

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2013/222



BETWEEN:

COOLS VANLOO

Claimant

AND

ELROY BOUCHER  
BERNARD MORGAN  
JOEL POYER  
AUBREY BURGIN  
ELIZABETH WILLIAMS

Defendants

Appearances: Ms. Nicole Sylvester for the Claimant  
Mr. Joseph Delves for the Respondents

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2013: November 25 and 26  
2014: May 19 and 20,  
August 14

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### JUDGMENT

[1] **THOM J.:** In April 2012 the Claimant (Mr. Vanloo) was elected as President of the Saint Vincent and the Grenadines Public Service Union (the Union). The following persons were also elected as members of the executive of the Union:

|                      |                       |
|----------------------|-----------------------|
| Mr. Leroy James      | First Vice President  |
| Mr. Kevin Alexander  | Second Vice President |
| Mr. Simeon Bacchus   | General Secretary     |
| Ms. Desiree Thomas   | Assistant Secretary   |
| Mr. Gillian Primus   | Treasurer             |
| Mr. James Ollivierre | Grievance Officer     |

- [2] The Union has a written constitution and is registered pursuant to the Trade Unions Act<sup>1</sup>. The Constitution provides for Annual General Meetings to be held. At an Annual General Meeting which was convened May 16, 2013 and concluded on June 20, 2013 members approved a motion to amend Rule 5(a) (iii) of the Union's Constitution.
- [3] In 2013 the relationship between Mr. Vanloo and some members of the Executive having broken down, at a meeting of the Executive held on August 15, 2013 it was decided by the majority of the members that the question of the misconduct of Mr. Vanloo should be discussed at a Special General Meeting of the Union.
- [4] A Special General Meeting was convened on September 10, 2013. The details of what occurred at the meeting is disputed. However it is not disputed that on the day of the Special Meeting members passed a resolution removing Mr. Vanloo and all other members of the Executive. Members also passed a resolution establishing an Interim Committee to manage the affairs of the Union. The Defendants were appointed members of the Interim Committee.
- [5] Mr. Vanloo instituted these proceedings in which he seeks the interpretation of Rule 5(a), 6, 7, 8, 9, 12, 15 and 19 of the Union's Constitution; Section 18 of the Trade Union Act; Rules 7, 8 and 9 of the Trade Union Rules; and to determine whether:
- (i) the constitution of the Union was amended in conformity with its provisions;
  - (ii) the alleged amendment of the Constitution of the Union accorded with the Trade Unions Act and Trade Unions Rules;
  - (iii) the Special General Meeting of 10<sup>th</sup> September 2013 was convened in accordance with the Public Service Union's Constitution;
  - (iv) the Constitution of the Public Service Union allows for the removal of the entire Executive and or an Executive Member;
  - (v) Rule 12(d) mandates that notice is required to be given to members of the Union of the nature of the business to be discussed at a Special General Meeting of Members.
- [6] Mr. Vanloo filed two affidavits in support of his claim. Affidavits in support were also filed by Mrs. Marcelle Da Silva, Mr. Angus Hadaway, Mr. Oaluas Cummings, and Ms. Margaret London, all of whom are members of the Union.

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<sup>1</sup> Cap 216 Revised Laws of Saint Vincent and the Grenadines

[7] The Defendants filed two affidavits which were sworn by all of the defendants except Mr. Bernard Morgan the second defendant. Affidavits in support were filed by Mr. Leroy James and Mr. Harvey Farrell.

[8] I will deal with the issues in the following manner, (i) and (ii); and (iii) and (v) together and then issue (iv).

**WHETHER THE CONSTITUTION OF THE UNION WAS AMENDED IN CONFORMITY WITH ITS PROVISIONS AND IN ACCORDANCE WITH THE TRADE UNIONS ACT AND TRADE UNIONS RULES**

**SUBMISSIONS**

[9] Ms. Sylvester submitted that the amendment to the Constitution was not in conformity with the provisions of Rule 19 of the Constitution, Section 18 of the Trade Unions Act and Rules 7, 8 and 9 of the Trade Unions Rules for the following reasons:

- (i) The amendment did not form part of the Agenda of the May 16, 2013 Meeting which was continued on June 20, 2013.
- (ii) Any proposed motion to be moved at an Annual General Meeting must be sent to the General Secretary at least 10 days before the date of the meeting in accordance with Rule 12(a). The purpose of this rule is to give members notice of the motions that would be tabled.
- (iii) there is no evidence that a majority of not less than 2/3 of the financial members were present at the Annual General Meeting when the amendment was tabled and voted on.
- (iv) the minutes of the meeting of June 2013 are yet to be confirmed and there is no evidence that the amendment was registered with the Registrar as required by Section 18 of the Trade Unions Act, nor did the Registrar issue a Certificate of Registration.

[10] Ms. Sylvester next submitted that it is a well settled principle of law that in interpreting legislative provisions the Court must ascertain the intention of the legislature. Where the words are plain and obvious they must be given their ordinary natural meaning. Where the words are not clear or are ambiguous then the Courts would utilize aids in interpreting the provisions.

[11] Mr. Delves in response submitted that the Constitution of a Union is a contract of the membership. The rules must therefore be interpreted on the same principles as contracts and not by applying the principles of statutory interpretation. Mr. Delves relied on the following passage from Lord Roskill in ***British Actors Equity Association v Goring***<sup>2</sup>:

"I confess that for myself I approach with caution any argument which involves reading or writing into a contract between an association and its members provisions which could perfectly easily have been but were not expressed had anyone thought about the problem, for it has often been said that it is not for the courts to rewrite contracts for the parties least of all rules between the trade union and its members. On the other hand as Lord Denning M.R. has pointed out, as often happens with rules of association which have been evolve and amended sometimes over half a century as in this case and sometimes even much longer periods, it cannot fairly be expected that every eventuality which may occur with the passage of years will be foreseen by the draftsman of rules such as these. Like most rules these are imperfect; and if literal and arid legalistic construction of the language, however attractive at first sight to some lawyers, leads to results which one cannot believe the parties can have intended, the court should shrink from imposing such an interpretation upon the parties and should, in my judgment, adopt a more sensible interpretation even though that other interpretation may require implying provisions because the parties did not express fully that which they must have intended. The rules of a trade union cannot be expected to cover every type of activity between that union and its members or between the governing bodies of that union and its members. The rules of a body such as this ought not, in my judgment to be too legalistically considered."

[12] In ***Heatons Transport (St. Helens) Ltd v Transport and General Workers' Union***<sup>3</sup> the Court stated that:

"By that agreement each member joins with all other members in authorizing specified persons or class of persons to do particular kinds of acts on behalf of all the members who are hereafter reformed to collectively as the union. The basic terms of that agreement are to be found in the Union's rule book. But trade union rule books are not drafted by parliamentary draftsmen. Courts of law resist the temptation to construe them as if they were; for that is not how they would be understood by the members who are the parties to the agreement of which the terms or some of them, are set out in the rule book, nor how they would be, and in fact were understood by the experienced members of the court."

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<sup>2</sup> [1977] 1 C.R. 393 at 401-402

<sup>3</sup> [1972] 1 CLR 25.

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[13] Mr. Delves further submitted that the written constitution of the Union was formally and properly varied by agreement between the parties at the Annual General Meeting held on May 16, 2013 as evidenced by the letter to the Registrar of the High Court. The Trade Unions Act and Rules and in particular Sections 17 and 18 do not restrict a union as to how it carries out an amendment. The requirement for the registration of any amendment is a matter of form and not of substance and has no effect on the variation of the constitution of a union which is a contract.

[14] Mr. Delves further submitted that the Rules contained in SRO No. 95 of 1952 of which Rules 7, 8 and 9 are a part, are sample rules and there are no provisions in the Trade Unions Act which requires a union to adopt these rules. Thus Rule 8 does not apply to a union which has its own alteration and amendment rules. Also there is no provision in the Trade Unions Act which makes void or no effect an amendment made in breach of the Act or Rules. Rule 19 of the Union's Constitution provide for alterations, amendments or repeal of the Rules by a two-thirds of the financial members present at a General Meeting. The evidence on behalf of the defendants is that all amendments have been made in accordance with the provisions of Rule 19.

### **Court's Analysis**

[15] In Halsbury's Laws of England in discussing the alterations of the rules of a trade union the Learned Authors stated:

"Amendment to the rules of a trade union must be made in accordance with its rules, although the court may refuse to intervene if there has been no more than a procedural irregularity."

This principle is illustrated in the case of Edwards v Haultiwe /<sup>14</sup> where Rule 19 of the Union's rules provided: "The regular contributions of employed members shall be as per tables... and no alteration to the same shall be made until a ballot vote of the members has been taken and a two-thirds majority obtained." The Union at a delegate meeting passed a resolution to increase the contributions without a ballot taken. The English Court of Appeal held that this was not a mere irregularity and the alteration was invalid.

[16] The issue is whether Rule 5(a) (iii) of the Union's Constitution was lawfully amended.

[17] Rule 5(a) (iii) in its original form reads:

"The officers elected at the Annual General Meeting shall hold officer (sic) until the next election, and shall be eligible for re-election with the exception of the General Secretary and the Treasurer who shall hold officer (sic) at the pleasure of the Union."

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<sup>4</sup> [1950] 2 AER 1064

- [18] The purported amendment requires the following words to be added at the end of 5(a) (iii):  
"Notwithstanding this, any member of the Executive can be voted off at any Special General Meeting or Annual General Meeting."
- [19] I agree with the submission of Mr. Delves that a constitution of a union being a contract of the membership, it must be interpreted on the same principles as contracts and not on the principles of statutory interpretation.
- [20] Trade Unions like other entities are also regulated by laws passed by Parliament such as the Trade Unions Act and the Trade Unions Rules made under the Act. The Trade Unions Act requires Trade Unions to register the rules that govern them and any alteration of the rules must also be registered. The Trade Unions Act also makes it mandatory for certain matters to be included in the Union's Constitution. Section 17 of the Trade Union's Act provides that the following matters among others must be included in the Union's Constitution:
- (a) the manner of making, altering, amending and rescinding rules;
  - (b) provision for the appointment and removal of a general committee of management, of a treasurer and other officers;
  - (c) provision for full and accurate accounts by the treasurer;
  - (d) provision that the committee of management of the trade union shall be so composed that the majority thereof are workers in the industry represented by the union.
- [21] The relevant provisions are Rule 19 of the Constitution, Sections 17, 18 and 32 of the Trade Union's Act and paragraphs 7, 8 and 9 of the Trade Union's Rule.
- [22] The rule which deals with amendments to the Union's Constitution is Rule 19, it reads as follows:  
**ADDITION AMENDMENTS OR REPEAL OF RULES**
19. These Rules may be added to amended or repealed by a majority number not less than two-thirds of the financial members present at a General Meeting."
- [23] The effect of Rule 19 is that an amendment to the Union's Constitution could only be made at a General Meeting of the Union. This is however not restricted to an Annual General Meeting. The amendment must also be approved by two-thirds of the financial members present at the meeting.

[24] Paragraphs 34 and 35 of the case stated read:

34. "The Defendants sought to assert that the Constitution was amended to insert Section 5(a) (iii) and as such that allegedly gave them the authority to remove the entire Executive of the Public Service Union. The Constitution and the alleged amendment is bundled hereto and marked 'F'."

35. The alleged amendment was considered and moved by motion at the meeting of the 20<sup>th</sup> June 2013. The Minutes of that meeting where the alleged amendment was raised are yet to be confirmed."

[25] The evidence of Mr. Vanloo is at paragraph 16 of his affidavit dated 19<sup>th</sup> November 2013, the relevant part reads as follows:

"Further the members could not avail themselves of the alleged amendment as contended at paragraph 20 of the Defendants' Affidavit as such amendment was not duly made and registered in accordance with the Union's Constitution nor the Trade Unions Act and the Trade Unions Rules Cap. 216 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009."

[26] The Defendants evidence on this issue is at paragraph 20 of their joint affidavit dated 22<sup>nd</sup> October 2013. It reads as follows:

"20. This letter followed an Annual General Meeting at the Peace Memorial Hall on 16<sup>th</sup> May 2013 and concluded on 20<sup>th</sup> June 2013. At that meeting, members were dissatisfied with the functioning of the Executive resulting from the constant 5:2 split. The claimant asked the memberships to remove the General Secretary and the Treasurer ostensibly because they did not sign a bond within the time he wanted them to. (This was the first time the bond was being enforced to the best of our collective knowledge). However members were cognizant of the real problem and contemplated removing the claimant and amended the Constitution to allow the removal of any member of the Executive."

[27] The purported amendment was made at an Annual General Meeting therefore the provisions of Rule 12 (a) and (b) would have had to be complied with: They read as follows:

"12. (a) The Annual General Meeting of the Union shall be held no later than the last day of March in each year. Fourteen (14) days notice of such meeting shall be given. Any notice, motion, resolution or other matters intended for the meeting shall be forwarded to the General Secretary at least ten (10) days before the date of the meeting and shall be forthwith circulated to members by the General Secretary.

(b) The proceedings of the Annual General Meeting shall be:

- (i) Presentation of the Minutes of the last Annual General Meeting.
- (ii) Presentation of the Annual Report
- (iii) Presentation of the Audited Financial Statement and the Accounts of the last Calendar year.
- (iv) Election of Officers
- (v) Any business of which the General Secretary has received ten (10) days notice
- (vi) Any other business in the opinion of the presiding Chairman properly arising out of the above."

A notice, motion or resolution would have had to be sent to the General Secretary at least ten (10) days prior to the meeting and the General Secretary would have had to circulate the notice, motion or resolution. Alternatively the issue of the amendment could have arisen out of a matter listed in Rule 12(b). I do not agree that Rule 12(b) (vi) is limited to matters arising under Rule 12(b) (v). Rule (vi) specifically states "arising out of any of the above". It could therefore also arise out of the presentation of the Annual Report or the Audited Financial Statement.

[28] No evidence in relation to the details of the meeting was before the Court. The Agenda was not exhibited. Also there was no evidence whether or not the amendment was approved by 2/3 of the financial members present at the meeting.

[29] In view of the above the Court is unable to make a finding whether the amendment was made in accordance with the Union's Constitution. However, the matter does not end there. Section 18 of the Trade Union's Act provides that an amendment does not take effect until it is registered with the Registrar of Trade Unions. Section 18 reads as follows:

**"18. Alteration of rules of trade union**

(1) Every alteration in the rules of a registered trade union shall be registered with the Registrar and shall take effect from the date of registration unless some later date is specified in the rules.

(2) The rules of a registered trade union shall not be altered so that they cease to contain provisions in respect of the several matters in Part 1 of the Schedule."

[30] The Trade Unions Rules set out the procedure by which Trade Unions are to register alterations to their rules. The relevant provisions are Rules 7, 8 and 9. They read as follows:

**"7. Alteration and rescission of Rules**

An alteration of rules of trade union may be either:

- (a) partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution, or of more than one or all of those modes; or
- (b) a complete alteration consisting of the substitution of an entire set of rules for the existing set of rules.

**8. Registration of partial alteration of rules**

- (1) An application for the registration of a partial alteration of rules must be made by seven members of the trade union, and must be made in Form C in the Schedule and must be accompanied by a statutory declaration in Form D in the Schedule, and by a printed copy of the existing rules, and by the following documents
  - (a) if the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules each copy being marked "O", and signed by each of the applicants;
  - (b) if the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked "O", and signed by each of the applicants.
- (2) The Registrar, before registering the partial alteration of rules shall ascertain that the rules of the trade union, if altered in accordance with the proposed partial alteration will provide for all the matters required by the Act to be provided for by the rules of a registered trade union.

## **9. Certificate of registration of partial alteration of rules**

The certificate of registration of a partial alteration shall be in Form E in the Schedule and shall be delivered to the applicants, attached to one of the copies of the new rule or rules or, when the alteration consists of rescission, merely attached to the old set of rules."

- [31] The only documentary evidence in relation to the registration of the amendment is an undated and unsigned letter to the Registrar of the High Court purportedly prepared by the then General Secretary Mr. Simeon Bacchus. No certificate issued by the Registrar of Trade Unions was adduced in evidence. If the amendment had been registered with the Registrar of Trade Unions, then it would have posed no difficulty to adduce a certificate of registration from the Registrar. However, what is critical is that Rule 8 of the Trade Unions Rules requires that the application for the registration of the amendment must be made by seven members of the trade union, not just the General Secretary. Further Rule 8 requires that the application must be made in accordance with Form C in the Schedule. Of importance is that Form C requires the applicants to confirm that they have been duly authorized by the Union to make the application on behalf of the Union and to state the date the resolution was passed at a general meeting authorizing them to so do and where no such resolution was passed the manner in which the authorization was given.
- [32] Rule 8 also requires that a statutory declaration in FORM D of the Schedule must be attached to the Application. The declaration is to be made according to the Declaration in Lieu of Oaths Act (Chapter 219) which makes a false declaration punishable as perjury.
- [33] There is no evidence which shows that the provisions of Rule 8 have been complied with.
- [34] I respectfully disagree with the submission of Mr. Delves that the requirement for registration of any amendment is a matter of form and not substance. Section 18 specifically states that an amendment only takes effect from the date of registration, or at a later date after registration if the rules of the Union's Constitution so provides. Also Section 18(2) and Rule 8(2) requires the Registrar of Trade Unions to ascertain that the amendment would not lead to con-compliance with the provisions of the Act before an amendment is registered.
- [35] I also respectfully disagree with the submission of Mr. Delves that the Trade Unions Rules are mere sample rules and that Rule 8 does not apply to a union such as the Public Service Union which has its own alteration and amendment rule in Rule 19 of its Constitution. Rather the Trade Unions Rules set out the procedure to be followed to give effect to the provisions of the Trade Unions Act, they are not sample rules which may or may not be adopted by a union. I am fortified of this view by Section 32 of the Trade Unions Act. It reads as follows:

"32. **Rules**

- (1) The Governor-General may make rules respecting registration under this Act and in particular, but without prejudice to the generality of the foregoing power, with respect to -
  - (a) the seal, if any, to be for the purpose of registration under this Act;
  - (b) the forms to be used for such registration, and any other forms which may be prescribed under this Act;
  - (c) the inspection of registers and documents kept by the Registrar and the making of copies of any entries therein;
  - (d) the fees to be charged for registration and inspection and any other service or matter prescribed or permitted by this Act; and
  - (e) generally for carrying this Act; other than Sections 26 to 31, into effect.
- (2) Any rules made under subsection (1) shall have no force or effect until approved by resolution of the House of Assembly."

- [36] In view of the above I find that the purported amendment to Rule 5 (a) (iii) was not registered with the Registrar of Trade Unions as required by Section 18 of the Trade Union Act and the procedure set out by the Trade Unions Rules and is therefore not effective.

**WHETHER THE SPECIAL GENERAL MEETING OF SEPTEMBER 10, 2013 WAS CONVENED IN ACCORDANCE WITH THE CONSTITUTION AND WHETHER RULE 12(d) MANDATES THAT NOTICE BE GIVEN TO THE MEMBERS OF THE NATURE OF THE BUSINESS TO BE DISCUSSED AT A SPECIAL GENERAL MEETING OF MEMBERS**

- [37] Ms. Sylvester submitted that the Special General Meeting was not convened in accordance with Rule 12 of the Constitution since pursuant to Rule 12 only the Executive could summon a Special General Meeting. The Special General Meeting of September 10, 2013 was summoned by Ms. Kemilia Hazelwood via email dated August 23, 2013. Ms. Hazelwood is a member of staff employed by the Union. The email did not indicate that it was being sent at the direction of the Executive or any member thereof. Further there is no evidence of a written requisition to the Union of twelve (12) members of the Union pursuant to Rule 12(d).
- [38] Ms. Sylvester further submitted that the notice did not state the purpose of the meeting. The fact that the minutes of the meeting of the Executive were prepared and readily available and that the financial members would have reviewed those minutes does not absolve the Union from giving notice of the meeting and the purpose of the meeting.

[39] In Rule 12(d), the word "shall" denotes a positive obligation to do something. Rule 12(d) was not complied with. The notice was inadequate as regards the nature of the business to be discussed and the agenda did not include the items which the meeting considered.

[40] Ms. Sylvester also submitted that the fact that Mr. Vanloo chaired the Special general Meeting does not amount to a waiver. Mr. Vanloo did so because it was his duty to preside over meetings of the Union. The motion for removal of the Treasurer and the General Secretary were entertained by Mr. Vanloo because they serve at the pleasure of the Union pursuant to Rule 5(a) (iii). Their removal could therefore arise at any time whether it was listed on the agenda or not.

[41] Mr. Delves in response submitted that the evidence of the defendants show that the Special General Meeting was called by the Executive. Notice of the meeting was issued by the General Secretary.

[42] Mr. Delves further submitted that where the Special General Meeting is called by the Executive there is no need to state the nature of the business to be discussed. In any event the meeting having been called as a result of a decision taken by the Executive at the Executive meeting on August 15, 2013 the nature of the Special General Meeting was known to Mr. Vanloo. Mr. Vanloo prepared for the meeting, he prepared a document outlining his achievements over the last five (5) years. The nature of the business of the Special General Meeting was stated in the Notice and it would also have been clear from the minutes of the August 15, 2013 meeting. Those minutes were available to all financial members. Also the agenda for the meeting was discussed at length before the meeting commenced.

[43] Mr. Delves also referred to the following statement of Mr. Vanloo at paragraph 25 of the claim: "The meeting up to the time of the adjournment considered only the items as raised in the notice and listed in the said Meeting's Agenda" and submitted that Mr. Vanloo is bound by his pleadings. Thus if the removal of the General Secretary and Treasurer were raised in the notice and the agenda, then so too were the motion to recall the Executive.

### **Court's Analysis**

[44] The circumstances in which a Special General Meeting may be convened are set out in Rule 12 of the Union's Constitution. It reads as follows:

**"12. GENERAL MEETINGS**

- (a) The Annual General Meeting of the Union shall be held not later than the last day of March in each year. Fourteen (14) days notice of such meeting shall be given. Any notice, motion, resolution or other matters intended for the meeting shall be forwarded to the General Secretary at least ten (10) days before the date of the meeting and shall be forthwith circulated to members by the General Secretary.

(b) .....

(c) .....

(d) A Special General Meeting of members may be called at any time by the Executive and shall be called at the written request of twelve (12) or more members of the Union whose requisition shall state the nature of the business they intend to discuss. Upon receipt of a written request, the Executive shall convene the meeting before fourteen (14) days shall have elapsed.

(e) (i) should the Executive fail to convene a Special General Meeting upon request within the stated period, the Petitioners may proceed to call the meeting.

(ii) a full report of the proceedings at any such Special Meeting shall be communicated to the Executive within fourteen (14) days of the Meeting.

(D) Not less than seven (7) days notice of any Special General Meeting shall be given to members.

(g) Notwithstanding Rule 7(D) the Executive shall have authority to summon a Special General Meeting to discuss matters demanding immediate attention of the General Body.

(h) Twenty-five (25) financial members shall constitute a quorum at all General Meetings.

[45] The effect of Rule 12 is that a Special General Meeting could be convened in one of three ways. Firstly by the Executive on its own volition. Secondly by the Executive at the written request of at least twelve (12) members of the Union. Thirdly if the Executive fails to convene the meeting requested by twelve (12) members within fourteen (14) days then the members could convene the meeting.

[46] It is not contended by either side that the Special General Meeting of September 10, 2013 was convened by the Executive as a result of a written request of at least twelve (12) members of the Union, or by at least twelve members of the Union. Thus for the meeting to be convened in accordance with the Union's Constitution, the following must have been fulfilled:

(a) The meeting must have been convened by the Executive.

- (b) Seven days notice of the meeting must have been given to all members means the circumstances in paragraph (g) are applicable.

[47] Mr. Vanloo does not dispute that the correct period of notice was given. Rather, Mr. Vanloo's contention is that the meeting was not convened by the Executive but by one Kemilia by an email dated 23rd August 2013 and secondly that notice of the purpose of the meeting was not given to members as required by Rule 12(d) of the Union's Constitution.

[48] It is not disputed that Kemilia is Ms. Kemilia Hazelwood who is a member of staff of the Union. The email reads as follows:

"Dear Members of the Executive,  
Please be informed that the date for the Special General Meeting will be held on the 10<sup>th</sup> September 2013 at 3:00 pm at the Peace Memorial Hall.  
Kind Regards  
Kemilia"

[49] The evidence of the defendants which was not contradicted and which I accept is that at a meeting of the Executive held on August 15, 2013 it was decided that a Special General Meeting should be convened and the notice of the Special General Meeting of September 10, 2013 was signed by the General Secretary. Mr. Vanloo accepted under cross-examination that he tore up the notice and threw it on the ground. The defendants exhibited a copy of the minutes of the Executive Meeting, the notice signed by the General Secretary, a copy of the notice that was published in the Newspapers, and the notice which the defendants testified was torn up by Mr. Vanloo and thrown on the ground.

[50] I accept the defendants evidence and the documentary evidence exhibited and I find that the Special General Meeting was properly convened in accordance with the Union's Constitution.

[51] I turn now to the issue whether Section 12(d) of the Union's Constitution mandates that notice must be given of the nature of the business to be discussed at the Special General Meeting. The notice reads as follows:

### **NOTICE**

All members of the St. Vincent and the Grenadines Public Service Union are invited to a Special General Meeting on Tuesday 10<sup>th</sup> September 2013 commencing at 3:00 pm. This meeting will take place at the Peace Memorial Hall.

The Meeting is to discuss important matters with regards to taking the Union forward.

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Please make special effort to attend and be on time."

- [52] An examination of the notice shows that it did not specifically state that the meeting was to discuss the conduct of Mr. Vanloo but rather a more general purpose was stated in the notice. In my view a member reading the notice would not have been aware that the purpose or one of the purposes of the meeting was to discuss the conduct of Mr. Vanloo.
- [53] The question however is does Section 12(d) mandates that notice must be given of the nature of business to be discussed at the meeting. Rule 12(d) does not specifically state that the members must be informed of the specific matters to be discussed at the meeting. Where at least twelve (12) members request that a Special General Meeting be convened, then Rule 12(d) requires that the members state the nature of the business that they intend to discuss. This they must do in their requisition to the Executive.
- [54] Rule 12(a) which relates to Annual General Meetings and which stipulates that fourteen (14) days notice of the meeting must be given to members also provides for all notices, motions, resolutions and other matters which members wish to discuss to be sent to the General Secretary at least ten (10) days before the meeting and the General Secretary is required to circulate such matters to the members forthwith. Rule 12(d) does not contain a similar provision. This is in keeping with the provisions of Rule 12(g) which provides for the Executive to convene a Special General Meeting in less than seven (7) days to discuss urgent matters. Matters to be discussed are outlined in the Agenda. The evidence of the Defendants which is not contradicted by Mr. Vanloo is that at the meeting of September 10, 2013 the Agenda was discussed and agreed by the members. Mr. Vanloo chaired the meeting.
- [55] In view of the above I am of the opinion that Rule 12(d) does not mandate that notice is required to be given to Members of the Union of the nature of the business to be discussed at a Special General Meeting. However, I am of the view that it is a good practice to be adopted by the Union.

#### **WHETHER THE CONSTITUTION PROVIDED FOR THE ENTIRE EXECUTIVE TO BE REMOVED**

- [56] Ms. Sylvester submitted that there is no procedure in the Union's Constitution for the removal of the entire Executive or a member of the Executive except by election. Mr. Letang an Official of the Caribbean Public Service Association advised the members that the Union's Rules do not provide for the removal of an Executive by a vote of no-confidence.
- [57] Ms. Sylvester further submitted that there is no history, culture or norm developed for the removal of an entire Executive. The defendants have not produced any evidence that such norm or culture had developed. The Defendants did not exhibit any documentary evidence of minutes to that effect. The case of Margaret London is not similar to the present case. The cases of Desmond

Pompey and Harvey Farrell can also be distinguished as they resigned before the expiration of their term of office.

- [58] Mr. Delves submitted that the rules governing the Union are a mixture of written rules and customary practices. An example of the customary practice is the amount of union dues collected from members. This sum is higher than the sum stated in Rule 13(c).
- [59] Mr. Delves further submitted that the Union has a history and culture of removing an Executive when they are deemed not to be functioning properly. Union members are aware of this practice of removing an entire executive by a vote from the floor when members form the view that it is in the best interest of the Union to do so. Thus notwithstanding that it is not formally set out in the Union's Constitution it is understood by members to be available to move the Union forward. In 2003 a no-confidence motion was tabled against the President Mr. Desmond Pompey, and in 2005 the entire executive was removed by a motion of no confidence. At that meeting thirty-five (35) persons voted to remove the Executive which is similar to the number of persons who voted to remove Mr. Vanloo and the members of the Executive.
- [60] Mr. Delves further submitted that if the Constitution of the Union is given a literal interpretation as urged on behalf of Mr. Vanloo then pursuant to Rule 5(a) (iii) and Rule 6, Mr. Vanloo having been elected in April 2012 his term would have ended at the following Annual General Meeting held in May/June 2013.
- [61] Mr. Delves does not dispute that the Union's Constitution does not contain an express power to recall but he submitted that paragraph 4 of Schedule 1 should be included in the Union's Constitution by implication because of necessity. Mr. Delves relied on the text **The Interpretation of Contracts**<sup>5</sup> by Kim Lewison QC in which reference is made to the following statement by Lord Simon in the case of **B.P. Refinery (Westernport) Pty Ltd v Shire of Hastings**<sup>6</sup>[1978] 52 ALJR:
- "In their (their Lordships') view, for a term to be implied the following conditions (which may overlap) must be satisfied. (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract so that no term will be implied if the contract is effective without it; (3) it must be so obvious that it goes without saying; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract."

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<sup>5</sup> [2004] Sweet & Maxwell

<sup>6</sup>[1978] 52ALJR

## **COURT'S ANALYSIS**

[62] The principles applicable to the removal of the Executive of a Union is stated in **Halsbury Laws**<sup>7</sup> as follows:

"The principles which apply to the appointment or election of union officials and their removal from office are similar to those which apply to the expulsion or discipline of a member. Thus there must be strict compliance with the rules, and a domestic body taking a decision to confirm an appointment or remove an official from office must comply with the rules of natural justice. Where an election is held it must be conducted substantially in accordance with the rules, but it will not be declared invalid because of a minor irregularity."

[63] The relevant provisions of the Union's Constitution are Rules 5(a) (i) - (iii) and 6(n) which read as follows:

### **"MANAGEMENT AND ORGANISATION**

- 5(a) (i) The officers of the Union shall be the following:-  
President, First Vice President and Second Vice President who shall be Public Relations Officer, a General Secretary, an Assistant Secretary, a Treasurer and a Grievance Officer all of whom shall be elected by ballot at the Annual General Meeting provided that in the case of the appointment of an Executive Secretary, the Executive shall be empowered to appoint such an officer and fix his remuneration and conditions of service.
- (ii) There shall be an Executive Committee or Management Committee consisting of the Officers elected by the General Meeting who shall meet at least once each week.  
There shall be an Administrative Council constituting of the Elected Officers of the Union together with members nominated to the Administrative Council by the representatives of the Ministries Department or Sections of the union's membership. The Council shall meet at least once per month.

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<sup>7</sup>vd.47 para. 516

- (iii) The Officers elected at the Annual General Meeting shall hold Office (sic) until the next election, and shall be eligible for re-election with the exception of the General Secretary and the Treasurer who shall hold office (sic) at the pleasure of the Union.

## 6. ELECTIONS

At the Annual General Meeting of the Public Service Union there shall be elected a President, two Vice-Presidents, a General Secretary, Assistant Secretary, Treasurer and Grievance Officer, three Trustees and two Auditors.

(D The newly elected officers shall assume office as from the termination of the Annual General Meeting."

[64] An examination of the above Rules show that there is no express procedure outlined in the Union's Constitution for the removal of the Executive other than by election at the Annual General Meeting of the Union except for the General Secretary and the Treasurer. It is a well settled principle that a Court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, statute or Articles of Association. It is not the Court's duty to introduce new terms into the contract to make the contract fairer to the parties - **Kenneth Kryss and Another v New World Value Fund Ltd** BVI HMAP 2013/0017; and **Attorney General of Belize and Others v Belize Telecom Ltd and Another** [2009] 1WLR 1988.

[65] Trade Unions are governed by the rules contained in their Constitution and also by the provisions of the Trade Unions Act and the Rules made pursuant to the Act. Section 17 of the Trade Unions Act makes it mandatory that the rules of every trade union must contain provisions relating to the matters outlined in Part 1 of the Schedule to the Act. One such matter mentioned in the Schedule is the matter of removal of the management committee. The relevant provision is paragraph 4. It reads as follows:

"4. A provision for the appointment and removal of a general committee of management of a treasurer and other officers."

[66] The effect of Section 17 is that the power to remove the Executive or a member of the Executive must form part of the Rules of every Trade Union. Where it is not expressly stated then it is implied by law. Indeed Section 18(2) which was referred to earlier prohibits a Trade Union from altering its Rules so that they cease to contain the provisions outlined in Part 1 of the Schedule to the Act. I also agree with the submission of Mr. Delves that the power to remove a member of the Executive or the entire Executive is necessary for the effective operation of a Union. It is a necessary implication in the Union's Constitution. It could not be said that the members intended that the

Executive once elected could not be removed prior to the expiration of their term of office no matter how incompetent they proved to be.

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Gertel Thom High  
Court Judge