

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 4 OF 1991

BETWEEN:

BERNARD NICHOLAS

Appellant

and

William Prevost and Allan Wallace, the
President and General Secretary, res-
pectively of the Dominica Trade Union
suing on behalf of themselves and on
behalf and representing all others,
namely the members as at the 2nd day
of July, 1990 of the Dominica Trade
Union.

Respondents

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Dr. N.J.O. Liverpool - Justice of Appeal
The Honourable Mr. Justice S. Singh - Justice of Appeal

Appearances: The Appellant in person
Mr Ronan David for the Respondents

1992: March 9, 10 and

JUDGMENT

This is an appeal against the judgment of Odel Adams J delivered on 6th May, 1991 whereby he granted an injunction restraining the Appellant by himself, his servants, agents, workmen or otherwise howsoever, from trespassing on the Union's property, namely the Trade Union Hall and exercising dominion over the same; ordered the Defendant to deliver forthwith the keys to the Trade Union Hall to the Respondents; and awarded nominal damages of \$10.00 against the Appellant. The basis of this relief was that the learned Judge found that the Appellant was properly suspended from the Union, he having been duly tried and found guilty in accordance with the rules of procedure set out in the Constitution of the Union: The trial referred to by the learned Judge took place on 1st December, 1989 and the Appellant was duly informed of the result by letter dated 15th December, 1989.

The articles of the Constitution of the Union which provide for suspension are the following:-

"ARTICLE 12. DISCIPLINE.

1. Any member of the Union may be penalised for committing one or more of the following offences:-
 - (a) Wilful violation of any provisions of this Constitution, any collective bargaining Contract, or the by-rules of any Branch.
 - (b) Obtaining membership through fraudulent means or by deliberate mis-appropriation.
 - (c) Instituting or instigating the institution of any legal actions against the Union or any of the Union officers or Branches without first exhausting all sources of remedies by the way of representation to the Executive Board.

- (d) Publishing or circulating among the membership, false reports calculated to hurt the union or with malice towards any officer or member of the Executive Board.
- (e) Working in the interest of, or holding membership in, or manifesting sympathy towards any organisation of disreputable character or for using abusive language, or disturbing the peace and harmony of meetings of the Union.
- (f) Mis-appropriation of the funds of the Union.
- (g) Using the name of the Union for soliciting funds for personal use or selfish favours.
- (h) No member of the Board or General Council shall, without first having the consent of the Board or Council, publish the tenor of debates or discussions of any meeting. They shall assume collective responsibility for all decisions taken at all meetings of the Board and General Council.

2. Any member found guilty of any of the foregoing offences may be fined, suspended or expelled."

"ARTICLE 8. EXECUTIVE BOARD.

6. The Executive Board shall have the power to remove or suspend any of the officers enumerated in this Constitution who after due trial upon written charges are found guilty of dishonestly, deliberate maladministration or any act calculated to injure the Union. (All persons disciplined in accordance with this Clause shall have the right of appeal to the General Council and the Annual Conference)."

"ARTICLE 13. TRIAL OF OFFICERS AND MEMBERS.

1. Any charge or charges against a member or officer must be first submitted in writing to the Branch or the Executive Board as the case may be.
2. Upon submissions of the charge or charges, the General Secretary of the Union or the Branch, as the said officer or member shall appear before a Trial Committee on the date and time set for the hearing. General Secretary shall indicate in the letter the charges referred against him.
3. A trial Committee of the Union or the Branch shall hear the charges and report its findings to the appropriate body which shall further consider such findings with a view of upholding the finding or carrying out a further trial.
4. Any person or persons so charged and affected shall have the right to appeal to the General Council or Conference."

On 7th November, 1989 the Union's Treasurer addressed a letter to the President of the Union (William Prevost) formally charging the Appellant, who was then the General Secretary of the Union, with certain violations of the Constitution and requested that the necessary machinery be put in motion in accordance with Article 13 after the consideration of the letter by the Executive Board. On 9th November, 1989 the President wrote to the Appellant enclosing a copy of the letter received from the Treasurer, and notified the Appellant that following an Executive Committee meeting on the matter a Trial Committee had been appointed to hear the charges against him, and that the meeting of the Trial Committee would take place on Thursday 16th November, 1989 at 4:30 p.m. at the Trade Union Hall.

The Appellant admitted receiving the President's letter and enclosure but did not attend at the time and place stipulated, and no meeting was held on that day; for on 21st November, 1989 the President issued a "second notice" to the Appellant to attend another meeting of the Trial Committee "scheduled to be held at the WAWU's Headquarters at 4:30 p.m.". No date is mentioned at which the meeting was to be held. The report of the Trial Committee, however, which was signed by its three members, stated that the Committee met on 1st December, 1989 and having examined the constitution in connection with the charges laid, found the Appellant guilty on all the charges laid against him; and they so recommended to the Executive Board.

Learned Counsel for the Respondents quite properly conceded that there was no evidence that the Appellant had been notified of the date of the meeting at which he was tried and found guilty and agreed that the decision to recommend his suspension was in violation of the rules of natural justice. We therefore find his suspension invalid.

Since the suspension was invalid the orders based on that suspension were erroneous and should be reversed. We accordingly allow the appeal, ~~side~~ the orders made by the learned Judge; and award the Appellant his costs to be taxed both here and in the Court below.

I concur

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SIR VINCENT FLOISSAC
CHIEF JUSTICE

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NICHOLAS LIVERPOOL
JUSTICE OF APPEAL

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SATROHAN SINGH
JUSTICE OF APPEAL