

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
CIVIL APPEAL NO. 7 OF 1980

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IN THE MATTER of the decision dated 2nd day of July, 1980 of the Registrar of Trade Unions refusing to register The Air Pacific Senior Staff Association as a Trade Union.

AND IN THE MATTER of the Trade Unions Act Cap. 80 of 1964.

Mr. G.P. Lala with Mr. J. Singh for
the Appellant.

Mr. A.M. Rabo for the Respondent.

D E C I S I O N

The abovenamed Air Pacific Senior Staff Association (which I shall hereinafter refer to as 'the Appellant Association') made application to the Registrar of Trade Unions pursuant to section 8 of the Trade Unions Act for registration under the Act.

The Registrar advertised the application in the issue of the Fiji Royal Gazette dated the 23rd May, 1980, by notice dated the 13th day of May, 1980.

The notice contained the following paragraph which is relevant in this appeal :

" Any registered Trade Union which considers itself adequately representative of the whole or of a substantial proportion of the interests in respect of which registration of the proposed amendment is sought, should within 21 days of the appearance of this notice in the Fiji Royal Gazette submit to me in writing any objection which it may wish to make against the registration sought."

Only one objection in writing was received by the Registrar and that was by letter dated the 5th June, 1980, from the Air Pacific Employees Association. The Registrar did not uphold the objection.

It is in my view significant for reasons which will appear later that no objection was received from the Airline Management Staff Association (AMSA), an Association which was registered on the 10th April, 1980, despite strong objections from the said Air Pacific Employees Association and the Federated Airline Staff Association.

The Registrar in compliance with section 3(5) of the Act consulted the Trade Unions Advisory Committee on the 1st July, 1980, and received advice from that Committee that the Association's application should be refused for the same reasons as the Registrar gave to the appellant association in his letter dated the 2nd July, 1980, which states as follows:

"You are hereby notified that your application to register the Air Pacific Senior Staff Association as a trade union under the Trade Unions Act, is refused. The ground of such refusal is that there is now in existence another registered trade union, namely, the Airline Management Staff Association which is adequately representative of a substantial proportion of the interests in respect of which registration is sought."

The Appellant Association within the time provided in section 16(1) of the Act has appealed against the Registrar's refusal to register the Association.

The notice of motion has some 13 alleged grounds of appeal. As Mr. Gardiner, the Registrar, has pointed out in his affidavit, a large number of the statements by Mr. L.H. Morris, the Appellant Association's President, in his affidavit are a repetition of the alleged grounds of appeal.

Seeking to find the Appellant Association's main ground of appeal is not easy as many of the alleged grounds are arguments. There is one ground and that is the ground provided by section 16(1) of the Act. The Appellant Association is aggrieved by the Registrar's refusal to register the Association and it is contended that he erred in so doing on the grounds that the Airline

Management Staff Association "is adequately representative of the whole or a substantial proportion of the interests in respect of which the applicant seeks registration".

In Action 196 of 1980 between the Federated Airline Staff Association and Registrar of Trade Unions and Another, the plaintiff in that action unsuccessfully sought to restrain the Registrar from registering AMSA. In that action I considered section 13 of the Act and expressed my view, to which I still adhere that the word "may" in subsection 1 of that section was not permissive but an enabling expression. I further expressed the view that, if the facts are such as to satisfy the Registrar that any of paragraphs (a) to (g) both inclusive of section 13 have application, he is obligated to refuse registration. I do not therefore have to consider the exercise by the Registrar of any discretion but only whether his refusal to register the Union was justified.

The issue I consider is not a difficult one to resolve. Either AMSA, which is presently registered under the Act, is adequately representative of the whole or a substantial proportion of the interests in respect of which the appellant Association seeks registration or it is not. If it is, the Registrar acted properly but if it is not he erred.

Before considering the facts on this issue I would state that I have perused the authorities referred to by Mr. Lala and Mr. Rabo. Both counsel have done quite a lot of research but the issue I have to consider is as I have stated not a difficult one. Many of the Australian cases Mr. Lala referred to dealing with appeals from the refusal of a Registrar to register an association are not of very much assistance because the wording of section 59 of the Australian Commonwealth Constitution and Arbitration Act 1904 - 1934 differs from section 13(1)(e) of our Act very materially. The Australian provision is :

"The Registrar shall, unless in all the circumstances he thinks it undesirable so to do, refuse to register any association as an organisation if an organisation, to which the members of the association might conveniently belong has already been registered". (the underling is mine.)

By contrast paragraph (e) of section 13 of our Act reads as follows :

"Any other trade union already registered is adequately representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration :

Provided that the Registrar shall, by notice in the Gazette or otherwise, notify any registered trade union which appears to him to represent the same interests as the applicants of the receipt of such application, and shall invite the registered trade union concerned to submit in writing within a period of twentyone days any objections which any such trade union may wish to make against registration".

The Australian provision gives the Registrar a discretion, if the factual situation is that the members of an Association might conveniently belong to a registered union.

The Fiji provision however provides that if an existing registered trade Union adequately represents the whole or a substantial proportion of the interests of the Association seeking registration it is one ground on which the Registrar can refuse registration of the applicant association.

Looking at the facts in this case I am not persuaded that A.M.S.A. "is adequately representative" of the interests of the members of the Appellant Association.

Although A.M.S.A. did not object to the Appellant Association's application which would seem to indicate it had no grounds to object or did not want to if it had grounds, the plaintiff filed an affidavit sworn by

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Mr. Bijay Prasad, its President, in support of the Registrar's actions. That affidavit confirms my views. Mr. Prasad points out in his affidavit that A.M.S.A. is capable of representing the members in the Appellant Association. I have no doubt its Constitution is wide enough to permit it to do so but that Association does not in fact at present represent any of the members of the Association. A.M.S.A. currently has only 20 members all of them senior staff employed by Qantas Airways Ltd.

There are some 51 senior airline staff all employed by Air Pacific Ltd. who could be but are not members of A.M.S.A. because they have no desire to join A.M.S.A.

Those simple facts disclose that A.M.S.A. is quite capable of but is not presently adequately representative of any of the interests of the members of the Appellant Association.

Paragraph (e) of section 13 in my view is a provision designed to prevent the formation of splinter unions. It does not in my view contravene section 13 of the Constitution of Fiji. If a substantial proportion of the senior staff of Air Pacific were presently members of A.M.S.A. the Registrar could quite properly refuse registration of an association formed by the remaining senior staff. But where no such staff are members of A.M.S.A. as is the situation in this instance, the Registrar should not have refused registration and I hold that he erred in so refusing.

Since there is nothing before me to indicate that the Appellant Association's application was not otherwise in order, I allow the appeal.

The Registrar as a result of this appeal is now obligated by section 9 of the Act to register the Appellant Association in the prescribed manner as a

registered trade union. In my view no order of this Court is necessary directing him to register the Union.

R. G. Kermode

(R.G. KERMODE)
ACTING CHIEF JUSTICE

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MAY, 1981.