

# CASES AND COMMENTS

## LAW AND ORDER v. RULE OF LAW

### THE CHALLENGE OF THE BOUGAINVILLE INCIDENT\*

The Bougainville Copper Mine occupies a unique position in Papua New Guinea's economy and society. Its existence has already relieved the nation of fears of chronic balance of payments problems, has provided a large source of revenue on which the Government can launch ambitious development plans and, particularly in its construction phase, has created a significant number of jobs in the monetary sector of the economy.

Psychologically, its "significance" is even greater. A decade ago Papua New Guinea seemed condemned to the permanent poverty, underdevelopment and aid-dependence that are the fates of resource-poor agricultural economies. Today the consciousness has dawned that the nation is almost unbelievably rich in resource potential of an extremely varied nature, with every opportunity to develop the society of its choice, free from many of the economic pressures of other Third World Countries. The reality of a prosperous future is still a long way off for the majority of the people, but the Bougainville mine exists as an earnest of that future. For the next decade it will remain the only resource development of its size in the country, the largest single source of Government revenue, and the major contributor to exports. It is hardly surprising, then, that it has become a major piece in the subtle game being played out between Bougainville separatists and the Central Government. Nor is it surprising that the Government proved extremely sensitive to any threat to the mine's production.

When, in May of this year, a demonstration by striking miners at Panguna resulted in a confrontation with police

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\* This short paper is intended to initiate a section of the journal which deals with comments on contemporary events related to law in Melanesia. The editors invite comments on this paper or on other relevant subjects. The paper has been written by Mr. A. Cunningham, LL.B. (Sydney). The author was the industrial advocate for the Public Service Association from May 1974 to April 1975 and is now projects officer for the Association.

that turned into a two-day riot, a possible conflict was posed between draconian "law and order" and rule of law, and a severe challenge was created to administrative and legal authorities.

1. The Industrial Dispute

The whole sorry episode had its genesis in an industrial dispute, of the very kind that the *Industrial Relations Act* 1962 is designed to resolve or circumvent. The fact that the confrontation took place must be counted as a serious failure of the legal industrial relations machinery.

Under Part III of the *Industrial Relations Act* 1962, machinery is provided for settling disputes by conciliation first, and then, if this fails, by compulsory arbitration. The disputants are obliged to report the existence of a dispute which is likely to give rise to a strike or lockout to the Department of Labour. The Secretary for the Department of Labour may either on his own initiative or in response to a report by the disputants bring the disputants together for negotiations in the early stages. If the dispute cannot be resolved by this means, it is referred to a tribunal whose decision, once registered, becomes binding on the disputants.

Bougainville Copper Ltd has long been conscious of the need to maintain an image as a "good corporate citizen", and part of this image had been its claim to be a generous employer by the standards of industry in Papua New Guinea. While the mine workers' pay and conditions were never as generous as much ill-informed publicity suggested, the company's workforce was among the better paid groups of Papua New Guinean labour. Working conditions were also more favourable, but against this must be set the general "mining camp" atmosphere of the settlements serving the mine, with their high cost of living and masculinity rates, the newness and rawness of the towns, all of which tend to create a more tense atmosphere than in other more established settlements.

The company, however, had taken an uncharacteristically rigid stand over the application of the 1974 Urban Minimum Wages Board Decision to the Bougainville award,<sup>1</sup> and the union

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1 The Minimum Wages Board, under Part II of the *Industrial Relations Act* 1962, can determine from time to time the minimum wages for any industry sector or geographical area in Papua New Guinea.

had become increasingly disenchanted with the failure to make any headway or even, at times, to receive any acknowledgement of their letters from the company. A short strike in the previous year had been a symptom of the rising tension, but divisions and disagreements on both sides, and a complete breakdown of communications between the parties had prevented the warning being heeded. The demonstration that triggered the riot had been called by the union for the purpose of publicly presenting a letter to the company which had previously been sent to it but never acknowledged.

At this stage the dispute had been allowed to continue for nearly six months. The legal machinery exists for both conciliation and arbitration in such cases, but neither party resorted to it. In the case of the union leaders this was through apparent inexperience and lack of knowledge. Why the company did not use these procedures is difficult to judge. After the riot some of the union leaders felt the company had been seeking to provoke a situation where it could "tame" the union. It is probable that this view is an *ex post facto* rationalisation based as much on the company's actions after the riots as its attitude beforehand. The company officers did appear remarkably insensitive to the rising tide of feeling. It is significant that Sir Val Duncan, the Chairman of BCL's parent company, Rio Tinto Zinc, in a report issued several weeks after the events at Panguna admitted that there was a "Need for greater contact between management and workforce... Far too many of our companies have become stratified".<sup>2</sup> Allowing for the usual caution in self-critical statements in reports to shareholders, this might provide a hint of the trouble at Panguna. If one inserted "total alienation" for "need for greater contact" one might find the explanation.

The events suggest the need to take steps to make the industrial relations machinery more effective. Officers of the Department of Labour were aware of the dispute, though perhaps not of the full extent of feeling on the issue, and there had been the warning implicit in the earlier strike. One can understand dislike of official busybodies, but where neither company nor union saw fit to report the dispute, as they are obliged to do under Section 19(1A) of the Act, the event does pinpoint the need for counsellor/mediators in either the Department of Labour or the Bureau of Industrial

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2 Papua New Guinea Post-Courier (3 June 1975).

Organisations who can intervene on their own initiative to offer at least counselling and advisory services, if not mediate the dispute itself. At present, under Section 18(2) of the Act, the Secretary for Labour needs to obtain the approval of the High Commissioner before he can intervene on his own initiative. It is also important that the work being done by the Bureau of Industrial Organisations in educating unions about the industrial relations machinery should be continued. The union failed to notify the Department of Labour of the dispute solely because of lack of knowledge, but it has, since the riot, taken steps to do so.

## 2. The Law Enforcement Agencies

The role of the law enforcement agencies leaves much to be desired. The events that triggered the riot, the mass arrests, the temporary compound, most of all the failure to exercise any discrimination in selecting the persons for arrest, all indicate a panicky overreaction to the real situation on the first morning. More patience and tact at the beginning could have controlled and contained the incident. Again one can explain much of it by inexperience in dealing with industrial confrontations on such a large scale, but one hopes the lesson has now been learned that over-reliance on authoritarian measures can be destructive of "law and order" rather than helpful.

It is less easy to explain or justify the close relations between police and the company. The police were in position before the miners reached the company headquarters. Everything suggests trouble had been anticipated for some time, which raises the question why no effort was made to head it off by industrial negotiations. If the company had time to call in the police, they assuredly had time to send out negotiators to talk with the union. Whether it was intended or not, the line of police between the miners and the company managers who refused to put in an appearance conveyed the impression that the police had been called in to enforce on the miners the company's refusal to negotiate.

Nearly a thousand miners were arrested and imprisoned in a hastily-built compound declared an emergency place of detention. Five were selected as "ringleaders" and charged with indictable offences - all of them officers of Bougainville Mining Workers Union; in retrospect and in the light of later proceedings it is difficult to see any basis for singling them out except for their union connections.

Even if these measures were seen as no more than an emergency response to a crisis, other actions of the law

enforcement agencies cannot be so explained. Officials of the company were allowed access to the prisoners before their legal representatives from the Public Solicitor's Office, apparently for the purpose of identifying those that the Company intended to sack. Any relationship between the criminal proceedings and the company's disciplinary measures, however coincidental, could hardly have given defendants and potential witnesses confidence in coming forward with evidence that was to a greater or lesser degree against the company and its point of view. When applications were made for prisoners to be released on bail, again it was the affidavits of company officials that were offered in support of the police objections.

It is more surprising, given the trade union background and ideology of many of the present Government, that the law enforcement agencies were so quick to adopt the management view that all of the trouble could be attributed to violence-prone miners incited and led throughout by their union.

Statements by both the Minister and the Commissioner for Police in the days immediately after the riot reflected the view that the miners were solely responsible. Other public statements were more cautious but did show the same tendency. On the 19th May, indeed, the Managing Director of the Company stated that the "Government had assured the Company any man found guilty would serve a prison sentence".<sup>3</sup> Exception was taken to this by the Public Solicitor, by then representing most of the detainees, but no satisfactory public explanation was given.

If in the immediate wake of the riot, the predominant government view reflected that of the mine management, it was not long before another was heard. After the company had announced that it intended to replace the union as spokesman for the miners with a series of councils based on ethnic groupings and barracks, the Minister for Labour<sup>4</sup> and the Director of the Bureau of Industrial Relations<sup>5</sup> issued statements which, however cautiously expressed, indicated

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3 Papua New Guinea Post-Courier (19 May 1975).

4 Papua New Guinea Post-Courier (23 May 1975).

5 Papua New Guinea Post-Courier (3 June 1975).

that there were two sides to the question, and warned against over-hasty judgements. These were the institutions that were most aware of the industrial dispute that formed the background to the incident.

The Company's plan was, particularly in view of its timing, unwise in that it was likely to enhance ethnic distinctions and exacerbate tensions, suggesting that the company was taking advantage of the situation to rid itself of the union. Such a view may have precipitated these official reminders that behind all the immediate troubles there was still an unresolved industrial dispute.

### 3. The Task of the Criminal Law

The procedures of criminal law themselves emerge with rather more credit from the whole affair. The speed with which the detainees were provided with legal representation despite their huge number is a tribute to the Public Solicitor's Office, and an encouraging sign for those who believe in due process of law.

By May 21st police charges against all but those claimed to be "ringleaders" were suddenly dropped. The announcement claimed that the main reason was the increasingly insanitary state of the temporary compound and said new charges would be preferred against most of those released. It was conceded, however, that in some cases there was insufficient evidence to justify the arrest. In fact none of the men has been re-charged.

Other events on Bougainville had pushed the aftermath of the riot out of the public eye by the time the union leaders faced their trial. The only report was a bare statement that all five of the accused had been acquitted. Written copies of the court's decision are not available at the time this is written, but it appears that the trial result was a vindication of the part played by the union leaders. The demonstration was intended to be an orderly one for the purpose of presenting a document to the company, but was stopped in front of the "Pink Palace" (the Company Headquarters) by police. The leaders asked for an interview with the mine management but were ordered away by police. Several rocks appeared to have been thrown from the body of the crowd below the leaders and the police immediately tried to disperse the crowd with tear gas. As the riot developed the union leaders did all they could to regain control over their men and calm the situation down.

The acquittal of the five union leaders will probably put an end to legal proceedings arising from the riot. The emphasis has now swung back to industrial issues. The Bougainville Mining Workers Union, revived and even strengthened, is now pressing for its original claims and for the reinstatement of the dismissed men. The whole question is likely, in the way of several previous "crises", to fade away in a welter of unanswered questions and unresolved doubts.

It is my opinion, however, that the rule of law was vindicated and was shown to be a nobler and, indeed, more effective, concept than strident authoritarian calls for "law and order" at any price. The Bougainville events might have created a situation to rank with the Tolpuddle Martyrs, the trials of the "Molly Maguires" and the leaders of the I.W.W. in the long and depressing history of legal prosecution of working men's movements in the interests of the owners of capital. That they did not must be seen as a good omen for the future.

In even the narrowest view, the demonstration of effective legal process has done more to create a climate of social stability than harsh repression could have achieved. It was a pity that the riot occurred. It is my hope that, before it is forgotten, detailed analysis of the events might suggest ways of preventing any repetition.

- Andrew Cunningham.