

SOLOMON ISLANDS ELECTRICITY AUTHORITY –V- SOLOMON ISLANDS NATIONAL UNION OF WORKERS

Industrial Law-interpretation of power in Panel to make award-jurisdiction of High Court in appeal case.

Trade Disputes Act (cap 75) s. 6

The employer of an officer of the Electricity Authority appealed a ruling of the Trade Disputes Panel whereby the Panel ruled that it has the power to make an order to direct or compel an employer to dismiss an employee where justifiable by the Panel and that such order would constitute an “award” in accordance with the Act. The terms of the appeal appear from the ruling.

- Held:*
1. Where a “dispute” exists and the Panel has cognizance of it for the purposes of an award, the court cannot circumscribe the prescriptive powers of the Panel by reference to a particular award made between the employer and a union on its members behalf.
 2. Having found a “dispute” *a fortiori* the Panel is bound to enquire into that dispute and make an award.

Cases cited:

R –v- Commonwealth Ct of Conciliation and Arbn. and Merchant Service Guild of Australasia, Exp Taylor, [Allen] and Co Ltd, Ex p Golf SS Co Ltd, Ex p Holyman, [William] & Sons Ltd [1912] 15 CLR 586

The following additional case was mentioned:

Rookes –v- Barnard (1964) 1 ALL ER 367

James Apaniai for the Respondent

Andrew Radclyffe for the Appellant

Appeal from ruling of Disputes Panel.

Date of Hearing: 30 June 2004

Date of Judgment: 6 July 2004

Brown PJ. As a consequence of an “Award” made by the Trade Disputes Panel, the appellant comes to this court claiming –

1. The Panel erred in law in deciding that a decision or an order to terminate an employee, where justifiable, could be "an award" for the purposes of section 6 of the Act.
2. The Panel erred in law in ruling that the Panel has the power to direct or compel an employer to dismiss an employee.

Both counsel have assisted me considerably with their arguments on these questions and I proposed to use part of the respondent's submission to illustrate the facts and circumstances which have given rise to this appeal.

The employees of the Solomon Islands Electricity Authority who are members of the National Union of Workers have demanded in a petition dated the 24th March 2004 (the petition) that the Authority's Administration manager be removed from employment. On the 1st April 2004 the National Union of Workers filed a dispute with the Panel based on a petition. On the 26th April 2004 the Electricity Authority also filed a dispute with the Panel. The dispute was common in both references and was centered on the petition. On the 29th April 2004 Electricity Authority referred preliminary issues to the Panel for ruling. The issues were that the Panel had no power to order the Authority to dismiss the Administration Manager – that the Panel only has the power to make an award; and that an order to dismiss an employee would not amount to an "award" for the purposes of the Trade Dispute Act (Cap.75)(The Act). On the 3rd June 2004 the Panel ruled it has the power to make an order or direct or compel an employer to dismiss an employee where justifiable and that such would constitute an "award".

The Electricity Authority now comes to this Court by way of appeal against this ruling by the Panel.

There is no dispute that both have referred this petition to the Trade Disputes Panel or that a Trade Dispute has arisen in terms of the petition. What the Electricity Authority says, however, is that the Trade Dispute Panel is effectively estopped by the terms of the collective agreement dated the 1st January 2000 made between the Authority and members of the National Union of Workers recognizing the right of the employer to "conduct his business and manage his operations and for this purpose to engage, promote, demote, suspend, lay-off or terminate the employment of any employee, to decide the times methods and manner of working and the type of work to be done, to introduce technical authorizations or improvements, and modify, extend, or cease operations."

The appellant submits that the Union petition to have the officer of the Authority, the Manager-Administration, dismissed interferes with the Authority's right to conduct business as it sees fit and is in conflict with Clause 9.1 of the collective agreement. Were the Electricity Authority to submit to the demands of the Union, such submission and termination of the Managers employment would amount to unlawful interference with

the contractual relations between the Electricity Authority and its employee, the Manager- Administration, which may give rise to a claim for breach of employment contract.

The Trade Dispute Act (Cap.75) s.6 (1) provides

"where a Trade Dispute is referred to the Trade Dispute Panel and (where or not they have offered assistance under section 4) the Panel is not of the opinion that the dispute is likely to be settled by negotiation, they shall themselves enquire into the dispute and shall make an award.

(2)..

(3) in inquiring into a dispute under this section the Panel shall, as well as giving the parties to the dispute an opportunity of submitting evidence (either orally or in writing), also give such an opportunity to the Minister, and may give such an opportunity to any person who, in their opinion, has an interest in the dispute.

(4) The Panel shall in considering what award to make in any Trade Dispute, take account not only of the interests of the parties to the dispute but also the likely effect of the award on other persons and on the economy as a whole."

It can be seen then from a reading of sub-paragraph (1) that there is a mandatory obligation on the Panel to make an award. This is apparent when one reads the imperative "shall" used in the subsection.

Although both counsel referred to *Rookes -v- Barnard* (1964) 1 ALL ER 367, I have not been assisted by the case for factually it bears little resemblance to the matters in issue in this appeal before the court. I have been assisted however by counsel's discussion in relation to the term *Trade Dispute*. That term has echoes in the term "industrial dispute" in the Australian Constitution; Section 51(XXV) which "connotes a real and substantive difference having some element of the persistency, and likely, if not adjusted, to endanger the industrial place of the community. Such a dispute is not created by a near formal demand and a formal refusal." (*R -v- Commonwealth Ct of Conciliation and Arbn. and Merchant Service Guild of Australasia, Exp Taylor, [Allen] and Co Ltd, Ex p Golf SS Co Ltd, Ex p Holyman, [William] & Sons Ltd* [1912] 15 CLR 586).

I accept that this court has two issues before it. The first is to find a connection with one or more of the matters listed in the schedule to the Act [definition] section] and by common consent [for both parties have referred the dispute to the Panel] a sufficient connection with the matters in that definition to afford the reference to the Trade Dispute Panel. There is not doubt that is the case.

The second issue, to which Mr. Apaniai obliquely points, is that issue expressed in the *Commonwealth Court of Conciliation Case*; that the dispute will, if not adjusted, likely endanger the industrial peace of the community. Sub-paragraph 4 of the Section echoes that consideration.

It is a misconception on the applicant's part (understandable in view of the apparent sole discretion in the employer to deal with incidents of employment) to impliedly suggest that the Panel may enter upon the dispute by taking account of all matters which should weigh on their collective minds but invest the terms of the collective agreement with an inviolate right. The Panel is entitled to take a subjective view of all matters that it considers relevant and may place what weight in its discretion it thinks appropriate when making an award. It is not for this court to presume to constrain the very wide prescriptive powers of the Panel to adjust relationships which endanger the industrial peace of the community. The Panel is not a party to the collective agreement between the employer and the union (and cannot be bound by such) and its prescription under legislation encompasses a wider ranging imperative than the immediate relations between the employer and employee.

Having accepted a Trade Dispute, *a fortiori* the Panel is bound to inquire into that dispute and make an award.

The appeal grounds are consequently not made out. The appeal is dismissed. The appellant shall pay the respondents costs.