

Simon Ah Tong and 62 others

Appellants

v.

The Mauritius Sugar Terminal Corporation

Respondent

FROM

THE SUPREME COURT OF MAURITIUS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 20TH OCTOBER 1988

Present at the Hearing:

LORD KEITH OF KINKEL
LORD FRASER OF TULLYBELTON
LORD TEMPLEMAN
LORD ACKNER
LORD JAUNCEY OF TULLICHETTLE
[Delivered by Lord Keith of Kinkel]

This appeal from a judgment dated 9th April 1986 of the Supreme Court of Mauritius (C.I. Moollan C.J. and A.M.G. Ahmed J.) raises a short point upon the proper construction of section 19(1)(f) of the Mauritius Sugar Terminal Corporation Act 1979 ("the Act of 1979"), incorporating certain agreements dated 7th and 8th June 1979 between the Government of Mauritius and a number of trades unions.

The Act of 1979 was passed to provide for the management of a bulk sugar terminal at the time under construction at Port Louis. The Act was assented on 9th June 1979 and came into force on the 30th of that month. The terminal was expected to make a substantial contribution towards the economy of Mauritius, principally through reducing the time spent in harbour by ships loading sugar. However, it was also foreseen that it would have an adverse effect on the traditional stevedoring activities of the port, and that many persons employed in those activities and in allied trades would perforce become redundant.

In these circumstances the Government entered into agreements with a number of trades unions whose

members were likely to be so affected. The agreement relevant for present purposes is that between the Government and the Mauritius Workshop Workers' Union dated 8th June 1979. Clause 1 provided:-

"Redundancy Pension

1.

(i) Workers of Taylor Smith & Co. Ltd. who have completed fifteen years of continuous service and have become redundant because of the coming into operation of the Bulk Sugar Terminal shall be entitled to a full annual pension equivalent to two-thirds of -

(a) 26 x 12 x daily basic wage for daily paid workers; or

(b) 52 x weekly basic wage for weekly paid workers; or

(c) 12 x monthly basic salary for monthly paid workers.

(ii) Workers who have not completed fifteen years of continuous service and who have become redundant because of the coming into operation of the Bulk Sugar Terminal shall be entitled to a pension on a pro-rata basis i.e.

[and then a formula is set out]

(iii) Such redundancy pension shall be paid by the Bulk Sugar Corporation."

Section 19 of the Act of 1979 made provision for the manner of application of the revenue of the Corporation in the course of its management of the bulk sugar terminal. Sub-section (1), in a series of numbered paragraphs, specified various matters, mainly of an ordinary administrative character, towards which the revenue might be applied. Paragraph (f) specified:-

"(f) any compensation payable to employees of the United Docks, the stevedoring companies, Societe Noel Freres, Mauritius Jute and Textile Ltd., Central Aloe Fibre Factory and Taylor-Smith Co. Ltd. or their widows as per agreements signed by the Minister of Labour and Industrial Relations on behalf of the Government of Mauritius with the Port Louis Harbour and Docks Workers' Union, the Docks and Wharves Staff Employees Association, the Aloe Industry Workers' Union and the Mauritius Workshop Workers' Union on the 7th and 8th of June 1979."

The bulk sugar terminal came into operation on 30th June 1980. It appears that Taylor Smith Co. Ltd. whose business comprised stevedoring and associated activities, then or shortly afterwards laid off 39 employees, with the consent of the Termination of Contracts of Service Board given under section 39 of The Labour Act 1975. These employees were granted pensions by the Corporation in pursuance of section 19(1)(f) of the Act of 1979 and the agreement of 8th June 1979. Further batches of employees were laid off by the company as redundant, with similar consent, on various dates up to 31st December 1983. These employees also were granted pensions by the Corporation. Correspondence produced indicates that this was done in pursuance of instructions given to the Corporation by the Government. Finally, on 31st May 1984, the company gave notice of termination of their employment on grounds of redundancy to the 63 employees who are the appellants and the plaintiffs in the present proceedings. The laying off of these employees was approved by the Termination of Contracts of Service Board on 27th June 1984 and took effect on 31st August 1984. The Corporation refused to pay a pension to any of the plaintiffs, and the present proceedings, which were started by a statement of claim entered on 31st July 1985, have been brought to establish that the refusal is unwarranted.

The Corporation tabled a preliminary plea *in limine litis* in these terms:-

"The statement of claim discloses no cause of action, inasmuch as section 19(f) of the Mauritius Sugar Terminal Corporation Act 1979 is now spent."

The plea arises out of the circumstance that Volume 3 of the Revised Edition of the Laws of Mauritius, which came into force on 1st July 1982, reproduced the Act of 1979 with the omission of section 19(1)(f). The Revised Edition was prepared by the Law Revision Unit acting under section 1 of the Revision of Laws Act 1974 as amended in 1981. By virtue of section 4(4) a revised edition is to come into force on such day as the Attorney-General may prescribe. From the day after it is to be the sole official text of the enactments included in it and to be taken to be the law of Mauritius. Section 5(1)(a) provides:-

"5.(1) The Law Revision Unit may, in the preparation of a revised edition -

(a) omit any enactment or part of an enactment which has been expressly or impliedly repealed or has become spent or obsolete by reason of its being in the nature of a transitional provision or otherwise."

Under section 6(1) the Attorney-General may authorise the Law Revision Unit to make a change in the substance of an enactment for the purpose of a revised edition, and if such a change is made the enactment shall be laid before the Assembly under subsection (2) and shall have effect as part of the revised edition only from such day as is fixed by the Assembly. It is not suggested that the omission of section 19(1)(f) of the Act of 1979 was brought about under these provisions. The omission can only have been on the understanding that the enactment omitted was spent. The question on the preliminary plea is whether or not that understanding was correct. If it was not correct the Law Revision Unit had no authority to omit the enactment in question and its action in purporting to do so cannot have any effect upon the law, with the result that the Act of 1979 must still be read in its original form. The Supreme Court of Mauritius decided that section 19(1)(f) was indeed spent. It held:-

- "(i) the present state of the law has not catered for pensions to be disbursed by the defendant corporation in favour of the plaintiffs in the circumstances recited in the statement of claim;
- (ii) it was perfectly within the powers of the Law Revision Unit to omit, in the light of the agreements which had been entered into, the substance of the former Section 19(1)(f) which could only have transient effect and had been phrased out and therefore spent.
- (iii) the omission referred to at (ii) above did not constitute an amendment of substance such as to require compliance under the provisions of section 6 of the Revision of Laws Act;
- (iv) the plaintiffs did not become redundant because of the coming into operation of the bulk sugar terminal within the meaning of Section 19(1)(f) and the agreement referred to."

The Supreme Court accordingly sustained the Corporation's plea *in limine litis* and dismissed the statement of claim. The plaintiffs now appeal to Her Majesty in Council.

By virtue of section 19(1)(f) of the Act of 1979 the Corporation became statutorily bound to pay pensions to certain workers of Taylor Smith & Co. Ltd. in accordance with the agreement of 8th June 1979. Paragraph (f) can properly be regarded as having been spent on 1st July 1982, the date when the revised edition came into operation, only if there were then no employees of the company who might in

future become entitled to pensions as provided for in the agreement. The argument for the Corporation, accepted by the Supreme Court, is that on a proper construction of the agreement the workers entitled to a pension thereunder were those, and only those, who became redundant because of, and contemporaneously with, the coming into operation of the bulk sugar terminal. Clause 1 of the agreement does not, however, contain any provision of a temporal character apart from the requirement about length of service. The agreement was entered into, and the Act of 1979 was passed, over a year before the bulk sugar terminal came into operation. If the agreement and the Act had followed and not preceded the coming into operation of the terminal then the references to workers who "have completed" certain service and "have become" redundant could clearly cover only those who had already done so. But, as it is, those words are looking to the future, and so must be read as "shall have completed" and "shall have become redundant". In the circumstances it is not open to extract from the words used any indication of an intention that the workers who are to qualify for a pension are to be those who become redundant not only because of but also at the same time as the coming into operation of the terminal. If that had been the intention it could very easily have been evinced by the insertion of the words "and upon" between "because of" and "coming into operation". As it is, there are no good grounds for excluding from eligibility for a pension those workers who become redundant some time after the coming into operation of the terminal but who are able to establish that their redundancy was caused by that event.

For these reasons their Lordships are of opinion that the Corporation's plea *in limine litis* is ill-founded, that section 19(1)(f) is not spent, and that provided the plaintiffs can establish that the fact of their redundancy was brought about by the coming into operation of the bulk sugar terminal they will be entitled to payment of pensions by the Corporation. It is hardly necessary to say that the decision dated 27th June 1984 of the Termination of Contracts of Service Board, in so far as expressed to proceed on the ground that the plaintiffs' redundancy was brought about by the coming into operation of the terminal, is not binding on the Corporation, who were not party to the proceedings before the Board, and is irrelevant to the present action.

Their Lordships will accordingly humbly advise Her Majesty that the appeal should be allowed, and that the cause be remitted to the Supreme Court of Mauritius to proceed as accords. The respondent Corporation must pay the appellants' costs before the Board and of the hearing in the Supreme Court on the plea *in limine litis*.



