

Privy Council Appeal No. 51 of 1960

Walter Annamunthodo - - - - - Appellant
v.
Oilfields Workers' Trade Union - - - - - Respondent

FROM

THE FEDERAL SUPREME COURT OF THE WEST INDIES

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY, 1961

Present at the Hearing:

LORD DENNING.

LORD MORRIS OF BORTH-Y-GEST.

MR. L. M. D. DE SILVA.

[*Delivered by LORD DENNING*]

Walter Annamunthodo has worked in the oil industry in Trinidad ever since the year 1944. In 1952 he joined the Oilfields Workers' Trade Union and he remained thereafter an ordinary member of the Union. He never became an officer. The rules of that Union require that every member shall give a pledge that he will obey the rules and regulations of the Union: and it may be presumed that Walter Annamunthodo gave that pledge. At any rate he does not dispute that he is subject to the rules. Prior to the events hereinafter mentioned he had never been charged with any offence against the rules.

On 15th May, 1957 the General Secretary of the Union notified Walter Annamunthodo that he was required to appear before the General Council of the Union on Sunday 9th June, 1957 to answer four charges of offences against the rules. Walter Annamunthodo attended the hearing on that day and denied the charges. The hearing was adjourned until Sunday 16th June, 1957, but Walter Annamunthodo did not attend on that day as he had a previous engagement. On 17th June, 1957 the General Secretary informed him that he had been convicted on all the charges laid against him: and that the General Council had as a result seen fit to expel him. He appealed to the Annual Conference of Delegates, but they on the 30th March, 1958 upheld the expulsion.

Thereupon Walter Annamunthodo sought relief in the Courts. On 17th May, 1958 he brought this action against the Union claiming that his purported expulsion was ultra vires and void: an injunction to restrain the Union and its servants or agents from excluding him: and damages for breach of contract. On 25th June, 1959 the Supreme Court of Trinidad and Tobago (Phillips J.) dismissed his claim. He appealed to the Federal Supreme Court (Rennie, Archer and Wylie J.J.) who on 25th January, 1960 dismissed his appeal. He now appeals, by special leave, *in forma pauperis*, to Her Majesty in Council.

Stripped of their legal form, the charges against Walter Annamunthodo were in substance that during the lunch-hours on 15th and 17th August, 1956 he had attended meetings in the works, at which non-members were present, during which he had alleged that the President-General of the Union had embezzled \$25,000 of the Union's funds; that during those meetings he had levelled charges of theft and corruption against the officers of the Union; and that he had repeatedly made those statements in public.

Their Lordships notice that the President-General and officers of the Union did not take action for slander against Walter Annamunthodo but proceeded instead to formulate charges against him under the Union rules. The rules which they invoked were as follows:—

“ Rule 25: Irregular Discussion of Union’s Business

It shall be irregular for any officer or member of the Union to discuss the business of the Union in public or with persons who are not members of the Union and any officer *or member* so charged and found guilty shall forfeit his office or be suspended from membership or be fined any sum not exceeding five dollars or expelled. Any other member found guilty of such breach shall be fined two dollars (\$2.00) for the first offence, for the second offence he shall be suspended from membership for three months, and for a third similar offence he shall be expelled.”

Their Lordships have put the words “ or member ” in italics because Phillips J. thought they enabled the General Council to expel Walter Annamunthodo. But the Court of Appeal thought those words must have been inserted in error, for they could not be reconciled with the second part of the rule. They should therefore be ignored and treated as if deleted. Their Lordships agree with this view which was indeed not disputed before them: so Walter Annamunthodo could not be expelled under this rule.

“ Rule 26: Plotting of Members

(1) Any officer or member who is charged with plotting against fellow officers or members shall on conviction, if an officer forfeit his office, or be suspended or fined any sum not exceeding five dollars or be expelled; and if a member be fined two dollars for the first offence; for a second offence he shall be suspended from membership for three months or may be expelled from the Union.”

Their Lordships notice that Walter Annamunthodo was an ordinary member and this was his first offence. So he could not be expelled under this rule.

“ Rule 27: Respect to Officers

All officers and members are required to show due respect to the officers of the Union who have been duly elected. Anyone charged and found guilty of disrespectful conduct in this connection, if he be an officer shall, for the offence, either forfeit his office or be suspended from office. If he be an ordinary member he shall for the first offence be fined the sum of one dollar. Anyone found guilty for a second offence may be expelled.”

Their Lordships again notice that Walter Annamunthodo was an ordinary member and this was his first offence. So he could not be expelled under this rule.

“ Rule 32: Complaints and Appeals

(5) All charges made by any member or officer against another must be in writing and if any charge, on investigation, is proved to be made through malice and without foundation, the member or officer preferring such charge shall be liable to suspension or expulsion or be fined any sum not exceeding five dollars as the case deserves.”

Their Lordships think that the General Council misconceived this rule. It is intended to deal with charges brought before the General Council or Executive Committee of the Union and says that if they are unfounded and malicious, it is an offence. In short, something in the nature of “ malicious prosecution ”. Walter Annamunthodo had brought no such charge. He should not therefore have been convicted under rule 32 and was not liable to expulsion under it. Phillips J. so held and it was not disputed before the Federal Supreme Court nor before their Lordships.

There was a slight reference before their Lordships to rule 32(9) but it was never mentioned in the Courts of the West Indies and it is not open to the Union now to rely on it. In any case it has no relevance.

Now those rules 25, 26, 27 and 32 were the only rules which the General Secretary invoked in his letter charging Walter Annamunthodo with a breach of the rules. They were specified in the greatest particularity. The letter followed the familiar form of an indictment:

“ *Charge 1.*

Statement of Offence: Plotting. Contrary to Rule 26. . . .

Particulars

Charge 2.

Irregular Discussion of Union Business contrary to Rule 25.

Statement of Offence:

Particulars

Charge 3.

Offence: Breach of Rule 32, *Complaints and Appeal.*

Particulars

Charge 4.

Statement of Offence: Disrespectful conduct contrary to Rule 27.

. . . .

Particulars”

Their Lordships have already observed that under none of those rules was there any power to expel Walter Annamunthodo. Yet when it came to sentencing him the General Council did expel him: and for this purpose they invoked another rule, namely rule 11(7). He had not been charged with a breach of it, but nevertheless they claimed a right to expel him under it. The letter informing him of it dated 17th June, 1957 was in these words:

“ This is to inform you that you have been convicted on all the charges laid against you by the General Secretary of the Oilfields Workers’ Trade Union.

The General Council has as a result seen fit to expel you under the provisions of Rule 11, Section 7 on the ground that your general conduct has been prejudicial to the best interest of the Union.”

Now rule 11(7) is in these words:

“ The General Council may find any member who is proved to the satisfaction of the said Council, to have been guilty of conduct prejudicial to the interests of the Union any sum not exceeding \$5.00 and/or may suspend or expel such member from the Union. Any member so fined, suspended or expelled shall have the right of appeal to the Annual Conference of Delegates whose decision shall be final and binding.”

The first question is: Did rule 11(7) create a *separate and distinct offence* of “conduct prejudicial to the interest of the Union”?—for in that case it ought to have been separately charged—or Did rule 11(7) merely empower the General Council to impose *more severe penalties* for the various *other offences* specified in the rules provided that the conduct of which he was convicted under them was prejudicial to the interests of the Union?—for in that case rule 11(7), so it was said, need not be separately charged, but only the other offences. Phillips J. in the Supreme Court and Archer and Rennie J.J. in the Federal Supreme Court thought that rule 11(7) only empowered the General Council to impose *more severe penalties* and sought support for this view from some observations of Eve J. in *Wolstenholme v. Amalgamated Musicians’ Union* [1920] 2 Ch. 388 at pages 400–1. But Wylie J. thought it created a *separate and distinct offence* and their Lordships agree with him. As he said, “it stands entirely on its own, authorising expulsion of a member who is proved to the satisfaction of the General Council ‘to have been guilty of conduct prejudicial to the interests of the Union’”. In the opinion of their Lordships it should not have been invoked for the purpose of expelling Walter Annamunthodo unless he was given notice of the charge under it and had a fair opportunity of meeting it.

But even if rule 11(7) only empowered *more severe penalties*, nevertheless those severe penalties could only be imposed when the conduct was prejudicial to the interests of the Union: and their Lordships think that, even on that view, the rule should not have been invoked without giving Walter Annamunthodo notice of it.

Mr. Lazarus sought to treat the specific formulation of *charges* as immaterial. The substances of the matter lay, he said, in the *facts* alleged in the letter as to the meetings which Walter Annamunthodo had attended and the allegations he had made. Their Lordships cannot accede to this view. If a domestic tribunal formulates specific charges, which lead only to a fine, it cannot without notice resort to other charges, which lead to far more severe penalties.

The second question is this: Is Walter Annamunthodo debarred from complaining of rule 11(7) being invoked because he did not appear at the adjourned hearing? He had attended the first hearing on 9th June, 1957 when the evidence was taken: but he did not attend at the adjourned hearing on 16th June, 1957, giving as his reason that he had made a previous engagement to be the judge at a "Mock Trial" sponsored by a Girls' Group. That seems a poor excuse. And it was said that, if he had appeared at the adjourned hearing, he could have been given notice in writing then and there of the intention to proceed under rule 11(7) and thus expelled without any violation of natural justice. This argument appealed to Wylie J. who thought that, as he had been given an opportunity of appearing at the adjourned hearing and had not appeared, that was enough to satisfy natural justice. Their Lordships realise the force of this reasoning but they cannot agree with it. Walter Annamunthodo must be taken to have known that, at the adjourned hearing, the General Council might proceed to award the full penalty prescribed for the offences then charged against him—which was only a small fine—but he could not be expected to know that he might be dealt with for a separate and distinct offence which involved expulsion. When the General Council at the adjourned hearing desired to proceed under rule 11(7), and found that he was not present, they ought to have adjourned the hearing once again so as to give him notice of the fresh charge: and they would have had to do it in writing under rule 32(5). By failing to do so, they failed to observe the requirements of natural justice.

The third question is whether Walter Annamunthodo has lost his right to complain by appealing to the Annual Conference of Delegates. As soon as he knew of his expulsion by the General Council, he gave notice of appeal under rule 11 section 7. He had the opportunity to put before the Annual Conference of Delegates all his objections to his expulsion. He does not complain of any failure of natural justice by that body. And they affirmed his expulsion. So can he now complain? This reasoning was accepted by Archer and Wylie J.J. They held that, by appealing, he had lost his right to complain of rule 11(7) being invoked. Indeed he himself invoked rule 11(7) so as to appeal under it. So how can he now repudiate it? Their Lordships recognise the force of this reasoning, but they cannot agree with it. Even if the order of expulsion were capable of being affirmed or disaffirmed their Lordships cannot regard an appeal as an act of affirmance. On the contrary it is a disaffirmance—a complaint against the order of expulsion. If he had not appealed, it might have been said that he should have done so, that he should have exhausted all internal means of redress, before having recourse to the Courts. Such a plea was upheld in the special circumstances that prevailed in *White v. Kuzych* [1951] A.C. 585. It was therefore quite proper for him to appeal to the Annual Conference before coming to the Courts, even though he was not bound to do so. But, having appealed and failed, he does not by so doing forfeit his right to redress in the Courts. If the original order was invalid, for want of observance of the rules of natural justice, he can still complain of it, notwithstanding his appeal.

Mr. Lazarus did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept this suggestion. If a domestic tribunal fails to act

in accordance with natural justice, the person affected by their decision can always seek redress in the Courts. It is a prejudice to any man to be denied justice. He will not of course be entitled to damages if he suffered none. But he can always ask for the decision against him to be set aside.

In the result their Lordships think the decision of the General Council on 16th June, 1957 was vitiated by reason that it convicted Walter Annamunthodo of an offence against the rules with which he had never been charged. He is entitled therefore to have it set aside. But he gave no evidence that he had suffered any damage from it.

Their Lordships will therefore humbly advise Her Majesty that this appeal should be allowed and that it should be declared that the purported expulsion of the plaintiff from the defendant Union by resolution of its General Council on or about 16th June, 1957 was invalid and that an order should be made to set it aside. The respondents must pay the costs of the appeal before their Lordships (so far as costs are allowed to an appellant *in forma pauperis*) and also his costs in the Courts below.

In the Privy Council

WALTER ANNAMUNTHODO

v.

OILFIELDS WORKERS' TRADE UNION

DELIVERED BY LORD DENNING

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS,
HARROW
1961