JOHN IRELAND
(7) LEVI JOSEPH
(8) JOSEPH SAMUEL
(9) LIONEL HURST Appellants

- and -

(1) JOSEPH REYNOLD O'NEAL
(2) GERTRUDE O'NEAL Respondents

CASE FOR THE RESPONDENTS

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