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Judgment
55/1964

IN THE PRIVY COUNCIL

No. 15 of 1963

ON APPEAL
FROM THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trade Union Congress of Jamaica on the other hand, and

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

BETWEEN

THE SHIPPING ASSOCIATION OF JAMAICA

and

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

Appellants

Respondents

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

78718

CASE FOR THE RESPONDENTS

20 THE UNITED PORT WORKERS AND SEAMEN UNION
and THE TRADE UNION CONGRESS OF JAMAICA

RECORD

1. This is an appeal from the Judgment of the Court of Appeal of Jamaica (Phillips, J., President, (Acting), Lewis, J., and Waddington, J., (Acting) delivered on the 15th day of January 1963, reversing 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.

30 . 2. In the said Notice of Motion, the Appellants asked 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

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et seq.

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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. 10
- (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. 20

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.

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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.1" for identity, the 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. 30

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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:

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"9. The Award is - 40

- (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.

10 Dated this 19th day of April, 1961.

- s. Noel P. Silvera
Chairman
- s. Paul Geddes
Employers Representative
- s. Roy Johnstone
Workers' Representative."

20 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. 220
l. 9 et
seq.

30 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 requesting 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). p. 218

40 8. It is provided by S. 13 of the Public Utility Undertakings and Public Service Arbitration Law - Cap.329 of the Revised Laws, that on a request for interpretation of any Award, the Tribunal is obliged to "decide the matter after "hearing the parties, or without such hearing, provided the "consent of the parties has first been obtained".

9. By letter dated the 2nd May 1961 addressed to the Secretary of the Tribunal, the Appellants' Solicitor on behalf of his clients, refused consent to the matter p. 215

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being dealt with without a hearing. By virtue of this refusal the Tribunal were obliged by the Statute to hold a hearing in respect of the request for an interpretation of the award, regardless of whether they considered the request unnecessary, misconceived or capable of being dealt with in some other way.

10. In pursuance of its Statutory duty as aforesaid, the Tribunal by letter dated the 2nd day of May signed by the Secretary, summoned the parties to a hearing on the 9th day of May 1961.

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11. On the 9th day of May when the tribunal met, Counsel for the Appellant took the preliminary objection that the Tribunal had no jurisdiction to "clarify" the award as they were purporting to do by their letter of the 2nd day of May. On behalf of the Respondents it was submitted that the Tribunal had power to 'interpret' an award under Sec. 13 of Cap. 329 and that further they had power to correct accidental omissions by virtue of the conjoint effect of Section 8(c) of the Arbitration Law, Cap. 19 and Sec. 24 of Cap. 19. It was therefore submitted that the Tribunal under one or other of the statutory provisions had the power to remedy what appeared to be a defect in this award. Counsel for the Appellant in reply submitted that Section 8(c) of the Arbitration Law had, in the circumstances, no application to the Tribunal. At that stage the Tribunal adjourned until the following day.

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p. 228

p. 231
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seq.

12. On the resumption the chairman stated that the award contained an "error arising from an accidental omission", and that the Tribunal would correct the error and forward the correction to the proper authorities.

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p. 234,
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13. Section 12 of Cap. 329 provides that the Tribunal shall make its award to the Minister of Labour. By letter dated the 17th day of May 1961 the Tribunal wrote to the Ministry of Labour correcting its award, so as to include a provision that the wage rates awarded should commence retroactively from the 15th day of May 1960. The said letter was not put in evidence but the effect thereof was communicated to the parties by a letter sent to each of them from the Ministry of Labour dated the 24th day of May 1961.

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p. 218
p. 219 1.30

14. It is submitted that as soon as it was brought to the attention of the Tribunal by the letters of 28th April 1961 and 1st May 1961 that its

award appeared to be defective, the Tribunal acted promptly and in accordance with the provisions of the Statute- Cap. 329 of the Revised Laws.

10 15. Even if not absolutely necessary it was quite proper for the Tribunal to refrain from making any comments until after the parties had been heard on the request for an interpretation of the award under Sec. 13 of Cap. 329. At this hearing the Respondents submitted in effect that they would be willing to accept action under Section 8(c) of Cap. 19 (assuming this to be applicable) as a substitute for the "interpretation" under Section 13 of Cap. 329 which they had requested. Having regard to this submission then once the Tribunal was satisfied that, on the facts within its own knowledge, it was lawful to invoke the provisions of Section 8(c) of Cap. 19, then it was entitled to consider itself released from the statutory obligation to give a decision under Sec. 13 of Cap. 329. In the light of the fact that Appellants' Counsel had submitted that the Tribunal could not act under Sec. 8(c) of Cap. 19, it was quite reasonable for the tribunal (two of the members being laymen), to adjourn until the following day to consider the legal position.

20 16. The Tribunal, as mentioned in paragraph 12 above, announced on the 10th May that it was prepared to exercise its powers under Sec. 8(c) of Cap. 19. There being no statutory provision prescribing the procedure to be adopted in the exercise of those powers, it was reasonable for the members of the Tribunal to take further time to advise themselves as to the correct method of making the correction.

30 17. In the light of the foregoing it is submitted that after the apparent defect in its award had been brought to its attention by the Respondents, the Tribunal acted at all material times thereafter with propriety and circumspection, and that no sinister inferences can fairly or reasonably be drawn from its conduct.

40 18. At the hearing of the Appellants' motion before the Chief Justice the Respondent put in evidence affidavits by the chairman of the Tribunal and one of the members - Mr. Roy Johnstone.

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19. At the request of the Appellants' Counsel these deponents were made available for cross-examination but Appellants' Counsel subsequently intimated that he did not propose to cross-examine them.

p. 74 l.33
et seq.

20. These Affidavits establish the fact that a decision in terms of the disputed amendment had been

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arrived at by the Tribunal prior to the signing of the award on the 19th day of April 1961, and that that decision was unanimous. Appellants' Counsel having refrained from cross-examining the deponents, it is not competent for Appellants to dispute this fact.

p. 23, 11.
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21. In his Judgment delivered on the 6th day of October 1961 the Chief Justice 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 case was upon the Association, it is my Judgment "that in the circumstances enough was proved to shift the "onus to the Unions."

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p. 23, 11
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pp. 35-48

22. From this Judgment the Respondents appealed on the grounds set out in their several Grounds of Appeal.

pp 49-66

23. 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

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p. 62, 11.
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(a) that "the evidence, taken as a whole, establishes "that the disputed decision of retroactivity was taken "before the 19th April 1961".

p. 65, 11.
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(b) that "the Tribunal had the power, under Section "8(c) of Chapter 19, to correct (the Award)".

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66, 11
10 et seq.

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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pp. 75-82

Waddington, J.A. (Acting) dissented from the majority of the Court of Appeal on 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 the onus was on the Association to show that the Tribunal had not made the decision as to retroactivity 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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p. 81, 11
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24. On behalf of this Respondent it will be contended that the Judgment of the majority of the

Court of Appeal is right and should be upheld for the following and other

REASONS

- (1) By virtue of the conjoint effect of Sec. 8(c) and Sec. 24 of Cap. 19 of the Revised Laws the Tribunal had Jurisdiction to correct any error in its award arising from an accidental omission.
- 10 (2) The disputed amendment to the award of the 19th April 1961 was expressly made in the exercise of that power and was therefore, ex facie, lawful.
- (3) The onus was on the Appellants to prove affirmatively, facts which could support a conclusion in Law that the Tribunal did not have the jurisdiction which it purported to exercise.
- (4) This onus is a heavy one because a Court will make every reasonable presumption in favour of supporting an award.
- (5) The Appellants entirely failed to prove any such facts.
- 20 (6) The evidence as a whole established that the Tribunal had met once to consider its award, on a date prior to the 19th April, on that date had unanimously decided on the rates set out in the award, and also that those rates should apply retroactively from the 15th May 1960, and further that the omission of the retroactive date from the document signed on the 19th April was not deliberate.
- (7) On those facts the Tribunal had Jurisdiction to amend the written award, so as to make it conform to the decision which had been arrived at prior to its publication.
- 30 (8) And Upon the grounds stated in the Judgments of Phillips, J and Lewis, J., in the Court of Appeal.

DAVID H. COORE, Q.C.

