

CA 118/80  
ADB US P.S.A

TRINIDAD AND TOBAGO



IN THE COURT OF APPEAL

Civil Appeal  
No. 118 of 1980.

BETWEEN

THE AGRICULTURAL DEVELOPMENT BANK

Appellant

AND

THE PUBLIC SERVICES ASSOCIATION

Respondent

Coram: C.A. Kelsick, C.J.  
C.A. Bernard, J.A.  
G. des Iles, J.A.

November 20, 1985.

A. Jessamy for the Appellant,  
F. Solomon and D. Alexander for the Respondent.

J U D G M E N T

Delivered by C.A. Kelsick, C.J:

In its judgment dated October 2, 1980, the Industrial Court ("the Court") made an award in favour of the respondent Association ("the Association") representing employees of the

/appellant Bank ....

appellant Bank ("the Bank") concerning the fixing of the levels of remuneration of those employees. The Court ordered the removal of overlap of scales in clearly related promotional posts to take effect from January 1, 1975 and that the rules of conversion in the Civil Service should apply.

The ground on which this award was unsuccessfully challenged before the Court, and which formed the first ground of appeal before this Court was, abandoned.

The Bank however for the first time before this Court in its second ground of appeal sought to impugn the award for the reason that the Court misdirected itself or erred in law in holding that the effective date of its order should be 1st January, 1975, a date prior to the issue of the Certificate of Recognition of the Association.

By two certificates, issued on 2nd April, 1975 under s.37 of the Industrial Relations Act 1972 (No.23 of 1972) ("the Act") and reg. 8 of, and Form 2a in the Schedule to, the Industrial Relations (Certification of Recognition) Regulations ("the Regulations") made under s.75 of the Act, the Registration, Recognition and Certification Board ("the Board") certified the Bank as the recognised majority Union in respect of workers

comprised in . . . .

comprised in the bargaining unit as specified in the respective certificates and certifying the number of workers in the bargaining unit at the relevant date, that is to say, 15th October, 1974.

By s.36(2) of the Act 'relevant date' means such date as the Board considers appropriate for the purpose of determining any matter before it under "this Part". "This Part" is Part III, with a caption "Certification of Recognition", and comprises sections 32 to 42.

The certificates were issued on 2nd April, 1975 and were stated to be effective from 15th October, 1974.

Pursuant to s.40(1), read together with s.2(1) of the Act, on 28th April, 1975 the Association treated and entered into negotiations with the Bank for the purpose of a collective agreement to contain provisions respecting terms and conditions of employment of the workers.

The Bank and the Association, having failed to agree, the dispute was reported to the Minister by the Association under s.5(1) of the Act; and on 30th December, 1977 it was reported by the Minister to the Court as an unresolved dispute, purportedly

/under s.61(a) ....

under s.61(a) of the Act. The nature and scope of the dispute was stated to concern the refusal of the Bank to remove the alleged overlapping of salary scales in promotional posts effective 1st January, 1971.

At the commencement of the hearing of the appeal Counsel for the Bank applied for leave to argue the following ground of appeal -

"That this Honourable Court had no jurisdiction to hear the dispute since the purported acceptance of the report dated 24th October, 1977 of the Association by the Minister was ultra vires in that it was accepted contrary to the provisions of section 51(3) of the Industrial Relations Act Chap 88:01."

Section 51(3) reads:

"A trade dispute may not be reported to the Minister if more than six months have elapsed since the issue giving rise to the dispute first arose, save that the Minister may, in any case where he considers it just, extend the time during which a dispute may be so reported to him."

Leave was refused for the reason that s.18(2)(d) of the Act rendered the Court incompetent to entertain that ground because it had not been formally taken in the lower Court. In his address at the conclusion of the hearing counsel again submitted that the Court had no jurisdiction to hear the dispute

/since the ....

since the Minister had no power to refer the dispute to this Court under s.61(a), which states that the Minister shall refer an unresolved dispute to the Court where no lockout notice or strike notice is given pursuant to s.60. The ~~con-~~ception was that this is an interests dispute, and not a rights dispute referred to in s.51(5) which when resolved the Minister is unilaterally authorised to refer to the Court under s.59(2). It was an unresolved interests dispute referable to the Court under s.59(3) by the Minister at the request of both parties.

For the same reason as the preliminary objection, this objection was not sustained.

I revert to the second ground of appeal.

Section 41 is in the following terms:

"41.(1) Where a trade union is certified by the Board as the recognised majority union, the particulars referred to in section 37(2) shall be entered in a record of such trade unions to be kept for that purpose by the Board in the prescribed form for the purposes of this Act; and the production of the record or of a copy of the relevant portion thereof, certified by the Secretary of the Board, shall be admissible in all courts and shall be conclusive proof of the matters therein stated.

(2) Notwithstanding any rule of law to the contrary, a recognised majority union shall, for the purposes of this Act, be treated as such only when such particulars are recorded

/under ....

"under subsection (1) and, subject to section 35, as long as so recorded the trade union shall be deemed to continue always to be the recognised majority union."

For the Bank it was contended that the earliest effective date from which the Court's order could lawfully be effective was April 1, 1975 (presumably meant to be "April 2, 1975") which was the date of the issue of the certificates to the Association. That was also the earliest date (i) at which the particulars in the certificates could be entered in the record of trade unions pursuant to s.41(1) of the Act, and (ii) from which the Association could be treated as the recognised majority union under s.41(2) and could initiate negotiations with the employer for a collective agreement under s.44. The argument continued, that on 15th October, 1974 (and on 1st January, 1975) the Association was not the recognised majority union referred to in s.51(1)(b) but was an unrecognised union mentioned in s.51(1)(c).

Consequently the capacity of the Association to bargain was restricted under s.51(5) to disputes as described therein which are "rights disputes". As the present dispute is an "interests dispute" excluded from subsection (5), the Association

cannot bargain ....

cannot bargain and enter into a collective agreement in relation to the subject matter of the instant dispute.

The two types of trade dispute which comprise a rights dispute are set out in s.59(2); and in s.51(5) which enacts:

"For the purpose of this Act, and in particular subsection (1)(c), a trade union other than a recognised majority union is competent to pursue the following types of trade dispute, but no other, in accordance with the provisions of this Act -

- (a) any dispute or difference between workers and workers of that employer in each case being on behalf of members of the union, concerning the application to any such worker of existing terms and conditions of employment or the denial of any right applicable to any such worker in respect of the employment; and
- (b) a dispute between the employer and the union as to dismissal, employment, non-employment, suspension from employment, refusal to employ, re-employment or re-instatement of a worker or workers."

In the Court's judgment in Alston's Building Enterprise Ltd. v The Oilfield Workers Trade Union (Trade Dispute No.69/75) which was decided on June 16, 1976, mention is made of rights disputes dealing with the existing rights of parties and interests disputes dealing with the creation of rights between parties or the alteration of existing rights.

/In Bank . . . .

In Bank and General Workers Union and Citibank N.A.,  
under s.51(4) of the Act the Minister referred questions to  
the Court. Delivering the Court's advice given on July 22,  
1981, the President of the Court defined "rights dispute" as  
any dispute over the alleged violation of an existing right;  
and "interests dispute" as a dispute over the creation of a  
right. He went on to observe that -

"An interests dispute can arise only between  
a recognised majority union and an employer  
as a result of either of them seeking to  
exercise the right granted by s.40 of the  
Act to conduct collective bargaining as  
defined in s.2(e) for the conclusion,  
renewal or revision of a collective agree-  
ment as defined in s.2(d) or the conclusion  
of a supplementary agreement as defined in  
s.49(1)."

I would reject the submission of the Bank that the  
Association is not the recognised majority union for the  
following reasons:

The Board determined the application and issued the  
certificates of recognition under s.23, and in conformity  
with s.36(2) of the Act and reg. 9 of the Regulations.

The Board's determination as set out in the certificates  
are final and conclusive. (See sec.32(4) and 41(1)). It cannot

/be questioned ....

be questioned in a court of law, by virtue of the privative or ouster provision in s.23(5) and (6), except under s.31 on an application for a Case Stated during the hearing before the Board.

The certificates issued in this case are therefore conclusive as to their contents and the Association was the ~~recognized majority union as from 15th October, 1974~~ and therefore on January 1, 1975, which is the effective date of the Court's award.

Section 15 enacts:

"An order or award in any matter referred to the court for determination may be made operative from such date as the court may consider fair and just having regard to all the circumstances of the case."

Under that section the Court was empowered to fix as the effective date of the award, 1st January, 1975, prior in time to 2nd April, 1975, when the certificates were issued.

Even if the effective dates of the certificates were 2nd April, 1975 and not 1st January, 1975, the Court was not thereby inhibited by s.41(2) from giving them retrospective effect to a date prior to 2nd April, 1975. That section only

/prescribes the ....

prescribes the procedure for legal recognition of the status of a union which authorises it to bargain, and the effective date from which it can begin to bargain. It does not limit as a matter of substantive law the commencement or duration (i) of a collective agreement which the union may, after that date bargain for and conclude, or, (ii) in default of such an agreement, of the award which may be given by the Court under s.15.

I would uphold the award of the Court and reject the ground of this appeal which I would dismiss.

We invite submissions from Counsel as to whether there are exceptional reasons in this case for this Court to consider it proper to make an order as to costs in favour of the respondent in accordance with s.10(2) of the Act.

C.A. Kelsick  
Chief Justice