

FIJI BANK EMPLOYEES UNION

A

v.

1. PRICES AND INCOMES BOARD  
2. THE ATTORNEY-GENERAL OF FIJI

B

[COURT OF APPEAL—Speight V. P., Mishra J. A., Roper J. A.]

Civil Jurisdiction

Date of Hearing: 5 November 1985  
Date of Judgment: 8 November 1985

C

*(Trade Union—Wage Freeze—competency.—entitlement of legislature to enact retrospective laws—enactments may have the effect of interfering with existing rights.)*

D

*T. Fa* for the Appellant  
*M. J. Scott* for the 1st Respondent  
*Dr A. Singh* for the 2nd Respondent

Appeal by Fiji Bank Employees Union against a decision by the Supreme Court refusing declarations that an order under the Counter Inflation Act (Cap. 73) (the Act) gazetted on 26 November 1984 which authorised the 'wage freeze' was ultra vires the Act.

E

S. 10 provides in summary that the Respondent Board with the approval of the Minister may by order regulate the payment of remuneration.

The order referred to:

F

"1. This order may be cited as the Counter-Inflation (Remuneration) (Control) Order. 1984.

*Interpretation*

2. In this Order, unless the context otherwise requires—

G

"appointed day" means 9 November 1984;

"remuneration" includes salary, wages, bonuses, commission and any other benefit, facility or advantage, whether in money or otherwise, paid or provided to any person by his employer:

*Remuneration*

H

3. An employer shall not pay or provide remuneration for work done at any time after the commencement of this Order at a rate which exceeds the rate of remuneration last paid or provided by him for the same kind of work before the appointed day.

A 4. The provisions of this Order shall prevail over any contract of service insofar as that contract governs the remuneration or rate of remuneration of a person for work both before and after the appointed day and any such contract shall be deemed to be amended so that remuneration of a person for work done after the commencement of this Order shall not exceed the highest rate at which it was paid or provided before the appointed day for the same kind of work.

B 5. Nothing in this Order shall prevent an increase in the remuneration payable to a person being an increase made by reason of—

(a) the promotion of the person to another office or position provided that office or position was created before the appointed day;

(b) the person performing the duties of another office or position provided that office or position was created before the appointed day.”

C It was argued for the Union that a power to “restrict or regulate does not authorise prohibition; therefore was ultra vires.

D *Held:* Clause 4 affected future contractual rights to future increases. The legislature had demonstrated an intention in S. 10 to legislate retrospectively, as was competent for it to do; though the so called retrospectivity did not occur in the sense that term is usually applied.

However as was said by Buckley C. J. in *West v. Gwynne* 1911 2 Ch. 3. . . .

E “Most acts of parliament in fact do interfere with existing rights.”

Appeal dismissed.

Cases referred to:

F *Toronto Municipal Corporation v. Virgo* (1896) A.C. 88  
*F.E. Jackson & Co. Ltd v. Collector of Customs* (1939) N.Z.L.R. 682  
*N.Z. Employees Industrial Assn. of Workers v. Attorney-General and Others* (1976) 2 N.Z.L.R. 521  
*West v. Gwynne* (1911) 2 Ch. 3

G Judgment of the Court

Roper, J. A.:

H This is an appeal against the judgment of Rooney J. in which he refused declarations that an order under the Counter-inflation Act (Cap. 73) gazetted on the 26th November 1984, and which authorized the “wage freeze”, was ultra vires section 10 of the Act. That section provides in short that the Respondent Board, with the approval of the Minister, may, by order, restrict or regulate the payment of remuneration of any kind. (emphasis added).

This is the text of the order:—

“1. This order may be cited as the Counter-Inflation (Remuneration) (Control) Order. 1984.

*Interpretation*

2. In this Order, unless the context otherwise requires—"appointed day" means 9 November 1984;

"remuneration" includes salary, wages, bonuses, commissions and any other benefit, facility or advantage, whether in money or otherwise, paid or provided to any person by his employer;

3. An employer shall not pay or provide remuneration for work done at any time after the commencement of this Order at a rate which exceeds the rate of remuneration last paid or provided by him for the same kind of work before the appointed day.

4. The provisions of this Order shall prevail over any contract of service insofar as that contract governs the remuneration or rate of remuneration of a person for work both before and after the appointed day and any such contract shall be deemed to be amended so that remuneration of a person for work done after the commencement of this Order shall not exceed the highest rate at which it was paid or provided before the appointed day for the same kind of work.

5. Nothing in this Order shall prevent an increase in the remuneration payable to a person being an increase made by reason of—

(a) the promotion of the person to another office or position provided that office or position was created before the appointed day;

(b) the person performing the duties of another office or position provided that office or position was created before the appointed day."

Mr Fa's first point was that a power to "restrict or regulate" does not authorise "prohibition" and that the effect of the Order was to "prohibit" the payment of remuneration and is therefore ultra vires.

There is no doubt that a power to regulate or restrict will not authorise a total prohibition of the activity to be regulated. That was made clear in *Toronto Municipal Corporation v. Virgo* [1896] A.C. 88, and by Callan J. in *F.E. Jackson & Co. Ltd v. Collector of Customs* [1939] N.Z.L.R. 682. In support of his argument Mr Fa relied on the opening phrase in Clause 3 of the Order "An employee shall not pay or provide remuneration for work done at any time after the commencement of this Order", which simply amounts to an illogical use of words taken out of context. He also drew attention to the fact that whereas section 10 gives power to restrict or regulate, section 11, which deals with dividends, gives a power of prohibition.

The Order must be considered in the light of the spirit and declared purposes of the Act, and on that we adopt the words of Turner P. in *N.Z. Employees Industrial Assn. of Workers v. Attorney-General and Others* [1976] 2 N.Z.L.R. 521 at p. 529:—

"The ambit of the Act itself must by reason of the nature of its subject-matter be regarded as a wide one. Measures to secure the economic stability of New Zealand need not usually be considered unless that economic stability appears in some degree to be threatened: and in times of economic stress measures will of necessity be such as to impose some burdens and restrictions on a great proportion of the community, and even to result in widespread hardship in greater or less degree. Moreover, it will probably be found expedient in such situations to regulate and restrict the exercise of freedoms which in 'normal' times would be left unimpaired. I cannot think of a restriction which more readily comes to mind, as one likely to be imposed for the general purpose of this Act, in a time of economic instability, than a ceiling on salaries, wages, or other rewards for services. Without power to impose such a restriction any attempt at stability by legislation must be in vain."

- A To hold that what was done in the instant case amounted to a prohibition would nullify the effect of section 10, and we therefore reject Mr Fa's first submission.

B Mr Fa's next submission was that the Order was null and void in that it operated retrospectively. This submission did not relate to the fact that the maximum remuneration payable was fixed at a date (the appointed day) which was prior to the date of the gazetting of the Order, but referred to the effect it would have on existing contracts of service, as provided in Clause 4 of the Order. Mr Fa's point, as we understood it, was that if there was a pre-existing agreement which provided for an increase in remuneration to take effect after the 9th November, the Order took away that right, restricting the worker to the remuneration he was receiving on the 9th November.

C There is no doubt that Clause 4 of the Order affects existing contractual rights to future increases of remuneration but if that is to be regarded as retrospection then it is our opinion that the legislature has demonstrated an intention in section 10 of the Act to enact retrospectively, as it is competent for it to do, because to restrict or regulate the payment of remuneration, future rights under existing agreements must necessarily be affected if the legislation is to have the desired effect.

D That aside we are not satisfied that we are dealing with an order having "retrospective" effect as that term is normally used where a statutory provision is under challenge.

Retrospective operation is one matter, interference with existing rights is another. The point is covered by this passage from the judgment of Buckley C.J. in *West v. Gwynne* [1911] 2 Ch. 3 at p. 12:—

E "As matter of principle an Act of Parliament is not without sufficient reason taken to be retrospective. There is, so to speak, a presumption that it speaks only as to the future. But there is no like presumption that an Act is not intended to interfere with existing rights. Most acts of Parliament, in fact, do interfere with existing rights."

We therefore reject Mr Fa's second submission.

F The appeal is dismissed with costs to the Respondents as fixed by the Registrar.

*Appeal dismissed.*