

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 7 of 1989

BETWEEN:

THE ANTIGUA HOTELS & TOURIST ASSOCIATION
and
SUNDRY WORKERS (represented by the ANTIGUA
WORKERS UNION)

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Byron

Appearances: Justin Simon for the Applicants Sundry Workers
Time Kendall, O.C. for the Antigua Hotels and Tourist
Association

1990: Nov. 30
1991: Feb. 25.

JUDGMENT

ROBOTHAM, C.J.

On 18th May, 1989, the Industrial Court for the State of Antigua and Barbuda made an award against the Antigua Hotels and Tourist Association (the Association) in favour of Sundry Workers, represented by the Antigua Workers Union (the Workers). By this award, the association became liable to pay to the Workers affected by the dismissals which were held to be unfair, a sum in excess of \$700,000.

On 11th June, 1990 this Court reversed the decision of the Industrial Court, and on 26th June, 1990, an application was filed on behalf of the Workers, seeking special leave to appeal to Her Majesty in Council.

On 30th November, 1990, we refused the application holding that no such right of appeal existed, and we promised to put our reasons in writing.

The application was supported by an affidavit filed by Keithlyn Smith the General Secretary of the Antigua Workers Union paragraphs 5 and 6 of which read as follows:

"(5) The respondents wish to appeal as of right to Her Majesty in Council pursuant to the provisions of section 122(1)(a) of the Constitution of Antigua and Barbuda on the ground that the appeal involves directly or indirectly a claim by the respondent workers exceeding \$1,500.00 (Fifteen Hundred dollars). The reversal of the award has caused the respondent workers loss of over \$1,500.00 (Fifteen hundred dollars) both individually and collectively.

/(6) Alternatively.....

- (6) Alternatively, the respondent workers seek leave of the Court of Appeal in the exercise of its discretion to appeal to Her Majesty in Council pursuant to section 122(2)(a) of the Constitution of Antigua and Barbuda on the ground that the questions of law involved in the appeal are questions of great general or public importance and are in any event of such importance to the hotel employers and the hotel workers that they ought to be submitted to Her Majesty in Council for decision."

Section 122(1)(a) of the Constitution of Antigua reads as follows:

"An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases -

- (a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards."

Section 122(2)(a) reads as follows:

"Subject to the provision of section 44(9) of this Constitution, an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases -

- (a) decisions in any civil proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council.

The application was opposed by Mr. Kendall for the Association on the ground that no right of appeal to Her Majesty exists from the Industrial Court as this Court is a creature of Statute, and only such rights as are given by the Statute can be enjoyed or enforced.

Establishment of the Court

This Court was first set up in Antigua by the Industrial Court Act No. 4/1976 (the Act). Section 4(1) of the Act reads:-

"For the purposes of this Act there is hereby established an Industrial Court which shall have the jurisdiction and powers conferred on it by this Act."

It is therefore a statutory Court, and its functions are circumscribed by what is contained in the Act.

/Powers of.....

Powers of the Court

When one looks at the structure of the Act it will be seen that every effort was made to confer on the President of the Court sufficient powers of a High Court Judge in order to make the Court effective.

Section 7 sets out the jurisdiction of the Court and its powers. Section 8 confers on the Court such powers, rights and privileges as are vested in the High Court of Justice on procedural matters.

Section 9 gives an aura of informality to the Court, in that they are not bound to follow the rules of evidence as stipulated in the Evidence Ordinance, and they may act without regard to technicalities and legal form. Also, under this section representation need not be by an attorney-at-law.

Section 10 sets out the powers of the Court. It can grant injunctions, and in the exercise of its powers, it may make an order which it considers fair and just - 10(3)(a) - and in accordance with equity and good conscience - 10(3)(b). Costs are not awarded unless exceptional reasons exist - 10(2).

Additional powers are given under section 11 e.g. to hear a matter ex parte - 11(a), and section 12 reads:-

"Subject to this Act the President may by rules regulate the practice of and procedure of the Court for the hearing and determination of all matters before it."

The right of Appeal

This right of appeal is conferred by section 17(1) of the Act and is on a point of law only, a fact which is often overlooked by Counsel in the presentation of their appeals before this Court.

Section 17(2)(3) sets out the powers of the Court of Appeal upon a hearing of an appeal and finally section 17(4) states:

"Subject to subsection (1) the hearing and determination of any proceedings before the Court and an order or award on any finding of decision of the Court in any matter (including an order or award)

(a) shall not be challenged, appealed against, reviewed, quashed or called into question in any Court on any account whatever."

This section it appears effectively rules out any further appeal to Her Majesty from a decision of the Court of Appeal, on whom the

/jurisdiction....

jurisdiction to hear appeals from the Industrial Court is expressly conferred under section 17(1) of the Act.

This finding would be sufficient ground to dismiss the application but a further question arises as to whether these proceedings in the Industrial Court can be classified as "Civil proceedings" for the purpose of section 122(1)(a) of the Constitution.

Order 5(1) of the Rules of the Supreme Court 1970 states:

"Subject to the provisions of any Act and of these rules, civil proceedings in the High Court may be begun by Writ, originating summons, originating motion or petition."

The Rules of the Supreme Court 1970 do not apply to the Industrial Court.

Disputes reach the Industrial Court only after a set procedure has been followed (called the grievance procedure) and the matter has been brought to the attention of the Labour Commissioner. It is only when he fails to resolve the dispute within 10 days that it is referred to the Industrial Court, under and by virtue of the relevant powers of the Antigua Labour Code 14/1975.

It cannot therefore be said that the decisions of the Tribunal in industrial matters are in Civil proceedings for the purpose of section 122(1)(a) of the Constitution.

To fortify the view that the proceedings in the Industrial Court are not Civil proceedings, section 13 of the Act makes provision for an award of the Industrial Court to be certified by the Registrar of that Court, and for this certificate to be filed in the Registry of the High Court of Justice. Upon being filed, then and only then does the award become enforceable in all respects as if it had been a judgment originally obtained in the High Court of Justice save that the control and jurisdiction over the order or award shall relate only to its execution - section 13(4).

It would also seem to follow that proceedings in the Industrial Court cannot be classified as "Civil proceedings" for the purpose of an appeal to Her Majesty in Council under 122(1)(a) of the Constitution.

The same construction would apply in the use of the words Civil proceedings in section 122(2)(a) under which the right of appeal is given by reason of the great general or public importance of the matter under consideration. Questions of great and general importance can be established where it is shown that the due and orderly administration of

Justice is....

justice is being interrupted or diverted into new channels. It cannot be said that this applies in this case. The issue is a localized and private dispute between the hotel and its workers. These matters will forever recur between employer and workman and each one must be decided on its own localized and individual facts.

Taking into consideration all the factors enunciated above, it does not appear that it was ever the intention of the Act to give the right of an appeal to Her Majesty from decision of the Court of Appeal in Industrial Court matters. This coupled with the fact that the proceedings are not "Civil proceedings" nor are the issues of great general or public importance lead to the irresistible conclusion that there is no right of appeal to the Privy Council.

Finally it is not surprising that the right of appeal was not given to extend beyond a Caribbean jurisdiction when one bears in mind the qualifications required of persons who sit on the Court. The President must be a person with substantial background and experience in Industrial relations, or be an attorney-at-law of not less than 10 years standing. The members must be persons experienced in industrial relations, business or public administration or qualified as economists or accountants, or attorneys of not less than 5 years standing. These qualifications are not unlike those required in the United Kingdom in respect of the constitution of the panel who sit on the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975.

It would seem too that in the United Kingdom, under this Act no appeal lies except to the Appeal Tribunal.

In the final analysis the Industrial Court is so structured to include persons with knowledge of localised industrial practice and relations as they affect the worker and the employer from time to time in Antigua and Barbuda and it is not surprising that no appeal beyond this jurisdiction has been given.

The application for special leave to appeal to Her Majesty was accordingly refused.

L.L. ROBOTHAM,
Chief Justice

/G.C.R....

G.C.R. MOE,
Justice of Appeal

C.M.D. BYRON,
Justice of Appeal