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Judgment
55/1964

IN THE PRIVY COUNCIL

No. 15 of 1963

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA
SUPREME COURT OF JUDICATURE OF JAMAICA

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

78716

B E T W E E N

THE SHIPPING ASSOCIATION OF
JAMAICA ... Appellants

-- and --

10 THE BUSTAMANTE INDUSTRIAL
TRADE UNION
THE UNITED PORT WORKERS AND
SEAMEN UNION
THE TRADE UNION CONGRESS OF
JAMAICA ... Respondents

CASE FOR THE APPELLANTS

RECORD

20 1. This is an Appeal by the leave of the Court
of Appeal at Kingston of the Supreme Court of
Jamaica from a Judgment of the said Court of
Appeal dated the 15th day of January 1963 in
civil Appeals Numbers 16 and 17 of 1961. p.48
p.82

2. By the said Judgment the Court of Appeal by
a majority held that the Appellants were not
entitled to the relief granted to them by order
of the Trial Judge MacGregor C.J. dated the 6th
day of October 1961 namely:- p.34 l.22

(i) That any amendments of or additions to
the Award of the Public Utility Undertakings and
Public Services Arbitration Tribunal (hereinafter

RECORD

called "the Tribunal") dated the 19th day of April 1961, and made upon the reference to the Tribunal of a dispute between the above mentioned Shipping Association of Jamaica (hereinafter called "the Association") on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union (hereinafter together called "the Unions") and the Trade Union Congress of Jamaica on the other hand which purport to have been made after the said Award was issued should be set aside. 10

(ii) That the Association be entitled to the usual order for costs against all three Unions including the Trade Union Congress of Jamaica which did not appear but was served.

3. The main questions involved in this Appeal are :-

(i) Whether the Tribunal made a clerical mistake or error arising from an accidental slip or omission in their award dated the 19th April 1961 which they were entitled to correct under section 8(c) of the Arbitration Law cap. 19. of the Laws of Jamaica (Revised Edition) 1953. 20

(ii) Whether the form in which the Tribunal attempted to correct the alleged error would, even if the said error were capable of correction, have been a proper sufficient and effective correction of the award.

(iii) Whether the onus of proving that a mistake or error falling within section 8(c) of the Arbitration Law cap.19 had not been made lay initially upon the Association. 30

(iv) Whether if such onus of proof lay upon the Association that onus was shifted to the Unions after the evidence sworn on behalf of the Association was filed.

(v) Whether if such onus of proof was shifted to the Unions that onus was discharged on the filing of the evidence sworn on behalf of the Unions. 40

p.100, 1.17
p.213, 1.8

4. On the 14th April 1960 a claim was made for an increase of wages by the Respondents against the Association. The Respondents were acting on behalf of certain categories of registered port workers employed in the Port of Kingston Jamaica

namely, Dockers, Holders, Foremen, Winchmen and Gangwaymen.

10 5. By letters dated the 11th and 14th March 1961 the Governor in Council in accordance with the provisions of the Public Utility Undertakings and Public Service Arbitration Law Chapter 329 of the Laws of Jamaica (revised Edition) 1953 (hereinafter referred to as "the essential services law") referred to arbitration under that law the dispute between the Association and the Respondents. p.212, 1.19

6. The terms of reference of the Tribunal were as follows :-

20 "To determine and settle the dispute which now exists between the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trade Union Congress of Jamaica jointly representing the Port Workers on the one hand and the Shipping Association of Jamaica on the other hand over the Unions claims for increased wages for Port Workers" p.212, 1.32

7. The Tribunal consisted of Messrs. Noel P. Silvera, who was Chairman, Mr. Paul Geddes who was appointed from the panel of Employers' representatives and Mr. Joy Johnstone who was appointed from the panel of workers' representatives. p.212, 1.13

30 8. The Tribunal sat at the Ministry of Labour in Kingston on the 4th and 7th April 1961 when both parties submitted evidence and made representations to the Tribunal. p.91 p.119

9. The Tribunal adjourned to consider its decision and eventually made its Award (Exhibit "J.C.W.3") on the 19th April 1961 and copies of the said Award were forwarded to the parties on or about the 28th April 1961 p.211

10. The said Award contained the following relevant paragraphs.

"History p.213

40 A joint industrial Council for the Port of Kingston was established on the 27th July 1953. Under normal conditions this Council deals with all matters affecting the operation of the Port of Kingston including matters affecting the Port workers welfare and this could include the subject

RECORD

of wage rates and hours of work. Apparently sometime in April 1960 the Unions in a letter dated the 14th April 1960 intimated to the Association that it was seeking increases in the hourly rates of pay for various categories of port workers on the Kingston Waterfront retroactive from the 4th April 1960

p.214, 1.16

Decision of the Tribunal.

The Award is :-

(i) 8d per hour increase for dockmen now getting 3/8d to establish a rate of 4/4d per hour:-

(ii) 8d per hour increase for holders now getting 3/9d (workers working in ships holds) to establish a rate of 4/5d per hour:-

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(iii) 8/- per day for foremen now getting 38/5d per day and 46/10d per day to establish a new rate of 46/5d and 54/10d per day respectively :-

(iv) 10d per hour for winchmen and gangwaymen now getting 4/- per hour to establish a rate of 4/10d per hour.

Dated the 19th April 1961"

Noel P. Silvera. Chairman

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Paul Geddes. Employers Representative

Roy Johnstone. Workers Representative"

p.5, 1.15

11. On the 2nd May 1961 the Secretary of the Tribunal telephoned the Solicitor for the Association and said that the Chairman of the Tribunal wished to know whether the Association would consent to the Tribunal dealing with a letter which had been sent to the Tribunal by the Honourable Hugh Shearer of the Bustamante Industrial Trade Union requesting an interpretation of the Award without a hearing for the purpose of Section 13 of the essential services law. The Solicitor for the Association informed the Secretary of the Tribunal that the Association did not consent to the matter being dealt with in its absence and on the same day confirmed the above telephone conversation in a letter (Exhibit "J.C.W.4") written to the Secretary of the Tribunal

p.218

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p.5, 1.29

p.215

p.222, 1.17

12. On May 2nd 1961 the Secretary of the Tribunal wrote to the Secretary of the Association as follows:-

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p.216

p.5, 1.34

p.221

"The Arbitration Tribunal which heard the above issue has received letters from the Bustamante

10 Industrial Trade Union and the United Port
Workers and Seamen Union, copied to you,
requesting a clarification of its Award with
respect to the date on which the increased
wage rates should become effective. The
Tribunal is prepared to clarify the point in
issue and in accordance with Section 13 cap
329, - Public Utility Undertakings and
Public Service Arbitration Law (revised
Edition) 1953, has decided to invite you to
make submissions on this matter which will be
heard at 2.15 p.m. on Tuesday May 9th 1961..."

Section 13 of the essential services law is as
follows:-

20 "If any question arises as to the
interpretation of any award of the Tribunal
.... any party to the award may apply to the
Tribunal for a decision on such question and
the Tribunal shall decide the matter after
hearing the parties, or without such hearing
provided the consent of the parties has first
been obtained. The decision of the Tribunal
shall be notified to the parties and shall be
binding in the same manner as the decision in
an original award."

30 13. On May 9th 1961 the Tribunal sat again at the
Ministry of Labour and Counsel for the Association
objected to the jurisdiction of the Tribunal and
submitted that the Tribunal having made its Award
was ~~factus~~ *factus* officio and except insofar as it was
saved by the provisions of Section 13 of the
essential services law had no power to deal further
with the dispute.

p.217
pp.223-4

14. The Unions first argued before the Tribunal
that they ought to exercise the powers conferred on
them by section 13 of the essential services law
and interpret the award of the 19th April 1961 so
as to add a paragraph to that award giving it
retroactive effect.

p.224

40 Eventually the Unions submitted to the
Tribunal that if in respect of interpretation under
section 13 (supra) there was any suggestion that it
did not apply then the Tribunal had power under
section 8(c) of the Arbitration Law cap 19 "to also
act".

p.225

15. Section 8(c) of the Arbitration Law Cap. 19
reads as follows:-

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"8. The Arbitrators or Umpire acting under a submission shall, unless the submission expresses a contrary intention, have power

(c) To correct in an Award any clerical mistake or error arising from any accidental slip or omission"

Section 24 of the Arbitration Law cap. 19 reads as follows:-

"This Law shall apply to every arbitration under any law passed before or after the commencement of this Law, as if the arbitration were pursuant to a submission, except in so far as this Law is inconsistent with the law regulating the arbitration, or with any rules or procedure authorized or recognised by that law."

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16. The Tribunal at this stage had not stated that there was any question of an accidental slip or omission having been made.

pp.228-9.

17. The Tribunal after hearing arguments adjourned for twenty minutes to consider the submissions and then stated that it would have to adjourn until the following day for the parties to receive their ruling.

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p.230

18. On the following day, namely May 10th 1961, the Chairman made the following announcement :

p.231, 1.20

"The Tribunal at this stage would like to state that there is in the Award an error arising from an accidental omission. The Tribunal is of the view that this error once corrected will answer the question of the Honourable Hugh Shearer and the Honourable Thossie Kelly. In the light of the foregoing the Tribunal has not addressed its mind to the submissions of yesterday, but having regard to Section 24 and Section 8(c) of the Arbitration Law Cap. 19 it will endeavour to correct this error. The correction will be forwarded to the proper authority in due course and the interested parties will, we are sure, be informed of the nature and import of this correction"

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pp.231-2

Counsel for the Association then submitted that the Tribunal had clearly elected to proceed under section 13 of the essential services law otherwise there was no reason at all to be sitting around the table and that the error could have been corrected at the time or immediately upon the detection by the

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Tribunal of their error without reference to anybody.

19. By letter dated the 24th May 1961 (Exhibit "J.C.W.8") the acting permanent Secretary to the Ministry of Labour, who incidentally was the Secretary to the Tribunal, wrote to the Association as follows:

p.234
p.6, 1.14

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"In a letter dated 17th May 1961 the Tribunal appointed under the Public Utility Undertakings and Public Service Arbitration Law Cap. 329 to determine the dispute referred to above informed the Ministry of Labour that the Award of 19th April 1961 did not entirely reflect the decision of the Tribunal as the operative date of the Award was omitted and that this constituted an error arising out of an accidental omission.

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2. The Tribunal in the aforesaid letter requested that the Award be corrected to read

The letter then proceeded to quote the Award as set out above and added:

"(v) that these wage rates should be retroactive to 15th May 1960"

p.235

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20. On 30th June 1961 a notice of motion was filed in the Supreme Court of Judicature of Jamaica in the High Court of Justice (ML9/61) for an order that any amendments of or additions to the Award of the Public Utility Undertakings and Public Services Arbitration Tribunal dated the 19th day of April 1961 and made upon the reference to that Tribunal of a dispute between the above mentioned Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen's Union and the Trade Union Congress of Jamaica on the other hand which purport to have been made after the said Award was issued may be set aside upon the following grounds :-

p.1

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(i) That each and every such amendment or addition was beyond the jurisdiction of the said Tribunal in that the said Tribunal was functus officio after it had issued its said Award.

p.2, 1.17

(ii) That neither such amendments nor

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additions nor any of them constituted the correction in the said Award of any clerical mistake or error arising from any accidental slip or omission within Section 8(c) of the above mentioned Arbitration Law.

(iii) That the said Tribunal have not made any clerical mistake or error arising from any accidental slip or omission and accordingly had no power to make any correction to the said Award under the said Section 8(c) or otherwise.

(iv) That all such amendments and additions to the said Award were ultra vires the Tribunal and had and ought to be set aside. 10

p.3
p.7 21. In support of the said motion there were filed two Affidavits made by John C. Wilman, Solicitor for the Association dated the 30th June 1961 and 19th September 1961 setting out the relevant facts and exhibiting the relevant documents.

p.25, 1.20 22. The motion came on for hearing before MacGregor C.J. on the 25th September 1961 when Counsel for the Association drew the attention of the Court to the fact that there was no evidence before the Court other than what was contained in the Affidavits filed by the Association in support of the motion. 20

p.25, 1.28 23. Thereupon Counsel for the Bustamante Industrial Trade Union stated that the Unions would be filing Affidavits later that day.

p.10
p.12 24. At 2 p.m. on September 25th 1961 there were filed on behalf of the Unions two Affidavits which had been sworn on that day by Noel P. Silvera and Roy Johnstone. 30

25. The relevant paragraphs of the said Affidavits are as follows:-

(1) Affidavit of Noel P. Silvera

p.11, 1.15 "4. That on a date subsequent to the 7th of April 1961 and prior to the 19th April 1961 the Tribunal met at the Ministry of Labour Kingston and gave considerations to the submissions of the parties.

5. That it was unanimously decided by myself and the other members of the Tribunal that the increases should be made as stated in our Award dated the 19th April 1961 and also that these increases should be retroactive as of the 15th May 1960. 40

6. That after our decision as stated above I personally on the said date of the Award informed Mr. E.G. Goodin and Secretary of the Tribunal, of the terms of the Award".

(2) Affidavit of R. Johnstone

"4. The Tribunal met on the 4th and 7th April 1961 and heard the submissions of the respective parties.

p.13, 1.1

10 5. That on the date between the 11th and 19th April 1961 the Tribunal met at the Ministry of Labour Kingston and gave considerations to the submissions of the parties.

6. It was unanimously decided by the Chairman of the Tribunal, Mr. Paul Geddes, the Employers Representative and myself that the increases should be made as stated in the Award dated the 19th April 1961 and also that these increases should be retroactive as of the 15th May 1960."

20 26. The matter was heard by MacGregor C.J. on the 25th, 26th and 27th September 1961 and judgment was reserved.

On the 6th October 1961 judgment was given by MacGregor C.J. who after dealing at some length with the facts, proceeded to consider the position of the Tribunal abinitio and having referred to Section 10 (5) of the essential services law said that it was clear that the Award signed by the Arbitrators on the 19th April 1961 spoke as from its date and that the Arbitrators having signed it became functus officio except insofar as their powers were saved by the provisions of any law and for the purpose mentioned in such law.

p.13

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Section 10(5) of the essential services law is as follows:-

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" Any agreement, decision or award made by virtue of the foregoing provisions of this section shall be binding on the employers and workers to whom the agreement, decision or award relates and, as from the date of such agreement, decision or award or as from such date as may be specified therein not being earlier than the date on which the dispute to which the agreement, decision or award relates first arose, it shall be an implied term of

RECORD

the contract between the employers and workers to whom the agreement, decision or award relates that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with such agreement, decision or award until varied by a subsequent agreement, decision or award."

- p.20, 1.10 27. The Learned Chief Justice then went on to refer to the two Sections under which the powers of the Tribunal may have been saved, namely Section 13 of the essential services law and Section 8 of the Arbitration Law Cap. 19. He found that Section 24 of the Arbitration Law applied to arbitrations under the essential services law but pointed out that the requests of Messrs. Kelly and Shearer in their respective letters of April 28th and May 1st were in relation to the powers given to the Tribunal under Section 13 of the essential services law and referred to "interpretation" or "clarification" of the Award. 10 20
- p.20, 1.38 28. The Learned Chief Justice also observed that the request to the Association's Solicitor was to seek their consent to the Tribunal acting under Section 13 in the absence of the parties and that when this was refused the letter written by the Secretary of the Tribunal on the 2nd May advising the parties that the Tribunal would meet on the 9th May was for the purpose of hearing submissions on "a clarification of its award with respect to the date on which the increased wage rates should become effective". 30
- p.21, 1.14 29. The Learned Chief Justice found as a fact that the Tribunal could not act under Section 13 and noted that Counsel for the Association having submitted that the Tribunal had no jurisdiction, the Chairman on the 10th May said that the Tribunal had not addressed its mind to that question.
- p.21, 1.22 30. The Learned Chief Justice then considered the circumstances under which the Tribunal came to the conclusion that there was in the Award "an error arising from an accidental omission" and referred to the fact that after the submission by the Association's Counsel at the meeting of May 9th that Section 13 had no application, Mr. Shearer for the Bustamante Industrial Trade Union whilst not abandoning the request for interpretation set out in his letter of May 1st made an additional submission that the Tribunal had by virtue of 40

- Sections 24 and 8(c) of the Arbitration law "authority to also act". In reply to this submission Counsel for the Shippers made the point that the Tribunal had met to consider its power of interpretation under Section 13 of the essential services law and that this was tantamount to an admission by the Tribunal that there was no error in the Award and that therefore no question of an error could arise under Section 8(c). p.22, 1.3
- 10 31. The Learned Chief Justice then noted that the Tribunal adjourned for a short time and on resumption stated that it had given consideration to the submissions and would give its ruling the next day which it duly did. p.22, 1.11
- 20 32. The Learned Chief Justice then dealt with the fact that the Chairman of the Tribunal did not state at either the meeting of the 9th or 10th May what the error was or how it came to be made and that it was not until the 24th May that the parties received the letter of that date (Exhibit "J.C.W.8") from the Permanent Secretary to the Ministry of Labour and went on to observe that at no time had the parties received anything from the Tribunal or from its Secretary showing that the Award had been amended by any document signed by all three members. p.22, 1.17 p.234
- 30 33. The next point dealt with in his judgment by the Learned Chief Justice was the matter of onus of proof and after commenting that it was not in the circumstances an easy decision to make, decided that the onus to establish that an amendment was properly made must rest upon those seeking to enforce it. p.23, 1.21
- 40 34. The Learned Chief Justice then went on to add that even if the onus in this case was originally upon the Association in his judgment the Association proved enough to shift the onus to the Unions and set out at some length the facts which he found to have established such a shift of onus and having done so added that he was of the opinion that if there was any onus placed on the Association in the first instance that onus had been overwhelmingly discharged and shifted to the Unions to establish the mistake or error. p.23, 1.40 pp.24,25
35. Having commented adversely on the delay in the filing of the Affidavits by Mr. Silvera and Johnstone and having expressed his view that they were thoroughly unsatisfactory, the Learned Chief Justice proceeded to consider them in some detail. In the end the Learned Chief Justice decided that all p.25, 1.20

RECORD

- p.30, 1.10 that the Affidavits showed was that (a) on some occasion it was decided that the increases should be made as was stated in the Award (b) that on some occasion which may have been the same occasion as is referred to in (a) it was decided to make the rates of increase retroactive to 15th May 1960 and that (c) the occasion at which the decision or decisions were arrived at are not stated to be the occasion when all the members met at the Labour office as referred to in the previous paragraphs. He held that there was a duty upon him to decide whether there had been an error arising from an accidental omission irrespective of what view the Tribunal may have held and that in his judgment the facts presented to the Court did not disclose sufficient evidence upon which he could act and say that such an error had arisen. 10
- p.33, 1.12 The Learned Chief Justice concluded his judgment insofar as consideration of whether a slip or error within the "slip rule" had in fact occurred by saying "on the evidence before me and upon the inferences which I draw I am satisfied that whilst consideration may I repeat may have been given to a retroactive order it was not decided upon until after the 9th May when Mr. Shearer took the point. I am satisfied that the Award as signed on 19th April exactly expresses the decision of the Arbitrators at which they had then arrived c.f. Sutherland & Co. v Hannevig Brothers Ltd. 1921 I.K.B. 336. 20 30
- In view of the facts that I have found, in my judgment there was no accidental omission to come within the remedy given by Section 8(c) as the Award correctly stated what had been decided."
- p.34, 1.22 36. The Learned Chief Justice accordingly granted to the Association an order in terms of the notice of motion together with the costs against the Unions.
- pp.35, 40 37. The Unions duly appealed from the said judgment to the Court of Appeal at Kingston of the Federal Supreme Court of the West Indies in its appellate jurisdiction on the grounds:- 40
- (i) That the Learned Chief Justice was wrong in law in finding that the onus of proving all or any of the facts relevant to the issue before him lay upon the Unions.
- (ii) That the Learned Chief Justice further

misdirected himself in stating "even if the onus in this case was upon the Association it is my judgment that in the circumstances enough was proved to shift the onus to the Unions" as there was no question of onus shifting in proceedings of this nature.

10 (iii) That the Learned Chief Justice acted unreasonably and in a manner unsupported by the evidence in finding as a fact that "I am satisfied that whilst consideration may I repeat may have been given to a retroactive order it was not decided upon until the 19th May when Mr. Shearer took the point. I am satisfied that the Award as signed on 19th April exactly expresses the decision of the Arbitrators at which they had arrived."

20 (iv) That the Learned Chief Justice misdirected himself as to the meaning and purport of the Affidavits filed by Mr. Silvera and Mr. Johnstone.

(v) That the Learned Chief Justice misdirected himself as to the nature of the issue he had to decide and in the absence of any allegation of fraud on the part of the Arbitrators and having regard to the terms of the motion it was not competent for the Court to go behind the record in an effort to show that the Arbitrators were not speaking the truth.

30 (vi) That in reaching his conclusions the Learned Chief Justice drew erroneous inferences, made unwarranted assumptions and speculations, and concerned himself with irrelevant considerations.

(vii) That the Learned Chief Justice misdirected himself on the facts and in the law.

38. Before the Appeal came on before the said Federal Supreme Court of the West Indies, the Federation was dissolved and jurisdiction in appellate matters of this nature vested in the newly constituted Jamaican Court of Appeal.

39. The said Appeal was heard on the 10th, 11th, 12th, 13th, 14th, 17th, 18th, 19th and 20th December 1962 when the Court of Appeal at Kingston Jamaica (Phillips President (acting) Lewis J.A. and Waddington J.A. (acting) dissenting) allowed the said Appeal. Phillips President (acting) and Lewis J.A. held that the decision

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p.49

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- p.66 as to retroactivity was made by the Tribunal before the 19th April 1961 and that there had been an omission in the Award in respect of this matter which the Tribunal had power to correct and which they had corrected. Both Phillips President (acting) and Lewis J.A. were of the opinion that the Affidavits sworn by Messrs. Silvera and Johnstone were sufficient to establish the fact that an error coming within the slip rule had occurred and that the legal burden of proof rested upon the Association and had not been discharged. 10
- p.75 Waddington J.A. (acting) dissenting held that the Learned Chief Justice in the Court of First instance was right in finding that even if the onus lay upon the Association enough was proved by the Association to shift the onus to the Unions and that most of the criticisms made by the Learned Chief Justice of the Affidavits sworn by Messrs. Silvera and Johnstone were justified. The Learned Judge went on to say that the Court cannot presume that an accidental slip or omission has occurred but this must be established by the Unions on a balance of probabilities and that in his view they had failed to do so on the evidence which they had tendered in the Court below and he felt that if the Tribunal had by its conduct laid itself open rightly or wrongly to suspicions of impropriety they had only themselves to blame. 20
- p.81, 1.17
- p.83, 1.10 40. The Appeal was accordingly allowed with costs to the Unions in the Court of Appeal and in the Court below whilst it was unanimously decided that the Association should have the costs of an application for leave to call fresh evidence made by the Unions prior to the hearing of the Appeal proper. 30
- p.89 41. By an Order of the said Court of Appeal pursuant to section 110 of the Jamaica Constitution the Association was on the 15th day of May 1963 granted final leave to appeal to Her Majesty in Council from the said judgment of the said Court of Appeal. The Appellants therefore respectfully submit that the majority decision of the said Court of Appeal should be set aside and the judgment of MacGregor C.J. in the Court of First instance restored together with such order as to costs both in Her Majesty's Privy Council and in the Courts below as may be proper for the following (amongst other) 40

R E A S O N S

- (1) BECAUSE the judgment of MacGregor C.J. in the court of first instance and the reasoning of Waddington J.A. (acting) in the Court of Appeal whereby they decided that the purported amendment of the arbitration award should be set aside were correct.
- 10 (2) BECAUSE the majority of the Court of Appeal namely Phillips President (acting) and Lewis J.A. erred in law in holding that the Tribunal had made an accidental slip or omission which came within Section 8(c) of the Arbitration Law Cap. 19 and that the said omission had been properly corrected.
- 20 (3) BECAUSE Phillips President (acting) and Lewis J.A. erred in law in holding that the onus of proof lay upon the Association and had not been discharged.
- (4) BECAUSE Lewis J.A. after accepting that the evidence of the Association dealing with events up to and including May 10th 1961 supported the judgment of MacGregor C.J. in the court of first instance erred in deciding that the onus of proof did not shift to the respondents because of the letter of May 24th 1961.
- 30 (5) BECAUSE Lewis J.A. was wrong in attaching any weight to the contents of the letter of May 24th 1961 which merely reiterated what had been stated by the Tribunal on May 10th 1961 and which statement Lewis J.A. regarded as being of no importance.
- 40 (6) BECAUSE Phillips President (acting) and Lewis J.A. further erred in law in that they drew unwarranted and erroneous inferences of fact from the Affidavits of Noel Silvera and Roy Johnstone and in particular they construed the said Affidavits in a sense favourable to the Unions instead of confining themselves to the statements sworn to in the said Affidavits.
- (7) BECAUSE Lewis J.A. made an unwarranted assumption in the absence of any specific

reference by Noel Silvera in concluding that the alleged slip was caused by the omission of Noel Silvera to inform the secretary of the Tribunal of the Tribunal's decision regarding retroactivity.

- (8) BECAUSE Phillips President (acting) and Lewis J.A. in the absence of any evidence on the point wrongly inferred that a decision had been taken by the arbitration tribunal as to retroactivity before 19th April 1961 10
- (9) BECAUSE Phillips President (acting) and Lewis J.A. misdirected themselves in holding that unless they interpreted the affidavit of Noel Silvera and Roy Johnstone in the manner urged by counsel for the Unions they must of necessity be imputing dishonesty on the part of the said deponents.
- (10) BECAUSE Phillips President (acting) and Lewis J.A. failed to appreciate that once Noel Silvera and Roy Johnstone had indicated their willingness to swear affidavits in support of the Unions' case they should have done so in unambiguous terms so as to leave the court in no doubt as to the manner in which the alleged slip was made. 20
- (11) BECAUSE the Association was entitled to treat the affidavits of Noel Silvera and Roy Johnstone as evidence of the facts therein clearly and unambiguously stated, no more and no less, and were under no duty or obligation to cross examine the deponents to those affidavits for the purpose of eliciting facts not stated therein or to resolve other ambiguities (if any) in the language used therein. 30
- (12) BECAUSE MacGregor C.J. was right not to call Noel Silvera and Roy Johnstone to give oral evidence before him and indeed had no power to do so.
- (13) BECAUSE Phillips President (acting) in considering the case of Mayer v. Leanse 1958 3 AER 213 erroneously treated that case as entitling him to construe the affidavits of Noel Silvera and Roy Johnstone in a sense (unjustified by their contents) which would support the application of the slip rule to the award of the 19th April 1961. 40

- (14) BECAUSE Phillips President (acting) in considering the said case of Mayer v. Leanse failed to appreciate that the approach of the court supporting the validity of the award must apply to the fundamental award handed down by the tribunal on April 19th 1961.
- 10 (15) BECAUSE Phillips President (acting) and Lewis J.A. in considering the authorities cited by counsel for the Association and in particular Oxley v. Link 1914 2 K.B. 734 Sutherland v. Hannevig Brothers Limited 1921 1 K.B. 336 Bentley v. O'Sullivan 1925 A.E.R. 546 and Henfree v. Bromley 6 East 309 failed to elicit the principles governing the application of the slip rule and the strictness with which the said slip rule has to be applied.
- 20 (16) BECAUSE, although the Tribunal purported to correct their award of the 19th April 1961, the letter of the 24th May 1961 was ineffective to correct that award, even supposing that a clerical mistake or error arising from any accidental slip or omission properly falling within the ambit of Section 8(c) of the Arbitration Law Cap. 19 had in fact been made.
- (17) BECAUSE the judgment of MacGregor C.J. was corrected and ought to be restored.

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BLEDISLOE

DANIEL LETT

No.15 of 1963

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL
OF JAMAICA
SUPREME COURT OF JUDICATURE OF
JAMAICA

B E T W E E N :

THE SHIPPING ASSOCIATION
OF JAMAICA

... .. Appellants

- and -

THE BUSTAMANTE INDUSTRIAL
TRADE UNION
THE UNITED PORT WORKERS
AND SEAMEN UNION
THE TRADE UNION CONGRESS
OF JAMAICA

... .. Respondents

CASE FOR THE APPELLANTS

CLIFFORD-TURNER & CO.,
11, Old Jewry,
London, E.C.2.

Solicitors for the Appellants.