

GANNON v Duffy

FRED GANNON, FRANK GANNON, MICHAEL GANNON  
AND SEAN RICE



.v.

KEVIN DUFFY AND PATRICK O'SHAUGHNESSY.

Judgment delivered by Mr. Justice McWilliam on the 4th day of March 1983

The Plaintiffs are bricklayers and the Defendants are officers of the Ancient Guild of Incorporated Brick and Stonelayers and Allied Trade Unions (hereinafter called The Guild). The Guild is a registered trade union and the evidence before me is that it is the only trade union presently representing bricklayers and stonemasons. The Plaintiffs obtained employment with a firm called Sweeney & Redmond Contractors Limited (hereinafter called the Employers) on terms alleged by The Guild to be unacceptable to it and which the Guild alleges contravene the terms of a Registered Employment Agreement (Construction Industry Wages and Conditions of Employment) made in accordance with the provisions of the Industrial Relations Act, 1946. The Employers are members of the Construction Industry Federation which, on behalf of its members, entered into the Employment Agreement with a number of trade unions, including The Guild.

The Guild, having formed the opinion that the Employers were in breach of the Employment Agreement by reason of the terms on which they had employed the Plaintiffs, commenced to picket the Employers' building site

at Blackhall Street on 8th February, 1983, so that work on the site was stopped. The Plaintiffs, appreciating that this activity was directed at their employment on the site, instituted these proceedings on 21st February, 1983, claiming an injunction restraining the Defendants and others from picketing, a declaration that they have a constitutional right to work, and damages for the alleged wrongful acts of the Defendants.

By notice dated 24th February, 1983, the Employers served notice on the Plaintiffs terminating their employment, thereby justifying the fears of the Plaintiffs that the action of the Defendants was directed at their employment by the Employers, although there was nothing unlawful in the manner of the termination of their employment.

Stated thus, the matter appears to be reasonably straightforward but, as frequently happens in cases such as this, there is a great deal more to the story.

On 4th February, 1983, The Guild had instituted proceedings against the Employers, the Plaintiffs and a trade union proposed to be registered by the Plaintiffs and others, claiming an injunction to restrain the registration of the new union, restraining the Employers from acting in breach of the Employment Agreement, and other relief.

In each action notices of motion have been served seeking interlocutory

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injunctions more or less in the terms of the respective claims.

Although only one of these motions, that of the Plaintiffs, has been heard by me, the affidavits filed in both cases have been opened and relied upon by both parties.

Essentially, the case made on behalf of the Plaintiffs is put on two grounds. First that there is no trade dispute within the meaning of the Trade Disputes Act, 1906, and, second, in so far as there is a trade dispute within the meaning of the Act, this does not avail the Defendants because the action taken infringes the Plaintiffs' constitutional right to work and not be compelled to lose their employment because they do not belong to The Guild or do not comply with rules imposed by a union of which they are not members.

Section 3 of the 1906 Act provides as follows:- "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that is an interference with the trade, business or employment of some person, or with the right of some other person to dispose of his capital or labour as he wills."

The expression 'trade dispute' is defined in section 5 of the same Act as follows:- "'trade dispute' means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment

"or non-employment, or the terms of employment, or with the conditions of labour, of any person, and the expression 'workman' means all persons employed in trade or industry, whether or not in the employment of the employer with whom the trade dispute arises."

The dispute here is between both employers and workmen and between workmen and workmen. That is to say, between the members of The Guild, who are workmen, and the Employers and between the members of The Guild and the Plaintiffs, all of whom are workmen. The dispute is also, ostensibly connected with the terms of employment and the conditions of labour of the Plaintiffs, who come within the meaning of 'any person' in the section. The section also expressly provides that the workmen, i.e. the members of The Guild, need not be in the employment of the employers with whom the dispute arises, and the execution of the Employment Agreement by the Construction Industry Federation on behalf of its members, including the Employers, and by The Guild gives The Guild an interest to see that the terms of the Employment Agreement are observed by the Employers when employing any persons. If this dispute is genuine, and I have no reason to suppose that it is not, the fact that there may be other associated disputes which are not trade disputes does not appear to me to be relevant. On the first submission made on behalf of the Plaintiffs, I am of opinion that there is

a trade dispute within the meaning of the statute.

On the second submission I have been referred to the case of Meskell v. C.I.E. (1973) I.R. 121; Educational Company of Ireland v. Fitzpatrick (1961) I.R. 323; and Murtagh Properties v. Cleary (1972) I.R. 320.

Although it is strongly urged on behalf of the Plaintiffs that the action taken by The Guild is really for the purpose of having the Plaintiffs dismissed because they do not belong to The Guild and because they have tried to form a new trade union in opposition to The Guild, as I have already said, once I have formed the opinion that there is a genuine trade dispute with the Employers I am also of opinion that it is not material that actions in furtherance of this dispute bring additional advantages to The Guild or disadvantages or hardship to the Plaintiffs, even though the pursuit of these advantages alone might come within the ratio decidendi of the cases cited.

In so far as a constitutional right to work was relied upon, and the existence of such a right was very strongly emphasised on behalf of the Plaintiffs, I have very considerable doubts as to whether such a right can be held to be infringed so as to give a cause of action against a person who is lawfully trying to enforce his own rights.

In both Fitzpatrick's case and Meskell's case a plaintiff was dismissed or refused employment because he would not join a union, thus forcing him to

forego his constitutional right either to join a union or not to do so.

In the Murtagh Properties case a picket was mounted to compel employers to dismiss waitresses because they were women and for no other reason, which was held to be a breach of their constitutional rights.

In the present case, the Plaintiffs and the Employers say that they have complied with the terms of the Employment Agreement. The Defendants say that they have not. Whether they have or not can only be established on a full hearing with oral evidence. A very different situation would have arisen had the Employers said to The Guild, we will adhere to the terms of the Employment Agreement in our dealings with the Plaintiffs and will employ them strictly in accordance with such terms and will give you appropriate facilities to verify that this is so.

Under all the circumstances I consider that this is not a case in which I should grant an interlocutory injunction.

*Herbert R. McWilliam*