

*Privy Council Appeal No. 22 of 1958*

Vere Cornwall Bird and others - - - - - *Appellants*

v.

Joseph Reynold O'Neal and another - - - - - *Respondents*

FROM

**THE WEST INDIAN COURT OF APPEAL**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 26th JULY, 1960**

*Present at the Hearing:*

LORD RADCLIFFE

LORD TUCKER

LORD COHEN

[*Delivered by* LORD TUCKER]

This appeal by special leave from a judgment of the West Indian Court of Appeal arises out of an action claiming damages and an injunction brought by the respondents against the appellants as a result of events which followed a resolution of the Executive Committee of the Antigua Trades and Labour Union authorising the General Secretary to take the necessary steps to picket the business premises of the respondents. The circumstances leading up to the passing of this resolution are conveniently set out in the judgment of the trial Judge, Date, J., as follows:—

In May 1949 one Averyl Winter was employed as a clerk at the Drug Store on a weekly basis. She continued working there until Saturday 11th June, 1955, when she was summarily dismissed by the Plaintiff Gertrude O'Neal and paid one week's wages in lieu of notice; no reason was given for the dismissal.

Sunday 12th June, was, of course, a dies non.

On Monday 13th June the Defendant Ireland, a Field Officer of the Antigua Trades & Labour Union of which Miss Winter is a member, went to Miss O'Neal and asked for the reasons for Miss Winter's dismissal. Miss O'Neal refused to give any. Thereupon, according to Miss O'Neal, Mr. Ireland demanded one year's pay for Miss Winter, and this was also refused.

Representations were then made by the Union to the Labour Commissioner of Antigua about Miss Winter's dismissal, and conciliation meetings under his Chairmanship were held at the Labour Department between representatives of the Drug Store and representatives of the Union on 23rd June and 7th July. At both meetings the Unions' representatives asked for the reinstatement of Miss Winter. The representatives of the Drug Store said that in dismissing Miss Winter without giving reasons and paying her a week's wages in lieu of notice they were acting within their legal rights, and that they were not prepared to consider the claim for reinstatement. At the second meeting a written undertaking was signed by Miss Winter to the effect that nothing said there would be used by her in any case of slander or libel; the representatives of the Drug Store then stated five reasons which they said were the only reasons for the dismissal. These were examined and severely criticised by the

Union's representatives, who expressed the view that they proved nothing against Miss Winter and did not justify her dismissal. As the representatives of the Drug Store persisted in their refusal to reinstate Miss Winter, the Chairman inquired whether they would be prepared to consider settling the matter on a basis other than reinstatement, to which they replied in the negative.

The voluntary negotiations having broken down, the Union approached Government for the appointment of a Board of Inquiry under the Trade Disputes (Arbitration and Inquiry) Act, 1939, Section 8 (1) of which reads thus:

" 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."

By instrument dated 16th August, 1955, the then Acting Governor of the Leeward Islands appointed a Board of Inquiry "to inquire into the causes of the dispute that arose over the dismissal of Miss Averyl Winter by the Proprietors of O'Neal's Drug Store, St. John's, and to report thereon to the Governor and to submit to him such conclusions, recommendations and observations as the Board sees fit."

At the Inquiry, which was held on the 24th August, Mr. E. E. Harney, representing the Plaintiffs, submitted in limine that there was no trade dispute between Miss Winter and the Drug Store and that the appointment of the Board was, consequently, invalid. The gist of his contention was that the relationship of employer and employee had been legally terminated by the giving of a week's wages to Miss Winter in lieu of notice, and that there could therefore be no trade dispute within the meaning of the Act under which the Board was operating. The Board ruled that "the terms of reference contained in the instrument dated 16th August 1955 which gave the Board its validity showed prima facie that there was a trade dispute existing between the proprietors of O'Neal's Drug Store and Miss Averyl Winter and therefore the Board had full power and authority to inquire into the dispute." At this stage Mr. Harney sought and was granted permission to withdraw from the Inquiry, and the Plaintiffs took no further part in the proceedings, but the minutes of meetings at the Labour Department, which contained inter alia the reasons given by Miss O'Neal for the dismissal of Miss Winter, were produced in evidence and closely examined.

In its report submitted to the Acting Governor on 31st August, 1955, the Board, after setting out its findings, expressed the opinion that there was no moral justification for the dismissal of Miss Winter and, using as a norm one of the accepted principles of good industrial relations, that is the principle of mutual respect and tolerance of human rights between employer and workman, recommended the proprietors of the Drug Store be asked to pay her a sum equivalent to thirteen weeks' wages "as a compensation for her dismissal".

Under cover of a letter from the Administrator of Antigua dated 6th September, 1956, a copy of the report was sent to Mr. Harney for the information of his clients and himself "and such action with the view to a settlement of the dispute as may be deemed advisable." In a letter the Administrator also informed Mr. Harney and his clients that the Acting Governor agreed generally with the recommendations of the Board. The Plaintiffs ignored this communication, and on 16th September the Administrator caused the Report to be published in the local press. The following day the Plaintiffs' business premises were picketed.

The picketing took place pursuant to the resolution referred to above of the Executive Committee of the Trades and Labour Union of the 9th September, 1955, which was as follows:—

“Be it resolved that provided up to the time of the publication of the Board’s award the dispute between Miss O’Neal and the Trade Union is not settled the General Secretary should take the necessary steps to picket the business premises.”

After the meeting the appellants Joseph (No. 7) and Hurst the General Secretary (No. 9) engaged six paid pickets to picket the respondents’ business premises.

The appellants numbered 1 to 7 and number 9 were all members of the Executive Committee of the Union. Samuel (No. 8) was not a member but was described as the chief picket. Nos. 4 and 6 (Williams and Ireland) were not present at the meeting of the Executive Committee when the resolution was passed. Hurst in his evidence at the trial stated that he gave the pickets instructions to conduct themselves in an orderly manner and told them that their duty was to pass on information to members of the public with regard to the dispute and not to molest anyone.

Paragraphs 5-10 of the respondents’ statement of claim are as follows:—

“5. The First seven named and the last named Defendants and each of them wrongfully and maliciously conspired and combined amongst themselves (with intent to injure the Plaintiffs and thereby compel them to submit to the demand of the Antigua Trades and Labour Union to pay compensation to one Averyl Winter a former clerk in O’Neal’s Drug Store who had recently been lawfully dismissed from her employment by the Plaintiffs) wrongfully and without legal authority to watch and beset or cause or procure to be watched and beset the said business places of the Plaintiffs and the approaches and entrances thereto in such manner as was calculated to intimidate customers and prospective purchasers.

6. In furtherance and execution of their said conspiracy and combination the said first seven named and the last named Defendants and each of them wrongfully and without legal authority caused or procured the Defendant Joseph Samuel and other persons to the number of 12 or thereabouts (hereinafter referred to as the pickets) wrongfully and without legal authority to watch and beset the said business places of the Plaintiffs daily from the 17th day of September, 1955 in such a manner as is calculated to intimidate customers and prospective purchasers and to obstruct the approaches thereto. The first seven named and the last named Defendants and each of them in acting as in this paragraph stated acted for the purpose of intimidating and preventing customers and prospective purchasers from entering the said business places and purchasing therein.

7. The first seven named and the last named Defendants on several occasions on the 17th day of September, 1955, and on divers other occasions thereafter attended outside the said business places of the Plaintiffs or in the vicinity thereof and gave encouragement to the said pickets.

8. The Defendant Levi Joseph and the pickets have by threats and acts of violence and intimidation and coercion prevented divers customers and prospective purchasers from entering the said business places and purchasing therein.

#### PARTICULARS.

(1) On the 17th day of September, 1955, the Defendant Levi Joseph led a steel band and a number of pickets carrying placards to the said business places of the Plaintiffs and surrounded same blocking the approaches and entrances thereto and shouting in a threatening manner to persons who attempted to enter the said business places “Don’t buy from O’Neal’s Drug Store, a Strike is on.”

(2) On the said 17th day of September, 1955, and on several days thereafter the Defendant Joseph Samuel who is well known to the general public as a local constable paraded up and down outside the said business places ringing a bell and shouting "Don't buy from O'Neal's Drug Store people. You no hear you no foo buy from this Drug Store." And when people asked why not? Defendant Samuel told them that the police will lock them up.

(3) The said Defendant Joseph Samuel on the 19th day of September, 1955, assaulted a person whose name is unknown who was attempting to enter one of the business places for the purpose of purchasing therein.

(4) The said pickets carrying flags and placards with slogans such as "Hold the line. The workers security is challenged" written thereon attend daily around the said business places and in a menacing and threatening manner surround and obstruct persons especially old men and women and children who attempt to enter the said business places shouting at them "Hold the line".

(5) The Defendant Levi Joseph on the morning of the 24th September, 1955, and other pickets conducted themselves in a boisterous and disorderly manner marching up and down in front of the said business places shouting "Hold the line"—"Don't buy from this Drug Store, workers must be respected."

9. In the alternative the Defendants and each of them wrongfully and maliciously conspired with intent to injure the Plaintiffs to create a nuisance and did in pursuance of their conspiracy create a nuisance by the continuous shouts and other noises of the pickets and by obstructing the approaches to the said business places of the Plaintiffs thereby seriously interfering with the comfort of the Plaintiffs and the ordinary enjoyment of the said premises by them.

10. By reason of the premises the Plaintiffs have suffered damage—Loss estimated at \$500.00 up to this date has thereby been incurred.

The Plaintiffs claim against the Defendants and each of them:—

(1) Damages.

(2) An injunction restraining the Defendants their servants and agents from unlawfully watching and besetting the business places of the Plaintiffs."

Evidence was given on both sides as to what took place during the picketing over the period from 17th September to the date of the trial on 30th November, 1955, but neither Samuel nor any of the other pickets was called. After referring to the evidence and having remarked on the absence from the witness box of all the pickets the Judge said:—

"Having given careful attention to these and the other arguments advanced by learned counsel for the defence, I am, nevertheless after the fullest consideration of the evidence of all the witnesses I have had the opportunity of hearing and observing, of the opinion that the particular incidents mentioned by me as having been related by Gertrude O'Neal, Linda O'Neal, Victoria Frederick, Cardigan Stevens and Iris Barrow did take place, and that their accounts of them are substantially correct; these persons impressed me as being essentially truthful witnesses, whatever their feelings towards the Union."

The Court of Appeal after referring to the passage cited above said:—

"There is abundant material from which the learned Judge could so find and we endorse that finding."

There are therefore concurrent findings of fact on this part of the case which clearly establish, when the evidence which the Judge accepted is looked at, that intimidation and threats of violence were used to prevent customers from entering the business premises of the respondents to an extent which amounted to an actionable nuisance. How far responsibility for these acts of the pickets can be established against all or some of the appellants will, however, require further consideration.

The trial Judge approached this question as follows. He found that the appellants, other than Samuel, had by the resolution of 9th September, 1955, agreed to the picketing of the respondents' premises, that the General Secretary had appointed the pickets pursuant to the authority conferred on him by the resolution and that the pickets so appointed had used coercion, intimidation and threats of personal violence, that the pickets so appointed were the servants of the appellants who were liable for the acts of their servants. He accordingly held that, although the predominant object of the picketing was the furthering by the appellants of their own interests, they had conspired to achieve their purpose by the use of unlawful means.

Samuel, although he was not a member of the Executive Committee and had not attended any of its meetings was held liable as the Judge said it was not disputed that he had combined with the other appellants for the purpose of picketing the respondents' premises.

This reasoning cannot be supported.

The pickets were not the servants of the individual appellants. They were appointed by the Antigua Trades and Labour Union which could of course only act by agents who were in this case the Executive Committee and the General Secretary, but this does not create the relationship of master and servant between these persons and the pickets. The General Manager or Works Foreman of an industrial limited liability company may have authority to engage and dismiss workmen and direct their operations but this does not make the workmen appointed by them their servants.

The Court of Appeal, as previously stated, endorsed the trial Judge's findings with regard to the means and methods adopted in the picketing, but were not satisfied that he had made a definite finding that the main purpose of the conspiracy was to further the appellants' legitimate interests and said that they were still less convinced that there was sufficient and satisfactory evidence to support such a conclusion. Having examined the evidence they said:—

“An examination of the evidence clearly reveals not only what was the real intention of the appellants but also the nature of their agreement at the material time, their external acts and their conduct show that by mutual consent and acquiescence they had a common purpose, that is, to cause injury to the respondents and bring them into subjection by employing means which were manifestly unlawful.”

They do not seem to have examined the position of each individual appellant in order to determine whether and if so how he had become a party to the unlawful conspiracy. It would therefore appear that they must have approached the question in the same way as the trial Judge, i.e., on the basis of the existence of the relationship of master and servant between the individual members of the Executive Committee and the pickets.

In rejecting any conclusion adverse to the appellants based on the master and servant theory their Lordships must not, however, be understood as saying that a finding of unlawful conspiracy might not have been established against some of the appellants if the Courts below had approached the case from a different angle, i.e., by looking to see what part, if any, each appellant had played in connection with each specific incident when threats or intimidation had been used and then considering whether such part necessarily compelled the inference that the particular respondent was party to a conspiracy to use unlawful means to further the object of the picketing and thereby create a nuisance. Their Lordships do not consider it would be proper for them at this stage to undertake such an investigation in the absence of clear and convincing evidence implicating the persons concerned and pointing irresistibly to their participation in an unlawful conspiracy.

Examination of the evidence accepted by both Courts below does, however, reveal beyond doubt that the appellants Joseph (the organiser) and Samuel (the chief picket)—apart from any question of conspiracy

were present and actively assisting in the picketing which was being carried out with threats and intimidation so as to obstruct the approaches to the respondents' premises continuously from 17th September to 26th November, 1955, thereby constituting a nuisance which has been found to have caused damage to the respondents' trade.

Joseph led the pickets on 17th September when they were first posted and was frequently present thereafter during the period in question. Samuel was present throughout.

On 17th September when the pickets arrived Joseph was at their head and taking a leading part. He was shouting "Don't buy from O'Neal's Drug Store" and told the pickets to shout behind the people going into the store.

Samuel was present throughout and himself shouted "Don't buy from O'Neal's". One of the pickets (a Dominican named Tilton Theophile) threatened to knock down several persons attempting to enter the store. On 19th September Samuel, who was a special constable, told people they would get into trouble if they went in.

24th September was a particularly noisy day. Some pickets were heard to threaten to beat people if they went in. Joseph was present that day egging on the pickets to shout louder. The respondents telephoned the police to complain. Joseph said he was temporarily substituting for one of the pickets. After a visit from the police Joseph was urging the pickets to shout louder.

On 15th October a young woman was surrounded by pickets and entered the store "almost in a state of collapse". On 11th November Samuel said to a customer "Nelson, don't you hear you must not go in there to buy—you is a dog".

On 26th November a Mrs. Allen asked Samuel what was the meaning of the words "Hold the line" (which was a slogan freely used by the pickets throughout this period) and was told it meant that nobody should enter the drug store.

The Court of Appeal in referring to these matters said:—

"In reality the evidence discloses that on the morning of 17th September, 1955, the pickets carrying placards arrived accompanied by a steel band playing and a large crowd. The appellant Samuel was one of the pickets. They were installed around the premises by the appellant Levi Joseph with much flourish, fanfare and noise. Thereafter their behaviour was of such a nature as to intimidate and prevent people from going into the store and it is clear as found by the trial Judge, methods of obstruction, coercion, intimidation and threats of personal violence were used. On occasions the pickets kept up a continuous shouting for sustained periods to such an extent as to constitute a nuisance."

Their Lordships are satisfied that the concurrent findings of fact are sufficient to establish the existence of a nuisance which has caused damage to the respondents and that the evidence accepted by the trial Judge clearly shows that the appellants Joseph and Samuel are liable as participants with others in the creation and continuance of the nuisance. The Statement of Claim alleges in the alternative a conspiracy to create a nuisance and the creation thereof pursuant to such conspiracy. Their Lordships do not consider it necessary or desirable to investigate whether the participation of the appellants Joseph and Samuel in the creation of the nuisance was in pursuance of a previous conspiracy or not. It suffices that they are each responsible for the tort in the commission of which they have assisted. They are accordingly liable for the damage which the trial Judge has assessed at the sum of £80 and as against them the respondents are entitled to an injunction the terms of which will be indicated later.

It will have been observed that so far no reference has been made to the legislation relating to trade disputes. As there is nothing in the relevant legislation to protect any individual from liability for torts committed by him whether in furtherance of a trade dispute or not it is

not strictly necessary to the decision of this appeal to determine certain questions which are of considerable importance to trade unions and employers and which figured prominently in the Courts below. But their Lordships consider it is desirable to make some observations thereon.

The relevant statutory provisions are as follows:—

*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.

*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.

*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.

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.

*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.

It was contended by counsel for the respondents at the trial that in order to constitute a trade dispute over a dismissal a dispute or difference must arise between the remaining employees and the employer. In the present case there was no dispute or difference between the remaining employees (none of whom were members of the Union) and the respondents. It also appears to have been contended that in any event there can be no trade dispute between a dismissed employee and a dismissing employer if the dismissal was lawful (i.e., if the period of notice required by law is given and payment in lieu thereof made).

The trial Judge rejected these submissions. He held that a trade dispute existed that the predominant object of the picketing was a

furthering by the appellants of their own interests, although they had other objects in mind and unlawful means had been used. On appeal the respondents by cross appeal gave notice that they would contend (1) that the definition of workman in the Trade Unions Act, 1939, does not include clerk and (2) that the Judge was wrong in holding that a trade dispute existed between the respondents and Avelyn Winter represented by the Antigua Trades and Labour Union. The Court of Appeal accepted both these contentions and increased the damages from £80 to £100 by reason of the non-existence of a trade dispute. In arriving at these conclusions they held that the only dispute was between the Union and the respondents, basing themselves on certain observations of Bennett, J. in the Court of Appeal in *Rex v. National Arbitration Tribunal* [1941] 2 K.B. 405. These observations were, however, not relied upon by the respondents when that case reached the House of Lords [1943] A.C. 166, where the decision of the Court of Appeal was reversed and Viscount Simon, L.C., in his speech stated that they must be regarded as abandoned. Lord Wright described as "strangely out of date" the argument that a difference between a trade union acting for its members and their employer cannot be a trade dispute.

The Court of Appeal further held that Miss Winter was not a workman. They would appear to have construed the words "workmen includes labourers" in Section 2 of the Trade Unions Act, 1939, as amended as though it were a definition. Although it is true that the definition in the Trade Disputes (Arbitration and Inquiry) Act, 1939, cannot be imported as such into the Trade Unions Act there is nothing to compel a limited and restricted meaning to the word "workman" in the latter Act. On the contrary the subject matter would seem to their Lordships, in the absence of words of limitation, to call for a wide and liberal interpretation which should not exclude shop assistants. With regard to the trial Judge's finding that the predominant object of the picketing was the furtherance of the appellants' own interests their Lordships are unable to agree with the Court of Appeal that this did not amount to a definite finding that the main purpose of the alleged conspiracy was to further the appellants' legitimate interests nor can they accept the view that the finding was not justified by the evidence. Their Lordships also agree with the trial Judge's rejection of the submission that the lawful dismissal of a workman cannot be the subject of a trade dispute.

For the reasons previously stated, however, their Lordships will humbly advise Her Majesty that the order of the Court of Appeal be discharged and that the judgment of the trial Judge be varied by entering judgment for the respondents for the sum of £80 damages against the appellants Joseph and Samuel only and that an injunction against the appellants Joseph and Samuel restraining them from creating a nuisance to the respondents by using threats or intimidation or inciting other persons to use threats or intimidation to deter customers from entering the premises of the respondents or otherwise obstructing free access by the public thereto, be substituted for the injunction ordered by the trial Judge.

The appellants Joseph and Samuel must pay one-half of the costs in the Courts below excluding the costs of the cross appeal which must be paid by the respondents and excluding the costs of joining the appellant Hurst and the costs of and incidental to the two applications for an interim injunction as to which the trial Judge's order will stand.

There will be no order as to costs of the present appeal.





In the Privy Council

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DELIVERED BY LORD TUCKER

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