Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE JUDICIAL REVIEW COURT

SUIT NO. M.122 OF 1998

IN THE MATTER of an application by **CREMO LIMITED** for leave to apply for Orders of .CERTIORARI AND PROHIBITION

AND

IN THE MATTER of a Reference by the Minister of Labour, Social Security and Sport to the INDUSTRIAL DISPUTES TRIBUNAL in pursuance of Section 11A [1] [a] [i] of the Labour Relations and Industrial Disputes Act.

Hector Robinson instructed by Patterson, Phillipson & Graham for Applicant

Miss Sheryl Lewis instructed by Director of State Proceedings for the Minister of Labour, Social Security & Sport

HEARD: February 22, 23, 24 and March 24 ,1999

REASONS FOR JUDGMENT

WALKER J.

Cremo Limited (the company) is a company incorporated under the Laws of Jamaica carrying on the business of manufacturing and selling dairy products, fruit juices and other food products at its factory located at 284 Spanish Town Road in the parish of Saint Andrew.

By these proceedings the company sought relief as follows:-

1. An Order of Certiorari to remove into this Honourable Court and to quash the decision of the Minister of Labour, Social Security and Sport made on May 15, 1998 to refer an alleged dispute between the Applicant and the University and Allied Workers Union to the Industrial Disputes Tribunal pursuant to Section 11A [1] [a] [i] of the Labour Relations and Industrial Disputes Act;

2. An Order of Prohibition to prohibit the Industrial Disputes Tribunal from proceeding upon the reference;

3. An order that the costs of and occasioned by this Application be the Applicant's; and

4. Such further or other Order as to this Honourable Court seems just.

The company's application was based on the following grounds:

(a) That the Minister of Labour, Social Security and Sport in referring the dispute to the Industrial Disputes Tribunal acted ultra vires and in excess of her statutory powers under the Labour Relations and Industrial Disputes Act.

(b) That the legal basis on which the Minister is authorised to make a reference to the Industrial Disputes Tribunal does not exist in this case.

(c) That the reference by the Minister of the said dispute to the Industrial Disputes Tribunal constitutes a denial by the Minister of the Applicant's legitimate expectation that the Minister would act according to the Law.

FACTUAL BACKGROUND TO THE APPLICATION

Robert Matt was an employee of the company between March, 1983 and September 25, 1995 when he was dismissed. His dismissal followed upon an incident which occurred on July 8, 1995 and in which Mr. Matt is alleged to have wounded another employee in the course of a strike at the company's factory. Mr. Matt had been formally charged with the offence of wounding arising out of the incident but eventually acquitted of that charge. It was alleged that subsequent attempts by the company to institute disciplinary proceedings against Mr. Matt were obstructed by Mr. Matt who, in the process, was insubordinate and abusive to the company's personnel manager. So it was that Mr. Matt was dismissed on September 25, 1995. At this time the company tendered to Mr. Matt a cheque representing the following amounts due to him:

> (a) "six weeks wages in lieu of notice - such six weeks, being the notice period, calculated in accordance with his years of service pursuant to the Employment (Termination and Redundancy Payments) Act; and
>
> (b) four weeks' pay for unused vacation leave pursuant to the Holidays With Pay Act."

In due course this cheque was returned to the company uncashed by Mr. Matt.

By letter dated October 17, 1995 the University and Allied Workers Union (the UAWU), which at the time held representational rights for production workers of the company, wrote to the Ministry of Labour, Social Security and Sport (the Ministry) requesting assistance in settling what was described in that letter as "a dispute" between the UAWU and the company relative to Mr. Matt's dismissal. Subsequently, two conciliation meetings were held at the Ministry, the first on December 4, 1995 and the

second on March 27, 1996. Both meetings were to no avail, the company maintaining that Mr. Matt's dismissal was justified and the UAWU maintaining a contrary position. On April 1, 1996, following upon a representational rights poll, the Bustamante Industrial Trade Union (BITU) replaced the UAWU as representative of the production workers of the company and the UAWU so informed the Ministry officially by letter dated July 9, 1996. Thereafter this dispute was addressed by the BITU but the company refused to entertain the matter while contending that the UAWU had lost its bargaining rights and that the BITU did not represent Mr. Matt at the time of his dismissal and, therefore, had no locus standi in the matter. Finally a third conciliation meeting was held on April 6, 1998 at which time the parties remained locked in their respective positions. In these circumstances the Minister of Labour, Social Security and Sport considered that any further meetings at the conciliatory level would be futile, and she determined that the dispute should be referred to the Industrial Disputes Tribunal (the Tribunal) for settlement. This was done by letter dated May 15, 1998 in which the terms of reference of the Tribunal were stated as follows:

> "To determine and settle the dispute between Cremo Limited on the one hand, and the University and Allied Workers Union on the other hand over the dismissal of Mr. Robert Matt."

This is the reference that was challenged before me on three grounds, although in making his submissions Mr. Robinson for the applicant conceded that in essence those grounds amounted to a single ground, the applicant's case having been sufficiently stated in ground (a).

On the basis of the arguments advanced by counsel on both sides, the result of this application turns on whether or not in making this reference to the Tribunal the Minister met the criteria prescribed in S. 11 (A) (1) (a) (i) of the Labour Relations and Industrial Disputes Act (the LRIDA) pursuant to which the reference was made. S. II (A) (1) (a) (i) reads as follows:

> " 11A-(1) Notwithstanding the provisions of sections 9, 10 and 11, where the Minister is satisfied that an industrial dispute exists in any undertaking and should be settled expeditiously, he may on his own initiative -
>
> (a) refer the dispute to the Tribunal for settlement -
>
> (i) if he is satisfied that attempts were made, without success, to settle the dispute by such other means as were available to the parties."

Section 2 of the LRIDA defines the term industrial dispute as:

> " a dispute between one or more employers or organizations representing employers and one or more workers or organizations representing workers, where such dispute relates wholly or partly to -
>
> (a) terms and conditions of employment, or the physical conditions in which any workers are required to work; or
>
> (b) engagement or non-engagement, or termination or suspension of employment, of one or more workers; or
>
> (c) allocation of work as between workers or groups of workers; or
>
> (d) any matter affecting the privileges, rights and duties of any employer or organization representing employers or of any worker or organization representing workers."

What then is the scheme and policy of the LRIDA? In this regard my own views accord entirely with the opinions of their Lordships of the Full Court of the Supreme Court (Smith C.J., Theobalds and Gordon J.J.) as expressed in ***R v Minister of Labour and Employment, The Industrial Tribunal, Devon Barrett, Lionel Henry and Lloyd Dawkins ex-parte West Indies Yeast Co. Ltd.*** (1985) 22 JLR 407. There it was held, inter alia, that;

> "In order for the Minister to invoke his discretion and make a reference to the Industrial Tribunal under section 11A, it is essential that a dispute exists which threatens, inter alia, industrial peace in the particular undertaking."

At page 412 H - I in referring to the Minister of Labour and Employment Smith C.J. said:

> "What s. 11A clearly does is to give the Minister freedom to intervene and take action in respect of any industrial dispute in spite of the restrictive procedures which the other sections require. However, in my opinion, he is not authorised to act with complete freedom. His powers are governed by the scheme and policy of the Act and by the express provisions of the section.
>
> I agree with the contention of counsel for the applicant company that the Minister is authorised to act only in the public or national interest or in the interest of industrial peace. In my view, he has no authority to act in the interest of a dismissed ex-employee where his dismissal has not given rise to a dispute which threatens industrial peace, as would occur if, for example, he is represented in his dispute by a trade union which also represents workers currently employed to his former employer who may take industrial action if the dispute is not settled."

Again at p. 413 C the Learned Chief Justice declared :

> "It is a fundamental requirement, expressly stated in s. 11A as in ss. 9 and 10 that the industrial dispute should exist in an undertaking before it can be referred for settlement to the Tribunal. It therefore seems obvious that the Minister's power to make a reference must be exercised so as to

> endeavour to ensure industrial peace in the undertaking in which the dispute exists and not merely to satisfy some narrow personal interest. In this case, the applicant company's managing director has stated that there has been no cessation of work or any disruption of, or interference with, the production of the applicant's plant as a result of the termination of the employment of the three ex-employees. He said that at all material times industrial peace and stability have existed and still existed between the company and its workers up to the date he swore his affidavit on 29 March 1984. The Minister's reference was made almost two years after the dismissal of the employees."

Was the Minister here concerned with an industrial dispute within the contemplation of s. 11A? I am not so persuaded. The Minister is not at large to act, and may not act, as arbiter in every instance where there is a dispute between an employer and a worker, even if such dispute be one that occurs in the course of employment. The Minister is not statutorily cast in such a role. The power given to the Minister by s. 11A is properly invoked only in circumstances which are in conformity with the overall scheme of the Act, and after compliance with such conditions precedent as are prescribed in that section of the Act. In the instant case it is clear that the Minister's reference was not prompted by a need to achieve or to preserve industrial peace, nor was it made in the public or national interest. Robert Matt had become an ex-employee of the company on September 25, 1995 and ever since that time the company had enjoyed industrial peace. The resolution of the ongoing dispute between Mr. Matt and the company, one way or the other, posed no threat to that peace. In truth it seems to me that whatever the true nature of that dispute at its inception (i.e. September 25, 1995), by the time the Minister's reference was made on May 15, 1998, more than 2 1/2 years later, that dispute, far from

being an industrial dispute in the undertaking of Cremo Limited, was no more than what might be called a "one-on-one" dispute between the parties. In the circumstances the situation was not within the scheme of the Act and, therefore, the Minister was not authorised to act as she did.

It was also submitted on behalf of the applicant that against the background of the change of representational rights from the UAWU to the BITU the Minister's reference was, in its terms, misconceived and unsustainable. I found no merit in this submission as in my opinion the reference was not on that account fatally flawed, if flawed at all.

In the result it was for these reasons that on February 24, 1999 I granted this application with costs.