

ATTORNEY GENERAL -v- SOLOMON ISLANDS PUBLIC EMPLOYEES UNION

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 128 of 1991

Hearing: 16 July 1991

Judgment: 5 August 1991

P. Afeau for the Plaintiff

R. Teutao for the Defendant

WARD CJ: In 1990 the Solomon Islands Government decided to employ Permanent Secretaries on four year contracts which included substantially better terms as to salary and benefits than had been paid to Permanent Secretaries under the previous terms. Not surprisingly this action prompted the respondent, as the Union representing the majority of public employees, to make a number of claims to bring the terms and conditions of other public officers into line. As a result there was a rapid deterioration in relations between the Union and the Government and the latter wrote to the Union in April, 1991, to say it no longer recognised the Union as the representative of government employees.

On 19th April, the Union went on strike and, on 8th and 9th May, the Government referred the dispute to the Trade Disputes Panel. Included in the reference were a number of matters with which this Court need not concern itself save for one; a demand by the Union for immediate termination of the contracts of the Permanent Secretaries.

The Panel sat on the 10th May solely to decide two preliminary points raised by counsel and ruled that it had no jurisdiction to hear the demand for termination of the Permanent Secretaries contracts because of the overriding effect of section 137 of the Constitution. Following that decision, the members of the Union went back on strike over that single issue on 17th May 1991.

The Attorney General now comes to this Court seeking answers to six questions:-

1. *Whether the demand by the Defendant for the termination of the employment contracts of the fifteen Permanent Secretaries is a trade dispute within the meaning of the Trade Disputes Act 1981.*
2. *Whether strike action taken by the members of the Defendant trade union following the demand for the termination of the employment contracts of the Permanent Secretaries was in contemplation or furtherance of a trade dispute thereby giving the Defendant immunity under section 24 of the Trade Unions Act from civil suit.*
3. *Whether section 10(1) of the Trade Disputes Act, 1981 was breached when members of the Defendant trade union went on strike over one of the matters of dispute referred to the Trade Disputes Panel after the Panel ruled it had no jurisdiction to deal with the said matter, but prior to the Panel determining or dealing with the rest of the matters referred to the Panel as a trade dispute.*
4. *If the answer to paragraph 3 above is, yes, whether the Plaintiff is entitled to relief under section 10(5) and (6) of the Trade Disputes Act, 1981.*
5. *Whether the demand by the Defendant trade union for the termination of the employment contracts of the fifteen Permanent Secretaries and the ensuing strike action by the members of the Defendant trade union contravened section 137(4) of the Constitution.*
6. *If the answer to paragraph 4 above is, yes, whether the Plaintiff is entitled to relief under section 83 of the Constitution."*

In effect there are three matters raised and I shall deal with the questions in pairs.

Questions 1 and 2 seek the Court's ruling on the meaning of a trade dispute. The Panel was asked to determine the same question and Mr Teutao has suggested the plaintiff's proper course was to appeal that part of the decision. An appeal was lodged in relation to other matters and Mr Teutao suggests the inclusion of the point now is a late attempt to remedy the failure to raise it then. Mr Afeau argues that new matters have now arisen which allow him to seek the Court's ruling.

Clearly new events have occurred but the question for determination is exactly the same as that considered by the Panel and could have been appealed as Mr Teutao contends. The Attorney General did appeal the decision by the Panel that it had no jurisdiction and so Mr Commissioner Muria did not need to consider whether the demand by the Union was a trade dispute although he did consider much of the law involved. In the present case, the plaintiff needs a ruling on that point in order to consider the second question in relation to section 24 of the Trade Unions Act and so I shall deal with it now.

It can be taken shortly. The matter has been considered before by this Court in *SIBC v. SINUW* (1985/86) SILR 136 where Wood CJ ruled that a demand by employees for the dismissal of two top executives of the plaintiff was a trade dispute.

Trade Dispute is defined in the schedule to the Trade Disputes Act as -

"A dispute between employees and employerswhich is connected with

(b) engagement or non engagement or termination or suspension of employmentof one or more employees."

The ruling of Wood CJ clearly applies in this case and the matter is settled unless and until it is reconsidered by the Court of Appeal.

The second question refers to section 24 of the Trade Unions Act which reads

"No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or in furtherance of a trade dispute on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills"

In that Act the definition of trade dispute is -

"any dispute or difference between employers and employeesconnected with the employment or non-employment or the terms of employmentof any person"

Whilst this is a simpler definition than that in the schedule to the Trade Disputes Act, it is basically the same as was found in the case of *Attorney General -v- SIPEU* (1985/86) SILR 153 and I consider the ruling of Wood CJ in the *SIBC case* covers question 2 also.

Mr Afeau has suggested that the demand for termination of the Permanent Secretaries' contracts was so unreasonable the Union did not intend it to happen and was only using it as a bargaining lever to help its other demands. Thus the strike was not in furtherance of that dispute. I accept it may have been intended as a bargaining point so that, even if it failed, it would improve the Union's chances of success in the other matters of dispute but the test is whether it was in furtherance of a trade dispute. There is nothing before the Court to suggest the strike intended any result other than the termination of the Permanent Secretaries' contracts and that is a trade dispute.

Whether or not the Union's demand or the strike are reasonable is not a question for this Court once it is established it is done in furtherance of a trade dispute. This point also has been dealt with by Wood CJ in the unreported case of *Attorney General -v- SIPEU* Civil Case Number 109 of 1984 in which he relies on the judgment of Lord Diplock in the case of *N.W.L. Ltd -v- Woods* (1979) 1 WLR 1294 @ 1304.

Questions 1 and 2 must be answered in the affirmative.

The third and fourth questions require a consideration of section 10 of the Trade Disputes Act.

"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;"

It is clear that once a trade dispute is referred to the Panel and pending settlement on the making of an award, it would be a breach of section 10 to call a strike in furtherance of the dispute. This is an important provision. It means that, once a dispute is referred to the Panel, further action is stayed pending the Panel's finding. However, it is only to prevent any industrial action in furtherance of the dispute the Panel is to consider.

In this case, all the other matters referred to the Panel were covered by section 10 and the strike could not lawfully continue in furtherance of them but the Panel had declined jurisdiction to consider termination of the Permanent Secretaries' contracts. The purpose of the Act to encourage settlement was no longer applicable and the assistance of the Panel was no longer available to resolve that dispute. It means that the Panel can never, in terms of section 10, bring about a settlement or make an award in that particular dispute. In those circumstances, it cannot be said that the dispute continues to be referred to the Panel and the parties are not subject to the restriction in section 10(2).

The Panel has accepted the reference of the remaining matters and, as has already been stated, a strike in support of those claims would breach the section. Mr Afeau suggests that, as long as they are before the Panel, the Union is prevented from striking at all. I do not accept that the intention of section 10 and the Act generally is that the reference to the Panel of one dispute should act as a total bar on the parties taking industrial action on any other until the first is decided.

Question 3 must be answered in the negative and I do not need, therefore, to consider Question 4.

The effect of section 137(4) of the Constitution, which is referred to in Questions 5 and 6, was considered by Mr Commissioner Muria in the appeal from the Panel's finding. The learned Commissioner dealt extensively with the question of whether consideration by the Panel of this demand would amount to a breach of section 137(4). The basis of the Panel's decision to decline jurisdiction had been that it would and the learned Commissioner upheld that decision. With respect, I agree.

On the basis of that ruling, the Attorney General by Question 5 seeks to take the matter a stage further. Mr Afeau suggests that, if the Panel would be in breach of section 137(4) if it considered the demand to terminate the Permanent Secretaries' contracts, so also was the Union when it demanded the same thing.

Section 137 (4) reads -

"In the exercise of their function under this Constitution, no such Commission shall be subject to the direction or control of any other person or authority except where otherwise provided by this Constitution."

It is a strong statement of the independence of the constitutional Commissions and quite clearly if the Panel was to give a ruling on the termination of the Permanent Secretaries' contracts it would be in breach of subsection (4) as has already been found by the Panel.

In answering Question 5, this Court must consider whether the action of the Union in demanding the termination amounted to direction or control by them of the Public Service Commission. Did the demand by the Union to the Government in any way direct the Public Service Commission to terminate the Permanent Secretaries' employment or exercise a control over the Public Service Commission on the same matter?

Obviously the Union hopes to influence the Government in such a way that it may ask the Commission to consider the question but it cannot be said that the demand could ever amount to an improper influence on the Commission. A request for something to happen - and that is all a demand is albeit forcefully phrased - does not prevent the other side from considering it and refusing it if it wishes or refusing even to consider it. The answer to Question 5 is clearly No and it is unnecessary to consider Question 6.

The applicant having failed to obtain the declarations he sought, the respondent is entitled to his costs.

(F.G.R. Ward)
CHIEF JUSTICE