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

78717 Judgment
55/1964

No. 15 of 1963

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF JUDICATURE
OF JAMAICA

A IN THE MATTER of an Arbitration between the
Shipping Association of Jamaica on the
one hand and the Bustamante Industrial
Trade Union on the other hand, and

B IN THE MATTER of the Arbitration Law, Chapter
19 of the Laws of Jamaica (Revised
Edition) 1953.

B E T W E E N :

C THE SHIPPING ASSOCIATION OF
JAMAICA (Applicants) Appellants

- and -

THE BUSTAMANTE INDUSTRIAL TRADE
UNION (Respondents) Respondents
✓ OTHERS

CASE FOR THE RESPONDENTS
The Bustamante Industrial Trade Union

Record

D 1. This is an appeal from the Judgment of the
Court of Appeal of Jamaica (Phillips, J., President,
Acting, Lewis, J. A. and Waddington, J. A., Acting)
delivered on the 15th day of January 1963, reversing
E the Judgment of the Chief Justice, Sir Colin
MacGregor, delivered on the 6th day of October 1961
granting the Appellants an Order in the terms of the
Appellants' Notice of Motion dated the 30th day of
June 1961 and awarding them costs.

F 2. In the said Notice of Motion, the Appellants
asked for an Order that any amendments of or

p. 2, 11.4
et seq

Record

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 Trades Union Congress of Jamaica on the other hand, which purport to have been made after the said Award was issued, be set aside on the following grounds:

(1) 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.

(2) that neither such amendments nor 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.

(3) that the said Tribunal had 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.

(4) that all such amendments and additions to the said Award were ultra vires the Tribunal and ought to be set aside.

3. The said Motion was heard by the Chief Justice, Sir Colin MacGregor, on the 25th, 26th, and 27th days of September, 1961, and Judgment reserved.

pp. 91, 119, 217, 230. 4. At the hearing of the Motion, a Transcript of Proceedings of the Arbitration Tribunal was exhibited to the Affidavit of J. C. Wilman, in support of the Motion, and marked "J.C.W.I" for identity, and Affidavits by Noel P. Silvera, Chairman of the said Tribunal, and of Roy Johnstone, a member of the said Tribunal, were put in by the Respondent.

pp. 10, 11.
Record
pp. 12, 13.

5. As appears from the said Transcript, the Tribunal met on the 4th and 7th April 1961 and heard

evidence and submissions by the representatives of the parties, and on the 28th April 1961 an Award bearing date the 19th April 1961, was forwarded to the parties by the Ministry of Labour, the relevant portion of which is as follows: pp. 211-214

"9. The Award is - p. 214

(1) 8d. per hour increase for dockmen now getting 3/8d. to establish a rate of 4/4d. per hour;

(2) 8d. per hour increase for holders now getting 3/9d. (workers working in ships' holds) to establish a rate of 4/5d. per hour;

(3) 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;

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

Dated this 19th day of April, 1961.

/S/ Noel P. Silvera

Chairman

/S/ Paul Geddes

Employers' Representative

/S/ Roy Johnstone

Workers' Representative "

6. On the 28th April, 1961, the Hon. Thossy. Kelly, of the United Port Workers and Seamen's Union, wrote to the Acting Permanent Secretary of the Ministry of Labour, who was also Secretary to the said Tribunal, to the effect that the Award did not contain an operative date despite the fact that a retroactive date was one of the issues argued before the said Tribunal. He requested that this retroactive date should be ascertained from the Tribunal and the matter clarified. p. 15, ll. 38 et seq.

Record

- p. 16, 11,
13 et seq. 7. On the 1st May 1961, the Hon. Hugh Shearer, of the Bustamante Industrial Trade Union, also wrote to the Acting Permanent Secretary of the Ministry of Labour pointing out that the Award had omitted reference to the issue of retroactivity, and requested an interpretation of the Award from the Tribunal on this question, in accordance with Section 13 of Chapter 329 of the Laws of Jamaica (Revised Edition). A
- p. 221 8. On the 2nd May 1961 the secretary of the said Tribunal wrote to the Appellants inviting them to a meeting of the Tribunal summoned for the 9th May 1961 to deal with the requests of Messrs. Kelly and Shearer. When the Tribunal sat on the 9th May 1961 for the abovementioned purpose, Counsel for the Appellants, Mr. Lett, objected to the jurisdiction of the Tribunal, which, he submitted, was then functus officio, and had no power to make any amendment to the Award by an addition thereto. B
- p. 223 C
- p. 231 9. The Tribunal adjourned to the 10th May 1961, and the Chairman then stated that "there is in the Award an error arising from an accidental omission". D
- p. 234, 235 10. By letter dated the 24th May 1961, the Acting Permanent Secretary of the Ministry of Labour wrote to the Appellants informing them that in a letter dated the 17th May 1961 the Tribunal had informed the Ministry of Labour that the Award of the 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. E F
- pp. 10, 11 11. In his Affidavit, Mr. Noel P. Silvera stated that prior to the 19th April 1961, the Tribunal had met at the Ministry of Labour and had unanimously decided that the increases in the Award should be retroactive to the 15th May 1960, and that after the decision he had personally informed Mr. E. G. Goodin, Secretary of the Tribunal, of the terms of the Award. G
- pp. 12, 13 12. In his Affidavit, Mr. Roy Johnstone substantially corroborated the evidence of Mr. Silvera. H
13. The relevant statutory provisions are contained in the Laws of Jamaica (Revised Edition), Chapter 329, SS. 10 (5), 12, and 13, and Chapter 19, SS. 8(c) and 24, which are as follows:

Chapter 329:

Section 10(5):

A "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
B 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 the
contract between the employers and workers to
whom the agreement, decision or award relates
C 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."

D Section 12:

E (1) "The tribunal shall make its award or
furnish its advice as the case may be to the
Minister without delay and where practicable
within twenty-one days from the date of
reference."

F (2) An award on any matter referred to the
Tribunal for settlement may be made retrospective
to such date as the Tribunal shall determine.
The decision of the Tribunal as to such date
shall be conclusive."

Section 13:

G "If any question arises as to the inter-
pretation of any award of the Tribunal the
Minister or 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
H shall be notified to the parties and shall be
binding in the same manner as the decision in
an original award."

Record

Chapter 19:

Section 8:

"The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power -

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(c) to correct in an award any clerical mistake or error arising from any accidental slip or omission".

Section 24:

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 authorised or recognised by that law".

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p. 36, ll. 43 et seq. 14. At the hearing of the said Motion, the Appellants' Counsel requested that Messrs. Silvera and Johnstone, whose Affidavits had been put in by the Respondent, should be made available for cross-examination on their Affidavits. The Respondent accordingly made both deponents available for two whole days but the Appellants' Counsel declined to cross-examine them, and the learned Chief Justice did not question them.

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p. 23, ll. 28-30 15. The Chief Justice in his Judgment stated that "the onus to establish that an amendment was properly made must rest upon those seeking to enforce it", and that "even if the onus in this

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p. 23, ll. 40-43. case was upon the Association, it is my Judgment that in the circumstances enough was proved to shift the onus to the Unions".

The Respondent submits that the learned Chief Justice misdirected himself in the law as to the onus of proof in a case of this kind.

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pp. 24-33 The learned Chief Justice also misdirected himself on the facts and the inferences to be drawn from the facts, and misconstrued the Affidavits of Messrs. Silvera and Johnstone, both of whom were

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- available for cross-examination, or questions by the learned Chief Justice, to clear up any possible ambiguity. It is clear from the statement of Mr. Silvera, as appears from the Record of Proceedings before the Arbitration Tribunal, that there had been an error arising from an omission in the Tribunal's Award dated the 19th April 1961. It is clear from the Affidavits of both Mr. Silvera and Mr. Johnstone that some time prior to the 19th April 1961, the three Arbitrators had met at the Ministry of Labour and had decided upon the terms of their Award, but that the fifth paragraph of the Award was accidentally omitted from the document dated the 19th April 1961.
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- B
- C The fifth paragraph of the Award made prior to the 19th April 1961 was as follows:
- "that these wage rates should be retroactive to 15th May 1960".
16. It is submitted that the Tribunal had power, by virtue of Section 8(c) of Chapter 19 of the Laws of Jamaica (Revised Edition) to correct the slip that had been accidentally made in the document bearing date the 19th April 1961.
- D
- E 17. Upon the Respondent's appeal to the Court of Appeal of Jamaica, Phillips, J., President, (Acting) held that the Appeal must be allowed on the grounds
- (a) that "the evidence, taken as a whole, establishes that the disputed decision of retro-activity was taken before the 19th April 1961."
- F (b) that "the Tribunal had the power, under Section 8(c) of Chapter 19, to correct (the Award)."
- Lewis, J. A., agreed with the learned President of the Court of Appeal that the Appeal must be allowed on the grounds stated, and upon the further ground that the onus of proof as to excess of jurisdiction lay upon the Association.
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- H Waddington, J. A. (Acting) dissented from the majority of the Court of Appeal on the ground that the Tribunal had become functus officio after the 19th April 1961 and could not make subsequent amendment of or addition to its Award, but agreed that

p. 231, ll.
20-37

p. 235, ll.
3,4

p. 49-66

p. 62, ll.
37-40

p. 65, ll.
11-13

p. 66,75.
p. 66, ll.
10 et seq.

pp. 75-82

Record

p. 81, ll.
44-46.

the onus was on the Association to show that the Tribunal had not made the decision as to retro-activity before they signed the Award of the 19th April 1961. He held that the Association had discharged this onus, and that the onus had shifted to the Unions, but was not sure that he would have reached some of the conclusions reached by the learned Chief Justice in the case.

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18. On behalf of the Respondent it will be contended that the Judgment of the Court of Appeal is right and should be upheld for the following and other

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R E A S O N S

(1) BECAUSE the Record of Proceedings before the Tribunal showed that the Tribunal had made an error arising from an accidental slip or omission as regards the operative date of the Award. This evidence in the said Record itself is reinforced by the Affidavits of the Chairman of the Tribunal, Mr. Noel P. Silvera, and Mr. Roy Johnstone, another member of the Tribunal.

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(2) BECAUSE the onus was on the Appellants to show by evidence a lack of jurisdiction on the part of the Tribunal to correct an error in the Award arising from an accidental slip or omission, and they had utterly failed to adduce any such evidence.

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(3) BECAUSE no fraud or dishonesty or misconduct of any kind was alleged or even suggested against the Tribunal, and it is only in such circumstances that the statement of the Chairman as appears in the Record of Proceedings of the Tribunal (which was obviously acquiesced in by the other members of the Tribunal) and the Affidavits of the Chairman and Mr. Roy Johnstone could be impugned or questioned.

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(4) BECAUSE the Tribunal, having made an error arising from an accidental slip or omission as to the operative date of the Award, was entitled to correct this error by virtue of Section 8(c) of Chapter 19 of the Laws of Jamaica (Revised Edition).

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(5) And upon the grounds stated in the Judgment of Mr. Justice Phillips and Mr. Justice Lewis in the Court of Appeal.

EUGENE C. L. PARKINSON Q.C.

~~DAVID H. COORE Q.C.~~

A

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- and -

THE BUSTAMANTE INDUSTRIAL
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& OTHERS

CASE FOR THE RESPONDENTS
The Bustamante Industrial Trade Union

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