SOLOMON TAIYO LIMITED -v- S.I. NATIONAL UNION OF WORKERS

High Court of Solomon Islands
(Ward C.J.)
Civil Case No. 208 of 1990
Hearing: 23, 24, 25, 28, 29 and 30 October 1991
Judgment: 8 November 1991

J. Corrin for the Plaintiff
G. Suri for the Defendant

WARD CJ: On 15th August 1989, the plaintiff, Solomon Taiyo Limited (the Company) and the defendant, the Solomon Islands National Union of Workers (the Union) entered into a written Collective Agreement which was to remain in force for a period of at least 36 months from 1st April 1989.

The terms of that agreement included as Clause 11 -

"The parties shall not resort to strike or lock-out or any other direct industrial action until all negotiations have been completed and exhausted."

The agreement also provided that the contents of Appendix III relating to wages, allowances and incentives should be reviewed every 12 months. On 9th May 1990 negotiations commenced over that review together with a number of suggested amendments to the other Appendices. They continued until the afternoon of Friday 11th May at which point the Union representatives left the negotiations to attend a meeting they had previously arranged and, at that meeting, the employees of the Company voted to start an immediate strike.

The plaintiff claims the negotiations were not completed and exhausted, the strike was a breach of Clause 11 and sues for breach of contract against the Union. The Union denies there was a breach because the negotiations were ended or, if there was a breach, that it was not a party to such a breach because it was the individual employees who decided to go on strike and the Union did not call on them to do so.

The following day, Saturday 12th May, the Company referred the dispute to the Trade Disputes Panel with the result that the provisions of Section 10 of the Trade Disputes Act applied. The striking workers did not return to work until Tuesday 15th and full normal working was not resumed until Wednesday 16th. The plaintiff alternatively seeks relief under that section in the form of an order to compensate it for the loss suffered. The defendant denies it breached any of the provisions of section 10. The total sum claimed is $913,617.78 with interest and costs.

There is little dispute over the major facts despite the differences pleaded in the amended defence. There was evidence that, when the negotiations started, the Union turned up with too many representatives and at least a part of the first day was spent sorting out that situation. The plaintiff suggests that showed an immediate intention by the Union not to abide by the terms of the Collective Agreement. Similarly it is suggested the fact that Appendices I, II and IV were included in the negotiations when they should have been discussed separately, demonstrates a similar attitude.

It may well be that the first matter shows a willingness by the Union to be difficult but I feel it shows no more than that. Similarly, I can see no significance against the Union on the second point as it appears from the witnesses on both sides that all were in agreement that discussion of the other Appendices should be included and it is clear from the documents that two earlier attempts by the Union to arrange a meeting to discuss amendments to these Appendices had been thwarted by the Company. Further, I am far from convinced that the words in the Collective Agreement under the heading "Amendments" means any more than that the party suggesting the amendments should be limited to discussion of those of which he gives notice.

Prior to the signing of the Collective Agreement in August 1989, the Union and the Company had signed another, brief, Memorandum of Agreement on 3rd July 1989 setting certain wage increases and providing *"that the interpretation of the legal minimum wage shall be referred to the Competent Court for general interpretation."* This had arisen from a difference of opinion whether the Labour (Minimum Rates of Labour) Order 1988 applied to Noro. Unfortunately the memorandum did not state which party should refer the matter to the court and so it had not been done by the time the negotiations started in May 1990.

Prior to those negotiations, in April 1990, the Union submitted the outline of their claims showing it sought both an across the board increase of 14.9% and the introduction of a minimum hourly or daily wage. The Company had obtained legal advice that the Labour Order did not apply and was not willing to agree to a minimum wage. Their initial offer was 6% increase on wages and 10% on allowances.

As Appendices I, II and IV were discussed first, the wage negotiations on Appendix III did not start until Thursday 10th. Both sides changed their positions and, by Friday, the Company had increased their offer to an 8% increase across the board of wages and allowances on top of an unnegotiated increase of 5% on wages given on 1st January 1990. The Union, however, continued pressing for the implementation of a minimum wage and finally indicated it was willing to forego even the 8% increase if such a pay structure was introduced.

After the Thursday meeting, the Company's negotiators had adjourned to consult the management in Honiara and it was on Friday that the leader of the negotiating team offered, with a written explanation, 8% but refused the minimum legal wage. It explained the Company's approach to the negotiations and referred to the fact management was willing to "*reconsider the matter respecting the request of its workers through the Union as how best it can justify an increase on wages alone when it is unable to meet both demands.*" It goes on to explain the 8% offer was in addition to the earlier increase thus making an overall increase of 13% which was above the cost of living increase of 10.8%. It concluded:-

> "*Managements final offer therefore is 8% across the board on wages and allowances and has done so in good faith as explained.*
>
> *Please consider this offer as our genuine effort to keep within the COL margin and we hope you will accept our reasoning to accept this final offer as you had said you would also respect our interests.*"

The defendant claims the rejection of the proposal for a minimum legal wage and the repetition of the reference to a final offer viewed against the Union's position that it was principally interested in obtaining a minimum legal wage and was willing to forego any increase if it was introduced left the Union convinced that negotiations had been completed and exhausted. The Company say the use of the expression "final offer" was simply a negotiating ploy and they were certainly willing to continue negotiating. That was the point reached on Friday afternoon when the Union left the negotiations to attend the meeting of workers.

Some of the witnesses suggested the negotiations on Appendix III only commenced on Friday. On the evidence as a whole I accept they started on Thursday and continued on Friday. I accept also that the union meeting had been arranged before the Friday and was a normal procedure for the Union to inform the employees about the state of the negotiations.

The meeting was given details of the Company's offer and was told the Company was not willing to discuss the minimum legal wage. It is not without significance to the consideration of the Defendant's contention that it felt the negotiations could go no

further that the Union officials did not ask for a mandate to negotiate further. Instead they advised that the matter should go to the Trade Disputes Panel or the High Court. However, the reaction of the workers, when they heard the minimum legal wage was not to be considered, was to call for a strike and the Union officials conducted a vote to ascertain the support for it.

I deal with the claim for breach of contract.

By section 12 of the Trade Disputes Act, every provision of this Collective Agreement shall be conclusively presumed to be intended by the parties to be legally enforceable. The parties to it are the Union and the Company and, if the Union has breached it, the plaintiff can succeed. The individual workers are not parties and so their action cannot be a breach of the Collective Agreement itself. Thus it follows that the claim must be based on the actions of the Union in the form of its authorised officers. The actions of the workers may, of course, still be evidence of the Union's position.

The Company asserts that the negotiations were still continuing when the strike was called and that the Union itself took steps that could be considered to be resorting to strike action. The burden of proving both elements is on the plaintiff.

It is agreed by the plaintiff's witnesses that the Company was unwilling to discuss the minimum legal wage. Miss Corrin urges the issue had been withdrawn from the negotiations by the provision, in the 3rd July Agreement, that it be referred to a competent court. That Agreement was to be read with the Collective Agreement and so the Union could not raise it in the review of Appendix III. She further suggests that the 15th August Agreement provided for an annual review of wages, allowances and incentives as specified in Appendix III and that the attempt to introduce a minimum legal wage was not a review but a complete restructuring of the wage system.

I do not accept those arguments. The requirement that the minimum legal wage be referred to a competent court was directed to ascertaining whether the 1988 order applied to Noro. The Company had obtained legal advice that it did not but that does not mean that the Union was precluded from trying to have it applied by agreement and it was a legitimate matter to use in negotiation on the topics covered by Appendix III.

However, that apart, the evidence showed clearly that by 3.30 p.m. on the Friday, the union was not prepared to accept the Company's offer. The Company representatives, after consultation with the management in Honiara, told the Union it was the final offer. I am not satisfied the plaintiffs have proved on a balance of

probabilities that the negotiations were still viable. On the contrary, the evidence as a whole satisfies me the Union believed and were right to believe that they had been told the final position. They knew it was unacceptable and so the negotiations were complete and exhausted. There was evidence that, once the strike had started, the General Secretary tried to persuade the Company to let him and Manakako take over the negotiations. I consider that as evidence that he was willing and anxious to do anything to stop the strike and not evidence that he personally considered the negotiations had not been exhausted.

In such a case, the strike was not in breach of Clause 11 so the question of whether or not the Union resorted to strike action in terms of Clause 11 need not arise. Had it been necessary to pass to that matter I would have found the Union did not resort to strike action. As will be seen later, the conduct of the Union officials at the meeting on Friday in arranging a vote on strike action does fall within the meaning of organising a strike but for the plaintiff to prove that the Union, as a party to the agreement, resorted to strike action requires more. I accept the officials went to the meeting with no intention of calling a strike. After the workers voted to strike, the officials called a number of meetings to try and persuade the workers to return to work because of the referral to the Panel. The Court was told that the General Secretary had not authorised the officials to resort to strike action without direct authorisation from him. I accept the evidence of all those matters. In such a case, even had I found the Union officials did resort to strike action, it would have been questionable whether such an unauthorised act could bind the Union unless there was evidence it accepted their actions.

I am satisfied on balance that the Union did not resort to strike action and tried to prevent the workers from doing so. The action of the members was taken despite that advice and the Union cannot be liable in those circumstances.

The claim for breach of contract is dismissed with costs to the defendant.

I now consider the claim under Section 10 of the Trade Disputes Act.

There is again little dispute over the events following the calling of the strike at 5.00 p.m. on the 11th May except in the interpretation of those events in relation to the Union's involvement. On Saturday 12th, the Company referred the dispute to the Panel and when, the same day, they received a letter from the Secretary to the Panel accepting the referral, a copy was served on the Union officials in Noro and the General Secretary in Honiara.

Immediately after the workers had voted to go on strike, I accept that Kagovai telephoned the General Secretary, David Tuhanuku, in Honiara. He told him the employees had decided to go on strike despite his attempts to stop them. Tuhanuku told him to arrange a general meeting the next day and a meeting was arranged with the Workers Committee. Kagovai explained to the court that it was usual to deal with the Committee and then, through them, call a general meeting. Because of the difficulty in arranging for the Chairman of the Committee to return to Noro, that meeting could not take place until Saturday evening but, at the meeting, it was agreed a general meeting should be called the next day to explain that, under Section 10, the workers had to go back to work. That meeting took place between 8.00 and 10.00 on Sunday morning. The Union officials explained the requirements of Section 10 of the Act but the employees refused to go back. It is an unfortunate fact that, at that time, difficulties in appointing a Chairman resulted in the Trade Disputes Panel sitting very little. The employees expressed concern that, if they returned, the Panel would never hear the case and also, if some only returned immediately, the Company would dismiss those who were unable, because they lived further away, to return as quickly.

When this was communicated to the General Secretary in Honiara, he tried to see Manakako to obtain some reassurance on those matters but the Company's attitude was that it would not discuss anything under the duress of the strike. That same day, Tuhanuku also spoke to the Secretary to the Panel about this and as a result the Secretary wrote to him setting the hearing down for Thursday 17th. Tuhanuku then told the Union officials in Noro to call a meeting the next day and one was arranged for 2.00 p.m. on Monday. Before that meeting Tuhanuku succeeded in speaking to the Company officials in Honiara to try and obtain some safeguards regarding possible dismissals.

At the Monday meeting, the members again refused to go back and it was not until a further meeting was held at 7.00 p.m. at which the Secretary to the Panel spoke to the workers that they agreed to return.

During this period, some service messages were sent out. On the Saturday, the Secretary of the Panel sent one advising the workers of the referral and telling them to return to work. It was broadcast both that day and on Sunday. On Monday, the General Secretary sent out a message urging the members to attend the meeting at 2.00 p.m. and later in the day he sent out a message telling the men to go back to work by the start of the 5.00 p.m. shift if possible.

The evidence of what went on at the various meetings depends largely on the witnesses from the Union. The plaintiff has suggested that the general conduct of the Union officials over this period showed that they were in fact encouraging the members

to stay on strike. Evidence was called that, when a catcher boat arrived, the crew were encouraged by Union officials to stop work in breach of the Agreement to unload. The Union official involved explained that he was approached by the crew over payment of their wages and he had a heated discussion about it with Leni but he did not advise them to join the strike. I accept that was the case. One of the plaintiff's witnesses suggested the Union officials told the workers at the base not to go back to work. However, it became clear that account was based on hearsay and, as the evidence unfolded, I found it totally unreliable.

As far as the meetings are concerned, I accept the account given by the Union officials. The plaintiff's witnesses were not present except at the final one and no witness was called from the people present to contradict the Union witnesses. At the first meeting on Friday, I accept the officials suggested the members should consider using the Trade Disputes Panel or the High Court to pursue their claim for a minimum legal wage but the workers themselves called for a strike. However, once that call was made the Union officials arranged for a vote and accepted the clear view of the meeting that there was to be a strike. That was a clear case of organising a strike. Had they wished at that stage, to dissociate themselves from the strike, they should have closed the meeting and withdrawn.

The question the Court has to consider, in terms of liability however, is whether the Union did any of the things mentioned in Section 12(2)(a) namely - "*calling, organising, procuring or financing a strike*" after the referral of the dispute to the Panel on Saturday 12th.

It is clear that the strike had already commenced and the burden is on the plaintiff to demonstrate that the Union continued to organise it or do any of the things in Subsection (2)(a).

Having considered the evidence as a whole, I am satisfied on balance the Union officials did not want the strike in the first place and were trying to persuade the workers to return to work at each meeting after the referral to the Panel. I do not accept the evidence of the incident on the catcher boat shows anything to the contrary and I do not accept the suggestion they told the men not to return to work.

The General Secretary gave evidence that he was attempting to see the Company officials in Honiara to explain the worker's fears about dismissals. Miss Corrin suggests that is evidence he was assisting in organising the strike. I do not agree. It is equally reasonable to interpret his actions as showing a willingness to do anything to stop the strike. I accept he did not want this strike and, bearing in mind the burden of proof, I take the subsequent visits to the Company in his favour.

Miss Corrin suggests that all the actions of the Union officials subsequent to the referral whatever their purpose were clearly part of organising the strike and further suggests the Union should have done more to get the men back to work. In particular she suggests the General Secretary should have sent a service message telling the men to return to work before the one he put out on Monday. I find those arguments inconsistent.

Organising is not a term of act. It is to be given its normal meaning of making arrangements for a strike. As I have said, I accept the officials did that at the meeting on Friday but I must be satisfied they did so after the referral on Saturday. Clearly they called meetings but I do not find the plaintiffs have proved they were for any purpose other than trying to stop the strike. I do not consider they were arrangements for the strike. They did not in any way encourage or assist the strike to continue. The purpose of the Act, as Miss Corrin points out is to restrict industrial action. If every time a Union calls a meeting to try to stop a strike it is to be seen as organising it in breach of Section 10, the procedure will become useless. Indeed, the plaintiffs' criticism of the General Secretary for not sending out a service message sooner lies uneasily with the earlier suggestion because, by the plaintiff's interpretation, such a move in itself would be organising.

I do not find the plaintiffs have proved on balance that the Union, as distinct from the employees of the Company, have breached Section 10.

The claim is dismissed with costs to the defendant.

(F.G.R. Ward)
CHIEF JUSTICE