IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI ISLANDS

CIVIL APPEAL NO. ABU0004 OF 1998S
(High Court Civil Action No.1 of 1994)

BETWEEN:

THE FIJI SUGAR CORPORATION LIMITED

Appellant

AND:

FIJI SUGAR AND GENERAL WORKERS UNION

Respondent

Coram: The Hon. Sir Maurice Casey, Presiding Judge
The Hon. Sir Mari Kapi, Justice of Appeal
The Hon. Justice Gordon Ward, Justice of Appeal

Hearing: Wednesday, 23 February 2000, Suva

Counsel: Mr. John R.F. Fardell with Mr. R. Naidu for the Appellant
Mr. H.K. Nagin for the Respondent

Date of Judgment: Friday, 25 February 2000

JUDGMENT OF THE COURT

This is an appeal from a decison of the High Court exercising appellate jurisdiction on appeal from a decision of the Sugar Industry Tribunal under the provisions of the *Sugar Industry Act* (Cap.206) (hereinafter referred to as the *SIA).*

The relevant circumstances giving rise to this appeal are as follows. The appellant is involved in the sugar industry that includes milling of sugar. The respondent is a union representing the interests of the employees of the appellant. The parties in a collective agreement (hereinafter referred to as the agreement) in 1962 determined the terms and conditions of employment for the employees of the appellant. The agreement was registered in accordance with the *Trades Dispute Act* (Cap. 97) and its terms governed the rights of the parties. Subsequently, when the relevant parts of the *SIA* were enacted in 1985, the agreement was deemed to have been filed in accordance with s.88 and registered in accordance with s.90 of the *SIA.*

The Minister responsible under the ***Wages Council Act*** (Cap. 98) (hereinafter referred to as the ***WCA)*** established the Manufacturing Industry Wages Council under s.3 (1) by way of the ***Wages Council (Manufacturing Industry) Order*** 1981 (hereinafter referred to as the ***WCO).*** The Order applies to all workers whose rate of remuneration does not exceed a set minimum level and who are engaged in manufacturing process in respect of which a license is in force or required under the ***Business Licensing Act.*** The minimum rate of remuneration was substituted with the figure of $150 per week by the ***Wages Council (Manufacturing Industry) (Variation of Field of Operation) Order*** 1993.

The Minister responsible then determined the terms and conditions of all workers in the manufacturing industry under the ***Wages Regulation (Manufacturing Industry) Orders*** 1993 (hereinafter referred to as the ***WRO)*** in accordance with s.8 of the ***WCA.***

The dispute between the parties relates to entitlements of workers set out under paragraphs 7, 8 and 9 of the ***WRO***. It is not necessary to set this out in detail for the purposes of the issues raised on appeal. Suffice it to say that remuneration for workers on public holidays under the ***WRO*** is higher than in the agreement.

It is accepted by the parties that if the provisions of the ***WCA,*** the ***WCO*** and the ***WRO*** are applicable, the employees of the appellant stand to gain. Therefore, the respondent Union made an application before the Tribunal to determine the applicability of the ***WCA*** and the subsidiary legislation under it to the employees of the appellant. The Tribunal stated the issue as follows:

> ***".....does the Wages Council Act Cap. 98 and the Subsidiary Legislation under it apply to the general employees of the Corporation.***

The Subsidiary Legislation referred to are specifically: The Wages Council Manufacturing Industry Order, the Wages Regulation Manufacturing Industry Order 1993 and the Wages Council Manufacturing Industry Variation of Field Operations Order 1993".

The Tribunal ruled that the provisions of the *WCA*, and the relevant subsidiary legislation made under it apply to the employees of the appellant and they prevail over the provisions of the agreement.

The appellant appealed to the High Court on three grounds:

"1. *The Sugar Industry Tribunal erred in law in holding that the Wages Council Act Cap. 98 and the Subsidiary Legislation relating to the Manufacturing Industry made thereunder apply to the Appellant's general employees.*

2. *The Sugar Industry Tribunal erred in law in holding that the Wages Regulation (Manufacturing Industry) Order 1993 binds the Appellant and the Respondent's members are therefore entitled to rates of time and a half for work performed on Saturdays and double time for work performed on public holidays.*

3. *That the Sugar industry Tribunal had no jurisdiction to order or exceeded its jurisdiction in ordering that Claim No.3 in Dispute No.1 of 1993 be varied when the only issue on which the parties made submissions to the Tribunal related to payment for public holidays and the parties were not heard on the issue of payment for workers engaged on Saturdays."*

The High Court in essence upheld the decision of the Tribunal and dismissed the appeal. The appellant has appealed to this Court on six grounds of appeal. The parties are agreed that the grounds raise three primary issues for determination:

"1. *Whether the employees of the appellant are employees in respect of whom the original WCO and subsequent Orders apply, culminating in the two 1993 Orders. This requires a determination of whether there was, at the time the WCO was made in 1981, 'adequate machinery' for the 'effective remuneration' of the employees of the appellant.*

2. *Whether the SIA provides a statutory code for the remuneration for employees of the appellant, with the result that it is not subject to subordinate legislation in the form of any order under the WCA.*

3. *Whether the Tribunal decision is impeachable as it fails to address adequately, or at all, the impact of s.116 of the SIA. The decision in the High Court is similarly affected by this issue, as Pathik J. did not separately address the relevance of this section in his decision of 10 December 1997."*

Issue 1

Counsel for the appellant submits that an Order establishing a Wages Council under s.3(2) of the *WCA* can only be made when the Minister, after consultation with the Labour Advisory Board, is satisfied that no adequate machinery exists for the effective remuneration for such workers. He submits that at the time the *WCO* was made, there was in existence adequate machinery for the effective remuneration for the employees of the appellant pursuant to the agreement and the provisions of the *Trades Dispute Act.* He further submits that when the relevant parts of the *SIA* were enacted in 1985, they represented a code for all industrial matters affecting the sugar industry including, in particular, provisions relating to the remuneration of the employees of the appellant. Consequently, he submits that as there was adequate machinery for effective remuneration of employees of the appellant, the provisions of the *WCO* and the *WRO* are not applicable to them. He does not go so far as to contend that the provisions of the *WCO* are invalid for the same reasons.

In reply counsel for the respondent submits that the question of the application of the *WCO* is to be determined in accordance with its terms. He submits that the Order is expressed to apply to all workers who are engaged in the manufacturing industry. He further submits that the proviso in paragraph 4 of the *WCO* exempts certain group of workers, namely, workers employed in any undertaking which is operated by Government or any local authority and any worker in any employment which for the time being is within the field of operation of any other ***Wages Council Order.*** He submits that if the *WCO* intended to exempt the employees of the appellant it would have said so in the proviso.

The question whether the Minister complied with the conditions set out under s.3(2) of the *WCA* is relevant to the issue of the validity of the *WCO.* However, counsel for the appellant does not attack the validity of the *WCO* on this basis. In our view, the question of whether the Minister complied with conditions set out under s.3(2) of the *WCA* can have no bearing on the question whether the provisions of the *WCO* in terms apply to the employees of the appellant. One has to interpret the provisions of the *WCO* on its own terms. The Tribunal and the High Court have consistently interpreted the provisions to apply to employees of the appellant whose minimum rate of remuneration does not exceed $150 and who are engaged in a manufacturing process in respect of which a license under the ***Business Licensing Act*** is required. We cannot find any error in this conclusion. We are satisfied that the *WCO* is applicable to all workers in the manufacturing industry including milling of sugar. This conclusion is further strengthened by the proviso in paragraph 4 which exempts certain workers (workers employed in any undertaking by the Government or local authority) or workers in any employment which is within the field of operation of any other ***Wages Council Order***. If the Order intended the employees of the appellant to be exempted from the application of the *WCO*, it would have said so. We would dismiss this ground of appeal.

Issue 2

Counsel for the appellant submits that the provisions of the *SIA* provide an exhaustive statutory code for the remuneration of employees of the appellant with the result that it is not subject to subordinate legislation made under the *WCA*.

Counsel for the respondent on the other hand submits in effect that the provisions of the *SIA* are expressly made subject to the provisions of other written laws on the question of terms and conditions of employment. He submits that the *WCA*, the *WCO* and the *WRO* fall within the meaning of written laws and therefore have precedence over the provisions of the agreement under the *SIA*.

This issue raises the consideration of the proper relationship between the *WCA* (and subsidiary legislation under it) and the provisions of the *SIA*. It is not unusual for Parliament to deal with the same subject matter in several statutes. This issue requires an examination of the terms of the relevant legislative provisions to determine the nature of the relationship that is intended by Parliament.

In summary the *SIA* provides detailed and elaborate provisions in Part IX - XII dealing with making, registration and enforcement of agreements on terms and conditions of employment of the employees of the appellant. However, the *SIA* is not unmindful of provisions of other written laws that deal with the same subject matter such as s.95 which makes specific reference to the provisions of ***Trades Dispute Act*** so far as registration of an agreement is concerned. The relevant provisions that relate to the issue before us are s.91(a) and s.116 (1) of the *SIA*.

Section 91 (a) reads:

"A collective agreement shall be void and of no effect for the purposes of this Act to the extent that it contains any provision which -

(a) is in conflict with any written law;"

This section clearly makes the terms of an agreement subject to any written law. This means that an agreement is void to the extent that it is in conflict with any written law. It is also clear from the terms of this provision that only parts of the agreement may be found to be in conflict with a written law, and the agreement is void only to that extent. The parts that are not in conflict remain intact.

Section 116(1) provides:

"116 - (1) The Tribunal shall not make an award which is -

(a) inconsistent with the provisions of any other written law regulating the wages, hours of work or other terms or conditions of, or affecting the employment of any person; or

(b) less favourable to any person than any award or order lawfully made in pursuance of any other written law."

This provision prohibits the Tribunal from making any award that would give effect to any agreement that is inconsistent with or is less favourable to any written law. This provision indicates (as does s.91(a)) that a provision in a written law would have precedence

over any provision in an agreement that is inconsistent or is less favourable. The inconsistency referred to in s.116(1)(a) may relate to any one of a number of matters such as wages, hours of work or other terms or conditions of employment. The Tribunal is prohibited from making any award in any of those matters where such an award would be inconsistent with a written law. We reject the submission by counsel for the appellant that the inconsistency in this provision relates to a global comparison of all the terms and conditions of employment.

The specific question in the present case is; whether the entitlement to holiday pay in the agreement is in conflict with the ***WRO*** (s.91 (a)) or is inconsistent with or less favourable to the ***WRO*** (s.116)(1)(9)? The Tribunal and the High Court have held consistently that the ***WRO*** is a written law and it provides for better entitlements on holiday pay and therefore is in conflict or inconsistent with terms in the agreement and consequently the Order must prevail. We cannot find any error in these conclusions. We would dismiss this ground of appeal.

Issue 3

Counsel for the appellant submits that the decision of the Tribunal as well as the High Court may be impeached in that they failed to carry out an overall comparison of the wages package under the agreement. Counsel for the respondent simply submits that it is not necessary to carry out such a comparison. The particular issue for consideration relates to entitlements of employees for work performed on public holidays. As we have pointed out in **Issue 2** it is not necessary to compare other conditions of employment when considering whether a particular condition of employment is in conflict with (s.91(1)(a)) or is inconsistent with (s.116(1)) a written law. There is no merit in this submission and we would dismiss it also.

Decision

The appeal is dismissed with costs to the respondent, which we fix at $2,500 together with disbursements to be fixed by the Registrar if the parties cannot agree.

Sir Maurice Casey
Presiding Judge

Sir Mari Kapi
Justice of Appeal

Justice Gordon Ward
Justice of Appeal

Solicitors:

Messrs. Munro, Leys and Company, Suva for the Appellant
Messrs. Sherani and Company, Suva for the Respondent

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