

~~SUPREME COURT JUDICATURE~~
KINGSTON
JAMAICA

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
SUIT NO. M. 27 of 1979

BETWEEN	JAMAICA TELEPHONE COMPANY LIMITED	APPLICANT
AND	NATIONAL WORKERS UNION	RESPONDENT

20th December, 1979

J. Leo-Rhynie for applicant.

Clinton Hines for Respondent Worker.

J U D G M E N T

Carey, J. :

This is a motion to set aside that portion of an award relating to the dismissal of the respondent in this matter before me, Kenneth Doyley, by the Jamaica Telephone Company Limited. The award was made by Dr. Carl Stone, in an award dated the 17th day of April, 1979, which I understand was published and delivered to the applicant on the 19th of April, of this year.

The grounds of motion are that:

- (1) That the said award on the face thereof is bad in law in that the said arbitrator has based his award upon propositions of law which are erroneous.
- (II) That the award is bad on the face of it in that it is inconsistent, uncertain and ambiguous.

The Arbitrator, Dr. Carl Stone, was required by the agreed terms of reference "to determine whether the Jamaica Telephone Company Limited was justified in dismissing", and there are a number of names including this applicant. The terms continue, "in the event that their dismissal is unjustified the Arbitrator is empowered to rule whether they should either (a) be paid a sum of money, as determined by him, as compensation, or (b) be reinstated."

- (5) The Company's evidence, however, was persuasive on the point that the amount of overtime paid far exceeded the volume of work involved.
- (6) The inference drawn from 3, 4 and 5 above is that some abuse was evidently taking place at the expense of the Telephone Company in the payment of overtime to Mr. Doyley. The sudden decline in gross overtime earnings over this period suggests that Mr. Doyley must have been aware, however vaguely, of this development.
- (7) The fact that Mr. Doyley was a beneficiary in what were clearly excessive overtime claims, makes him, in my view, a guilty party to this evident abuse of overtime pay.
- (8) The evidence presented by the Company, however, is not strong enough to determine the nature and degree of Mr. Doyley's guilt which could run anywhere from that of a conspiracy to defraud the Company to failure to report unearned overtime pay received. The abuse of the daily time sheet clouds this matter with an even thicker veil of uncertainty and speculation.
- (9) The Arbitrator is convinced that while Mr. Doyley is by no means blameless the vague and speculative character of the evidence does not provide a firm enough base to constitute reasonable evidence, justifying the ultimate sanction of dismissal.
- (9) (sic) There is, in my view, reasonable grounds for a lesser punishment such as suspension or repayment of overtime pay.
- (10) I can only conclude that the penalty imposed by the Company was influenced by the confessions of the other four technicians and the manifest dishonesty of the ex-Supervisor, Mr. Brown.

- (11) In the light of certain inferences that could be drawn from the evidence provided by the Company, and the speculative character of the guilt of Mr. Doyley, I can support the view that reasonable grounds existed to justify the dismissal.
- (12) Although it is outside of my terms of reference, I suggest that the Company scale down the punishment of Mr. Doyley to that of six months suspension.
- (13) Notwithstanding the legal status of that recommendation, it is my decision that in any event, Mr. Doyley should be reinstated.

It was clear from the arguments advanced by counsel on both sides that there must have been an error in law on the face of the award. Mr. Hines, on behalf of the respondent, sought to persuade the court that it ought, however, to remit the matter for clarification by the Arbitrator, and that approach is explicable only on the basis that there was an error on the face of the award.

When one examines the findings of fact of the Arbitrator, I cannot agree with the argument of Mr. Hines that they were confused or ambiguous. What the Arbitrator has plainly, in my judgment, found as a fact, is that Mr. Doyley was guilty of dishonesty. In his finding No. 1, the Arbitrator stated, "The volume of overtime earned by Mr. Doyley was far in excess of his own account of actual work done over the period." At (7), "The fact that Mr. Doyley was a beneficiary in what were clearly excessive overtime claims makes him, in my view, a guilty party to this evident abuse of overtime pay."

The Arbitrator, however, having regard to the evidence which was adduced before him, was quite unable to determine with any degree of accuracy the extent or degree of Mr. Doyley's guilt. I understand him to be saying that it was not clear whether Mr. Doyley had presented false claims or had claims entered on his behalf, or had done some work, or had done no work. His guilt

lay in the fact that he had knowingly, over a four month period, received payment to which he was not entitled. It is for that reason that he made his recommendation that the Company ought to impose a sanction less draconian than dismissal. So, as I said, I can find nothing that is unclear or imprecise with respect to his findings.

I was asked to remit the matter to the Arbitrator to clarify those findings numbered 7, 9 and 11, to enable him to clarify those findings in such a way as to identify whether the employee, Doyley, was found to have acted dishonestly, and, if so, whether it would be of a kind and gravity that would entitle the employers to dismiss him; and, further, for the Arbitrator to clarify whether from the evidence before him the employers had discharged the burden of proof imposed on them that they were justified in dismissing the employee, Doyley. As I have indicated, the Arbitrator has made a specific finding as to guilt in this case, and it would be a sleeveless errand to remit the matter to enable him to do what he has already done.

A number of cases have been cited before me and although I bear them in mind, I do not find it necessary to refer to any of them. It is enough to say that so far as this case is concerned, the Arbitrator was required to determine whether the Jamaica Telephone Company was justified in dismissing certain persons. The Arbitrator found all these persons were guilty of dishonesty, and in the case of five, he found that they had committed a criminal offence. In Doyley's case, he was unable to say whether he had or not. What he did say was that the evidence, such as it was, could place Mr. Doyley's involvement anywhere from that of conspiracy to defraud the company to failure to report unearned overtime pay received.

As I understand the law, once it is established that an employee is guilty of conduct involving dishonesty, albeit not proven to be a criminal offence, that would entitle an employer to dismiss an employee. It is a misconception, and I

fear the Arbitrator fell into error when he held that there was an obligation on the part of the company to provide evidence of fraud or conspiracy on Mr. Doyley's part. That is not the law. The company was entitled and justified in dismissing him, and in view of the findings of fact of the Arbitrator, that was the only conclusion which was open to him to arrive at.

There was, in the circumstances, an error on the face of the record which entitles the applicant to have the award set aside. The motion succeeds and that part of the award relating to the dismissal of the employee, Kenneth Doyley, by the company, made by Dr. Carl Stone in his award dated the 17th day of April, 1979, is set aside.

In his award, the Arbitrator found that five of the dismissed employees had been guilty of a criminal offence and accordingly their dismissal was, in the circumstances, justified. In so far as this applicant was concerned, he held that Mr. Doyley should be reinstated forthwith.

It was argued on behalf of the applicant that the Arbitrator had erred because he was of opinion that in order to justify the dismissal of the employee, Kenneth Doyley, it was necessary for the Company to prove conspiracy or fraud on the said employee's part. It was argued on behalf of the respondent, Mr. Doyley, that the award of the Arbitrator should be remitted to clarify a number of his findings as they were ambiguous and confused. Further, he had failed to isolate the clear findings of fact from principles of law which should apply to them.

It is necessary, therefore, to set out the precise findings made by the Arbitrator. He found as follows:

- (1) The volume of overtime earned by Mr. Doyley was far in excess of his own account of actual work done over the period January to April, 1977.
- (2) The Company, however, failed to provide any evidence of fraud or conspiracy on Mr. Doyley's part.
- (3) The fact that Mr. Doyley's overtime earnings declined substantially over the weeks on which persons other than Mr. Brown authorised payment does clearly suggest that whatever arrangements existed regarding Mr. Doyley's authorisation to do overtime were not known or approved by other management personnel.
- (4) The Company, in my view, failed to disturb Mr. Doyley's claim that he had authorisation to do overtime from Mr. Brown to carry out preventive maintenance on trunk lines.