IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0013 OF 1996
(High Court Miscellaneous Appeal No. HBA0011 of 1995)

BETWEEN:

THE FIJI SUGAR CORPORATION LIMITED

APPELLANT

-and-

FIJI SUGAR & GENERAL WORKER'S UNION

RESPONDENT

Mr. B. Sweetman for the Appellant
Mr. H. K. Nagin for the Respondent

Date and Place of Hearing	:	14 August 1997, Suva
Date of Delivery of Judgment	:	18 August 1997

JUDGMENT OF THE COURT

This is an appeal from a decision of Pain J arising from proceedings which commenced initially before the Sugar Industry Tribunal (the Tribunal) and subsequently on appeal to the High Court.

In August 1995 the Fiji Sugar Corporation Limited (the Corporation) and Fiji Sugar & General Worker's Union (the Union) were attempting to determine their differences in connection with a collective agreement which is referred to as the 1994

Log of Claims. Because these negotiations could not be resolved the Union commenced industrial action. that is, it went on strike.

The Sugar Industry Act (Cap 206) requires that at least 14 days written notice must be given to the other party to a dispute before any strike action is commenced. The Union relying on a written notice dated 17 October 1994 commenced strike action on 9 August 1995 i.e. after 10 months notice to the Corporation.

On the same day the Industrial Commissioner issued a Certificate of Dispute which stated in part as follows:-

> *"NOW THEREFORE BEING SATISFIED THAT NO USEFUL PURPOSE WOULD BE SERVED BY CONCILIATING UNDER SECTION 103 FOR THE PURPOSE OF SETTLING THE DISPUTE HEREIN REFERRED TO, I HEREBY CERTIFY IN PURSUANT TO SECTION 104 OF THE SUGAR INDUSTRY ACT THAT THE DISPUTE IS UNRESOLVED AND ACCORDINGLY REFER THE DISPUTE TO THE SUGAR INDUSTRY TRIBUNAL FOR DETERMINATION."*

The dispute came before the Tribunal on 12 August 1995. As a preliminary objection the Corporation challenged the legality of the industrial action taken by the Union and alleged that the strike was illegal.

The issues before the Tribunal involved the interpretation of s.98 of the Sugar Industry Act which, as far as relevant to this appeal, provides as follows:-

"98-(1)Subject to sub-sections (4) and (7) no industrial action by way of strike shall be taken in respect of an industrial dispute:-

(a)unless the action is taken by employees who are a party to the dispute or who are members of an organisation of employees which is a party to the dispute;
(b)unless at least fourteen days' notice in writing of the intention to take such action has been given by or on behalf of those employees or that organisation as the case may be, to the other party to the dispute, or, where there is more than one, to each of them, and to the Registrar of Tribunal; and
(c)if the Industrial Commissioner has, at the time the action is taken, certified the dispute to be an unresolved dispute under subsection (2) of section 96, section 104 or subsection (8) of this section.

(2) .....

(3) .....

(4) Subject to subsection (5), a person shall not be guilty of an offence under subsection (1), (2) or (3) in respect of any action taken by him if at the time of taking that action twenty-eight days has elapsed since notice was given to the Registrar of the Tribunal and the Tribunal has not made its award in respect of the dispute.

(5) The Tribunal may extend the period of twenty-eight days referred to in subsection (4) if in its opinion it is appropriate to do so having regard to the action before the Tribunal of any party to the dispute.

(6) A notice under this section shall be in such form and shall contain such particulars as shall be determined by the Tribunal and copies of such form of notice shall be available from the Registrar of the Tribunal.

(7) Where a party to an industrial dispute gives notice of intention to take industrial action under this section in respect of that dispute and for the time being such action by that party is not prohibited under the foregoing provisions of this section, any other party to that dispute may take industrial action in respect of that dispute without giving such notice for so long as the industrial action taken by the first-mentioned party is not prohibited.

(8) The Industrial Commissioner may, and if so directed by the Tribunal shall, certify an industrial dispute to be an unresolved dispute:-

(a) at any time after a notice under this section has been given to the Registrar of the Tribunal in respect of that dispute; or

(b) .....

and thereupon the Industrial Commissioner shall refer the matter for determination by the Tribunal under Part XI or, where the dispute is required to be determined otherwise than by the Tribunal under the provisions of the Master Award or, pending the making of the Master Award, of a contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1) of section 71, for determination in accordance with those provisions."

The question of proper notice of intended industrial action by way of a strike was naturally an issue of paramount consideration. If the notice was invalid then the strike would be illegal. The Corporation's challenge relied on:-

(1) non-compliance as to the format of the notice (s.98(1)(b) and (6));

(2) the prohibition of strike action if the Industrial Commissioner certified an unresolved dispute (s.98(1)(c)).

As to (1) the Tribunal concluded that the form of the notice complied with the provisions of s.98(1)(b).

As to (2) the Tribunal relied on its interpretation of s.98(4) to determine the meaning of s.98(1)(c) and as a result to declare that the Union's notice dated 17 October 1994 was invalid and that the industrial action taken by the union was therefore illegal.

From that decision the Union appealed to the High Court pursuant to one of the provisions of s.123 of the Act which permits such an appeal on the ground "...that the decision of the Tribunal is erroneous in point of law". The grounds of appeal were as follows:-

"1. *THAT the Learned Sugar Industry Tribunal erred in law in wrongly interpreting Section 98 of the Sugar Industry Act.*

2. *THAT the Learned Sugar Industry Tribunal erred in law in deciding that the Appellant's industrial action was illegal.*

3. *THAT the Learned Sugar Industry Tribunal exceeded his jurisdiction in directing that the Appellant's members return to work with effect from 12.00 p.m. on Sunday 13th August, 1995."*

At the hearing of the appeal the challenge to the Tribunal's interpretation of s.98(4) was very quickly resolved. Counsel for the Corporation conceded that "...the interpretation given by the Tribunal to s.98(4) and (5) cannot be supported". As a result His Lordship included in his judgment:-

> *"It follows that the Tribunal's decision, that the strike was illegal because it took place more than 28 days after notice was given, cannot be sustained. The Appellant has established its ground of appeal that the Tribunal "erred in law in wrongly interpreting Section 98 of the Sugar Industry Act"."*

That decision Mr. Nagin advised us achieved what the Union sought on appeal. He agreed with the learned Judge that "This finding would normally be sufficient for the Court to determine the appeal in favour of the appellant" i.e. the Union.

However he went even further and submitted that such a finding should have finally determined the appeal. We agree. The balance of the judgment dealing with the interpretation of the High Court rules; the necessity for cross appeals; and the absence of forms required by S.98(6) to name but a few of the issues discussed, fail in our opinion to add life to what on 19 March 1996, the date of judgment, had clearly become a dead

issue. His Lordship should simply have quashed the Tribunal's declaration that the strike was unlawful; he should not have made any finding as to its legality.

The industrial action was initiated on 9 August 1995. The Union workers returned to work on 13 August 1995 as directed by the Tribunal and we are told that subsequent logs of claims have since been satisfactorily negotiated between the Corporation and the Union. In our opinion any attempt now to revive what we regard as a dead issue is not going to contribute to a sympathetic and amicable environment of employer and employee relations.

We say that advisedly because of the lack of evidence to support the correspondence relied on by the Corporation. That is not to say that Counsel have failed in this respect. Mr. Sweetman explained that the issues we are now concerned with were originally presented to the Tribunal as a preliminary objection on the morning of a hearing which was anticipated to last many days. However, the Tribunal delivered an eight page decision later the same day so that no evidence was presented to either support or challenge the documentation which formed the basis of the Tribunal's decision.

Any appeal both to the High Court and to this Court is restricted by and limited to whether the decision of the Tribunal is erroneous in point of law. Mr. Sweetman eloquently endeavoured to amplify what the correspondence failed to fully disclose. We are not prepared to go down that route and discuss issues which Mr. Nagin quite correctly

has submitted we should not do. That would involve us in determining mixed issues of fact and law an exercise we do not have jurisdiction to undertake.

Accordingly the appeal against the decision of the High Court as to the interpretation of s.98(4) and (5) is disallowed.

The appeal against the decision of the High Court as to the legality of the industrial action is allowed.

There will be no order as to costs.

The original of this judgment was hand written; approved by Savage J.A.; and his consent endorsed on Thursday 14 August 1997. He left Suva to depart Fiji at 7 a.m. on Friday 15 August 1997 before the judgment in final form could be typed.

Pursuant to s.19(1) of the Court of Appeal Act (Cap.12) both counsel have consented to the two remaining Judge's signing and delivering this judgment.

I.R. Thompson

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Mr. Justice I. R. Thompson
Judge of Appeal

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Mr. Justice J. D. Dillon
Judge of Appeal

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