

TA'ASI O'BRIEN v SOLOMON ISLANDS NATIONAL TEACHERS ASSOCIATION
High Court of Solomon Islands
(Ward C.J.)

Civil Case No. 242 of 1989

Hearing: 6 March 1990

Judgment: 9 March 1990

A. Radclyffe for the Plaintiff
T. Kama for the Defendant

WARD CJ: The plaintiff in this case, Mr O'Brien is a member of the defendant trade union and the President of the Honiara branch.

In August 1989, the Union advised its members that they should, in support of a pay claim, take part in industrial action. As a result of alleged irregularities in the way that decision was reached, the plaintiff opposed it and, on 12th August, wrote as President of the Honiara branch expressing his disagreement. Although it was addressed to the members of the Honiara branch, it was also widely copied to people outside the Union and the teaching profession including the Permanent Secretary in the Ministry of Education.

Such action was seen by the Union management as extremely damaging to the Union's bargaining position and so, by a meeting on 18th August, the Executive Council resolved to suspend the plaintiff's membership for three months. A letter was sent that day to the plaintiff stating:-

"At its meeting held today the Executive Members of the Exco have unanimously voted to suspend your membership of this Association."

The reasons are set out and it is then stated that:

"Because of these irresponsible acts I have no option but to suspend your membership for three months as from today under section 37 and 38 of the Constitution. As such you are no longer the President of the Honiara Sinta Branch."

It was also pointed out that he had a right of appeal under section 37. The right of appeal under that section is to the "Annual or to an Extraordinary General Meeting." Although the letter refers to his suspension under both section 37 and 38, I presume the reference only to the appeal procedure under the former shows his suspension was, in fact, under that section.

By originating summons, Mr O'Brien seeks the answer to two questions challenging the result of the meeting of the Executive Council on the 18th August:

- "1. Did the executive of SINTA have a quorum at its meeting on 18 August 1989 in accordance with Section 31 of SINTA's Constitution?
2. Did the executive of SINTA have power at that said meeting to suspend the plaintiff's membership of SINTA and remove him from his office of President of the Honiara Branch of SINTA? "

A third question seeking a declaration as to the right of one of the Council members to be a member of the Executive is no longer pursued.

The constitution of the Union provides that, subject to the supreme authority of the general meeting, the government and management of the affairs of the Union are vested in the Executive Council. By section 30 the Council consists of the President, two Vice Presidents, the General Secretary, Assistant General Secretary, Treasurer and two representatives from each of the Provincial Committees, giving a total of 18.

By section 31, "Not less than fifty per centum of the total number of members of the Executive Council shall form a quorum." By section 45 the General Secretary is a 'non-voting member' of the Council. In view of the reference to the 'total number of members' it would appear he is to be counted when deciding the quorum.

On the 18th August, the Council meeting was attended by the President, one Vice President, the General Secretary, the assistant General Secretary and the Treasurer. As that constituted only 28% of the total members it was clearly not quorate and the reference in the letter to a unanimous vote therefore refers only to those 4 votes.

The affidavit of Mr Aihunu, the General Secretary, explained what happened after the letter was sent.

"9. On 13th September 1989, the Executive issued Executive Council paper 01/89 seeking further approval by Executive Council members not present at the meeting on 18th August, 1989. This was done by a circular dispatched to Executive Council members in the Provinces on or about 8th November 1989.

10. The members signed and returned the circular to SINTA office and then all Executive Council Members approved the suspension of the Plaintiff."

The latter statement is not accurate. Twenty names are listed on that document and, apart from the 4 members who voted at the meeting itself, only 10 members expressed any view. (The names, properly, do not include the General Secretary and no explanation is given as to why the document has 20 names.)

Mr Kama, for the Union, tells the Court that this has been standard procedure for some time because the Provincial members are so dispersed. If they were always brought all the way to Honiara, it would be far too expensive for the Union. He argues that it is not necessary for the members to attend at the

meeting to make up the quorum so long as they are involved in the decision.

I cannot accept that. A quorum is by definition the maximum number of people who make a valid meeting. Section 31 of the Union constitution provides that "the Executive Committee (sic) shall meet" and section 32 provides for the disqualification from office of a member who fails to attend three consecutive meetings. It is perfectly clear that the Council should have met in the physical sense.

If the Union now finds the provisions of the Constitution are too onerous or impractical, they should change the Constitution by general meeting. They are not entitled, arbitrarily, simply to ignore its provisions. Mr Kama accepts there is no provision in the Constitution for such decision by circulation of papers. Even if there had been, I do not believe it could have covered this case. This was not a case of the Council making a decision with each member taking part by circulation of papers. It is quite clear from the letter of 18th August that the decision made by the 4 members was made that day and regarded as final - the suspension is stated to be effective 'as from today'. It may be that the subsequent views of the remaining members who replied supported that decision but it was too late to do anything about it. In fact, by the time the majority signed the paper, there were only 10 days of the period of suspension left.

I have to say I have grave doubts about the truth of the suggestion that this was standard procedure. It seems far more likely that the office holders on the Council are simply running the Union in disregard of the safeguards and rules of the constitution by making decisions without bothering to consult the majority of the Council members. That would explain, for example, why the circular in this case prepared in September 1989 was numbered 01/89 when, under the requirements of section 31 of the Constitution, the Executive Council must have met at least twice before that year and should, presumably, have sent similar circulars each time.

It was pointed out by Mr Radclyffe, for the plaintiff, that the date shows the circular was only sent out after the plaintiff had taken legal advice and was an apparent attempt by the council to cover up for the manner in which the decision had been made. That seems to me to be the position. Having heard the decision was likely to be challenged, the Council attempted to make it look less arbitrary by the apparent participation of the members who, until that time, had not been consulted.

I do not need to go further. It is perfectly clear that there was no quorum on 18th August and there was therefore no valid meeting. It follows that any decision to suspend the plaintiff from membership or to remove him as President of the Honiara branch was invalid.

The answer to both questions is No.

I finally mention one further matter. The Union constitution provides for an appeal to the Association in general meeting. Where a member of a voluntary association has accepted rules that give the executive power to enforce discipline with penalties where necessary and provide for an appeal from the exercise of such powers, that procedure should normally be followed. The granting of a declaration is discretionary and the Court will not normally interfere if the disgruntled member has failed to avail himself of the remedies provided.

In this case, I feel Mr O'Brien had good reason for feeling the appeal would not have helped. The next Annual General Meeting was to be in November by which time his suspension would be nearly complete. The Executive had already shown itself willing to act totally outside the rules of the Association and had imposed a severe penalty without giving him any chance of reply. The Executive Council had circulated a paper to the provincial representatives setting out their side of the matter and seeking to persuade those members to their view. This was prior to the Annual General Meeting at which they were voting members.

In those circumstances I feel the Court should provide a remedy that he may otherwise have been denied.

Costs to the plaintiff.

(F.G.R. Ward)
CHIEF JUSTICE