

MONTERRAT

IN THE HIGH COURT OF JUSTICE

NO MNIHCV1995/0047

BETWEEN:

MONTERRAT SEAMEN & WATERFRONT WORKERS UNION

Claimant

and

MONTERRAT PORT AUTHORITY

Defendant

Appearances:

Sylvester Carrott, Owen Roach with him, for the Claimant
Gerard St C Farara QC for the Defendant

2004: August 23, 27

JUDGMENT

- [1] MITCHELL, J: The Montserrat Seamen & Waterfront Workers Union is a duly registered trade union. The Montserrat Port Authority is a public corporation established by statute in the year 1977 and charged with the management and administration of Port Plymouth.
- [2] Since in or about the year 1966, the Union has supplied stevedore and longshore labour to Port Plymouth. It supplied longshore labour under successive fixed term written agreements with the Port Authority's predecessor, the Montserrat Shipping Association. In the year 1978 the Port Authority assumed responsibility for the engagement of longshore labour. The Union's stevedores continued to be engaged by the Shipping Association.
- [3] The last such written agreement between the parties for the supply of longshore labour was made on 7 April 1990. By it, the Union and the Authority agreed to continue the practice whereby the Union would supply labour services to Port Plymouth. The Authority recognised the Union as the sole bargaining agent in all matters relating to wage rates,

hours of work, and other conditions of employment for workers engaged in the loading and unloading of cargo in the port. All wages were paid by the Authority not to the workers but to the Union on behalf of the workers. In addition, the Authority agreed to pay the Union a negotiation fee of 5% of the total wages earned. There was no express provision for the termination of the agreement.

[4] At the same time, the Union entered into an agreement with the Shipping Association in respect of the engagement of stevedores. The terms of the agreement were similar to that with the Authority.

[5] In early 1995 a labour dispute arose. The details are unclear. There are no agreed documents on file, and such facts as are relevant appear only from the admissions on the pleadings. Correspondence passed between the parties. None of this correspondence is before the court, though some details are to be found in the Lists of Documents filed on the order on the Summons for Directions in the matter. It would appear that in early January 1995 the Union had taken industrial action in not supplying labour at the port and threatened to continue further action. As a result, the Port Authority had terminated the agreement while at the same time continuing to recognise the Union as the sole bargaining agent for the workers, if they so desired. As a result of the termination of the agreement, the Port Authority had subsequently paid benefits to a total of 102 of the Union's workers. The sum paid out totalled \$1,089,317.31. This was paid directly to the workers. It represented salary in lieu of notice and severance pay for the termination of the agreement. Thereafter, the Authority had continued to employ a total of 30 persons all of whom were members of the Union and had formed part of the 102 men previously registered as port workers with the Union.

[6] The result was this action. By the Statement of Claim filed in the suit, the Union claimed a number of reliefs including

(a) A declaration that the Authority was in breach of contract;

- (b) a declaration that the Authority's decision to terminate the agreement was unconstitutional, null and void and of no effect in that it was done in contravention of the Union's right to freedom of assembly and association guaranteed by section 61 of the Montserrat Constitution Order 1989;
- (c) a declaration that the Authority's decision to terminate the agreement was unconstitutional, null and void and of no effect in that it was done in contravention of the Union's right to protection from discrimination guaranteed by section 63 of the Montserrat Constitution Order 1989;
- (d) damages for breach of contract;
- (e) an accounting of all monies paid by the Authority as wages from the 17th January 1995 to the date of this order;
- (f) an injunction to restrain the Authority from engaging labour at Port Plymouth except as provided for in its contract with the Union;
- (g) interest pursuant to statute;
- (h) costs;
- (i) further or other relief.

[7] The defence as amended is to the effect that the parties had entered into a collective bargaining agreement which had been terminated by the industrial action taken by the Union in January 1995. The Authority denied that the Union had suffered any damage as claimed, and that, in any event, the agreement was not enforceable. If it was enforceable, it had been validly terminated, and the Union was not entitled to any damages. The

Authority denied that the Union's constitutional rights had been contravened. There are other aspects of the defence, but there is no need to detail them here.

THE ISSUE

[8] It is appropriate at this time to set out what the issue is that is to be tried by the court. When the matter came up before the judge in chambers for a pre-trial review, both parties advised her that they had agreed that there was a preliminary issue that should be tried. That issue was as to the capacity of the Union to contract. It was agreed that this issue would be determined by the court on the basis of written submissions. The sole issue for determination at this point is the capacity of the claimant Union to have entered into an agreement with the Authority on the admitted facts, ie, that it was not only the bargaining agent of the workers, but was to be a supplier of labour to the port for an agreed "negotiation fee." The validity or otherwise of each and every term of the agreement is not before the court at this time. The validity or otherwise of the various claims made in the Statement of Claim are not before the court. The validity of the various clauses of the defence are not for comment at this stage. Their validity will fall to be determined on the basis of evidence, none of which is yet before the court.

[9] The reason why the issue has been so labouriously set out in the paragraph above is that the submissions as actually filed by the Authority on 28 March 2003 and replied to by the Union appear to ask the court to go further than the boundaries set by the order of the court for the trial of the preliminary issue. The submissions of the Authority quote extensively from the agreements and correspondence, and ask the court to come to conclusions about them and to rule on their effect¹. Later in the filed submissions, the court is asked to examine the agreement and to conclude that the parties had never intended it to be a legal contract or one enforceable by an action for damages or specific performance². Still later, the court is asked to rule that the claim of the Union for relief from an alleged breach of its fundamental right of freedom of association and assembly is misconceived as being rights of the workers and not of their union³. All these issues, and

¹ Paragraphs 7 and 8

² Paragraphs 14-17

³ Paragraphs 21-29

others that are raised in the submissions, might have been the object of an application for determination of a preliminary issue or to strike out. That was not done. Interesting though they are, they are not properly before the court at this time. The only question is, did the Union have the legal capacity to enter into a binding contract the breach of which by the Port Authority would entitle it to some relief in law? It is as well to remind ourselves that the court has not even seen a copy of the agreement that is the basis of the dispute (the Union has included an unsigned copy of it with its bundle of authorities, but this is not an agreed document and I did not consider it proper to look at it).

THE LAW

- [10] The **Trade Unions Act, Cap 322** of the Laws of Montserrat was originally enacted in the year 1940. It is the usual Trade Unions Act of the period. By section 5, a court is prohibited from entertaining legal proceedings for the recovery of damages for the breach of an agreement between members of a trade union concerning the condition on which members shall, among other things, sell their goods, transact business, employ or be employed. By section 6, actions of tort against members or officials of a trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union are prohibited. Sections 13 and 14 provide for the registration of trade unions. Sections 16 and 17 provide for trade unions to hold land and other property in the name of trustees.
- [11] It is not in dispute that as a matter of law the correct legal analysis is that in reaching a collective agreement a trade union is acting as principal and not as agent for its members⁴. Nor is it in dispute that generally collective agreements are not normally enforceable in law because on the whole there is no intention by the parties to it to create legal relations.
- [12] The **Taff Vale** case⁵ relied on by both parties was a case in tort. In that case, the union took out a summons to strike out its name as defendant in a suit on the ground that it was neither a corporation nor an individual and could not be sued in a quasi-corporate or any

⁴ *Holland v London Society of Compositors* [1924] 40 TLR 440

⁵ *Taff Vale Railway Company v Amalgamated Society of Railway Servants* [1901] AC 426

other capacity. The House of Lords in unanimously restoring the judgment of the trial judge and reversing that of the Court of Appeal held as far back as the year 1901, in the words of the Earl of Halsbury LC,

If the Legislature has created a thing which can own property, which can employ servants, and which can inflict injury, it must be taken, I think, to have impliedly given the power to make it suable in a court of law for injuries purposely done by its authority and procurement.

The principle it established, that a registered trade union may sue and be sued in its own name, is not limited to tort but is applicable in contract as well.

[13] The **Bonsor** case⁶ of 1955 was a case in contract, though this was a contract between either the union and its members or between the members themselves. A professional musician was a member of a registered trade union. He was expelled from membership. He was granted a declaration that his expulsion was null and void, but his claim for damages was dismissed. On his appeal to the House of Lords, it was held that a registered trade union was capable of being sued for breach of contract as a legal entity although it was not an incorporated body. The wrongful expulsion of the member was a breach of contract for which the union was liable in damages.

[14] The **Ford Motor Co** case⁷ involved an action brought by a large industrial corporation to enforce a number of collective agreements. The issue before the court was whether to continue an ex parte injunction obtained by the company against the unions. In his 1969 judgment in the Queen's Bench Division, Geoffrey Lane J in deciding to discharge the interlocutory injunction found that neither the company nor the unions had intended to make the agreements binding at law. He noted that agreements are commonly divided into two classes: commercial agreements where there is a rebuttable presumption that the parties intended to create legal relationships, and social and domestic agreements where

⁶ **Bonsor v Musicians' Union** [1955] 3 All ER 518

⁷ **Ford Motor Co Ltd v Amalgamated Union of Engineering and Foundry Workers and others** [1969] 2 All ER 481

there is a rebuttable presumption against legal enforceability. The two areas are not mutually exclusive. Each case must turn upon its own facts. This case does not establish that there is a common law presumption against enforceability of collective agreements.

- [15] The Union relies on the **Shipping Association of Georgetown** case⁸. This was a Guyanese Court of Appeal case involving an action brought by a waterfront worker against the Shipping Association which employed him. He was a member of a union that had negotiated a collective labour agreement on behalf of all registered workers with the Association. By the agreement and by the terms of his employment there was deducted from his salary a contribution to a levy stabilisation fund which guaranteed his receiving make-up pay if his weekly earnings fell below a minimum. The agreement was countersigned by the Commissioner of Labour, indicating that it had the blessing of the Labour Department. By statute in Guyana deductions from salaries for payment to third parties was specifically prohibited. The main question in this case was whether the agreement entered into by the employer and the worker's union for payment into a fund from which the worker could receive certain benefits was forbidden in law. The Court of Appeal accepted his argument that the payments had amounted to an unauthorised deduction from his wage. The case does not assist us further.

CONCLUSION

- [16] It has as we have seen long been established that though not a body corporate (such as a corporation registered under a Companies Act or created by statute) a registered trade union possesses the ability to contract in its own name. Trade unions can and do make ordinary contracts: contracts of employment, contracts for the supply of goods and services and the like. Such contracts are enforceable in the normal way⁹. There can be no serious dispute between the parties that the Union had at the relevant time the capacity to enter into binding contracts. In our case the question for the court at trial will be whether the pleaded terms of the agreement and in particular the agreement to remunerate the

⁸ *Shipping Association of Georgetown and Bookers Shipping (Demerara) Ltd v Arthur Hayden* (1975) 22 WIR 134

⁹ Chitty on Contracts (29th Edition) paragraphs 9-085

Union for the supply of labour constitutes a binding agreement as between the Union and the Authority with a presumption as to its enforceability.

[17] A collective bargaining agreement based on the authorities is clearly not enforceable and is not a legal contract. On the particular facts of this case there was an admitted relationship between the Union and the Authority whereby the Union received remuneration or a commission for the services which it provided to the Authority. There was a contract between the parties for the provision of services for payment. That contract was within the capacity of the Union. Its enforceability is a question that is to be determined by a court of law. The merits or otherwise of the claim brought by the Union against the Authority rest to be determined at trial. There will be judgment on the preliminary issue accordingly in favour of the Union. All other issues raised in the submissions of the Authority, and answered by the submissions of the Union are not for determination at this stage. The Registrar is directed to set the case down on the next case management conference list after the time limited for an appeal herein for any further appropriate directions to be given.

[18] There remains the question of costs. There is no application nor any submission on costs. The rule is that costs follow the event. The successful party is generally entitled to costs¹⁰. There is no longer any taxation of costs by a taxing master. The rules require that every court in determining an issue shall simultaneously make such order as to costs as appears just. Given that there has been judgment in favour of the Union on the preliminary issue, it is entitled to an order for costs in its favour. The rules require the court to take into account the conduct of the parties, particularly the manner in which a party has pursued a particular issue¹¹. These proceedings have been unnecessarily complicated by the multitudinous ancillary matters raised by the Authority in its submissions, all of which have had to be replied to by the Union, but which this court was not authorised to rule on. The arguments raised may be useful at any subsequent trial. A later court will order the costs of the substantive trial if the parties do not agree them. In the circumstances, I will award

¹⁰ CPR 2000, R.64.6

¹¹ CPR 2000, R.64.6(6)

the costs of this part of the trial to the Union in an amount which I assess at \$5,000.00. These costs are to be paid by the Authority to the Union prior to the case management conference referred to above failing which the defence stands struck out.

Don Mitchell, QC
High Court Judge