

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M. 53 OF 1992

IN THE FULL COURT

BEFORE: The Honourable The Chief Justice
The Honourable Mr. Justice Chester Orr
The Honourable Mr. Justice D.O. Bingham

Regina v. The Minister of National Security and Justice
and

The Attorney General Ex Parte Bryan Sykes - President of
the Association on behalf of himself and members of the
Legal Officers Staff Association

Mr. Berthan Macaulay, Q.C., Mr. Wentworth Charles and
Miss Portia Nicholson for Applicants

Mr. Emile George, Q.C., Mr. W.K. Chin See, Q.C., and Miss
Ingrid Mangatal for Respondents

July 6, 7, 8, 9, 10, 13, 1992

ZACCA, C.J. .

On July 13, 1992 we refused an application for
Order of Certiorari and Prohibition with costs to the
respondents to be agreed or taxed. We promised to put
our reasons into writing and this we now do.

By notice of motion, an application was made by
the Legal Officers Staff Association (LOSA) and Bryan Sykes
as President of the Association for Orders of Certiorari
and Prohibition. The respondents are the Minister of
National Security and Justice and the Attorney General.

A preliminary point was taken by the respondents
as to the Legal Officers Association being a proper party.
The Court ruled that LOSA was not competent to bring the
application and the Court invited Counsel for the applicants
to apply for an amendment to enable the application to be

brought by Bryan Sykes on his own behalf and on behalf of the members of LOSA. This application was granted by the Court and the hearing proceeded.

Bryan Sykes is President of LOSA, an Attorney-at-law and Crown Counsel in the Office of the Director of Public Prosecutions. LOSA's members comprise legal officers in the Public Service of Jamaica.

Negotiations commenced between LOSA and the Minister of National Security and Justice in relation to the terms and conditions of employment of such officers in the Public Service. The Legal Officers withdrew their services and this resulted in the dislocation of the work in the Courts of Jamaica.

In a letter dated 17th June, 1992 from the Permanent Secretary in the Ministry of National Security and Justice, the applicant was informed that Cabinet had decided that once a determination was made as to the officers involved in industrial action then Staff Order 3.25 was to be enforced. Staff Order 3.25 states :

"Salaries and wages of officers who participate in industrial action may not be paid for any day or portion of the day during which they are engaged in industrial action."

The applicant was also informed that the determination having now been made, the Ministry would proceed to make the necessary deductions from the salaries of the officers concerned.

The letter is set out in full :

" Ministry of National Security & Justice
12 Ocean Boulevard
Kingston Mall
P.O. Box 467
Kingston
Jamaica

No. 157/1

17th June, 1992

Mr. Bryan Sykes,
President
Legal Officers Staff Association
Office of the Director of Public
Prosecutions
Public Buildings West
King Street
Kingston.

Dear Mr. Sykes:

Please refer to your letter dated 9th June, 1992, concerning your enquiry as to whether or not this Ministry proposes to make deductions from the salaries of members of your Association.

You will recall that when you indicated that your membership proposed to take industrial action you were repeatedly informed that deductions would be made from the salaries of officers who were engaged in such action in accordance with Staff Order 3.25.

Staff Order 3.25 provides as follows :-

"Salaries and wages of officers who participate in industrial action may not be paid for any day or portion of the day during which they are engaged in industrial action. "

I also wish to advise you that on 22nd May, 1992, Cabinet decided that once a determination was made as to the officers involved in industrial action then Staff Order 3.25 was to be enforced. The determination having now been made, this Ministry is proceeding to make the necessary deductions from the salaries of the officers concerned for the month of June.

Yours sincerely,

(sgd.) Clair Kean
Permanent Secretary. "

On receipt of this letter, an application was made for leave to apply for Orders of Certiorari and Prohibition to quash the Order of the Cabinet and to prohibit the implementation of the Cabinet's decision.

The Reliefs sought were :

- (1) an Order of Certiorari to remove into this Honourable Court decisions by the Cabinet and the Minister of National Security & Justice, dated respectively 22nd May 1992 and 17th June, 1992 contained in a letter addressed to the 2nd Applicant by the Permanent Secretary of the Ministry of National Security and Justice dated the 17th June 1992 ;
- (2) An Order of Prohibition prohibiting and preventing the said Minister, and such other Ministers in the Cabinet, having responsibility for such departments in which legal officers, members of the Legal Officers Staff Association, are employed; their servants or agents or any persons directly or indirectly under their control or authority, from implementing or giving effect to the said decisions ;
- (3) a Direction that Notice of these Orders by leaving a sealed copy each with the Permanent Secretary of the Ministry of National Security and Justice, and the Secretary to the Cabinet be deemed sufficient Notice of these Orders.

The grounds on which the reliefs were sought were as follows :

- (1) Staff Order 3.25 of the Staff Orders made by the Minister for the Public Service in 1976 (effective 1st June 1976) does not constitute part of the contract of employment with officers of the public service (see Staff Order 1.3(ii)). Therefore, there is no power in the Minister under the contracts of employment of the members of the First Applicant, and the Second Applicant, to make the said decision.
- (2) Assuming, without conceding that Staff Order 3.25 can be unilaterally imported into a contract of employment of service, such import would be void on the ground that it is unlawful being contrary to Section 4(2) of the Labour Relations Industrial Disputes Act, 1975 and contrary to s. 18 of the Constitution.

(3) Staff Order 3.25 has no legislative effect in that it does not fall within Section 3(2)(b) of the Civil Service Establishment Act 1976, nor in pursuance of a legislative instrument of any kind whatever.

(4) Having regard to the fact that sick leave was approved by the appropriate authority in every case to which the said decisions are applicable, then the public officers involved were "not required to be at work" (Section 4(4)(b) of the Labour Relations & Industrial Disputes Act) on the relevant days, and whatever they may or may not have done in connection with the activities of the first applicant, were permissible in law. No unauthorised or impermissible act was alleged to have been done by the members of the first applicant within or without their working hours. (Section 4(1)(b) and 4(4) of the Labour Relations and Industrial Disputes Act).

(5) Assuming that the deductions were being made as a result of industrial action, the said deductions would amount to a penalty which can only be imposed after disciplinary proceedings under the Public Service Regulations. The Public Service Regulations 1961, relating to the imposition of penalties subsume :-

- (i) that an opportunity is given to the officer to defend any allegations affecting his conduct, before a decision is arrived at ; and made effective by the Governor General's Order (See Section 127(4) of the Constitution and Regulation 39 of Public Service Regulations) and ;
- (ii) that such decision is taken for reasonable cause ;

(6) The power to make deductions from the salary of a public officer is conferred on the Public Service Commission, and the latter has not delegated such power to any Minister of Government or any public officer. (See Delegation of Functions (Public Service) Order 1963; Public Service Regulations 37(1)(d) & 37(2)).

(7) On any view, having regard to the negotiations and consultations precedent to the said decisions, which are clearly in relation to them, the Applicants legitimately expected that no decisions as taken aforesaid, would have been taken, without prior consultation or notification to the Applicants. This was not done. The applicants were thereby deprived of the opportunity to contradict, correct or comment on any statement or fact which the said Cabinet or Minister may have considered relevant, and taken into account in making decisions adverse to the Applicants. The decisions, in the circumstances, were therefore made without fairness to the Applicants and therefore must be set aside.

(3) In any event, any deductions made, not founded on a contractual or legislative basis, would be a contravention, of the applicants rights under Section 18 of the Constitution (deprivation of property).

At the commencement of the hearing of the application ground 4 was withdrawn and deleted. It was up to then being contended that the legal officers were on sick leave. This ground having been withdrawn, no disclosure was made as to the reason for the legal officers' withdrawal of services. However, ground 5 assumed a position of industrial action on the part of the legal officers.

The respondents filed an affidavit on behalf of Phyllis McLaughlin who is the office manager in the office of the Attorney General. Her affidavit was to the effect that twelve legal officers attached to the Attorney General's Department were absent from work on three occasions during May, for a period of three days on each occasion.

She further stated that applications from these officers for sick leave were not approved.

The applicants were at all material times appointed and employed in the Public Service under a contract of service providing for emoluments to be paid in respect of services rendered. They are servants of the Crown appointed by the Governor General on the advice of the Public Service Commission: Section 125(1) of the Jamaica Constitution.

It was contended by Mr. Macaulay on behalf of the applicants that the Cabinet has no power to decide that there should be deductions from salaries of the legal officers. Also that the Minister of National Security and Justice has no power to make such deductions.

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It was submitted that the employment of persons in the service of the Crown and the regulations concerning their conduct in such service can only be exercised by Her Majesty acting upon the advice of the Public Service Commission. Neither the Cabinet nor the Minister of the Public Service appoints a Public Servant and therefore they are excluded from making any deductions from salaries of Legal Officers.

It was further submitted that deductions from salaries may only be made under Regulation 37(1) of the Public Service Regulations 1961. This can only be done where disciplinary proceedings have been instituted against the officer and where he has been given an opportunity to be heard in defence of any allegation made against him in respect of his conduct.

It was argued that industrial action could be termed misconduct and such course of conduct may be the subject of disciplinary action pursuant to regulations 28 and 29 of the Public Service Regulations 1961. Mr. Macaulay also submitted that LOSA should have been given an opportunity to be heard before the decision was taken by the Cabinet. However, he was not asking the Court to quash the order of the Minister of National Security and Justice.

Mr. Emile George for the respondents submitted that the Cabinet had the power to make the decision as to the Legal Officers being not paid. The Public Service Commission was not concerned with emoluments and the non-payment of salary for work not performed as this was not a matter for the Commission.

He argued that the Minister of National Security and Justice was charged with the payment of salaries for the Legal Officers and once a determination was made that they were on industrial action, the Ministry was entitled to deduct from their salary, an amount which represented the days for which no work was done. In such circumstances the principles of natural justice and legitimate expectation do not arise.

Certain concessions were made by Mr. Macaulay :

- (1) It was conceded that for the purposes of the case, the Legal Officers were on industrial action ;
- (2) the present case related to one of contract of employment ;
- (3) There were no statutory limitations which prevented the operation of the common law rule that an employee was only entitled to wages where they have been earned ;
- (4) There are no statutory limitations to take the case out of the normal master and servant situation ;
- (5) In the normal master and servant situation, the principle of natural justice has no application.

Mr. Chin See for the respondents submitted that the deduction of wages was a matter of private law and if the employee was dissatisfied, his proper remedy was to bring an action for the wages deducted. He also submitted that the Court should not exercise its discretion in granting the Order because other proceedings would have to be taken to give the legal officers relief for non-payment of salary.

The proceedings were therefore an abuse of the process of the Court. He argued that the Judicial review was an inappropriate remedy, relying on the case of Roy v Kensington and Chelsea and Westminster Family Practitioner Committee [1992] 2 W.L.R. 239.

We are of the view that the application before the Court was not one with respect to the payment of salary for the period they did not work but was one in relation to the quashing of the Cabinet's decision.

The proceedings were therefore appropriate and were properly before the Court.

Did the Legal Officers take industrial action ?

During the course of the hearing, Mr. Macaulay stated that for the purposes of the case he conceded that the legal officers had taken industrial action. No doubt the following facts must have led Counsel to make this concession .

- (1) Ground 4 which alleged that the legal officers had been granted sick leave was withdrawn ;
- (2) No other ground was put forward as to why the legal officers were absent from work ;
- (3) The affidavit of Phyllis McLaughlin that the legal officers in the Attorney General's Department had not been granted sick leave ;
- (4) The two press releases issued by the applicant in his capacity as President of LOSA ;
- (5) The work of the Courts was disrupted for some four weeks.

The first press release dated 16th May, 1990 stated :

" At an emergency general meeting this morning, members of the Legal Officers Staff Association (LOSA) decided to write to the Ministry of the Public Service seeking clarification of the Government's proposals in respect of LOSA's current salary claims.

This decision was taken in light of the confusion resulting from different and inconsistent proposals coming out of the Ministry of the Public Service and the Ministry of National Security and Justice respectively.

" LOSA hopes that the desired clarification from the Ministry of Public Service will form the basis for early restoration of normality and continuation of negotiations.

LOSA members expressed a desire for an early settlement of their claim and also expressed regret at the hardship being experienced by members of the public as a result of the present situation.

In the meantime members voted to continue their protest.

(Sgd.) Bryan Sykes,
President
Legal Officers Staff
Association. "

The second press release dated 20th May, 1992, stated :

" As a result of talks held at the Ministry of Labour yesterday involving the Legal Officers Staff Association (L.O.S.A.) and representatives of the Ministry of the Public Service, Ministry of National Security and Justice and the Ministry of Labour, the general membership of L.O.S.A. voted today to resume normal duties tomorrow, May 21, 1992. This resumption is based on L.O.S.A.'s satisfaction that a clear basis for the continuation of salary negotiations has been arrived at.

(Sgd.) Bryan Sykes,
President,
Legal Officers' Staff
Association.

May 20, 1992 "

It would be unusual to say the least that so many legal officers in so many departments became sick at the same time. Even assuming that there was a sick out, such action could amount to industrial action. Regina v. Industrial Disputes Tribunal
Ex parte Alcan Jamaica Company (unreported) 1.12. 1980.

In our view there is clear evidence that the legal officers had taken industrial action.

Was the Cabinet competent to take the decision that if it was determined that the legal officers were on industrial action, they were not to be paid for the days they were absent from work ?

Mr. Macaulay contended that a decision to deduct pay can only be made by the Public Service Commission. Appointments to public offices are made by the Governor General acting on the advice of the Public Service Commission. Therefore it is only the Public Service Commission which is competent to advise on the deduction of pay.

The Jamaica (Constitution) Order in Council 1962 provides for the Public Service Legislation, continuing in force. Section 3. 2(2).

Section 125(1) of the Constitution of Jamaica states :

" Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor General acting on the advice of the Public Service Commission. "

Section 125(3) provides :

" Before the Governor-General acts in accordance with the advice of the Public Service Commission that any public officer should be removed or that any penalty should be imposed on him by way of disciplinary control, he shall inform the officer of that advice and if the officer then applies for the case to be referred to the Privy Council, the Governor General shall not act in accordance with the advice but shall refer the case to the Privy Council accordingly.

Provided that the Governor General, acting on the advice of the Commission may nevertheless suspend that officer from the exercise of his office pending the determination of the reference to the Privy Council. "

The position therefore is that the Public Service Commission advises the Governor General on the appointments to public offices, the removal from such offices and exercises disciplinary control over such officers.

On the other hand it is the Minister of Public Service who has the power to constitute or abolish offices. He may also by order determine the emoluments to be attached to any office.

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Section 3 of the Civil Service Establishment Act provides :

"3.- (1) Subject to the provisions of the Constitution of Jamaica relating to the holders of public offices and of this Act, the power to constitute or abolish offices in the public service shall be exercised by the Minister by order.

(2) An order under this section may from time to time -

- (a) determine the numbers of any office specified hereunder ;
- (b) determine the emoluments to be attached to any office; and
- (c) make such incidental, consequential and supplemental provisions as the Minister thinks necessary :

without prejudice to the generality of the foregoing, any such order may include provisions -

- (i) making in any enactment regulating the number of offices in respect of which, or the number of office holders in respect of whom, emoluments may be paid, such modifications as may be expedient ; and
- (ii) amending any enactment relating to the appointment, powers, duties, rights or liabilities of any officer holding any office specified in an order or bearing the same style and title as an officer appointed to any office specified in an order.

The Public Service Regulations 1961 is divided into several parts. Part II deals with the appointment and functions of the Public Service Commission. Part III deals with appointments, promotions and transfers. Part IV with probationary service and termination of appointments. Part V deals with discipline.

Section 28(1) provides :

"The Commission shall deal with disciplinary proceedings against officers in the light of reports from Permanent Secretaries and Heads of Departments, or otherwise. "

Section 37(1) provides .

"The penalties which may be imposed on an officer against whom a disciplinary charge has been established are -

- (a) dismissal ;
- (b) reduction in rank ;
- (c) deferment or withholding or increment ;
- (d) a fine ;
- (e) reprimand.

- (2) Where a fine is imposed the amount of such fine shall be deducted from the salary of the officer by such instalments as may be specified at the time the penalty is imposed.

This section provides for the penalties which may be imposed on an officer against whom a disciplinary charge has been established. Where a fine has been imposed, such fine may be deducted from the salary of the officer.

Does industrial action fall within the ambit of disciplinary proceedings ? Is the Public Service Commission empowered to deduct pay where the officer has taken industrial action ? The penalties that can be imposed under s. 37(1) do not include a deduction of salary. For any of the penalties to be imposed, there must first be a charge and a finding of misconduct on the part of the officer. The Legal Officers have not been charged with misconduct.

Mr. Macaulay submitted that if an officer takes industrial action, he may be reported for misconduct and the Public Service Commission would then be empowered to conduct disciplinary proceedings and if misconduct has been established, impose one of the penalties provided for in s. 37(1) of the Public Service Regulations.

In our view there is no right to strike - see Hotel Four Seasons Ltd. v. The National Worker's Union C.A. 2/1984 - March 29, 1985 (unreported). It is not, however, unlawful for employees to strike. If an employee takes industrial action, he is not doing anything which is unlawful or illegal. How can he then be said to be guilty of misconduct ?

The employee may however suffer the loss of pay for the period during which he was on industrial action. It is well settled law that where an employee takes industrial action, his employer is entitled to refuse to pay him for the period during which he was on industrial action - Regina v. Industrial Disputes Tribunal Ex Parte Palace Amusement Company [1921] Ltd. M 43/1981, February 18, 1982.

In Miles v. Wakefield Metropolitan District Council 1987, 2 WLR 795, the Plaintiff was appointed by the Defendant Council a Superintendent registrar of births, deaths and marriages. His normal working week consisted of 37 hours including three hours on Saturday morning, which was the most popular time for civil weddings. On the instructions of his Trade Union, the Plaintiff took industrial action and refused to conduct weddings on Saturdays. It was held that an employee's right to remuneration depended on his doing or being willing to do the work that he was employed to do and if he declined to do that work, the employer need not pay him.

At page 798 Lord Bridge of Harwich states .

"If an employee refuses to perform the full duties which can be required of him under his contract of service, the employer is entitled to refuse to accept any partial performance. The position then resulting, during any relevant period while these conditions obtain, is exactly as if the employee were refusing to work at all. It follows that the central question of law can be stated thus: if an employee, entitled to a weekly salary for a working week of a definite number of hours, refuses to work for the whole or part of a week, is the employer entitled, without terminating the contract of employment and without relying on any right to damages for breach of contract, to withhold the whole or a proportion of part of the week's salary ?

My Lords, the penetrating analysis of the authorities undertaken by my noble and learned friend Lord Oliver and the reasoning he bases on that analysis seem to me to lead convincingly to an affirmative answer to this question. "

Lord Templeman at page 804 states :

"My Lords, industrial action involves a worker, in conjunction with all or some of his fellow workers, declining to work or declining to work efficiently in each case with the object of harming the employer so that the employer will feel obliged to increase wages or improve conditions of work or meet the other requirements put forward by the workers' representatives. The form of industrial action which consists of declining to work is a strike. The form of industrial action which consists of declining to work efficiently has many manifestations including the 'go slow' and the refusal by the plaintiff to carry out some of his functions on Saturday. In essence, the plaintiff was employed by the public and his industrial action took the form of declining to work efficiently on Saturday with the object of inconveniencing the public and advancing the claim of his union for higher salaries. Industrial action is an effective method of enhancing the bargaining power of the workers' representatives. "

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And at page 807 .

"I agree with my noble and learned friend Lord Bridge of Harwich that industrial action can take many forms and that the legal consequences of industrial action will depend on the rights and obligations of the worker, the effect of the industrial action on the employer and the response of the employer. For my part however I take the provisional view that on principle a worker who, in conjunction with his fellow workers, declines to work efficiently with the object of harming his employer is no more entitled to his wages under the contract than if he declines to work at all. The worker whose industrial action takes the form of "going slow" inflicts intended damage which may be incalculable and non-apportionable but the employer, in order to avoid greater damage, is obliged to accept the reduced work the worker is willing to perform. In those circumstances, the worker cannot claim that he is entitled to his wages under the contract because he is deliberately working in a manner designed to harm the employer. "

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"My present view is that a worker who embarks on any form of industrial action designed to harm his employer gives up his right to wages under his contract of employment, in the hope that the industrial action will be successful in procuring higher wages in the future, and possibly in the hope that negotiations which end the industrial dispute will provide for some payment for the period of the industrial action. "

In his judgment at page 820, Lord Oliver said .

"As I have already indicated, the position of the plaintiff is very closely analogous to that of an employee employed by the council under a contract of service and embraces substantially all the incidents normally associated with such an employment save that the power of dismissal lies elsewhere than in the paymaster. In the context of a claim against the paymaster for remuneration for his services, where the question is "has the plaintiff earned the salary which he claims?", the analogy appears to me to be exact and in my judgment the burden which the plaintiff has to assume in order to succeed in a claim for his statutory remuneration is no different from that required of an employee. I would, for my part therefore, answer the third question postulated above in the affirmative. Applying the contractual analogy, the plaintiff cannot, for the reasons which I have given, successfully claim that he was at the material time ready and willing to perform the work which he was properly required to do on Saturdays and his action for the remuneration attributable to that work must fail. "

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In the case of Snfell Thomas v. A.G. of Trinidad and Tobago
[1981] 3 W.L.R. 681, s. 99 of the Constitution of Trinidad
and Tobago provides for the appointment, removal and the
exercise of disciplinary control over persons holding
office in the police force. This power was given to a
Police Service Commission. The Police Service Com-
mission purporting to act under regulation 89 of the
Regulations of 1966, dismissed the Plaintiff, a police
officer, from the police force.

Lord Diplock at p. 611 said :

" The functions of the Police Service
Commission fall into two classes :
(1) to appoint officers to the police
force, including their transfer and
promotion and confirmation in appoint-
ments and (2) to remove and exercise
disciplinary control over them. It
has no power to lay down terms of
service for police officers; this is
for the legislature and, in respect
of any matters not dealt with by
legislation, whether primary or sub-
ordinate, it is for the executive to
deal with in its control of employ-
ment with the individual police
officer. Terms of service include
such matters as (a) the duration of the
contract of employment, e.g. for a fixed
period, for a period ending on attaining
retiring age, or for a probationary
period as is envisaged by the reference
to "confirmation of appointments" in
section 99(1); (b) remuneration and
pensions; and (c) what their Lordships
have called the "code of conduct" that
the police officer is under a duty to
observe. "

The Public Service Commission, has similar powers
of appointment, removal and exercise of disciplinary control
over members of the Public Service. The instant case does
not fall within the ambit of the powers of the Public
Service Commission. It is the executive which is respon-
sible for the establishing of offices and the remuneration
to be paid to these officers.

S. 69 of the Jamaican Constitution states :

- "(1) There shall be in and for Jamaica a Cabinet which shall consist of the Prime Minister and not less than eleven other Ministers appointed in accordance with the provisions of section 79 of this Constitution.
- (2) The Cabinet shall be the principal instrument of policy and shall be charged with the general direction and control of the Government of Jamaica and shall be collectively responsible ~~chevador~~ to Parliament."

The applicants contend that the Cabinet had no power to make the decision which they did. The decision of the Cabinet which is challenged is to the effect "on 22nd day, 1992, Cabinet decided that once a determination was made as to the officers involved in industrial action then Staff Order 3.25 was to be enforced."

Cabinet was not making a determination as to whether the legal officers had taken industrial action. What the Cabinet did was to take a policy decision that if it was determined that the officers had taken industrial action, then they should not be paid for the period during which they were on industrial action.

The Cabinet was entitled to take this policy decision and in our view, this decision cannot be challenged.

This was a matter dealing with the remuneration of the legal officers, which is within the province of the Minister of the Public Service who is a member of the Cabinet.

It is the Minister responsible for the Public Service who fixes the remuneration to be paid to the legal officers. The responsibility and day to day supervision of the legal officers are vested in the Ministry of National Security and Justice. This Ministry is responsible for the payment of salaries to the legal officers. As such it is this Ministry which must determine whether the legal officers had taken industrial action.

The determination having been made, the Ministry would be entitled to deduct from their salaries an amount which represented the period for which no work was done due to industrial action.

In any event, the applicants have conceded that for the purposes of the arguments, the legal officers had taken industrial action. This can only mean that having so acted they were not entitled to be paid for the period during which they had not worked.

Is it therefore necessary for any determination to be made by any other person or body ?

It is not disputed that these legal officers were repeatedly informed by the Ministry that deductions would be made from the salaries of those legal officers who were planning to take industrial action in the event that such action was taken.

Mr. Macaulay submitted that the legal officers should have been given an opportunity to be heard by the Cabinet before making their decision and that this opportunity to be heard was never given to them by the Cabinet. It was submitted that the opportunity to be heard can only relate to the Cabinet's decision and that this submission was not being made in relation to the decision of the Minister on the 17th June, 1992 having regard to the second paragraph of the letter of the 17th June, 1992.

Mr. Macaulay further submitted that the legal officers should have been given an opportunity to be heard as to the determination to be made and this determination was as to whether what was done was industrial action.

It is to be observed that the decision of the Cabinet was not a determination as to whether there was industrial action, but a policy decision taken that if it was determined that there was industrial action, the officers were not to be paid.

The determination was made by the Ministry of National Security and Justice and in those circumstances there was no obligation for the officers to be heard by the Cabinet. Having submitted that it was not being suggested that they should have been given an opportunity to be heard by the Ministry of National Security and Justice, the question of being given an opportunity to be heard by the Ministry does not arise.

We are of the view that in arriving at their policy decision, the Cabinet was exercising a discretionary power and in such circumstances, there was no entitlement by the legal officers to be heard.

The Cabinet as the principal instrument of policy for the Government of Jamaica, had the authority to make the decision which they did.

For these reasons we refused the application with costs to the respondents to be agreed or taxed.

ORR, J.

I agree.

BINGHAM, J.

I agree.