

S.I. NATIONAL UNION OF WORKERS -v- STAR HARBOUR TIMBER CO. LTD

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 153 of 1990

Hearing: 29 October and 8 November 1990

Judgment: 12 November 1990

G. K. Suri for the Plaintiff

R. H. Teutao for the Respondent

WARD CJ: In July this year there was a dispute between members of the Solomon Islands National Union of Workers and the company for which they worked, the Star Harbour Timber Company and the matter was referred to the Trade Disputes Panel.

The Union now applies by originating summons for a number of declarations and orders most of which I have already ruled must wait until the Trade Disputes Panel has had a chance to consider the dispute. These proceedings therefore, are limited to an alleged breach of section 10 of the Trade Disputes Acts which reads:-

"10 (1) At any time when a trade dispute has been referred to the Trade Disputes Panel and the panel have neither -

- (a) succeeded in bringing about a settlement of the dispute by negotiation, nor
- (b) made an award in the dispute,

no person shall do any of the things mentioned in subsection (2).

(2) Those things are -

- (a) calling, organising, procuring or financing a strike or other industrial action short of a strike in furtherance of the dispute, or threatening to do so;
- (b) instituting, carrying on, authorising, organising or financing a lock-out or other industrial action short of a lock-out in furtherance of the dispute, or threatening to do so; or
- (c) terminating (for whatever reason) the contract of employment of any employee whose conditions of service are in issue in the dispute."

The applicants seek (using the paragraph numbers on the summons):

- (2) an order declaring that the defendant had contravened section 10(1) of the Trade Disputes Panel Act 1981 when it continued to lock-out workers who are Union members after the dispute had been referred to the Trade Disputes Panel on the 24th July 1990,
- (4) an order that the defendant company comply with the provisions of section 10(1) of the Trade Disputes Act for it to continue with the employment of all workers locked-out on the 25th July 1990 until the determination of the trade dispute by the Trade Disputes Panel.
- (5) an order of relief on the loss of income suffered by the workers as from the date of referral (24th July 1990) of the trade disputes to the Trade Disputes Panel.
- (6) an order that the costs of this application be costs in this matter."

The general background to the case is not in dispute.

Following a visit by the Assistant General Secretary of the Union, Clement Waiwori, to the Company premises in Makira, the employees went on strike on 17th July over the Company's intention to reduce its work force from 70 to 40.

On the 20th July an agreement was reached between the Union and the operations manager of the Company, Gary Uprichard, that thirty newly recruited employees should be laid off temporarily pending the Company's application for timber rights. A memorandum of agreement was drawn up and signed that day by Waiwori on behalf of the employees and Uprichard on behalf of the Managing Director.

The Union claim that it was further agreed orally that no further lay-offs or deployment of the remaining workers should occur. The Company does not specifically deny that additional part of the agreement and I am satisfied, on the evidence before me, there was such a further agreement. Had there not been, the memorandum of agreement would have been valueless as anything more than a statement of events up to that date and I feel it must have been intended as more.

Clause 4 of the agreement stated that no industrial action would be taken by the members of the Union during the course of the agreement.

However, on 22nd July the Union claim the Company intended to employ the remaining permanent workers on a casual basis only and the employees went on strike again on 23rd July 1990. That reason is denied by the Company. They say there was no change in status of any of the employees at that stage. At the time a ship was being loaded with sawn timber and, as a result of the strike, it had to leave only partly loaded.

It is not necessary for this Court to resolve that difference. It is clearly a matter for the Trade Disputes Panel because, the next day, 24th July, the Union referred a trade dispute to the Panel and advised its members by service message to return to work the following day, 25th July, to comply with section 10. What happened the next day is a matter of considerable dispute between the parties and is the crucial matter for this Court to decide.

The Union case is that all the employees attended the next day for work but were told by Uprichard that they were dismissed. He also made a comment to them that the shareholders did not like union involvement. At the same time a number of documents were left in the office to be distributed. One was a letter typed out and needing only signature. It was addressed to the Secretary, National Union of Workers (SI) and read:-

"Dear Sir,

Resignation from the Solomon Islands National Union of Workers

I wish to inform that this letter signifies that I have now resigned from the National Union of Workers as of the above date.

Following my resignation I agreed that my membership with the Union be withdrawn and that my

Union fee should be refunded to me via the above address.

Signed

Dated this 25th day of July 1990"

The other was a form of agreement in blank the first part of which read -

STAR HARBOUR TIMBER LTD

EMPLOYMENT CONTRACT

TERMS AND CONDITIONS OF EMPLOYMENT OF EMPLOYEE AND EMPLOYER

I..... Employed by Star Harbour Timbers Company Ltd declare that I am not a member of the Solomon Islands National Union of Workers and that I will comply to the Terms and Conditions of this agreement and follow the directives of the Operations Manager also I agree to remain non union member during my term of employment."

There then follow various terms and conditions numbered 2 to 16 followed by spaces for the employee, the operations manager and a witness to sign.

Over the next few days, a total of seventeen people were employed. Some were union members and had not been on strike, some were members who had and some were not union members. Most of them signed these two documents.

The Union case, therefore, is that what occurred on 25th July was a lockout, and, once the trade dispute was referred to the Panel, the Company was guilty of carrying on the lockout in breach of section 10(2)(b).

The respondent's version of events on 25th July is quite different. Wilson Olofua, the administration manager of the Company, explained that, on 25th July only five employees turned up but not to work. They wanted to renegotiate the terms of the lay-offs already settled in the memorandum of agreement.

It has not been possible for either side to call Uprichard because he has left the country and so the Company evidence of events on 25th July depends on Olofua and that of the Union on Benson Pane who was the Union representative at the Company and one of the five the company claim turned up to renegotiate on 25th. The Company also called Peter Reeks the General Manager who, on 26th, received a copy of the Union's letter referring the dispute to the Panel. He replied the next day with a letter that referred to "lay-offs". From the whole content of that letter, I am satisfied this was not referring to any possible lock-out on 25th but to the whole matter of the reduction of the workforce about which there had been an agreement.

Olofua told the Court that the company were only too willing to take the men back on 25th or the 26th. He said he sent one of the strikers, Oscar Kuper, with a message to the workers to return. I found him an inconsistent and unconvincing witness. In relation the events of 25th, I preferred the evidence of Pane.

Olofua countered the suggestion all the men had turned up on 25th with the statement they had gone back to their islands and could not have returned because there was no petrol. He then talked of sending Kuper but, when asked about petrol, said he obtained some to send with him. He said the letter and form of contract, Exhibit. F, was only typed in the afternoon of 25th after the men had failed to appear and he first saw it on 26th. I find Exhibit F a most important document. When the 12 men were re-employed on or about the 30th, all but two signed those forms. The Company witnesses say there was no obligation to sign. If so, I find it hard to understand its purpose. Olofua said that, if the men had turned up on 26th or 27th, they would have been re-employed on the same terms as before except for the 30 who were to be laid off.

I do not go through all the inconsistencies of their evidence but having considered it, I am satisfied on the balance of probabilities that Uprichard, feeling, no doubt, that the men had gone on strike wrongly and blaming the incident on the recent unexpected visit of the Assistant General Secretary of the Union, decided to take the men back only if they signed the agreement not to join a Union. I am satisfied the men did return on 25th following the service message and Uprichard told them they were dismissed. That was a lockout, even if the Company was willing to re-employ them immediately they renounced their Union membership.

Once the reference to the Trade Dispute Panel was communicated to it, the Company was obliged to allow the men to return to work. Counsel for the Company has suggested that, by Rule 3 of the Trade Disputes Panel Rules, the Secretary of the Panel must inform the other parties of a reference by notice in writing. I do not accept that. Rule 3 requires the original reference to be in writing but does not specify the form of the notice to the other parties. In this case, Mr Reeks accepts he was notified and spoke to the Secretary of the Panel on 26th. As soon as that occurred, the company was bound by section 10. Unfortunately, the company had little or no knowledge of the requirements of the Trade Disputes Act.

I do not believe the suggestion that Kuper went around, in effect, to say the lock out was over. Once they knew of the referral, the Company should have taken effective steps to communicate with the employees by some means such as a service message or by notifying the Union and such a message should have made it clear the men could continue working on their old terms. This, I am satisfied, they failed to do. As such this was a continuation of the lockout and a breach of section 10(2) (b) and (c).

The Union asks for an order that the locked out employees be taken back until the resolution of the trade dispute. I order that the Company reinstate all of the 40 workers who were to be retained under the memorandum of agreement of 20th July 1990 who are not employed by the Company and who wish to continue their employment.

As far as the thirty who were to be laid off are concerned, I accept the Company's evidence that was to happen when the M.V. Regina was loaded and I do not order their reinstatement.

I also find that the employees have suffered loss by this action. The Union further seek an order that the respondents compensate the employees and I shall hear counsel on this.

JUDGMENT ON COMPENSATION

I make an order to compensate the employees for their loss. The evidence has shown that the Company intended to lay off workers because of the delays they were experiencing with the issue of a timber licence. Since the start of the lock out, the employees have been back in their villages and have no doubt been able to devote more time to looking after and feeding their families. During that time the Company has had no work from then. That is the fault of the Company but it would be unrealistic if the Court simply ordered a full repayment of wages for the period involved. I therefore order the Company pay one half of the wages of the locked out workers.

In the case of the thirty named in the schedule to the memorandum of agreement, that will be half of the basic daily rate for 3 days 25th, 26th and 27th only. That money is to be paid on 30th November. In the case of any of the remaining

forty workers, it is half of the basic pay they would have received for a five day week from and including 25th July to the date of their reinstatement.

All men to be reinstated must be reinstated on 19th November. Any of those forty men who have since obtained other paid employment are not to receive any payment for the period of that other employment but, if they wish to be reinstated, and are available for reinstatement on 19th, they are to be reinstated. Any employee who does not attend by 12 noon on 19th November is deemed not to want to be reinstated and his right to reinstatement lapses.

The compensating wages for the reinstated workers are to be paid in four equal fortnightly payments commencing on the first pay day after 19th November. Any employees who do not wish to be reinstated are to receive their compensation in two equal payments on 30th November and 14th December.

Thus I summarise my orders:

1. I declare that the Star Harbour Timber Company Limited contravened the provisions of section 10(2)(b) when it carried on the lock out of its employees on 26th July 1990.
2. I order that the Company reinstate any of the forty workers who wish to be reinstated and attend on 19th November 1990.
3. I order that, as relief for loss of income, the Company pay the thirty workers named in the schedule to the Memorandum of Agreement half the basic pay for three days; such money to be paid on 30th November 1990.

4. I order that, as relief for the loss of income, the Company pay the remaining forty employees half the basic rate of pay for a five day week from 25th July 1990 to 16th November 1990 inclusive, for any time during that period they have not been in paid employment.
5. Any employee who wishes to be reinstated must attend ready for work on 19th November 1990 between 7.00 a.m. and 12 noon. All employees who fail so to attend, forfeit their right to reinstatement.
6. Payment of compensation for reinstated workers is to be paid in four equal fortnightly payments commencing on the first pay day after 19th November.
7. Any of the forty named employees who does not wish to be reinstated is to receive his compensation in two equal payments on 30th November and 14th December.
8. The Company and the Union are to arrange a service message to be sent over SIBC at the Company's expense on the 13th, 14th and 15th November. The terms of the message is to be agreed between them and submitted to the Court at 1.30 p.m. today.
9. Costs to the applicants.

(F.G.R. Ward)
CHIEF JUSTICE