IN THE FIJI COURT OF APPEAL
Civil Jurisdiction
CIVIL APPEAL NO. 55 OF 1980

Between:

THE ATTORNEY GENERAL OF FIJI — APPELLANT

- and -

EMPEROR GOLD MINING COMPANY LIMITED — RESPONDENT

G. Grimmett for the Appellant.
Sir John Falvey Q.C. and W. Morgan for the Respondent.

Date of Hearing: 24th March, 1981.
Delivery of Judgment:

JUDGMENT OF THE COURT

SPRING, J.A.

Emperor Gold Mining Co. Ltd. (hereinafter called the respondent) issued an originating summons out of the Supreme Court of Fiji at Suva seeking a ruling on two questions namely :

(a) Whether the Minister for Labour, Industrial Relations and Immigration acted within the powers conferred on him by paragraph (b) of subsection 2 of Section 6 of the Trade Disputes Act 1973 when he authorised the Permanent Secretary for Labour, Industrial Relations and Immigration to refer a trade dispute existing between the National Union of Mine Workers and the Plaintiff to a Tribunal when the great majority of the employees involved in the trade dispute were not engaged in an essential service.

(b) Whether the powers conferred by paragraph (b) of section 6(2) of the Trade Disputes Act 1973 are exercisable only in respect of that section of the industry which comprises essential workers."

On 3rd September, 1980, the Supreme Court answered the two questions as follows :

"1. No, but not for the reason put forward by the plaintiff.

2. Usually but not necessarily as the powers may be exercised where the dispute involves both essential and ordinary workers if an essential service is involved."

The Attorney-General of Fiji (hereinafter called the appellant) has appealed to this Court against the determination by the Supreme Court in respect of the answer given to Question 1 above; the answer to question 2 is not challenged.

The facts may be briefly stated. The respondent is a gold mining company operating a gold mine at Vatukoula and in April, 1980, was employing approximately 927 persons - comprising 707 hourly paid workers and 220 salaried staff. According to the affidavit of Varma Nand of Suva Acting Principal Labour Officer in the Ministry of Labour there was a dispute between the National Union of Mine Workers (hereinafter called the Union) and the respondent, regarding the recognition by the respondent of the right of the Union, for the purposes of collective bargaining to negotiate with the respondent the terms and conditions of employment of persons who were voting members of the Union. This dispute it was claimed by the Ministry of Labour was not a trade dispute within the meaning of section 2 of the Trade Disputes Act 1973 (hereinafter called the Act). The Union had invoked the provisions of the Trade Unions Recognition Act 1976 and referred the disagreement over recognition to the Permanent Secretary for Labour who authorised an investigation which revealed that 60.32 per centum of the employees at the

Gold Mining Company were eligible for membership of the Union. Upon these figures the Union was clearly entitled to recognition.

On or about 24th April, 1980, 296 employees of the respondent withdrew their labour and included in this number were 25 persons employed in an essential service at the mine. The total number employed by the respondent in an essential service was 100. "Essential Service" is defined in the Act as :

> " 'essential service' means any service, by whomsoever rendered and whether rendered to the Government or to any other person, which is specified in the Schedule to this Act."

Included in the list of essential services in the Schedule to the Act is "Mine Pumping Ventilation and Winding".

On 25th April, 1980, the National Secretary of the Fiji Traders Union Congress wrote to all affiliated unions urging the imposition of "black bans" on the operations of the respondent company. An extract from the National Secretary's letter reads :

> "In the circumstances, in conformation of the decision of the Executive Committee, affiliates are now directed to take all immediate measures to apply a complete ban on all operations of the Emperor Gold Mine Company in particular, its administrative services, fuel, banking, transport, postal and telecommunications, exports and imports, loading and unloading, and the processing of any goods or services."

In fairness to the learned Judge this letter was not before him as it was admitted as fresh evidence at the hearing of this appeal which we shall mention later; nevertheless as appears from his judgment the Judge was well aware of the threats of violence, the imposition of black bans and threatened complete withdrawal of labour.

LST
160

On 5th May, 1980 - Compulsory Recognition Order (No.4) 1980 was made and duly gazetted on the following day stating inter alia :

> "It is hereby declared that the Union is entitled to recognition by the employer under section 3 of the Act."

Despite the Union's success in obtaining recognition the striking workers did not return to work. On 9th May, 1980, the Union submitted to respondent a log of claims. On 19th May, 1980, the respondent replied to the Union advising it was preparing a counter log of claims and that it was concerned about the welfare of its employees. The Union had all along been blaming the respondent for employing delaying tactics in dealing with the log of claims; relations between the respondent and the Union worsened.

In his letter of 26th May, 1980, Mr. Smith the Industrial Relations Officer of the Union wrote to the Permanent Secretary of Labour advising the existence of a trade dispute between the Union and the Company; the letter stated further :

> "The management, and in fact your Ministry seem unaware that things could develop where members/employees could resort to action that could not be in the best interests of all concerned. Where I have repeatedly restrained members from resorting to other action including picketing and even considering escalating the strike, I am no longer prepared to so continue. In fact, I have personally taken it upon myself to issue a Circular dropping a threat which I hope will provide some reaction, even if not in my favour personally, and upon return to Vatukoula, I intend to consider seriously some of the same proposals which have come from members. I have also reported this to the Fiji Trades Union Congress and believe that they will view the situation with the priority that it deserves."

Another letter was sent to the Ministry of Labour by Mr. Smith dated 26th May, 1980, which reads :

" We are concerned that their actions are now leading us to resort to supporting suggestions that employees in Essential Services should come out on strike in view of management's actions. Further, this week seems to be a stage where we will no longer be able to prevent actions by striking members to escalate the action which could mean serious threats to the whole industry. The Company seems to be totally unaware that a divided strike could really be a planned one in which they alone could suffer under should some of those who are supposedly on their side and working, resort to action that could bring things to a standstill."

The Permanent Secretary of Labour wrote to the Union and the respondent on the 29th May, 1980 advising his acceptance of the trade dispute notice and informing them of the appointment of a conciliator.

On 30th May, 1980, the Senior Labour Officer at Lautoka wrote to the respondent and the Union advising he had been appointed a conciliator by the Permanent Secretary and requested their attendance at a conciliation meeting schedule for 2nd June, 1980; the respondent failed to appear at the meeting and relations between the respondent and the Union became more strained. Further attempts at conciliation by the Permanent Secretary ended in failure. On 6th June, 1980, the Minister, pursuant to section 6(2)(b) of the Act authorised the Permanent Secretary to refer the trade dispute to a Tribunal on the grounds that the trade dispute involved an essential service. On 6th June, 1980, 293 workers employed by the respondent Company including 24 workers engaged in an essential service were still on strike. We understand all the employees returned to work on or about 6th June, 1980. On 18th June, 1980, the Minister made an order prohibiting, with effect from 20th June, 1980, the continuance of, and declared unlawful from that date, any lockout in connection with the trade dispute. The arbitration proceedings commenced on 17th June, 1980, but it does not appear that any award was made and in the circumstances it would appear none was necessary as all the workers were back in full employment

with the respondent company. We understand from the Bar that the trade dispute is no longer a live issue as between the respondent and the Union and that there are no outstanding issues calling for determination between them. Appellant, however, on behalf of the Minister challenges the determination made by the learned Judge in the Supreme Court in respect of Question 1 above and has appealed to this Court.

Counsel for appellant applied for leave under the Rules of this Court (22 (2)) to adduce further factual evidence by way of affidavit designed to prove that the learned Judge had reached conclusions on fact which were unsupported by the evidence and that he had dealt with issues which were not before him. Sir John Falvey, Q.C. Counsel for respondent did not oppose the application and intimated he did not wish to furnish affidavits in reply. Leave was granted and three affidavits were furnished.

The grounds of appeal consist of 33 subheadings alleging errors of law, errors of law and fact and misdirection on the part of the learned Judge. We do not propose to deal seriatim with each of the 33 grounds of appeal. We have summarised the grounds of appeal as follows :

(1) The learned Judge misdirected himself and erred in law and in fact in that he determined matters which were not in issue, took into account matters of fact which were not proved or supported by the evidence.

(2) That the learned Judge was in error in concluding on 6th June, 1980, that the trade dispute referred to a Tribunal did not involve an essential service.

(3) That the learned Judge was in error in concluding that section 6(2)(b) must be read with and as an integral part of sections 3, 4, 5 and 6(1) of the Trade Disputes Act and that the Minister of Labour exceeded his powers in exercising his discretion by referring the dispute to a tribunal for compulsory arbitration pursuant to section 6(2)(b).

It is against this background of the facts that we turn to consider the first ground raised on this appeal. May we say at the outset that the facts of every trade dispute vary and will always vary from trade dispute to trade dispute. In this case the facts are somewhat unusual in that approximately one third of the total work force at the Emperor Gold Mine went on strike - including therein about 25 of the 100 persons engaged in an essential service; the strikers remained on strike notwithstanding that recognition was accorded to the Union for the purposes of collective bargaining. The company continued to operate its business despite the fact that 296 workers had withdrawn their labour. The rest of the employees - some 600 - remained in full employment.

In this appeal we remind ourselves that the Supreme Court was asked to review not the exercise of a judicial, but a Ministerial discretion in an administrative matter. We are of the opinion that if the task of the Court is to review the exercise of a Minister's discretion it is necessary for the Court to have before it the existence of facts upon which that discretion has been exercised. The evaluation of those facts will of course be for the Minister alone to determine, but the Court is entitled to examine in such detail as it sees fit the surrounding facts to inquire whether those facts exist; whether they have been taken into account; whether there has been a proper self direction as to those facts, whether the discretion has not been exercised on other facts which ought not to have been taken into account. If these requirements are not met then the exercise of

the discretion is capable of challenge. In Secretary of State for Employment v. Associated Society of Locomotive Engineers' and Firemen (No.2) (1972) 2 All E.R. 949, Lord Denning M.R. said at p.967 :

> "This brings me to the important question: what is the effect of the words 'If it appears to the Secretary of State'? This, in my opinion, does not mean that the Minister's decision is put beyond challenge. The scope available to the challenger depends very much on the subject-matter with which the Minister is dealing. In this case I would think that, if the Minister does not act in good faith, or if he acts on extraneous considerations which ought not to influence him, or if he plainly misdirects himself in fact or in law, it may well be that a court would interfere; but when he honestly takes a view of the facts or the law which could reasonably be entertained, then his decision is not to be set aside simply because thereafter someone thinks that his view was wrong."

Some of the criticism levelled at the judgment in the Court below is that the learned Judge referred to factual matters which were not before him; that he found as a fact certain matters upon which there was no evidence that he went well beyond the limited question posed for determination; that neither counsel were invited to address him on the issues and questions of fact which were 'utilised' by him in arriving at his answer to the question.

The Court is at a grave disadvantage in coming to a firm and positive conclusion on this matter. The hearing was in Chambers and the arguments advanced and submissions made by counsel are not recorded; accordingly this Court does not have the advantage of any record of the proceedings before the learned Judge. It has nothing other than the pleadings, the affidavits filed and the exhibits thereto.

However, our attention has been drawn by counsel for appellant to certain matters of complaint in support of this ground of appeal which we list as follows :

(a) Counsel for appellant submitted that the learned Judge found that the respondent company reported the trade dispute to the Minister of Labour when there was no evidence to support this finding. It appears from the record that it was the Union and not the Company which reported trade dispute to the Permanent Secretary for Labour in a letter dated 26th May, 1980, signed by J.V. Smith on behalf of the Union and exhibited to Varma Nand's affidavit as Exhibit 'E' and to this extent the learned Judge appears to have erred.

(b) That the learned Judge was in error when he found that the Permanent Secretary for Labour "had his Ministry carry out an investigation on 22nd April, 1980".

We have examined the record and it does appear that possibly the learned trial Judge misunderstood the evidence as contained in Varma Nand's affidavit on this matter. In a supplementary affidavit Varma Nand deposes that the investigation was carried out on 29th April, 1980, but the figures used were applicable to 22nd April, 1980. The complaint of counsel for appellant is that the learned trial Judge having found erroneously that the investigation was undertaken on 22nd April, 1980 went on to criticise the Union and levelled charges against it that on the 24th April, 1980, it was responsible for 296 workers going on strike the learned Judge proceeding on the assumption that the investigation was carried out on 22nd April, 1980. It would appear that the learned Judge was in error in coming to his conclusions herein.

(c) That the learned Judge had no evidence before him to support the statement "I believe it was pressure on the Union officials by striking miners who had been out of work for some weeks that was the cause of the trouble and not delay by the Company".

166
157

It appears from the record that the Union complained to the Permanent Secretary by letter on at least two occasions of the delaying tactics of the respondent company in discussing the log of claims. We were unable to ascertain from the record either the existence, or the source, of this information which was believed by the learned Judge and which is the subject of the above complaint.

We do not propose to deal with or categorise the other matters of complaint raised by appellant under this ground of appeal. As stated there is no record as to what was said in the Judge's Chambers and it would be quite wrong for us to speculate thereon. We are satisfied, however, that the learned Judge was entitled - in fact, bound to go into the surrounding facts to ascertain what facts existed and upon which the Minister acted in making his Order on 6th June, 1980. From an examination we have made of the matters referred to it appears, however, that to a limited extent the learned Judge came to decisions on matters of fact which were not supported by the record and to this limited extent the complaints of appellant are justified.

However, in reaching this conclusion we stress again that the complete lack of record as to counsel's submissions, arguments or discussions has placed this Court in a difficult position.

We turn now to consider Ground 2 of the summarised grounds of Appeal :

> (2) That the learned Judge was wrong in concluding that on 6th June, 1980, the trade dispute did not involve an essential service.

We are advised that counsel were at all material times in agreement that included among the employees of respondent who were on strike were persons engaged in an essential service. Further, it is we understand agreed that an essential service was in fact in operation at the respondent's Gold Mine at Vatukoula. However, we understand that the respondent contended before the learned Judge that the trade dispute should not have been referred to

compulsory arbitration pursuant to Section 6(2)(b) of the Act as the majority of the workers at the Mine was not engaged in an essential service.

Sir John Falvey urged that section 6(2)(b) dealt with a trade dispute which involved an essential service, not merely a person or persons engaged in that essential service.

Mr. Grimmett counsel for appellant argued that the answer to question 1 should have been "Yes". Mr. Grimmett contended that the log of claims filed by Union on behalf of Mine employees included those workers engaged in an essential service and in view of the fact that that log of claims could not be settled then it followed that the trade dispute involved an essential service albeit that the number of workers engaged in such service were very much in the minority. Further, that the Minister was entitled to have regard to the threats of the Union that other workers in other essential services were likely to withdraw their labour in support of the workers at the respondent's Mine.

It is necessary to remind ourselves of the facts that were before the Minister and to decide whether the learned Judge in the Court below carefully appraised these facts which were evaluated by the Minister and upon which he exercised his discretion. The learned Judge stated that there was no evidence before him to indicate that the trade dispute involved an essential service. The affidavit sworn by Viliame Bale the respondent's Personnel Officer and appearing in the record, deposed that there were 100 employees employed in an essential service as defined in the Act, 25 of whom withdrew their labour on 24th April, 1980. Admittedly the respondent company continued to operate despite the strike by 296 of its employees, but there were threats that the strike would escalate.

The learned Judge stated :

> "There was nothing before the Minister on 6th June, 1980, to indicate that the Company was not in business or that any essential service was not operational due to some essential workers withdrawing their services."

It is apparent that the learned Judge did not take into account the threatened total withdrawal of labour or the necessity to attempt to forestall or avert a probable major strike which could have serious consequences for the industrial and business life in Fiji.

The learned Judge stated :

> "I am in no doubt at all that the Minister went no further than considering that the Company employed workers who were considered to be essential workers and that some of them were involved in the trade dispute as evidenced by their withdrawal of labour. He could not have known if any specific essential service was involved in the dispute in the sense I shall be referring to later."

In fact the learned Judge did not think that the Minister should be influenced by the threats made by Union indicating the possibility of industrial strife.

In dealing with section 6(2)(c) the learned Judge said :

> " The third situation is one of utmost gravity, an extreme situation where the rights of the parties must give way to the interests of the nation.
>
> Even in this situation I am in no doubt that the Minister is not empowered under section 6(2)(c) to act prematurely or in panic. He can act only when the situation has arisen or is likely to arise. That is a matter of judgment and experience. All three situations referred to in section 6(2) are instances where the Minister's power is a reserve power to be used where other measures provided in the act fail or are ignored or an emergency arises."

It is apparent that the learned Judge discounted the threats and the attitude of the Union when he said :

> "(The Minister) should not have been influenced by Mr. Smith's irresponsible statements in his letters that his members would resort to violence. All the Union asked for was reconciliation assistance to bring about a meeting of the parties. It is my belief that the parties could have been brought together if the Ministry had perserved in their efforts."

Although earlier in his judgment the learned Judge said :

> "I must however, point out that the very strained relations between the Company and the Union must have been known to the Ministry."

The learned Judge then posed the question to himself - "Did the trade dispute involve an essential service?". The learned Judge said -

> "The essential workers were certainly interested in, or could be affected by, the dispute but this did not in my view "involve" the service in which they were employed in that dispute.
>
> In view of the provisions of the Act and Part IV in particular, "involved" in the context in which it is used in section 6(2)(b) has a restricted meaning and can only mean "to entangle (a person) in trouble, difficulties, perplexity, etc." (Shorter Oxford English Dictionary). The involvement must be direct and of a substantial nature.
>
> There is no evidence before me and I am satisfied there was none before the Minister on the 6th June, 1980, to indicate that the trade dispute, which counsel concedes existed, involved any essential service in the sense which I have held "involve" means."

In construing the word "involves" the learned Judge adopted a narrow or restricted interpretation and on the facts of this particular case he concluded that although essential workers were on strike and would be certainly interested in or could be affected by the trade dispute this did not of itself involve an essential service in which they were employed. However, the facts of this case, and we emphasise that we are dealing only with these facts, disclosed a very real threat of general industrial upheaval involving other

essential services. The learned Judge took the view that the involvement of an essential service in a trade dispute must be direct and substantial. In other words while he does not suggest that the test of the involvement of an essential service in a trade dispute should be measured by the number of persons implicated therein he implies that in this case the facts required to show a far greater degree of trouble or difficulties than what the Judge believed existed as at 6th June, 1980; in coming to his conclusion the learned Judge stated that -

> "No section of the public appears to have been deprived of any essential service nor was life or property endangered by such walkout".

The learned Judge obviously considered that the log of claims contained provisions of a general nature applicable to all workers including workers engaged at the Mine in essential service. The learned Judge was inclined to the view that it was the essential service that had to be involved not the persons who comprise the essential service. What the legislature intended to be done or not to be done can only be ascertained from what it has chosen to enact either in express words or by reasonable and necessary implication. The object of an Act and its intent, meaning and spirit can only be ascertained from the Act itself.

In Grey v. Pearson 1857 6 H.L. Cas. 61 at p.106 Lord Wensleydale said :

> "that in construing statutes, as well as in construing all other written instruments 'the grammatical and ordinary sense of the word is 'to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further'. Acts of Parliament are, of course, to be construed 'according to the intent of Parliament' which passes them. That is 'the only rule' said Tindal, C.J., delivering the opinion of the judges who advised this House, in the Sussex Peerage Case (76). But his lordship was careful to add this note of

warning: 'If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver'."

In re Arnold ex parte Hext (1914) 3 K.B. 1078 the construction of the words "involved in the appeal" were given a wide meaning; the Court holding that in looking to the money or moneys worth involved it was entitled to look at all the proceedings to ascertain what really was the sum dealt with.

The word involves in section 6(2)(b), in this case, and in our opinion on its own particular facts, calls for a wider and less restricted meaning than that accorded to it by the learned Judge.

The learned Judge considered that if involvement in the dispute by a small number of essential workers could be considered to be involvement of the essential service in which he works the Minister would have an unfettered power to order compulsory arbitration wherever there was a trade dispute in a business which employed some essential workers. We think the learned Judge's contention goes too far as the Minister in the exercise of his discretion must take into account all the facts and many other factors which bear or have an influence on those facts and accordingly we do not agree that the Minister's discretion is unfettered. However, in this case approximately 25% of the essential workers went on strike while the rest of the essential workers continued in employment. There was however the real threat of further industrial strife with the threatened continuation of the withdrawal of labour by essential workers in other essential services and the Minister was entitled to take into account the very real threats in exercising his discretion.

It is necessary to examine briefly the principles governing the exercise of discretionary power. Professor

de Smith in Judicial Review of Administrative Action 3rd Edition at page 252 says :

> "The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously."

Further, it is clear from the authorities that where a discretion is conferred upon a Minister he must act lawfully and that is a matter to be determined by examining the relevant Act, its scope and object.

In Padfield v. Minister of Agriculture (1968) 1 All E.R. 694, Lord Reid in discussing the matter of exercise of ministerial discretion said at p. 699 :

> ".....Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court."

In our view where a Minister has acted lawfully within his discretion and been guided by the principles set out in the last two passages we have quoted, the Court will not interfere whether or not the Court may disagree with

the exercise of the discretion, and no jurisdiction is vested in a Court to alter a Minister's decision where he has exercised his discretion lawfully in the sense we have indicated.

Therefore, we are of the opinion that on 6th June, 1980, the Minister adopted a view of the facts in this case which could reasonably be entertained and was justified in coming to the conclusion that the trade dispute between the Union and the respondent company did involve an essential service.

Turning now to Ground 3 of the appeal. Counsel for appellant complains that the learned Judge embarked on a consideration of sections 3, 4, 5 and 6(1) of the Act when they were not in issue and had not been put in issue.

The learned Judge stated :

> " Subsection 2 of section 6 should not be read in isolation and must be read as part of section 6 and subject to any other provisions in the Act which are applicable and which govern or limit the exercise of the Minister's discretionary powers."

The learned Judge was of the view that if the dispute involved an essential service it was the Minister's duty, if he considered that the dispute could only be settled by compulsory arbitration, to first seek the consent of the parties to that course of action before he considered what other action to take. The learned Judge concluded that it was the clear intention of the legislature that he should have done so. Section 3 of the Act provides :

> "Any trade dispute, whether existing or apprehended may be reported to the Permanent Secretary by or on behalf of any of the parties to the dispute."

The section provides that any party to a trade dispute or possible trade dispute may report same to Permanent Secretary for Labour. If the trade dispute is reported then a report thereon shall be called for. Section 4 of the Act sets out the steps that the Permanent Secretary may

take as being expedient for the promotion of a settlement of the dispute. It is to be noted that in clause 4(g) it is provided :

> " Report the trade dispute to the Minister, who may, if he thinks fit, authorise the Permanent Secretary to refer it to a conciliation committee appointed by the Minister for mediation and conciliation."

Section 5 sets out steps to be taken to settle the dispute. Section 5(1) reads :

> " In endeavouring to secure, by means of conciliation of the parties, the settlement of a trade dispute reported to him under section 3 of this Act, the Permanent Secretary or any person appointed by him or the Minister shall, if and in so far as he considers it appropriate to do so, make use of any machinery or arrangements for the settlement of disputes which exist by virtue of any agreement between the parties to the dispute, or between organisations representing respectively a substantial proportion of the employers and employees engaged in or in any branch of the particular trade, industry, service or occupation in which the dispute arose."

The learned Judge stated :

> " If efforts to settle the dispute by conciliation or other means specified in sections 4 and 5 of the Act are not successful, it is then that the Minister is officially brought into the picture for the first time. It is the duty then of the Permanent Secretary to report the trade dispute to the Minister (Section 6(1) of the Act."

It is noted, however, that the Permanent Secretary may report the trade dispute to the Minister under section 4(1)(g); under section 5(1) the Minister may take certain steps, which must of necessity presuppose that the Minister is seized of the matter. The learned Judge may have overlooked these subsections when he said that the first time the Minister is "officially brought into the picture" is under section 6(1); the Minister can be concerned with the trade dispute under section 4(1)(g) and section 5(1). It is convenient to set out section 6(1) and section 6(2)(a)(b) and (c).

"6-(1) Where the Permanent Secretary or any person appointed by him or by the Minister is unable to effect a settlement the Permanent Secretary shall report the trade dispute to the Minister who may, subject as hereinafter provided, if he thinks fit, and if both parties consent, and agree in writing to accept the award of the Tribunal, authorise the Permanent Secretary to refer such trade dispute to a Tribunal for settlement.

(2) The Minister may authorise the Permanent Secretary, whether or not the parties consent, to refer a dispute to a Tribunal where -

(a) a strike or lock out arising out of a trade dispute, whether reported or not, has been declared by order of the Minister to be unlawful as provided for under section 8 of this Act; or

(b) a trade dispute, whether reported or not, involves an essential service; or

(c) the Minister is satisfied that a trade dispute, whether reported or not, has jeopardised or may jeopardise the essentials of life or livelihood of the nation as a whole or of a significant section of the nation may endanger the public safety or the life of the community."

Counsel for appellant submitted that sections 3, 4 and 5 deal with trade disputes that may have been reported to the Minister of Labour under section 3. Under section 6(1) if the Permanent Secretary or any one appointed by him or by the Minister (under section 5(1)) is unable to effect a settlement the Permanent Secretary shall report the trade dispute to the Minister who may if he thinks fit, and if both parties consent and agree in writing to accept the award, authorise the Permanent Secretary to refer the trade dispute to a Tribunal.

The learned Judge inclined to the view that before action could be taken under section 6(2)(b) the Minister must first seek the consent of the parties and if the consent was not forthcoming then and only then could

the Minister exercise the powers contained in section 6(2)(b). In our view compelling language would be required if the section is to be construed as suggested by the learned Judge. Our reading of section 6(2)(b) is that the Minister may authorise the Permanent Secretary to refer the trade dispute to a Tribunal where the dispute involves an essential service whether or not the parties have consented and whether or not the dispute has been reported.

Section 6(2)(b) appears to stand apart from sections 3, 4, 5 and 6(1) and where the facts as evaluated by the Minister so dictate the Minister is empowered to refer the trade dispute, which involves an essential service, to a Tribunal whether the parties to the dispute have consented or not, and, even whether the trade dispute has been reported or not. These words are wide enough to cover both a report by the parties under section 3(1) and alternatively, a report by the Permanent Secretary under section 6(1). The absence of either, or both, is rendered immaterial.

The intention of the legislature to vest such powers in the Minister stems no doubt from the fears that grave consequences could flow from industrial upheaval in essential service or services. We are of the opinion that the learned Judge was wrong in his interpretation when he said :

> " The facts indicate that the Minister ignored section 6(1) of the Act and this may have been because he considered he was not obliged to seek the consent of the parties in the circumstances. If the dispute did in fact involve an essential service it was still the Minister's duty, if he considered the dispute could only be settled by arbitration, to first seek the consent of the parties to that course of action before he considered what other action he could take. He did not do so although the clear intention of the legislature is that he should have done so."

The learned Judge went on and said :

" I am of the view that the Minister did on the 6th June, 1980 exceed his powers in initiating action which sought to compel the parties to go to arbitration."

We conclude that in this case, and on the facts as found and examined, the Minister had a discretion under section 6(2)(b) to refer the trade dispute between the Union and the respondent to a Tribunal without first obtaining the consent of the parties and irrespective of the observance of the procedures set out in sections 3, 4, 5 and 6(1) of the Act.

Finally we are of the opinion for the reasons which we have given that the learned Judge was in error in concluding that the Minister of Labour had exceeded his powers under section 6(2)(b) of the Trade Disputes Act.

Accordingly, the Answer to Question 1 should be "Yes".

The appeal is allowed with costs, in this Court, to the appellant.

Vice President

Judge of Appeal

Judge of Appeal