

THE STATE

v

THE ACTING PERMANENT SECRETARY FOR LABOUR
AND INDUSTRIAL RELATIONS*ex parte*
SUVA CITY COUNCIL

[HIGH COURT, 1993 (Scott J), 31 August]

*Trade disputes- meaning of "trade disputes" - Trade Disputes Act (Amendment)
Decree 27/1992.*

The Permanent Secretary accepted as a trades dispute a dispute between the parties over the right to occupy Council premises. HELD: a dispute between parties which is unconnected with employment is not a "trade dispute" within the meaning of the Act.

No cases were cited

Mrs. T. Jayatilleke for the Applicant
A. Cope for the Respondent

Scott J:

Employees of the Suva City Council (the Council) are members of the SCC Staff Association (the union) which has for several years had its office on Council premises. No rental or other charges have ever been levied by the Council in respect of the occupation of the office space which the Council claims the union occupies as a bare licensee.

In January 1993 the Council decided that the union should be required to vacate this space by March 1993 and that it should find alternative accommodation outside Council premises.

After unsuccessful representations were made by the union to the Council the union reported the existence of a trade dispute to the Permanent Secretary on 17 March 1993 pursuant to the Trade Disputes Act (Cap.97) (the Act). The matter of complaint was the Council's decision that the union should vacate.

On 24 March 1993 the Council wrote to the Permanent Secretary pointing out that the Master Agreement between the Council and the union did not require the provision of office space for the union by the Council. The Council submitted that there were "no grounds of Trade Dispute" and asked the Permanent Secretary to reject the union's report.

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A On 25 March the Acting Permanent Secretary wrote to the Council advising it that he had accepted the union's report and proposed to refer the dispute for settlement under the provisions of section 5A of the Trades Disputes Act (Amendment) Decree 27 of 1992 (the Decree).

B On 14 May the Council sought and obtained leave to move for judicial review of the Acting Permanent Secretary's decision to accept the union's report on the principal ground that the Acting Permanent Secretary had erred in treating the matter at issue between the parties as a trade dispute.

C Both Counsel filed helpful written submissions for which I am grateful. The Applicant's case is that the dispute between the parties does not fall within the definition of a "Trade Dispute" as defined by section 2 of the Act as amended by the Decree. The Respondent's case (expressed most succinctly in paragraphs 12 and 18 of Mr. Cope's submission) is that the effect of the Decree has been to amend the Act so that any dispute between an employer and a trades union is capable of being a "trade dispute"

"trade dispute" is defined by the Decree in the following words:-

D " "trade dispute" means any dispute or difference between any employer and a Trade Union recognised under the Trade Unions (Recognition) Act or between a union of (sic) employers connected with the employment or with the terms of employment or with the conditions of labour of any employee."

E Mrs. Jayatilleke submitted that the definition must be read so that the words "connected" through to "employee" qualify the whole of the preceding part of the definition. Mr Cope on the other hand submitted that the second word "or" was disjunctive and that therefore all those words appearing before it could be taken to stand independently. On that interpretation any dispute between any employer and a trades union, whatever its nature, would appear capable of being a trade dispute. In support of this way of interpreting the definition Mr. Cope pointed out that the result of adopting Mrs. Jayatilleke's approach would be that the words appearing before the second "or" would become otiose. With respect I think that that argument is something of a double edged sword: if Mr. Cope is correct in his approach than surely all the words appearing after the second "or" are equally redundant.

G The basic problem is that the definition of "trade dispute" contained in the Decree is rather poorly drafted. What for example a dispute "between a union of employers" is supposed to mean would be anyone's guess. Fortunately the precise meaning of that particular phrase is not relevant to this case.

Having considered the two approaches I have concluded that I prefer that of the Council. My reasons are as follows:

First, comparison of the amended definition of "trade dispute" contained in the Decree with the definition it replaced in the Act shows that the main purpose of amending the definition was to include reference to the Trade Unions (Recognition) Act (Cap.96) which was enacted in 1976, that is 3 years after the Act. In the original definition it is clear that the words "connected" through to "employee" qualify the whole of the preceding part of the definition. The same words are reproduced in the Decree and in my opinion and notwithstanding the consequence of otiosity already referred to they also qualify the whole of the preceding part of the definition in the Decree. Given that some degree of otiosity is the inevitable result of either approach to interpreting the definition the consequence resulting in the least surplusage is to be preferred.

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Secondly, under section 4 (i) (b) of the Act the Permanent Secretary may "inform the parties that any of the matters over which the trade dispute has risen or is apprehended is not a trade dispute under (the) Act". On Mr. Cope's argument all disputes between employers and employees are capable of being trade disputes and therefore section 4 (1)(b) of the Act would be both otiose and meaningless since the Permanent Secretary would never have any scope to invoke the power given to him by it.

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Thirdly, on Mr. Cope's interpretation a dispute between parties who happened to be an employer and a trade union but who were otherwise totally unrelated would be capable of amounting to a trade dispute. I employ a housegirl, I am therefore an employer. A union of bonnet and fan makers organises a social outing for its members in the course of which a barbecue is held on my land. The fire spreads and my coppice is destroyed. I am most angry and upset. I am in dispute with the union which refuses to compensate me - is that a trade dispute within the meaning of the Act? Surely not.

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In this case the Council is the union's landlord. The union does not occupy the premises pursuant to any clause in the Master Agreement. The Council has given the union notice to quit. The dispute is not in my opinion anything at all to do with the employment or the terms of employment or the conditions of labour of any employee. (It may incidentally be noted that the secretary of the union who wishes to occupy the office is not employed by the Council.) The situation is in my view analogous to a situation where the Council owning a piece of land has a simple boundary dispute with a union which owns land adjoining it. Such a dispute would not, in my opinion, be a trade dispute, merely an ordinary civil dispute over land. The proper forum for the resolution of such disputes is the Court not a Disputes Committee.

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In my view for the above reasons a dispute between employee and a union is only a trade dispute within the Act as amended by the Decree if it is connected

A with the employment or with the terms of employment or with the conditions of labour of any employee. Given my finding that this dispute is not of such a character I uphold the application and order certiorari to quash the decision of the Acting Permanent Secretary dated 25 March 1993.

(Order for certiorari)

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