

85/26  
26<sup>th</sup> March, 198

IN THE COURT OF APPEAL OF JERSEY

MALLETT and LE VESCONTE v THE DEFENCE COMMITTEE

JUDGMENT

The appellants, John Gedeon Mallett and Brian Francis le Vesconte bring this appeal as the representatives of 44 police officers, all of whom were employed as police officers on and before 1st January 1968. As serving police officers they were entitled, under the provisions the Paid Police Force (Jersey) Law, 1951, to the benefits of a non-contributory pension scheme.

The Public Employers (Contribution Retirement Scheme) (Jersey) Regulations, 1967, enabled police officers (along with others) to join a contributory pension scheme as from 1st January 1968. Some of the serving police officers chose to join the new contributory pension scheme; others, however, remained in the non-contributory pension scheme. Police officers joining the force after 1st January 1968 had no option: they were required to join the new contributory scheme.

In order to give effect to these new arrangements, it was agreed that all police officers should receive an additional 5% on top of their basic rate of pay in order to compensate for a 6% deduction made in respect of the new scheme; but those officers who chose not to join the new contributory scheme, and so remained in the non-contributory pension scheme, suffered a deduction (after the 5% had been added) of 4.75%.

As a result of these arrangements, a differential was accordingly created between the pay of those police officers who had chosen to remain in the non-contributory pension scheme and

those who had joined the contributory pension scheme: and this differential continued for several years.

Until 1977 the basic rate of pay of the Jersey Police had, in substance, followed the rates of pay which were applicable in the United Kingdom. In 1977, however, pay links with the United Kingdom were severed. When it came to determining appropriate rates of pay with effect from 1st April 1978, negotiations took place between the Police Association and the Defence Committee. Documents setting out the respective cases were exchanged; and it was agreed that, in the event of disagreement with regard to appropriate rates of pay, that there should be a reference to arbitration. Chapter 4 of the Defence Committee's Reply is in these terms:

"4.1 It is agreed that in the event of the States of Jersey Police Association on behalf of their members not accepting this Reply from the Defence Committee, an Arbitration Tribunal shall be convened.

4.2 There shall be an independent mutually agreed Chairman.

4.3 The States of Jersey Police Association and the Defence Committee shall each nominate one member of the Arbitration Tribunal.

4.4 The agreed terms of reference for the Arbitration shall be:-

- (i) the initial claims submitted by the States of Jersey Police Association
- (ii) the Defence Committee's Case in Reply dated April, 1978
- (iii) this latest Document

(iv) any written reply to (iii) that the Police Association may submit.

4.5 Either party to the Arbitration may elect to be represented.

4.6 Either party is open to submit additional written evidence to the Arbitration Tribunal, however, such additional evidence should be submitted to the Tribunal at least fourteen (14) days prior to the date fixed for any Hearing, with copies of such evidence being forwarded to the other party.

4.7 Whatever the Arbitration Tribunal may determine shall be binding on both parties.

4.8 Each Side shall meet its own expenses."

A consideration of these documents, without more, might have led one reasonably to conclude that it was the intention both of the Police Association and of the Defence Committee that the Arbitration Tribunal should settle the whole question of police pay with effect from 1st April 1978.

The Arbitration took place at the beginning of 1979. The Hearing took place on 29th January, and the Award was published on 5th March. The Award began in these terms:

"1. The question which we have been asked to settle arises out of a disagreement between the States of Jersey Police Association and the Defence Committee over police pay.

.....

2. Both sides indicated that they would be content

with an answer to two questions -

FIRST What, on April 1st, 1978, would have been the appropriate remuneration of a Police Constable upon appointment, based on a 40 hour week?

SECOND Whether rank differentials should be measured by percentages or fixed sums of money?"

After reviewing the relevant history of police pay, the Award referred to the basic rate of pay contended for by the Police Association, as being appropriate for a Police Constable. The Award then continued in these terms:

"To that figure the Association seeks to add -

(a) 5% as compensation for the pension arrangements now in force

.....

In our opinion the Association in claiming those percentages overlook the facts -

FIRST that when the contributory pension scheme was introduced those who opted for it ... suffered a deduction from their pay of 6% but were, nevertheless, compensated by a 5% increase in pay;  
....."

The Award concluded in these terms:

"(a) that the working week should be one of 40 hours;  
(b) that the appropriate salary of a Police Constable on appointment on April 1st, 1978 would have been the sum of a year; four thousand five hundred pounds;

- (c) that increments determined by length of service should be by way of fixed amounts and not be percentages."

A consideration of the Award leads us to three conclusions. First, whether or not it was the common intention of the parties that the Arbitration Award should settle all question of police pay for the relevant year - and not merely the appropriate rate for a Police Constable upon appointment - it is plain that the Award itself did no more than answer the specific questions which were asked of the Arbitration Tribunal. Secondly, in arriving at the figure of £4,500, not only the parties to the Arbitration themselves, but also the Tribunal itself, had well in mind the 5% which had been added to the basic pay to compensate for the 6% deduction. Thirdly, the Award itself did not consider any difficulties which might arise from the differential in the rates of police pay.

On 8th March - only three days after the Award had been published - a meeting was held between the Chairman of the Arbitration Panel and representatives of the parties to the Arbitration, "to clarify the interpretation of the conclusions of the Arbitration Panel on Police Salaries". A note of that meeting was prepared and is before this Court. Several matters were raised. It was confirmed that the salary for a Police Constable should be effective from 1st April 1978 for one year, and that it related to a working week of 40 hours. Pay Scale Increments were also considered and it was apparently agreed that the effect of the Award in cash terms would be applied to all increments of ranks up to and including Chief Inspector. It was further agreed that Personnel and Management

Services officers would act on the payment of the new rates of pay as soon as possible. It appears to us, therefore, that the matters which were discussed at the meeting of 8th March were wider in scope than the precise questions which had been asked of the Arbitration Tribunal.

The agreement made on 8th March to bring into effect the payment of the new rates of pay as soon as possible was dealt with immediately. On 9th March the General Secretary of the Police Association wrote to Mr. Robson of the Personnel and Management Services Department in these terms:

"Further to our conversation of yesterday's date, I enclose a copy of the proposed salary scales for Police Officers w.e.f. 1.4.'79. I would appreciate your comments as soon as possible in order that they can be implemented";

and attached to that letter was a schedule setting out the proposed police force rates of pay. Two features of that schedule call for attention. First, the "current rate w.e.f. 1.4.'78" included the 5% which had hitherto been added to the base rate. Secondly, the schedule covered not merely a Police Constable upon appointment, but all ranks from Constable to Chief Inspector, and indeed, included pay scales for each rank.

On 20th March, the General Secretary followed up his earlier letter with a further letter to Mr. Maher also to the Personnel and Management Services Department. He wrote in these terms:

"As you are now aware, the Arbitration Tribunal constituted to examine Police pay and conditions

published their decision on Monday, 5th March, 1979.

"In order to seek clarification of that decision, a meeting was held on Thursday, 8th March 1979 at which were present Sir Robert Le Masurier, Senator J.R.C. Riley, Mr.N.Robson and representatives of this Association.

"At the commencement of this meeting it was agreed that the Police Association would submit revised salary scales based on the tribunal's findings for the approval of your department. These figures were duly delivered on Friday 9th March 1979. It was further agreed that we should meet to discuss the retrospective aspects of the award and that we would receive a copy of the minutes of the meeting compiled by Mr.J.Bowman of your Department.

"I write, therefore, to request a meeting as soon as possible to discuss the unresolved matters and to request a copy of the minutes of the meeting of the 8th inst."

It is therefore plain that the Award provided the basis for an agreement between the parties to the Arbitration for the pay of all ranks of the police force; and it is equally plain that that agreement made no provision for the differentiation in pay between those police officers who had remained in the non-contributory pension scheme and those who had chosen to join the contributory scheme. Retrospective aspects of the Award apart, it appears, from the documentation, that there was agreement between the Police Association and the Defence Committee on all matters relating to police pay and conditions of service with effect from 1st April 1978.

This view is confirmed by consideration of a further letter from the Secretary of the Police Association dated 25th September 1979. It appears from that letter that the Defence Committee sought subsequently to assert that there should be a deduction of 4.75% from the rates of pay of those police officers who had remained in the non-contributory pension scheme from the rates of pay agreed consequent upon the Arbitration Award. The Defence Committee was seeking, in effect, to maintain the differential: the Police Association, by contrast, was contending that there was no justification for the Defence Committee making any deduction, having regard to the Arbitration Award and the dealings which had subsequently taken place.

This dispute was apparently incapable of amicable resolution, and came before the Royal Court in 1982. In a judgment delivered on 2nd August 1982 (Crowhurst and Others v Defence Committee, No.11 of 1982 - unreported judgments), the Royal Court held that no deduction should have been made; and there was no appeal to this Court from that decision.

The effect of the decision was, of course, to remove the differential which had existed before 1978. No sooner had the decision of the Royal Court been given, than the Plaintiffs sought by the action in which <sup>their</sup> ~~their~~ appeal arises, to restore the differential, by claiming that they were entitled to 5% over and above the basic pay - i.e. giving them a 5% lead over their colleagues who had remained in the non-contributory pension scheme. They contended that they were entitled to this in spite of the Arbitration Award and the agreement which followed it. Precisely where this would leave those police



officers who had joined the police force after 1st January 1968 and who were therefore compulsory members of the contributory pension scheme - but who were not plaintiffs in the present proceedings - was not precisely clear, save that we were told that their position was also the subject of litigation.

As we have said, we consider that the agreement which was reached on a 'current rate' was intended to include the 5% previously added to the basic rate and did not contemplate any continued differentiation between officers remaining in the non-contributory pension scheme and those in the contributory scheme. It was contended before us (though not before the Royal Court) that the Police Association was not the agent of the Plaintiffs in the present action for the purpose of negotiating their pay and conditions of service with the Defence Committee. This somewhat surprising submission is perhaps less surprising when one considers the letters to which we have referred written in 1979 by the General Secretary and the Secretary of the Police Association. There may be occasions when a trade union or a trade association is not the agent of its members at least for certain purposes; but we are quite satisfied that, for the purposes of this case, the Police Association was at all material times and for all material purposes the agent of the Plaintiffs in these proceedings.

We are equally satisfied that the Police Association, acting as the agents of the present Plaintiffs, concluded an effective agreement on behalf of the present Plaintiffs with regard to their pay and conditions of service with effect from 1st April 1978.

In the result we have reached the same conclusion as  
the Royal Court and accordingly dismiss this appeal with costs.

J. Caranta.  
President.