

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 137 OF 2000

BETWEEN:

SIMEON GREEN

Plaintiff

and

ST VINCENT BANANA GROWERS ASSOCIATION

Defendant

Appearances:

Mr Carl Glasgow for the Plaintiff
Mr Grafton Isaacs for the Defendant

2000: June 9, 26

JUDGMENT

[1] **MITCHELL, J:** The sole issue in this case is the interpretation of a statute. The dispute between the parties centres on whether or not the Defendant Association (hereinafter “the Association”) is exempt from the provisions of the **Protection of Employment Act, Cap 150** of the 1991 Revised Edition of the Laws of St Vincent and the Grenadines (hereinafter “the Act.”)

[2] The following principal reliefs were sought:

- (1) Whether upon the true construction of section 2 and of any section thereto pertaining of the Protection of Employment Act Chapter 150 and any amendments thereof of the Revised Laws of St Vincent and the Grenadines the Banana Growers Association is an employer within the meaning of the Act.

(2) Whether the Hearing Officer appointed under the said Act is competent to adjudicate upon the case of unfair dismissal brought before him by the Plaintiff against the Defendant.

[3] There was not much dispute over the facts. The evidence was all affidavit evidence. Neither counsel sought to cross-examine either of the two deponents. The Plaintiff's affidavit of 24 March 2000 reveals that he was employed by a written contract as the General Manager of the Association on 1 November 1997; on 27 May 1999 he was advised of his vacation leave from 25 May to 23 July 1999; that on 28 May the Association served notice on him that his employment was terminated; that he made application for a determination of his matter before the Labour Commissioner under the procedure laid down in the Act; that the Association contended that the Labour Commissioner did not have jurisdiction as it was not an employer under the Act; that the Hearing Officer sought an opinion from the Attorney General's office and reported that the Attorney General was of the view that the Hearing Officer did not have jurisdiction.

[4] On 6 April 2000, the Association entered an appearance. On 23 May 2000, it replied by filing an affidavit sworn by Henry Keiser, its present Managing Director. He deposed that the Plaintiff was served with a notice of termination and paid salary, vacation leave, allowances, and pay in lieu of notice. He deposed that neither the Labour Commissioner or the Hearing Officer had jurisdiction to entertain the Plaintiff's complaint which "falls squarely within the four corners of the Plaintiff's agreement dated the 1st day of November 1999 [sic]." He deposed that he agreed with the opinion of the Attorney General, and asked the court to dismiss the Plaintiff's application. There was no specific evidence from either of the deponents as to the number of employees working for the Association. However, it is general knowledge that the banana industry is a major industry in St Vincent, and the Association has plant and employees located throughout the State. Counsel for the Association did not take the point or otherwise submit that this

omission in the evidence had any consequence, and I am confident that it was generally assumed that the Association, as a major employer, employed many more than four persons. I take judicial notice of the fact that the Association employs more than 4 persons. Nor was any specific mention made in either of the affidavits as to the status of the Association, as to whether or not it was a statutory authority. This was, no doubt, because as a matter of law the Association is a statutory authority created as such by Act No 10 of 1978, now the **Banana Industry Act, Cap 32**.

[5] Counsel for the Defendant submitted that the Act did not apply to the Plaintiff because of his contract with the Association. His contract was for a period of 3 years. It provided for termination prior to its term "by either party giving the other side one month's notice in writing." Counsel for the Association submitted further that the Act, at the definition section, section 2, defined "employer" to exclude the Association. He submitted that there existed special provisions relating to termination notice and retiring benefits that exempted the Association from the provisions of the Act. Counsel for the Plaintiff, in detailed written submissions supported by authority, submitted that the Association is an "employer" under the Act for the following reasons:

- (1) There are no special reasons that already apply both as regards termination notice and retiring benefits;
- (2) The contract of employment between the Plaintiff and the Defendant cannot amount to special provisions which already apply;
- (3) In any event, the contract of employment does not make provision for both termination notice and retiring benefits;
- (4) If the words are interpreted in their ordinary grammatical sense, there is no doubt that the St Vincent Banana Growers Association falls within the definition of "employer;"
- (5) If the Act is read as a whole it is evident that it was designed to remedy a mischief such as this.

[6] The dispute between the parties, then, amounted to no more than a simple disagreement as to how to interpret the words of the Act and apply them to the agreed facts. Let us look at the law next. The Act came into effect in St Vincent on 1 July 1980. It created in St Vincent the statutory concept of unfair dismissal as an adjunct or alternative to the common law remedy of wrongful dismissal available through the courts. It provided the procedure for the Labour Commissioner and his hearing officer to settle disputes, and for appeals to an appellate authority. It created the usual offences. Not every employment in St Vincent was automatically covered by the Act when the Act came into effect. Section 2 of the Act is instructive. In the definition of “employee,” it excludes to a certain extent workers in private households, masters and crew of ships, members of families, and to a certain extent, stevedores. In the definition of “employer,” it excludes employers who customarily employ less than 4 employees, and the Crown and statutory boards, “but only where special provisions already apply both as regards termination notice and retiring benefits.” “[N]otified establishment” means an establishment declared under section 3(2) to be a notified employment [sic.] Presumably, though it is not important for this case, the word “employment” here is a typing error for the word “establishment.” “[P]rotected employment” means an employment declared under section 3(2) to be a protected employment.

[7] Section 3 is an important section in determining to whom the Act applies. It provides:

(1) Every employee engaged in a protected employment in a notified establishment shall, on and after the 1st July, 1980, stand protected against unfair termination of service by his employer.

(2) The Minister may, by notification in the Gazette, declare any establishment, or class of establishment, to be a notified establishment and declare any employment, or class or category of employment, therein as a protected employment.

[8] The **Protection of Employment (Notified Establishment) Order** came into effect on 19 October 1992. It set out a list of those establishments or class of establishments that are notified establishments for the purposes of the Act. Included in the list are:

- (a) all establishments concerned with agricultural and livestock production and with the provision of agricultural services, and which normally employ four or more workers; and all farm or estate managers and supervisors, agricultural and animal husbandry workers, agricultural service workers, technical and professional workers and watchmen and office workers falling within these establishments.
- (b) . . .
- (c) . . . etc

Employees in St Vincent had to await the Order notifying the establishments and/or declaring the employments affected before they would know whether they enjoyed the protection promised by the Act. This Order applied the provisions of the Act to various employees and employers in St Vincent and the Grenadines. Until this Order (or any predecessor Order if such existed) was made, the protection provided to workers under the Act was inchoate, a mere hope for the future. Before the required Order was made, no agricultural worker in St Vincent enjoyed the protection afforded by the Act. Prior to the making of the Order, no statutory authority was subject to the new regime created by the Act, because no employment been declared to be a protected employment. Once this Order was made, all of the provisions of the Act applied to the employers and employees affected, and the protection promised to be afforded by the Act became crystallized.

[9] I choose to ignore for the purposes of this decision the fact that the Order by its title claims only to declare under the provisions of section 3 the notified establishments. There exists no separate Order declaring the employments that are to be protected employments as envisaged by section 3(2). It is apparent on reading it, that the Order was intended to combine both declarations, and I accept that that is the correct approach. The wording of the Order, though its title is limited to notified establishments, describes both the establishments and the classes of workers that are declared to be protected. So, sub-paragraph (a), quoted above, after notifying that all agricultural and livestock producing establishments are protected, goes on to declare which types of workers falling within these establishments are protected.

[10] How, if at all, did the Order affect the parties to these proceedings? The principal function of the Association, as set out in section 3 of Cap 32, is as follows:

(2) The Association shall, in accordance with the provisions of this Act, have the following functions, namely:

- (a) to control the cultivation, marketing and export of bananas and banana plants;
- (b) to promote, institute and undertake research into the cultivation of bananas and banana plants and take such steps as may be expedient for the control or prevention of pests and diseases that affect the same.
- (c) . . .

The Association is engaged, from the above, in the provision of agricultural services. From this, I conclude that, if the Association were a private employer, and not a statutory authority, it would by virtue of this Order automatically be a notified establishment under the Act. As a statutory authority or board as defined

in the definition section 2 referred to above, the Association can in the specified circumstance be exempted as a notified employer.

- [11] The rule on proof is that the person alleging an exemption in his favour from the provisions of an Act bears the burden of proving that the exemption applies to him. A statutory board is exempt only where “special provisions already apply both as regards termination notice and retiring benefits.” I understand this requirement for special provisions to be a general one. That is, there must be evidence that a statutory board, claiming to be exempt from the provisions of the Act, has in place the appropriate special provisions applying to its workers generally. There was no evidence in this case of the existence of any special provisions that already applied between the Association and its employees in respect of the required matters under the section. A statutory board that has no special provisions generally cannot contract out of the Act in relation to a particular worker by entering into a contract containing provision for termination notice and retiring benefits with that worker. It is not the individual contract of employment, it is the entire statutory board that, because of its special arrangements with its workers put in place prior to the coming into effect of the Act, is exempted. If I understand the Association’s submission to be that it is exempt because it has a short-term contract with the Plaintiff which contract contains the relevant special provisions, then I find that the Association is not exempt from the Act, and the Labour Commissioner has jurisdiction. Alternatively, if I understand the Association’s submission to be that the Act permits the Association to enter into such contracts outside of the Act, then I have to say that I do not see it that way either. The only evidence that would have sufficed to exempt the Association from the provisions of the Act would have been evidence that the Association was a statutory board that prior to the coming into effect of the Act made special provision for its employees both as regards termination notice and retiring benefits. Such an exemption is offered not to private employers, only to statutory boards and to the Crown. There being no such evidence before the court in this case, I am constrained to find that

the Association is a non exempt statutory board, and the Plaintiff is in protected employment with it.

- [12] There will be judgment for the Plaintiff accordingly. The Banana Growers Association is declared to be an employer within the meaning of the **Protection of Employment Act, Cap 150**. The Hearing Officer appointed under that Act is competent to adjudicate upon the case of unfair dismissal brought before him by the Plaintiff against the Defendant. The Plaintiff is entitled to his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge