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UNIVERSITY OF THE
WEST INDIES
1955
INSTITUTE OF
LEGAL STUDIES

1.

IN THE PRIVY COUNCIL

No. 51 of 1960

ON APPEAL

FROM THE FEDERAL SUPREME COURT, TRINIDAD
OF THE WEST INDIES

63618

B E T W E E N:

WALTER ANNAMUNTHODO .. Appellant

- and -

OILFIELDS WORKERS' TRADE UNION
Respondent

CASE FOR THE APPELLANT

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1. This is an appeal in forma pauperis from a Judgment of the Federal Supreme Court, Trinidad, dated the 25th day of January, 1960, dismissing an appeal from a Judgment of the Supreme Court of Trinidad and Tobago, dated the 25th day of June, 1959, dismissing a claim by the Appellant (hereinafter called "the Plaintiff") for a declaration that he is a member of the Oilfields Workers' Trade Union (hereinafter called "the Union") and that his purported expulsion therefrom is ultra vires and void, and for an Injunction, Damages, other relief and costs.

Record
p.41
p.21

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2. The Plaintiff claims that his purported expulsion from the Union ought to be set aside on the ground that the procedure followed by the General Council of the Union in dealing with certain charges made against him violated the principles of natural justice.

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3. The Plaintiff was charged under 4 specified rules of the Union, but of the 4 charges one was misconceived, for reasons hereinafter appearing. As regards the remaining 3 charges, which were effective, the Plaintiff's complaint is that although in each case the only penalty which could have been imposed upon him under the relevant rule specified in the charge was a small fine, the General Council not only found him guilty of the charges but also purported to expel him from the Union under another rule, which was not referred to in any of the charges or mentioned at the hearing of the charges.

Record
p.16, 1.8
p.56

4. The Plaintiff, a member of the Union, received a letter dated the 15th May, 1957, from the General Secretary of the Union, setting out the 4 charges against him in the following terms:-

"Dear Comrade,

This serves to notify you that you are required to appear before the General Council of the Oilfields Workers' Trade Union on the 9th June, 1957 at 10 a.m. precisely to answer three (3) of the appended charges numbered 1, 2 and 3 laid against you for Trade Union offences committed jointly with Comrades Hugh Morton and Cecil Mitchell and an additional charge laid singularly against you numbered 4.

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Yours faithfully,
(Signed) J.C. Houlder,
General Secretary,
Oilfields Workers' Trade
Union.

Charge 1

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Statement of Offence: Plotting, Contrary to Rule 26.

That you (the Plaintiff) a member of the O.W.T.U. Hugh Norton, an officer of the Pointe-a-Pierre Branch of the O.W.T.U. and Cecil Mitchell, a member of the O.W.T.U. did during the year 1956 plot against the following officers: John F.F. Rojas, President General; Thomas Bunte, 1st Vice-President, Joseph Houlder, General Secretary and John Commissiong, Treasurer, all of the O.W.T.U. contrary to Rule 26.

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Particulars

(Details of the conduct alleged were set out).

Charge 2

Irregular Discussion of Union Business contrary to Rule 25.

Statement of Offence

That you (the Plaintiff), a member of the

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O.W.T.U. Hugh Norton, an officer of the Pointe-a-Pierre Branch and Cecil Mitchell a member of the O.W.T.U. did on Wednesday the 15th August, 1956 and Friday the 17th day of August, 1956 hold irregular discussions of Union Business contrary to Rule 25.

Particulars

(Details of the conduct alleged were set out).

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Charge 3

Offence: Breach of Rule 32, Complaints and Appeal.

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That you (the Plaintiff), a member of the Oilfields Workers' Trade Union, Hugh Norton, officer of the Pointe-a-Pierre Branch of the O.W.T.U. and Cecil Mitchell, a member of the O.W.T.U. have been for months now making public statements and charging in public Executive Officers of the Oilfields Workers' Trade Union with corruption in connection with the funds of the O.W.T.U. and the utilization of the said funds for personal use by John F.F. Rojas, Thomas C. Hunte, Joseph C. Houlder and J.E. Commissioning all General Officers of the Oilfields Workers' Trade Union contrary to Rule 32.

Particulars

(Details of the conduct alleged were set out).

Charge 4

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(The Plaintiff only).

Statement of Offence

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Disrespectful conduct contrary to Rule 27. That you (the Plaintiff), a member of the Pointe-a-Pierre Branch of the Oilfields Workers' Trade Union did at a meeting of the Pointe-a-Pierre Branch on Monday the 4th February 1957 held at the Oilfields Workers' Palms Club behave in a manner which was grossly disrespectful to John F.F. Rojas, President General of the O.W.T.U.

RecordParticulars

(Details of the conduct alleged were set out)."

5. The rules of the Union referred to in the said charges are as follows :-

Rule 25 - Irregular Discussion of Union's Business.

It shall be irregular for any officer or member of the Union to discuss the business of the Union in public or with any persons who are not members of the Union and any officer or member so charged and found guilty shall forfeit his office or be suspended from membership or be fined any sum not exceeding five dollars or expelled. Any other member found guilty of such breach shall be fined two dollars (\$2.00) for the first offence, for the second offence he shall be suspended from membership for three months and for a third similar offence he shall be expelled.

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Rule 26 - Plotting of Members.

(1) Any officer or member who is charged with plotting against fellow officers or members shall on conviction, if an officer forfeit his office, or be suspended or fined any sum not exceeding five dollars or be expelled; and if a member be fined two dollars for the first offence; for a second offence he shall be suspended from membership for three months or be expelled from the Union.

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(2) Any officer or member attending the meeting with motives to create disharmony among officers and members assembled, thereby disturbing the peaceful and harmonious working of the same shall be subjected to the same penalties.

Rule 27 - Respect to Officers.

All officers and members are required to show due respect to the officers of the Union who have been duly elected. Anyone charged and found guilty of disrespectful conduct in this connection if he be an officer shall, for

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the first offence, either forfeit his office or be suspended from office. If he be an ordinary member he shall for the first offence be fined the sum of one dollar. Anyone found guilty for a second offence may be expelled.

Rule 32.

This rule, entitled "Complaints and Appeals", is a lengthy rule which deals with inter alia the methods whereby complaints are to be raised. Section (5) of this rule reads as follows :-

(5) All charges made by any member or officer against another must be in writing and if any charge, on investigation, is proved to be made through malice and without foundation, the member or officer preferring such charge shall be liable to suspension or expulsion or be fined any sum not exceeding five dollars as the case deserves.

- 20 6. The Plaintiff was never an officer of the Union and had never before been charged with any offence against the rules of the Union. It follows that the penalty to which he would have been liable under Rule 26, if found guilty on Charge 1, was a fine of 2 dollars. Similarly, under Rule 25, if the Plaintiff was found guilty on Charge 2, the penalty would have been 2 dollars. Under Rule 27, the penalty on Charge 4 would have been one dollar. p.16, 1.14
p.16, 1.16
- 30 7. As regards Rule 32, referred to in Charge 3, it is submitted that for the purpose of considering the possible penalty which might have been imposed, this rule can be ignored, because the said charge was misconceived. It was held by the learned trial Judge, and not disputed on appeal, that the allegations contained in the said Charge 3 do not fall within the ambit of Rule 32 (5). p.33, 1.24
- 40 8. On the 9th June, 1957, the Plaintiff appeared before the General Council of the Union to answer the said charges and an inquiry into his alleged conduct was held. His defence was a complete denial of the allegations. The General Council did not give a decision on that date, and by a letter dated the 12th June, 1957, from the General Secretary, requested him to attend again on the 16th June, 1957; the said letter was in the following terms :- p.6, 1.5
p.9, 1.26
p.17, 1.21
p.62

Record

"This serves to notify you that you are requested to attend the adjourned meeting of the Union's General Council, sitting as a Board of Enquiry, on Sunday 16th inst. at 10 o'clock in the forenoon when the evidence taken last Sunday at the hearing of the charges laid against you and others would be considered by Council and a decision given on the matter."

p.62

The Plaintiff replied by letter dated the 14th June, 1957, stating that he was unable to attend the meeting on the 16th June, 1957, owing to a previous engagement, and asking that the decision of the General Council be communicated to him in writing; his letter was in the following terms :-

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"Dear Sir,

I acknowledge receipt of your letter dated 12th June 1957 advising me that the General Council will give its decision on Sunday 16th June 1957 on the hearing of the charges laid against me.

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Owing to a previous arrangement to be the Judge at a "Mock Trial" sponsored by a Girls' Group in my district at the same time, I regret that I cannot attend the Board of Enquiry.

Under the circumstances I am sure you will be kind enough to send me the decision in writing at your earliest convenience."

9. The decision of the General Council was communicated to the Plaintiff by letter from the General Secretary dated the 17th June, 1957, which reads as follows :-

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p.63

"Dear Sir,

This is to inform you that you have been convicted on all the charges laid against you by the General Secretary of the Oilfields Workers' Trade Union.

The General Council has as a result seen fit to expel you under the provisions of Rule 11 Section 7 on the ground that your general conduct has been prejudicial to the best interest of the Union."

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10. Rule 11, which is entitled "General Council", deals with the constitution and the powers and duties of the General Council of the Union. Section 7 of the said rule reads as follows :-

10 (7) The General Council may fine any member who is proved to the satisfaction of the said Council, to have been guilty of conduct prejudicial to the interests of the Union any sum not exceeding \$5.00 and/or may suspend or expel such member from the Union. Any member so fined, suspended or expelled shall have the right of appeal to the Annual Conference of Delegates whose decision shall be final and binding, provided, however, that any member who may have been fined, suspended or expelled before these rules came into force shall have no right of appeal under these rules. No suspended or expelled member shall have any claim on the funds or activities of the Union or any part thereof.

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11. Until the Plaintiff received the said letter of the 17th June, 1957, informing him that he had been expelled, he was never given any intimation that the Union was proceeding against him in respect of "conduct prejudicial to the interests of the Union", under Rule 11 Section 7.

p.16, 1.20

12. The Plaintiff gave notice of appeal against his expulsion to the Annual Conference of Delegates under Rule 11 Section 7, by letter dated the 21st June, 1957. He was informed by letter dated the 12th May, 1958, from the General Secretary, that his expulsion had been upheld by the Conference.

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p.64

p.67

13. On the 21st May, 1958, this suit was instituted by Writ of Summons in the Supreme Court. The Statement of Claim included the following averment :-

40 "9(c). The Plaintiff was never charged and/or was never notified (in writing, orally or otherwise) of any charge against him and/or was never given any opportunity of being heard in respect of any action contemplated against him under rule 11 (7) of the rules of the defendant Union, and accordingly it was incompetent and/or against natural justice for the defendant Union to expel the Plaintiff thereunder."

p.7, 1.8

A Defence was delivered.

p.9

Recordp.12
p.16

At the trial, which commenced on the 15th June, 1959, the Plaintiff gave oral evidence in support of his case. No evidence was called on behalf of the Union.

14. The Judgment of the Supreme Court was delivered on the 25th June, 1959. On the main issue as to whether there had been a departure from the principles of natural justice, because the Plaintiff had not been informed that the Union was proceeding against him under Rule 11 (7), the learned trial Judge (Phillips J.) held as follows :-

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p.25, 1.39

(a) That the "critical question" for determination is whether Rule 11 (7) is to be construed as creating a specific offence of "being guilty of conduct prejudicial to the interests of the Union", of which notice in those specific terms should have been given to the Plaintiff; or whether it is to be construed as merely conferring on the General Council the power of imposing the stipulated penalties in any case where, after due inquiry into specific charges which have been proved to its satisfaction, the Council is of opinion that the conduct, which is the subject-matter of the charges, is prejudicial to the interests of the Union.

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p.32, 1.36

(b) That the proper construction of Rule 11 (7) is that it is an "enabling power", entitling the General Council to impose more severe penalties for specific offences than is permissible under the Rules creating those offences, in cases where the Council is satisfied that the acts constituting the offences in question are prejudicial to the interests of the Union.

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p.33, 1.43

(c) That the Rule does not give rise to an offence which is separate and distinct from the specific offences with which the Plaintiff was charged, so as to make the giving to the Plaintiff of notice of the fact that his case was being dealt with under the provisions of Rule 11 (7) a necessary requisite to the validity of the inquiry held into his conduct.

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15. The learned trial Judge decided two subsidiary issues of construction as follows :-

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| | (a) Having held, as stated above in paragraph 7, that the allegations in Charge 3 clearly do not fall within the ambit of Rule 32(5), the learned Judge decided that the Plaintiff was wrongly convicted on that charge and, accordingly, was not liable to expulsion for any alleged breach of Rule 32(5); it is submitted that this decision was right. On the other hand, the learned Judge held that although the General Council wrongly found the Plaintiff guilty on Charge 3, this did not render invalid their decision to expel the Plaintiff; it is submitted that in so doing he erred. | p.33, 1.24

p.33, 1.27

p.33, 1.28

p.33, 1.30 -
p.34, 1.3 |
| 10 | | |
| | (b) He construed Rule 25 as permitting the application of the penalty of expulsion, although the Plaintiff was never an officer of the Union and this was the first occasion on which he was ever charged with an offence. It is submitted that this is an erroneous construction of the said rule. | |
| 20 | | |
| | 16. The learned trial Judge dismissed the action with costs. | p.36 |
| | 17. In the Federal Supreme Court (Rennie, Archer and Wylie, J.J.) the first Judgment was given by Archer J. The learned Judge dealt first with the subsidiary questions regarding the proper construction of Rules 32 and 25. He observed that there was no appeal against the learned trial Judge's construction of Rule 32. As regards Rule 25, he rejected the learned trial Judge's construction, and held that as the Plaintiff was an ordinary member of the Union, and not an officer, he was not liable to expulsion for his breach of Rule 25, and that, therefore, his expulsion was valid only if it was authorised under Rule 11 (7). | p.41

p.43, 1.18

p.46, 1.16

p.46, 1.19 |
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| | 18. On the principal issue, Archer J. accepted the view of the learned trial Judge that Rule 11 (7) is an "enabling" rule, and held that there was no evidence of a breach of the rules of natural justice in the proceedings before the General Council. He further held that even if some fault could be found with the adjudication by the General Council, the Plaintiff could not succeed because the Annual Conference of the Union ruled against the Plaintiff on his appeal to that Conference. | p.46, 1.21 -
p.47, 1.24

p.47, 1.28

p.47, 11.32-49 |
| 40 | | |
| | 19. Both the learned trial Judge in the Supreme Court and Archer J. in the Federal Supreme Court | p.32, 1.36
p.46, 1.43 |

Record

indicated that in holding that Rule 11 (7) is an "enabling" rule, they were using that expression in the sense in which it was used by Eve J. in Wolstenholme v. Amalgamated Musicians Union (1920) 2 Ch. 388. It is submitted that the facts in that case are distinguishable from those in the present case and that both the learned judges erred in purporting to follow the reasoning in Wolstenholme's case.

p.48, 1.6

20. Rennie J. concurred with the Judgment delivered by Archer J.

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pp.48 - 50

21. The third Judgment in the Federal Supreme Court, that of Wylie J., expressed a different view as to the proper construction of Rule 11 (7) from that of Archer, J. and the learned trial Judge. The learned Judge did not regard this rule as an "enabling" rule in the sense explained by the learned trial Judge, but as a rule creating an independent offence. He said :-

p.48, 1.14

"In my judgment, the opening sentence of Rule 11 (7) constitutes an entirely independent breach of the rules which would justify the Council in expelling a member this rule could operate whether or not the same conduct amounts to a breach of any other rule."

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22. Although he construed Rule 11 (7) in the manner stated above, Wylie J. took the view that the Plaintiff had been given a reasonable opportunity to be heard in respect of the charge (or presumed charge) under the said rule, and that therefore there had been no violation of the rules of natural justice; he said :-

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p.49, 11.13-31

"The General Council had no power to expel the appellant for breach of any of these rules (Rules 25, 26, 27) and the form of the charges might therefore lead Plaintiff to believe that expulsion would not be considered. However, this could not preclude the General Council from invoking other rules against the Plaintiff if the evidence justified such a course and provided that the Plaintiff had a reasonable opportunity to be heard in respect of a charge under another rule. In my judgment, he had this opportunity. The evidence was taken on 9th June, 1957, in the presence of the Plaintiff. He was notified by letter that on 16th June, this evidence "would be considered by

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Council and a decision given on the matter".
He was also requested to attend, but declined
because of a prior engagement."

Wylie J. agreed with Archer J. concerning the effect
of the Plaintiff having exercised his right of appeal
to the Annual Conference. p.49, l.47

For these reasons Wylie J. agreed that the
Plaintiff's appeal should be dismissed. p.50, l.8

10 23. The Plaintiff submits that Wylie J. in the
Federal Supreme Court was right in holding that
Rule 11 (7) creates an independent offence, but
wrong in holding that the Plaintiff had had an
opportunity to meet a charge under that rule; it is
submitted that it is clear on the facts that he had
no such opportunity, and was not even charged under
that rule, and therefore there was a violation of
the principles of natural justice. The Plaintiff
further submits that if Archer and Rennie, J.J. in
20 the Federal Supreme Court and Phillips J. in the
Supreme Court were right in holding that Rule 11 (7)
was an "enabling" rule in the sense suggested,
nevertheless there was a violation of the principles
of natural justice because the Plaintiff was never
given notice that he might be expelled under that
rule or an opportunity to address the Council in
mitigation of the penalty. The wording of the
charges was such as to direct his mind solely to-
wards a consideration of Rules 25, 26 and 27 under
which the penalty to which he was liable, if found
30 guilty, was no more than a small fine.

24. On the 12th February, 1960, in the Federal
Supreme Court, the Plaintiff was granted Conditional
Leave to Appeal to Her Majesty in Council but owing
to his poverty was unable to comply with the condi-
tions. On the 7th June, 1960, the Plaintiff was
granted Special Leave to Appeal in forma pauperis,
by Her Majesty in Council. p.51

40 25. The Plaintiff submits that this Appeal should
be allowed with Costs and that he should be granted
the Relief claimed by him for the following, amongst
other,

R E A S O N S

1. BECAUSE Rule 11 (7) creates an independent
offence and not merely an "enabling power".

Record

2. BECAUSE the Plaintiff was never charged under Rule 11 (7).
3. BECAUSE this case is distinguishable from Wolstenholme v. Amalgamated Musicians Union (1920) 2 Ch. 388.
4. BECAUSE whether Rule 11 (7) creates an independent offence or merely an "enabling power" the Plaintiff was never informed that the General Council would or might deal with his case under that rule. 10
5. BECAUSE the only charges which were properly laid against the Plaintiff were those under Rules 25, 26 and 27 and the only penalties which could have been imposed upon him in accordance with the provisions of those rules were small fines.
6. BECAUSE the Plaintiff was never given an opportunity to show cause why he should not be expelled from the Union.
7. BECAUSE although the charge under Rule 32(5) was misconceived and the learned trial Judge rightly held that the Plaintiff ought not to have been convicted on that charge, the learned trial Judge was wrong in holding that this erroneous conviction did not invalidate the decision to expel the Plaintiff. 20
8. BECAUSE the learned trial Judge misconstrued Rule 25.
9. BECAUSE in all the circumstances there was a departure from the principles of natural justice, and the Plaintiff's case was not dealt with by the General Council in accordance with those principles. 30
10. BECAUSE the Plaintiff's appeal to the Annual Conference cannot render his expulsion valid if (as he submits) the General Council failed to deal with his case in accordance with the principles of natural justice.

RALPH MILLNER.

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CASE FOR THE APPELLANT

T.L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant.