

S. I. NATIONAL UNION OF WORKERS -v- SOLOMON TELEKOM COMPANY LTD

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 94 of 1991

Hearing: 6 June 1991

Judgment: 17 June 1991

G. Suri for the Applicant

J. Corrin for the Respondent

WARD CJ: On 30th July 1990, the respondent (the Company) entered into a collective agreement with the Solomon Islands Telekom Workers Union which was the "in house" union representing the employees at that time.

The agreement was headed -

"This document records the agreement between the management of Solomon Telekom and the SITWU concerning the pay award for the two years from 1st April 1990."

The terms of that agreement were implemented but, soon after, support for SITWU declined and, in August, the applicant union, Solomon Islands National Union of Workers, (the Union) sought recognition by the respondent. The Company refused the request and so the Union referred it to the Trade Disputes Panel which conducted a secret ballot. After considerable prevarication by the Company, the Panel ordered it to grant the Union full recognition and a recognition agreement was signed. Following that recognition, the Union sought to negotiate new terms for the year 1991 - 1992 but the Company refused taking the position that the collective agreement negotiated with SITWU was still in force until April 1992.

The Company has referred the dispute over the validity of the collective agreement to the Trade Disputes Panel but the Union now comes to this Court seeking the following declarations and orders:-

1. *a declaration that the Applicant was and is not a party to the 1990 Collective Agreement entered into between the Respondent and its Inhouse Union.*
2. *a declaration that the said agreement is not binding on the Applicant, and*
3. *an order that the Respondent enter into fresh collective agreement with*

the Applicant, and

4. *an order that the benefits and terms and conditions of service currently enjoyed by the employees of the Respondent to continue until the new Collective Agreement referred to in paragraph (3) comes into operation;"*

The Union's position is basically that, as a Union is the principal in the collective negotiations, it is also a party to the agreement and the members become the beneficiaries. In this case, as the SINUW was not a party to the agreement it cannot be bound by it. The present agreement was negotiated by SITWU and so it remains, as Mr Suri puts it, their property and is nothing to do with SINUW.

The respondent suggests a union negotiates as an agent of the employees and the terms of the collective agreement take the place of individual contracts of employment. The agreement was for a two year period and so there is nothing left to negotiate.

Both sides have cited a number of authorities relating to the position in English law. I have considered those and other cases but the situation in England differs markedly from that in Solomon Islands and so their value is limited. In particular, the provisions of section 12 of our Trade Disputes Act result in a different status for the collective agreement.

Prior to 1971 in England it was not clear whether a collective agreement was or could be a binding contract. After a period of considerable controversy and dispute in the late 1960s, the British Government passed the Industrial Relations Act 1971. Section 34 of that act provided that a written collective agreement was conclusively presumed to be a legally enforceable contract unless the parties had by an express term agreed that it, or part it, was not intended to be legally enforceable. The section was never effective because it became almost automatic to insert disclaimer clauses such as "This is not a legally enforceable agreement" - usually at the request of the union. As a result, the Trade Unions and Labour Relations Act 1974 repealed the earlier provision and reversed the conclusive presumption.

Despite the fate of section 34 in England, when our Trade Disputes Act was passed in 1981 it adopted a similar provision:-

"12. *Every provision of a collective agreement which -*

- (a) *is made in writing after the commencement of this section, or*
- (b) *was registered under section 29 of the Trades Disputes Act 1976,*

shall be conclusively presumed to be intended by the parties to be legally enforceable, unless it is stated in the agreement that the agreement, or that provision, is intended not to be legally enforceable."

Thus that is the law in Solomon Islands. However, in order to consider the first and second declaration sought it is necessary to look further. Who, in terms of section 12, is a party to the agreement, who is bound by it and who is able to seek legal enforcement? It was in this context that counsel raised the status of the negotiating union in terms of principal or agent.

One of the fundamental differences between the employer and employee in relation to collective agreements is that the employer may be a party to the agreement but the employee cannot be. As he is not involved in the collective bargaining or the agreement itself, *res inter alios acta* applies. The Union, on the other hand, is a party and, I suggest, must be acting as a principal. The counter view that it is a agent would raise insurmountable problems in relation, for example, to non union employees affected by the agreement or employees who start with the company after the collective agreement has come into effect.

It seems clear that the true nature of a collective agreement is that it determines the form and contents of any subsequent individual contracts of employment. It cannot, in itself, create a contract of employment between the employer and an employee. Each contract is only created when the employer and employee decide to enter into it. When they do that, the terms of the collective agreement determine the extent of the terms and conditions of the contract.

Collective agreements have been described as a treaty and that is not an inappropriate descriptions. The question that is vital in this case is how far they may be considered to be binding and who they bind.

In general, collective agreements are intended to be binding. There would be little purpose in them if they were not. The effect of section 12 is to allow any party to a contract of employment which does not conform to the collective agreement, to enforce those terms as part of his contract. I do not feel section 12 goes any further than that.

As far as the union is concerned, it is a party to the agreement and may seek to enforce the agreement directly. Where the employer is a party it may also act directly against the union.

In this case, SINUW is not a party to that collective agreement and so it is neither bound by it nor is it able to enforce it as a principal under section 12. That can

only be done by the union that was a party, SITWU, or by employees on their individual contracts.

However, the fact SINUW is recognised by the Company but is not bound by the collective agreement does not remove the effect of the agreement. Each employee who accepted the terms of the agreement when it was implemented and every employee who has since accepted employment under those terms is bound by the agreement. Should an individual feel he is not being treated properly under those terms, he may, of course, use SINUW to bring the matter to the attention of the company by the normal negotiating procedures.

One of the terms of the agreement is that it should run for 2 years. Such a term is included to give a measure of certainty to both parties. For the employer it gives valuable assistance to future financial planning; for the employee it provides certainty as to the manner in which his contract may meet the demands of inflation. Having accepted the benefits of those terms, the parties to the employment contract are bound by the agreement as a whole.

As far as the declarations in paragraphs 1 and 2 are concerned, the applicant is entitled to those declaration. SINUW was not a party and is not bound by the terms but it must be remembered the members and other employees of the company who have accepted the terms are bound.

It follows, I cannot make the orders sought in paragraph 3. The order sought in paragraph 4 is therefore unnecessary and I do not make it.

No order for costs.

(F.G.R. Ward)
CHIEF JUSTICE