JUDICIAL REGULATION OF INDUSTRIAL RELATIONS

Nadchatiram Realities (1960) Ltd. v. *Raman & Ors.*

In 1911 in the House of Commons Winston Churchill commented that: "It is not good for trade unions that they should be brought in contact with the courts, and it is not good for the courts." [1] *Nadchatiram Realities (1960) Ltd.* v. *Raman & Ors.*,[2] a recent decision of the High Court in Malaya, bears further witness to the accuracy of Sir Winston's perception.[3]

The relevant facts of the case can be stated shortly. The plaintiff, a corporation owning and operating a rubber estate at Tampin Road Seremban, sought an order for ejectment of the defendants, its former employees and occupants of the labourers' premises on the estate, and damages for trespass. For reasons later to be explained, on October 8th, 1964, the defendants refused to do any work and subsequently they were served with the writ which instituted this action.

The effective chain of reasoning in the case can also be briefly summarized:

(a) Because the labourers were not required to live on the premises and because some in fact did not, the tenancy of the defendants was not connected with their service to the plaintiff but rather was "only a matter of convenience to both parties." [4]

(b) Thus, the defendants were merely tenants at will.

(c) Service of the writ operated as a demand for possession and as such terminated the tenancies.

2. *Cf. Vidyodaya University Council* v. *Silva* [1965] 1 W.L.R. 77. See note in (1965) M.L.R. 475.

1. May 30, 1911, quoted from Milne-Bailey, *Trade Union Documents* (1929), p. 380 and further by Kahn-Freund on "Labour Law", *Law and Opinion in the 20th Century* (ed. Ginsberg) p. 232.

2. [1965] 2 M.L.J. 263.

3. Similar observations have frequently been made. See, for example, Magruder, "A Half Century of legal influence Upon the Development of Collective Bargaining" (1937) 50 H.L.R. 1071; "Accomodation of the Norris-La Guardia Act to Other Federal Statutes" (1958) 71 H.L.R. 354; Wedderburn. "The Right to Threaten Strikes" (1961) 24 M.L.R. 572.

4. This was counter to the argument put forward by the plaintiff who was insisting that the tenancies were related to the employment of the labourers.

(d) Therefore the defendants were trespassing on the property of the plaintiff.[5]

(e) Accordingly, the defendants were ordered to quit the premises and each defendant was assessed fifty dollars in damages.[6]

Neither this line of reasoning nor the aforementioned facts is of much importance to our perspective of "judicial regulation of industrial relations" so, following the lead of the court, it is to the irrelevent facts and to the superfluous reasoning that the bulk of my efforts will be devoted.[7]

On October 2, 1964, two officials of the Negri Sembilan Branch of the National Union of Plantation Workers approached P.W.I, a co-proprietor of the plaintiff company, with certain proposals regarding the wages and working conditions of the plaintiff's employees. P.W.I refused to negotiate for two reasons: one, that the union officials could produce no authority from the labourers, and two, that he felt the current wage rates were better than the industry average. There was a petition signed by the workers setting forth their demands but it was not shown to P.W.I for fear that the signatories would be victimized. On October 5th a meeting of the labourers was held at which they were informed of P.W.1's refusal to negotiate and at which D.W.7 was elected Secretary of the Union. P.W.1's conductor, P.W.4, was present at this meeting and in the evening of the same day the labourers were informed that muster time would be 45 minutes earlier beginning the next morning, October the 6th. On that morning, for the first time in the year, P.W.1 was present at muster. No complaints were made to him then. As to what happened on the morning of the 7th of October is unclear. The defendants claimed that D.W.7 and another labourer took up the change of muster time with the conductor, P.W.4 P.W.4's version was that no such complaint was made but rather that D.W.7 had simply told the labourers not to go to work. The court accepted this. D.W.7 was then asked by P.W..4 to report to the office but he did not. In the afternoon D.W.7 was asked to explain his conduct and was warned by P.W.1 that if he interfered further with the workers he would be reported to the police. On the morning of the 8th, D.W.7's name was not called at muster time which meant that he was not to be given work that day. Instead, he was called into the office. The other labourers refused to work until they found the reason for not calling D.W.7's name at muster. P.W.1 subsequently went to each labourer individually and asked them to return to work but they refused. No explanation as to why D.W.7 was refused work came out in evidence.

From this the court made the following observations:

(a) that the strange presence of P.W.1 at muster on October 6th was easily explained. It was simply because the time of muster had been changed.[8]

(b) that the defendants' evidence to the effect that D.W.7 and another made a complaint to the conductor on the morning of the 7th was unacceptable partly because no complaint had been made directly to P.W.1 on the morning of the 6th, the first day of the early muster.[9]

(c) that there was nothing in the conduct of P.W.1 to indicate that he was attempting to thwart the union. Rather his conduct indicated an attitude of conciliation in that he approached the labourers individually on

5. [1965] 2 M.L.J. 263, 266.

6. *Ibid,* at 267.

7. The holding that the tenancies were in no way connected with the contracts of employment rendered the question of whether or not the labourers had broken their contracts of employment immaterial. Thus, the only material part of the reported decision is that portion following the critical conclusion that the tenancies were merely- tenancies at will. Continued possession following the service of the writ was a trespass. This would have been so equally had the employment reationship not been severed. Similarly, the labourers' use of sheds in connection with their picketing would still have been a trespass had the employment relationship continued to exist.

8. [1965] 2 M.L.J. 263 at 265: "Muster time must have been changed from 5:45 a.m. to 5 a.m. on the 6th October, 1964, which would account for the presence of P.W.1 on the morning of that day at the estate."

9. *Ibid.* at 265: "The labourers, however, did not appear to be unduly perturbed over the change, as no protest was made to him that morning."

two occasions asking for their co-operation. The court found it improbable that P.W.1 "would have resorted to any manoeuvre which must result in the disruption of work on the estate and involve the plaintiff company in serious financial loss."[10]

These observations raise serious doubts as to the court's appreciation of the facts. Are they substantially a realistic portrayal of the whole situation? Would it not be more consistent with the week's events to postulate that the change in muster time, following on the heels of the union meeting as it did, as being a deliberate show of power intended to make clear to everyone concerned "who was boss"? And similarly, is not P.W.1's presence at muster on the 6th of October not better explained as an attempt to reassert the unqualified authority of the company over the labourers? Is it not an obvious "bullying tactic" or "power play"? Would it not be more realistic to conclude that no objection was made to the change in muster time on the morning of the 6th either because the labourers had no time to get organized or because they were somewhat intimidated by the presence of P.W.1? Is it not far more likely that P.W.1 in approaching the labourers *individually* was using the tactic of "divide and conquer" which represents hostility to the union rather than displaying an attitude of conciliation? In the context of a refusal to negotiate with the union, an unexplained change in muster time the day following the union meeting, a singling out of the Secretary of the union and threatening him as well as refusing him work, is this conduct not simply that of an employer determined to keep the union out of all costs? And to find it improbable that an employer would embark on manoeuvres which would so disrupt his business is this not seeing trade union-employer disputes through somewhat "rose-coloured glasses"?

Doubts as to the court's ability to see the realities of the situation and as to its familiarity with industrial relations generally are furthered by the court's conclusion that it was clear from the evidence that the labourers went on strike "for the sole reason that D.W.7 was not given any work"[11] and that there was no evidence "that the strike was over the change in the muster time or over the refusal of the labourers' demands for improved conditions of service."[12] The existence of some form of union is absolutely necessary for employees to collectively bargain with employers. If there was a "sole reason" for the strike certainly it must have been that the labourers saw the discrimination against D.W.7 as an attempt by P.W.1 to thwart their efforts to organize and establish a union. They had to stand together now or be ruined. To say that the "sole reason" for the strike was P.W.1's refusal to give D.W.7 work on October 8th is no more accurate and perceptive than is the statement that the "sole reason" for the Great War of 1914 was the assassination of the Archduke. The conclusion cannot be supported on the ground of lack of evidence. The facts are fairly complete. It is the inferences made from the facts that are being questioned. They are superficial. And this can only be attributed to a lack of sophistication and unfamiliarity with regard to industrial matters on the part of the court.

This demonstrated lack of appreciation and understanding of the facts of industrial life is one of the reasons why "[i]t is not good for trade unions that they should be brought in contact with the courts, and it is not good for the courts."[13] Because trade unionists do not get meaningful decisions, discontent and disregard for for the judicial process is fostered. *Nadchatiram Realities* cannot help but have some such undesirable effect. And what makes it all the more lamentable is that, as has been pointed out, none of this was necessary for the decision in the case.[14]

D. J. M. BROWN.

10. [1965] 2 M.L.J. 263 at 266.

11. *Ibid.*

12. *Ibid.*

13. *Supra,* n.1.

14. *Supra,* n.7.