

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. M-036 OF 1990

Regina v. Industrial Disputes Tribunal

ExParte Gayle's Supermarket and
Hardware Limited.

CORAM: -

THEOBALDS J., PATTERSON J. & JAMES (G) J. (AG.)

Appearances: D. Morrison & P. Foster, instructed by Dunn, Cox and Orrett
for applicant, Gayle's Supermarket and Hardware Limited.

Clarke Cousins and Andre Earle instructed by Rattray, Patterson
& Rattray for the National Workers Union.

The Industrial Disputes Tribunal was not represented.

Heard: 6th & 7th November, 1991

THEOBALDS, J.

I have read the draft judgment of my brother Patterson. It records
with complete accuracy and in precise terms the substance and details of our
pre-judgment discussions. To add anything could only be by way of repetition
which would detract from rather than embellish this judgment. I say no more.

PATTERSON, J.

The applicant, Gayle's Supermarket and Hardware Limited, applied by way of motion for an order of certiorari to remove into the Supreme Court and quash an award made by the Industrial Disputes Tribunal on the 28th March, 1990.

The award of the Industrial Disputes Tribunal (the I.D.T.) is as follows:-

"AWARD:

The Tribunal awards as follows:-

(a) INCREASED WAGES AND OTHER IMPROVED CONDITIONS OF EMPLOYMENT

(1) WAGES

An increase of 10% on the existing wages.

(2) VACATION LEAVE

Two weeks' vacation leave for each year of service effective from the date of this Award.

(3) OVERTIME WORK

Time and one-half pay for work done in excess of eight hours on a week-day or in excess of forty (40) hours per week.

(4) SATURDAYS AND SUNDAYS

Time and one-half pay for work done on Saturdays and double time for work done on Sundays.

(5) PUBLIC HOLIDAYS

Double time pay for work done on Public Holidays.

(6) PENSION PLAN

The Tribunal supports the introduction of a Pension Plan to be negotiated between the Company and the Union.

(7) SEVERANCE PAY

To be paid in accordance with statutory provisions.

(8) OUT-OF-BASE ALLOWANCE

(i) An allowance of \$25.00 per day to be paid to employees who work outside a radius of 10 miles but less than 20 miles away from base.

(ii) An allowance of \$40.00 per day to be paid to employees who work at a radius of 20 miles or over away from base.

The above allowance is to be paid with effect from
11th April, 1989.

Employees who are paid out-of-base allowance as indicated at (i) and (ii) above shall not receive lunch subsidy provided for under (9) below any day(s) for which out-of-base allowance is paid.

(9) LUNCH SUBSIDY

A lunch subsidy to be paid to all employees at the rate of \$5.00 per day.

(10) UNIFORMS

Three sets of uniforms to be provided to each employee during each year of service.

(11) LAUNDRY ALLOWANCE

A laundry allowance of \$20.00 per week to be paid to each employee.

(12) LIFE INSURANCE

The Tribunal supports the proposal that the Company and the Union negotiate a reasonable Life Insurance coverage for employees.

(13) SICK LEAVE

The Tribunal awards that sick leave be granted to workers up to a maximum of fourteen (14) days per annum in cases of illness effective from the date of this Award.

Unless otherwise stated the awards listed at (1) through (13) above shall be effective from 11th April, 1989.

(b) (14) DISMISSED WORKERS

FINDING

The tribunal finds that the services of the fifteen (15) workers were unjustifiably terminated.

AWARD

(i) The Tribunal awards that Gayle's Supermarket and Hardware/Gayle's Supermarket and Hardware Limited re-instate the following workers in their jobs on a date not later than 17th April, 1990 with payment of such retroactive wages as may be due to them from the date on which their services were terminated i.e. 4th January, 1985."

The grounds on which the relief is sought are as follows:-

- "(a) No poll was held by the Ministry of Labour, Welfare and Sports under the provisions of Section 5 of the Labour Relations and Industrial Disputes Act, 1975 to determine a claim for Bargaining Rights by the National Workers Union in relation to workers of the applicant. There was, therefore, at no time, any existing dispute between the National Workers Union and the Applicant as to the Bargaining Rights of the said Union. The latter not having had any relation whatsoever with the former under the Labour Relations and Industrial Disputes Act, 1975, the National Workers Union had no Bargaining Rights as defined in Section 2 of the Labour Relations and Industrial Disputes Act and S5. thereof.
- (b) In the alternative, but not conceding the Ground in (a), there has not been any industrial dispute between the Applicant and the National Workers Union within the meaning of Section 2 of the Labour Relations and Industrial Disputes Act, 1975.
- (c) If both or either (a) or (b) of these Grounds are valid, then the Minister was wrong in law in making a Reference to the Industrial Disputes Tribunal in which the Applicant was cited as a party and therefore the Industrial Disputes Tribunal did not have the power or authority to make any adjudication on the said reference.
- (d) The reference to the Industrial Disputes Tribunal is erroneous in law because the reference by the Minister pursuant to Section 11(A)(1)(a) as amended by the Labour Relations and Industrial Disputes (Amendment) Act 1978 assumed as proved that the National Workers Union had bargaining rights with the Applicant pursuant to the provisions of Section 5 of the Labour Relations and Industrial Disputes Act, 1975 which had to be found as a legal fact by the Tribunal as a ground for any award it may make.
- (e) The award is impeachable as an error in law on the face of the record because in response to the Tribunal's question as to whether either party had any objection to the terms of reference,

the Applicant made several submissions disputing the said terms of reference as being defective and when the Tribunal failed to obtain an admission from the Applicant that there was no dispute about the terms of reference, The Tribunal failed in its duty to refer the terms of reference to the Minister for clarification in the light of the objection raised by the Applicant.

DATED the 19th day of April, 1990".

Gayle Supermarket and Hardware Limited was incorporated under the Companies Act on the 16th June, 1986, and on the 16th June, 1988, it acquired ownership of the undertakings of Linton C. Gayle, a sole proprietor trading under the business name of Gayle's Supermarket and Hardware. Gayle Supermarket and Hardware Limited subsequently changed its name on the 29th July, 1988 to Gayle's Supermarket and Hardware Limited.

It is important that the chronological background leading up to these proceedings be fully appreciated at the very outset so that the critical issues involved in this motion may be understood.

In December, 1984, the National Workers Union (N.W.U) acting on behalf of the unionised workers employed to Linton C. Gayle, trading as Gayle's Supermarket and Hardware, served on him a claim for bargaining rights. It should be noted that this was at a time when the N.W.U. had not entered into a collective agreement with the employer of the workers, nor had a ballot been taken in accordance with the terms of the Labour Relations and Industrial Disputes Act, (the Act) to establish bargaining rights in relation to the workers. The N.W.U., therefore did not have the legal authority of bargaining rights, hence the claim.

Shortly after the N.W.U. served its claim, Linton C. Gayle dismissed fifteen of the unionised workers on the ground of redundancy. The N.W.U. then referred the matter to the Minister of Labour, for a ballot to be taken to determine bargaining rights. Eventually the Minister, having failed to settle the category of persons who were eligible to vote in the ballot, referred the matter to the I.D.T. for determination.

On the 14th November, 1985, the I.D.T. handed down an award to the effect that the fifteen dismissed workers were eligible to vote in the ballot

to establish the validity of the bargaining rights claimed by the N.W.U. in relation to the employees of Linton C. Gayle. Linton C. Gayle sought to quash the award of the I.D.T. in this regard by way of a motion for certiorari, but a Full Court of the Supreme Court dismissed the motion on the 6th July, 1987. Linton C. Gayle then filed an appeal against the order of the Full Court dismissing the motion, but before that appeal was heard, he filed a notice of abandonment dated the 12th July, 1988. Thus the way for holding the ballot in accordance with the award of the I.D.T. on the 14th November, 1985 was cleared.

The next important event took place on the 16th June, 1988 when Gayle Supermarket and Hardware Limited acquired the operations of Linton C. Gayle trading as Gayle's Supermarket and Hardware. The Managing Director of Gayle Supermarket and Hardware Limited was then Merrick Gayle, and the directorship of the company did not include Linton C. Gayle. The name of the company was changed on the 29th July, 1988 to Gayle's Supermarket and Hardware Limited.

By letter dated the 3rd October 1988, the Permanent Secretary, Ministry of Labour, wrote to Gayle's Supermarket and Hardware informing them that on the 12th October, 1988 the Minister of Labour would conduct a ballot to determine the bargaining rights claimed by the N.W.U. in 1984 in respect of the workers employed to Linton C. Gayle, trading as Gayle's Supermarket and Hardware. The ballot was held on that day and it appears that the workers who were included were those in the employment of Gayle's Supermarket and Hardware Limited and the fifteen workers who had been made redundant in December 1984 by Linton C. Gayle, trading as Gayle's Supermarket and Hardware. The evidence did not disclose whether or not the workers who were then in the employment of Gayle's Supermarket and Hardware Limited were the same workers employed by Linton C. Gayle when he traded as Gayle's Supermarket and Hardware. However, the list included thirty names as those entitled to participate in the ballot, but on the day of the ballot, it was amended to twenty eight, because of the thirty, one had died and another was off the island. Twenty five persons participated in the ballot, twelve of those being persons who had been made redundant in December, 1984 by Linton C. Gayle, trading as Gayle's Supermarket and Hardware. The result of the ballot was communicated to the "Manager, Gayle's Supermarket and Hardware, Southfield P.O. St. Elizabeth"

by a letter from the Permanent Secretary, Ministry of Labour dated 13th October, 1988, which reads as follows:-

"Dear Sir,

Re: Representational Rights Ballot involving
Gayle's Supermarket and Hardware and the National
Workers Union conducted at Southfield, St. Elizabeth
on Wednesday, 12th October, 1988

I hereby certify that the result of the abovementioned
ballot is as follows:

Total number of persons eligible to vote	-	28
The number which voted	-	25
The number voting "YES"	-	17
The number voting "NO"	-	8
The number which did not vote	-	3
The number of rejected votes	-	NIL

Yours faithfully

RICHARD HALL (SGD.)
for Permanent Secretary".

The result shows that the N.W.U. gained bargaining rights, but it is obvious that had it not been for the ballots cast by the twelve redundant workers, the result would have been different. It is also obvious that the bargaining rights gained by the N.W.U. relate to the workers who were in the employment of Linton C. Gayle, trading as Gayle's Supermarket and Hardware; the permanent secretary so certified.

Linton C. Gayle, through his Attorney-at-law, Mr. London, wrote to the permanent secretary on the 13th October, 1988, and para. 2 of that letter reads as follows:-

"Mr. Gayle has requested me to formally advise you that Gayle's Supermarket and Hardware which he operated as sole proprietor in Southfield, St. Elizabeth legally ceased to exist as of 16th day of June, 1988 and that in these circumstances the determination of the ballot, while requiring his compliance with the procedural requirements of the LRLDA Regulations concerning representational rights, ceases to impose any further obligations on him".

The next significant step was taken by the N.W.U. when on the 31st October 1988, the Island Supervisor wrote a letter to the Management, Gayle's Supermarket and Hardware which reads as follows:-

"By now I am sure you would have been informed that the poll conducted at your workplace by the Ministry of Labour on October 12, resulted in representational rights being accorded to the National Workers Union.

You are hereby requested to meet with representatives of the National Workers Union within two weeks of the date of this letter at which time the Union Officer being assigned to your section will be introduced. I am suggesting that the first meeting be held in Kingston or Mandeville.

Looking forward to an early response to this letter.

(sgd.) Derrick Rochester.)

This letter drew a quick response from Linton C. Gayle who, through his attorney-at-law, H.I. London, wrote a letter on the 9th November, 1988 to Derrick Rochester, Island Supervisor of the N.W.U., which reads as follows:-

"I am instructed by Mr. Linton C. Gayle to acknowledge receipt of your letter dated October 31, 1988 concerning the recent poll conducted at Southfield, St. Elizabeth.

Mr. Gayle has asked me to advise you that Gayle's Supermarket and Hardware, which he has operated as Sole Proprietor in Southfield, St. Elizabeth, legally ceased to exist as of 16th day of June, 1988 and that in these circumstances the holding of the ballot, while requiring his cooperation with the Ministry of Labour in complying with the procedural provisions of the Labour Relations and Industrial Disputes Regulations, ceases to impose any legal obligations on him."

A copy certificate of incorporation of Gayle Supermarket and Hardware Limited, and a copy certificate of incorporation on change of name of Gayle's Supermarket and Hardware Limited were forwarded with Mr. London's letter.

The N.W.U., by letter dated 21st November, 1988, informed the Ministry of Labour of the recent developments. Apparently, this led to correspondence between the Ministry of Labour and Gayle's Supermarket and Hardware Limited, but no settlement was arrived at. Consequently, by letter dated the 20th March, 1989, The Permanent Secretary, Ministry of Labour Welfare and Sports informed

the N.W.U. that the applicant had refused to attend a meeting at the Ministry. The N.W.U. took positive action by serving on the applicant a claim for increased wages, improved fringe benefits and re-instatement and pay for the fifteen workers, dismissed as redundant by Linton C. Gayle in December, 1984. The relevant correspondence is as follows:-

April 11, 1989

The Manager,
Gayle's Supermarket & Hardware Limited
Southfield P.O.
St. Elizabeth.

Attention: Mr. Merrick Gayle

Dear Sir,

I note with alarm the position taken by your company in response to my letter of October 31, 1988.

In the interest of industrial peace, I am again requesting that you meet with the Union within two weeks so that the expressed intention of the workers borne out by the results of the poll to have the Union represent them can be effected.

Enclosed please find list of claims on behalf of your employees who fall within the bargaining unit.

Looking forward to an early response to this letter.

Yours faithfully,
NATIONAL WORKERS UNION

(Sgd.) Derrick Rochester
DERRICK ROCHESTER
ISLAND SUPERVISOR

ITEMS OF CLAIM

1. 15% increase annually on existing salary commencing January 1985 to the present time.
2. Two weeks' vacation leave for each year of service up to five years and three weeks thereafter.
3. Time and one half for work done in excess of eight hours per day and forty hours per week.
4. Time and one half for work done on Saturdays and double time for Sundays.
5. Two and one half times for work done on holidays.
6. Introduction of a Pension Plan.

7. Severance pay for three weeks pay for each year of service.
8. Out of base allowance.
9. Introduction of a lunch subsidy.
10. Uniforms - three sets annually.
11. Laundry allowance of \$25 weekly.
12. Life Insurance of \$30,000 with double indemnity feature.
13. Sick leave provisions.
14. Reinstatement and pay for the following workers dismissed since January 1985 to the present time:

Rudolph	Smalling	Everett	Gayle
Ronald	Smalling	Ron	Foster
Calvin	Taylor	Arden	Banton
Haggiera	Bent	Hopeton	Palmer
Trevor	Parchment	Leroy	Cox
Erland	Senior	Joseph	Elliott
Llewlyn	Elliott	Kevin	Brown
Glen	Staple"		

The applicant was adamant, and so the N.W.U. again referred the matter to the Ministry of Labour Welfare and Sports indicating that industrial action was threatened, and requesting the intervention of the Ministry. As a result, by memorandum dated 14th June, 1989, the Honourable Minister of Labour Welfare and Sports referred to the I.D.T. for settlement, "the dispute between Gayle Supermarket and Hardware Limited and the National Workers Union" in accordance with the provisions of Section 11A (1)(a)(1) of the Labour Relations and Industrial Disputes Act.

The terms of reference to the I.D.T. were as follows:

"To determine and settle the dispute between
Gayle's Supermarket and Hardware Limited/Gayle's
Supermarket and Hardware/Gayle Supermarket and
Hardware Limited on the one hand, and the Unionised
workers employed by the Company and represented by
the National Workers Union on the other hand, over -

- (a) The Union's claim for increased wages and other improved conditions of employment;

(b) the dismissal of:-

Rudolph	Smalling	Everette	Gayle
Ronald	Smalling	Ron	Foster
Calvin	Taylor	Arden	Banton
Haggiera	Bent	Hopeton	Palmer
Trevor	Farchment	Leroy	Cox
Erland	Senior	Joseph	Elliott
Llewlyn	Elliott	Kevin	Brown
Glen	Staple"		

The I.D.T. handed down its award on the 29th March, 1990 which I have set out in full earlier on, and it is that award which the applicant, Gayle's Supermarket and Hardware Limited, sought to quash.

The main thrust of the applicant's argument was that no industrial dispute existed at any time between the applicant and the N.W.U., and no industrial dispute existed between the applicant's predecessors, Linton C. Gayle, trading as Gayle's Supermarket and Hardware, and the N.W.U. Mr. Foster contended that the N.W.U. had never acquired bargaining rights in the issue between the workers and the applicant or its predecessor in title. He referred to R.v. The Industrial Disputes Tribunal ex-parte Half-Moon Bay Hotel Limited. (unreported S.C.H. 49/78.) In that case the Full Court considered and decided the crucial issue as to whether a dispute between the National Workers Union and the Half-Moon Hotel Limited was an industrial dispute within the meaning of Sec.2 of the Act, and so referable to the I.D.T. for determination under the Act.

Mr. Foster argued that a distinction must be drawn as to the difference between an "industrial dispute" as defined in Sec.2 of the Act and a mere "dispute". He submitted that it is clear that any dispute between the applicant's predecessor and the N.W.U. was not an industrial dispute within the meaning of the Act - if any dispute existed between the applicant's predecessor and the N.W.U. such a dispute related to the eligibility of workers to vote in a ballot, and cannot be described as an industrial dispute. He argued that the terms of reference by the Hon. Minister of Labour Welfare

and Sports to the I.D.T. in this case, assumed that there was an industrial dispute between the N.W.U. representing the workers and the applicant, whereas in fact no such dispute existed. Referring to Sec.22 of the Act, he submitted that no industrial dispute existed between the applicant's predecessor and the union representing the workers at the time when the change of ownership occurred, and consequently, Sec. 22 was not applicable to the facts of this case. The I.D.T. in the first instance, only dealt with the question of the eligibility of the workers to vote to settle bargaining rights and not with the question of the dismissal of workers. After the ballot was taken on the 12th October 1988 no certificate in accordance with Sec.5(4) of the Act was served on the applicant, and the N.W.U. had not acquired bargaining rights in respect of the workers employed to the applicant. Consequently, the Minister did not have the power to refer the claim of the N.W.U. to the I.D.T. since no industrial dispute existed.

Mr. Foster submitted that for the reasons stated, the award of the I.D.T. is impeachable as an error on the face of the record. Further, the objections taken before the I.D.T. to the terms of reference, were not dealt with in accordance with the provisions of law. He asked for an order that certiorari must go to quash the award.

Mr. Clarke Cousins, for the respondents, did not agree with the submissions of the applicant. He opined that in order for the applicant to succeed, it must satisfy the court that either:

- "(1) The Minister acted illegally or ultra vires his powers pursuant to Sec.11A, or
- (2) The Minister acted unreasonably or irrationally in making the reference".

He argued that as regards illegality, it must be shown that the Minister misrepresented the law or failed to apply the law correctly to the facts before him. As regards irrationality, it must be shown that on the facts before him, "the Minister, in making the reference, acted in such a manner that no tribunal could find that any reasonable or sensible person, applying his mind to either the facts or the law, could have acted as the Minister did."

He agreed that before the Minister can exercise his power, under Sec.11A of the Act, to refer a matter to the I.D.T., he must be satisfied firstly, that an industrial dispute existed, and secondly, that an attempt had been made, without success, to settle that dispute. He acknowledged the fact that the applicant at all times refused to deal with the N.W.U. on the ground that it had no dispute with them, but he said that the genesis of the dispute between the parties was the dismissal of the fifteen workers in December, 1984. The origin of that dispute, he contended, could properly be said to involve not only the purported dismissals of the workers but also an unwillingness on the part of the employer, (Mr. Linton Gayle), to meet with the union, the N.W.U. But the moment the N.W.U. succeeded on the ballot in 1988, it immediately, as part of its claim, asked for re-instatement of the dismissed workers. "Had it not done so, it would have been reasonable to infer that the battle that had been going on for four years had nothing to do with dismissal. In attempting to classify the dispute solely as one involving recognition, the applicant is ignoring the concepts of the law of agency". He submitted that "the general legislative purpose and intent of the Act" is to provide the legal framework for the orderly and expeditious settlement of trade disputes, and if the Minister had evidence before him by which he could envisage industrial strife, then he cannot be faulted in referring the matter to the I.D.T. On the facts of this case, the applicant had not established that the Minister acted ultra vires or irrationally.

Mr. Cousins referred to the facts in sequence leading up to the letter from the Ministry of Labour, Welfare and Sports dated 17th May, 1989, addressed to the applicant's attorneys H. I. London and Associates, inviting the applicant to a conciliatory meeting and the reply sent by Mr. London to the permanent secretary, Ministry of Labour, Welfare and Sports, on the 24th May, 1989 advising that the N.W.U. did not hold bargaining rights on behalf of the workers employed to the applicant, and that there was no ground in law for reference of an industrial dispute, and that there was no unrest amongst the workers.

Mr. Cousins argued that in so far as the evidence before the Minister was concerned, it could not be said that on those facts,

- "(a) he could not have perceived a threat to industrial peace
- (b) that attempts had not been made to conciliate or otherwise settle the claim."

The Minister, in the light of those facts exercised his discretion correctly in referring the matter to the I.D.T.

Mr. Cousins argued that the Half-Moon Bay Hotel Limited case could be distinguished from the present case, as no issue of dismissal arose in the former. That being so, Sec.22 of the Act is applicable to the facts of this case. That section, he said, affords statutory rights to a worker in circumstances where there is contention over those rights and if there is a change in ownership, he may be prejudiced or placed at a disadvantage. He traced the sequence of events leading up to the take-over of Mr. Gayle's business by the applicant, the subsequent change of name of the company, the ballot and its result being notified to Gayle Supermarket and Hardware. He said the certificate was not sent to the applicant because the sale by the sole proprietorship of its assets to the applicant was not disclosed to the Ministry or to anyone.

He submitted that the terms of reference by the Minister to the I.D.T. were concise and showed no ambiguity as to the mandate of the I.D.T. The I.D.T. adhered to the terms of reference and made an award, and that award can only be impeached on a point of law. The motion should be dismissed, he concluded.

A live issue to be decided is whether the N.W.U. had obtained bargaining rights for the workers employed to the applicant as a result of the ballot taken on the 12th October, 1986. The unrefuted evidence is that the applicant acquired ownership of the undertakings of Linton C. Gayle, trading as Gayle's Supermarket and Hardware, on the 16th June, 1986. It seems quite clear and I so find, that on that date, the single proprietorship of Linton C. Gayle, trading as Gayle's Supermarket and Hardware ceased to exist, and that the applicant succeeded to the business formerly carried on by him. Up to that time, the bargaining rights of the N.W.U. in respect of the workers employed to Linton C. Gayle had not been established. The category of workers

eligible to vote in a ballot to determine bargaining rights had been determined but there was still the dispute between Mr. Gayle and the N.W.U. as to whether the workers or a majority of them wished the N.W.U. to have bargaining rights in relation to them, and that could only be settled by a ballot under the terms of Sec.5 of the Act. Such a dispute is not classified as an "industrial dispute" under the Act. It is only after bargaining rights have been established that an industrial dispute, as defined by the Act, can arise.

"Industrial dispute" is defined in Sec.2 of the Act as follows:-

"industrial dispute" means 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 condition 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;"

It seems quite clear to me that what the ballot of the 12th October, 1966 sought to do was to settle the bargaining rights of the N.W.U. in relation to the employees of Linton C. Gayle, although at that time Mr. Gayle was no longer the employer of the workers who participated in the ballot. Indeed, the single proprietorship was not in existence.

It was argued that the change in ownership of the undertakings from that of the single proprietorship of Mr. Gayle to the applicant did not terminate the dispute, but that the applicant stood in the shoes of the former owner. Sec.22 of the Act was cited as the relevant provision for the proposition. That section reads as follows:-

"22. Where a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of an undertaking while an industrial

dispute exists in that undertaking, the dispute shall not be taken to be terminated by reason only of such change, and references in this Act to an employer shall, in relation to such dispute, apply to the person who is the owner of the undertaking immediately after the change occurs as they apply (or would, but for such change, have applied) to the person who is the owner immediately before the change occurs."

The provisions of this section, in my view, may only be invoked where a change in the ownership of an undertaking takes place while an "industrial dispute", as defined by Sec.2 of the Act, exists. The disposal by Mr. Gayle of his undertakings to the applicant would carry with it an existing industrial dispute, if such a dispute existed. But I am in full agreement with Mr. Foster's submissions that when the change of ownership took place, in June, 1968, the N.W.U. had not yet gained bargaining rights for the workers employed to Linton C. Gayle, and consequently, there has never been an industrial dispute between the N.W.U. and Linton C. Gayle up to the time that he disposed of his undertakings. That being so, Sec. 22 is quite irrelevant to the facts of this case and it follows that there has never been an industrial dispute between the N.W.U. representing the workers employed to the applicant on the one hand and the applicant on the other hand.

Sec.11 A(1)(a)(i) of the Act gives the Honourable Minister of Labour Welfare and Sports power on his own initiative, to refer industrial disputes to the I.D.T. for settlement. A prerequisite to any such reference is that the Minister must be satisfied that an industrial dispute exists - not just a dispute, but an industrial dispute within the meaning of the Act. It appears to me that in the instant case, the Hon. Minister may have been unmindful of the distinction to be drawn between the meaning of an industrial dispute and a dispute between parties. Further, the Hon. Minister seems to have been in doubt as to the party with whom the N.W.U. had a "dispute". All this is gleaned from the terms of reference to the I.D.T. which is "to determine and settle the dispute between Gayle's Supermarket and Hardware Limited/Gayle's Supermarket and Hardware/Gayle's Supermarket and Hardware Limited on the one hand, and the unionised workers employed by the Company and represented by the National Workers Union on the other hand", (emphasis mine). It is plain

to me that the Hon. Minister was not aware of the fact that the ballot conducted on the 12th October, 1988 was to determine representational rights claimed by N.W.U. in 1984 in respect of the workers employed to Linton G. Gayle, trading as Gayle's Supermarket and Hardware. The certificate of the results of the ballot was sent to "The Manager, Gayle's Supermarket and Hardware". A ballot was not conducted in respect of Gayle Supermarket and Hardware Limited or Gayle's Supermarket and Hardware Limited. On the face of the record, the Hon. Minister was in error in making the reference that he did when it was plain that no industrial dispute could exist between the applicant and the N.W.U. Accordingly, the award made by the I.D.T. on a reference that was without jurisdiction and palpably erroneous is impeachable, and consequently, certiorari will go to quash the award of the I.D.T.

JAMES T. (AG.)

I entirely agree and have nothing to add.

Theobalds J.

The unanimous decision of this Court is that certiorari will go. An order is made quashing the award made by the Industrial Disputes Tribunal on the 26.3.90. Costs to the applicant to be agreed or taxed.