S. I. NATIONAL UNION OF WORKERS -v- SOLOMON KITANO MENDANA HOTEL LIMITED

High Court of Solomon Islands
(Ward C.J.)
Civil Case No. 81 of 1990
Hearing: 5 July 1990
Ruling: 9 August 1990

J. Corrin for the plaintiff
F. Waleilia for the Defendant

WARD CJ: The plaintiff union claims sums of money due and owing to employees of the defendant hotel as allowances under their contract of employment as expressed in a collective agreement between the plaintiff and the defendant.

A total of $22,490.87 is claimed as sums unpaid for the period 1st January 1990 to 31st March 1990. Payment of similar benefits accruing since the 31st March is also sought.

The defendant entered a conditional appearance and now, by summons, seeks:

"1. That the Writ and service of the Writ in this matter be set aside on the ground that the issue of the Writ contravenes the requirements of the contract the terms of which the Plaintiff seeks to enforce by this action

2. That the Writ and service of the Writ of Summons be set aside on the grounds that as a matter of convenience and justice the most appropriate forum for the resolution of the matters raised in the Statement of Claim herein is the Trade Disputes Panel.

3. Further or alternatively that the action herein be stayed."

During the hearing, Mr Waleilia explained the third order was sought under O.27 r.4 on the ground that the case was vexatious or oppressive.

The first ground is based on the terms of the collective agreement. Clause 11 of that agreement states:

> *"If no solution is reached from negotiations in relation to both collective or individual disputes and the existence of a trade dispute is therefore established the parties will refer the matter to the Ministry of Trade Commerce and Primary Industries in accordance with the provisions of the Trade Disputes Act for appropriate action."*

This, he says, precludes the Union now from bringing the case to Court.

He further urges that all the claims arise from a dispute over the reasonableness or commercial viability of the allowances claimed in this action. He suggests this is, in truth, an action for specific performance and, as such, requires an examination of the terms of the collective agreement. In order to deal with those matters, it is necessary to argue the wider aspects of the agreement. His second ground, therefore, points out that such matters may be canvassed more fully and widely before the Trade Dispute Panel than can occur before this Court.

That the Panel may take a far less restricted view of collective agreements and other matters of trade dispute than this Court is true. However, clause 11 cannot take away from a party to a contract the right to remedy a breach of that contract by bringing a claim in the courts if necessary.

This is not a claim for specific performance but for money due. Their claim is that the money has already been earned and the defendant has failed to pay. That is a proper cause of action in this court. If the defence seek to show that the terms of the agreement defeat such a claim that is a matter of defence. I do not consider it a ground for ordering that service of the writ be set aside.

Similarly, the right to take a trade dispute to the Panel is clear. Mr Waleilia points out that the defendant has tried to bring the matter before the Panel but the Chairman has declined to accept it. In support of his second ground he urges that refusal was wrong. I do not need to consider that point here. If any matter before the Panel is wrong it may be taken on appeal to this Court but that is a separate action.

He further urges that the plaintiffs, by bringing an earlier claim for specific performance of the collective agreement and also this action in the High Court, are preventing the defendants from seeking their remedies under the Trade Disputes Act. Thus they do not come to this Court with clean hands. I have already ruled that the plaintiff's have a right to seek redress for breach fo contract in the courts. I cannot accept that, by pursuing that remedy, they do not come with clean hands.

On the third ground the suggestion this is vexatious and oppressive was based on the same argument. I do not feel it is such a case.

The application is refused with costs in the cause.

(F.G.R. Ward)
CHIEF JUSTICE