PERMANENT ARBITRATION TRIBUNAL

RULING

RN 137

BEFORE

Rashid Hossen	**-**	**Acting President**
S.C. Chan Wan Thuen	**-**	**Member**
B.Ramburn	**-**	**Member**

In the matter of :-

SPMPC Manual Workers Union
And
Minister of Labour & Industrial Relations

IPO

1. **Sugar Planters Mechanical Pool**
2. **Sugar Planters Mechanical Pool CEU**

This is an appeal under Section 81 of the Industrial Relations Act 1973, as amended, against the decision of the Minister of Labour & Industrial Relations & Employment rejecting the reporting of three industrial disputes by virtue of Section 80(11)(b) of the said Act.

The Appellant states that it is a duly registered Trade Union and has been granted recognition by the Sugar Planters Mechanical Pool Corporation ('SPMPC') to represent Manual Workers of the Corporation in all matters of disputes and grievances.

Messrs R. Sheambar, Coosnapa, R. Veerapen, L. Veerapen, Seenana are manual workers employed at SPMPC.

On 8th July 2003, the Appellant wrote to Respondent declaring an industrial dispute against SPMPC on three issues.

On 25th July 2003, the Respondent rejected the Industrial dispute under Section 80(1)(b) IRA.

The Appellant appeals against the said decision, on the ground that the Respondent's interpretation of who can be a party to an industrial dispute is erroneous, in as much as:

(a) two disputes were reported by the Appellant on behalf

of the abovenamed workers listed at paragraph 2 above, whom the Appellant has recognition to represent;

(b) the third dispute concerns a dispute of right and

interest concerning the category of employees that the Appellant has recognition to represent.

It is admitted that in a letter dated 6 June 2003 addressed to the Minister, the Sugar Planters Mechanical Pool Manual Worker Union reported the existence of an industrial dispute against the Sugar Planters Mechanical Pool Corporation on the following issues:

- Whether the form as per annex should be removed or otherwise, whether the employees concerned should draw a monthly allowance of Rs 800 or otherwise.
- Whether the job descriptions of Attendant should be respected.
- Whether the suspension without pay applied to Mr C Verny should be removed.

In another letter dated 8 July 2003 the same Union reported a second Industrial dispute against the Sugar Planters Mechanical Pool Corporation on the following issues:

"Whether the warnings issued to Mr R Sheambar and J C Coosnapa should be removed and deductions made on their salaries refund."

"Whether the hours of work of R Veerapen, Seenana and L Veerapen should be preserved."

"Whether the following allowance should be maintained:"

1. Crane allowances
2. Allowances on 07 & 08 Tractors Efficiency Bonus
3. Efficiency Bonus
4. Milk Allowance

Reacting to the reported industrial dispute, the Sugar Planters Mechanical Pool Corporation informed the Ministry that in accordance with article 2 of an agreement dated 6 November 1977 between the Sugar Planters Mechanical Pool Corporation and the panel consisting of the Sugar Planters Mechanical Pool Employees Union and the Sugar Planters Mechanical Pool Manual Workers Union it was agreed that :

"The Corporation recognises the panel as the sole and only bargaining agent for all its employees except the posts of General Manager and Deputy General Manager for the purpose of collective bargaining with regard to rates wages, hours of work, terms and conditions of employment……"

The Corporation also informed the Ministry that in a letter dated 1 3 May 2003, the Sugar Planters Mechanical Pool Employees Union had expressed the wish to no longer form part of the panel. The Corporation was therefore of the view that it could not entertain the industrial dispute until this issue was thrashed out.

The Respondent avers that **"Sole bargaining agent**" is defined in the Industrial Relations Act as meaning" a trade union or joint negotiating panel which has exclusive negotiating rights in respect of a bargaining unit". In this case the joint negotiating panel is composed of two unions and as one of its components has expressed the wish to dissociate itself, the panel can no longer operate as an entity. Consequently the negotiating rights, which the joint negotiating panel enjoyed, lapses. In a ruling (Private Enterprises Employees Union *vIs* The Minister of labour and Industrial Relations, dated 5 April 1994, RN 70) (Annex V) the Permanent Arbitration Tribunal pronounced that :

.....“in accordance with this definition and with the spirit of the Act only a recognised union is entitled to declare an industrial dispute although individual employees are entitled to do so.....

3. *The alternative would be an assault on the spirit and on the orderly structures of the act"*

The Respondent is therefore of the view that the Sugar Planters Mechanical Pool Manual Workers Union has no *locus standi* to report an industrial dispute. The Minister therefore rejected the reports of the industrial disputes under Section 80(1) of the Industrial Relations Act.”

Counsel representing the interests of the Union submitted that the Respondent rejected the industrial disputes on two grounds. The first being that the Union cannot declare a dispute because the dispute ought to have been declared by a joint negotiating panel and secondly since the joint negotiating panel has lapsed, the negotiating rights of the appellant follow suit. He referred to Article 2 of the Procedural Argument between the Appellant, the Responent and Co-respondent No 2 which reads:

"Corporation recognises the panel as the sole and only

bargaining agent for all its employees except the posts of General Manager and Deputy General Manager for the purposes of collective bargaining."

He argued that the Appellant is being recognized since 1986 and once the Union is being recognized, it can declare industrial disputes.

"The purpose of the Joint Negotiating Panel is to negotiate collective agreement. Once a collective agreement or a procedural agreement has been negotiated, terms and conditions being agreed upon, one of the Unions that form part of the panel may wish to declare a dispute on what is being agreed. It does not require both Unions or however many Unions in the panel, for all of them to declare an industrial dispute because once the agreement has been reached, the functions of the panel is finished. The functions of the panel is to reach the collective agreement, once that collective agreement is being reached, the function of the panel is over."

As regard the lapsing of negotiating rights, Counsel submitted that"Negotiating Rights having lapsed means that the panel is broken up, there can be no collective bargaining. But this does not mean that the Union is derecognized, the Union has the right to declare a dispute if need be and that a Joint Negotiating Panel is not a legal entity, whereas a trade union is

Counsel appearing for Co-respondent No 1 concurs with Respondent's view.

According to him, any interested party may bring a dispute but the

procedural agreement is on the one hand, between the Sugar Planters MechanicalPool Corporation, and on the other hand the two unions which constitute the panel. He further referred to Articles 7 & 8 of the Agreement reached between the Parties:-

"The Unions should raise the matter with the General Manager."

These Articles provide that if no agreement has been reached, both parties meaning either the Corporation, the employer or the panel, but not individual unions, because there are only two parties in this contract, may agree to refer the matter for voluntary arbitration under Section 70 of the Industrial Relations Act 1973 as amended.

It is apposite here to refer partly to what the Tribunal stated in its Award RN 742 of 2004, Mauritius Examinations Syndicate Staff Union and Mauritius Examinations Syndicate:

> "The Tribunal finds that the Union has been registered under the Industrial Relations Act 1973 in July 1996 and this is evidenced by annex "A" produced. The disputes in lite are referred to us by the Minister in the name of the Union i.e Mauritius Examinations Syndicate Staff Union. It is apposite *en passant* to note what was said in **Sullivan V Union of 'Artisans of the Sugar Industry Trade-Unions** SCJ 1978 Rec. no 1/78, with respect to the legal status of a Trade Union which has not yet been registered:
>
> "Our law regulating the existence and registration of Trade Unions is to be found in "The Industrial Relations Act 1973".
>
> Section 16(1) of the Industrial Relations Act 1973 reads as follows: - Subject to the other provisions of this Act, a registered trade union shall be a body corporate having perpetual succession and a common seal and shall have all the rights and powers of a natural person.

This is the enactment by which the trade union acquires legal personality.

Section 2 defines a "*trade union*" as : "an association of persons, *whether registered or not*, having as one of its objects the regulation of industrial relations between employees and employers and includes a federation".

It is provided for in section 5 subsection (1) that subject to section 110 of the Act, "every trade union shall, not later than three months after the date of its formation apply to the Registrar for registration". Subsection (2) enacts that: "if a trade union fails to comply with subsection (1) the trade union shall commit an offence and the trade union shall be wound up by the Registrar in the prescribed manner".

By Section 105(1) " Any trade union which fails to comply with any provisions of this Act or of the second schedule or of any regulation made under this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding five thousand rupees"

One would be inclined to interpret the above enactments as meaning that even before its registration the union in question has an existence and as such could sue or be sued. However in Citrine's treatise on Trade Union Law at page 177 it is said in no ambiguous terms that: "In the absence of some special staturoty provision the unincorporated group is not a legal person and cannot as such contract, commit or be injured by torts, sue or be sued, or hold property. It may operate as a factual entity but the law regards the use of its name as

merely a "convenient means of referring in conversation to the persons composing the society". In the absence of a procedural rule permitting the imposition of collective liability or the enforcement of collective rights the law attaches liability incurred in the assosication's name to those individual members who actually authorise or acquiesce in the making of the contract or the commission of the tort. Only they can sue and be sued: rights and liabilities are essentially personal to them."

Note 51 at the bottom of the same page reads as follows: "It has always been assumed that unregistered unions are not legal entities and cannot sue or be sued as such. It is arguable that for certain purposes the legislature has regarded them as possession a "*locua standi"* in legal proceeding e.g Section 16(4) of the Industrial Assurance and Friendly Societies Act 1948 and the corresponding act in Northern Ireland impose a penalty upon "any trade union" contravening its provisions – they apply both to registered and unregistered unions. See also Section 8 of the Trade Disputes and Trade Unions Act (N. 1) 1927. It is submitted that these provisions cannot be construed as giving a general power to sue and be sued. Life Assurance and political objects are optional and must not be a union's principal objects."

According to *Traité de Droit du Travail* by J. M. Verdier under the Direction of C. H. Camerlynck at page 182 and following it would appear that in France as well, a trade union unregistered or improperly registered although enjoying certain privileges has no power to take judicial action unless such power has been acquired after certain formalities have been fulfilled.

I have further considered the implication of the French Civil Code which is the basis of our civil law and which must be applied in the absence of some specific statutory enactment. It would appear that a

trade union which has been in operation for some time before it is declared to have been improperly constituted or improperly registered could be assimilated to what is known in French law as a "*Societé de fait"* this would not however give the unregistered trade union a legal entity but would help towards winding up the assets and liabilities of such a union which has been functioning but whose existence is ultimately declared to have been null and void. (Our law however provides how the Trade Union should be wound up by the Registrar)."

However, we need to point out at this stage that the fact of recognition is immaterial to the present case. The Union does not have to be recognised to declare an industrial dispute".

The Tribunal finds that nowhere in the Industrial Relations Act 1973 as amended the Legislator ever expressed such an intention. The definition and spirit of the Act does not hold any legal foundation in support of that contention . We are of opinion that had the Legislator intended that only recognized trade unions can declare dispute, this would have been expressed without ambiguity.

- ***Distinction between 'collective bargaining' and 'industrial dispute'***

'collective bargaining' means negotiations relating to terms and conditions of employment or to the subject-matter of a procedural agreement.

Section 2 of the Industrial Relations Act 1973 as amended defines an industrial dispute to be "a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to

(a) contract of employment or a procedure agreement; except, notwithstanding any other enactment, those provisions of the contract or agreement which –

(i) concern remuneration or allowance of any kind; and

(ii) Apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau.

"Pay Research Bureau" means the bureau referred to in the yearly recurrent budget under the Vote of Expenditure pertaining to the Prime Minister's Office."

(b) the engagement or non-engagement, or termination or suspension of employment, of an employee; or

(c) the allocation of work between employees or groups of employees."

It is to be reminded that our Industrial Relations Act 1973 as amended has been substantially borrowed from England where both the **Trade Union Act of 1871** and the **Trade Disputes Act of 1906** have been repeated by the Industrial Relations Act 1971. We find that the term 'industrial dispute' is an adaptation of the phrase 'trade dispute' used in the Trade Disputes Act of 1906. However, 'industrial

dispute' and 'trade dispute' although defined in broad similar terms do not have precisely the same meanings.

Section 167 of the Act of 1971 defines 'industrial dispute' as meaning:

'a dispute between one or more employers or organizations of employers and one or more workers or organizations of workers, where the dispute relates wholly or mainly to any one or more of the following, that is to say –

(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
(b) engagement or non-engagement, or termination or suspension of employment, of one or more workers;
(c) allocation of work as between workers or groups of workers;
(d) a procedure agreement, or any matter to which in accordance with section 166 of this Act a procedure agreement can relate.'

Compare this with the definition of 'trade dispute' in s. 5 of the **Trade Dispute Act, 1906** –

'any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person, and the expression "workmen" means all persons employed in trade or industry. Whether or not in the employment of the employer with whom a trade dispute arises….'

From these definitions it will be seen:

(i) To constitute an 'industrial dispute' the disputants must be on the one side a worker(s) or an organization or workers and on the other side an employer(s) or an organization of employers. A dispute between an employer and an organization of employers or between a worker and organization of workers or between a worker and a worker is not an 'industrial dispute'. Under the Act of 1906 a dispute between workmen and work – men might have been a 'trade dispute' but this is not the case under the Act of 1971.

(ii) Under the Act of 1906 the expression 'workmen' meant 'all persons employed in trade or industry, whether or not in the employment of the employer with whom the trade dispute arises'. Significant changes have been made in the Act of 1971. The definition of 'worker' in s. 167 covers not only an employee but also some who can be regarded as independent contractors; it also includes those 'workers' who are unemployed.

(iii) It is noted that the phrase 'whether or not in the employment of the employer with whom a trade dispute arises' in the Act of 1906 has been excluded from the definition in the Act of 1971 and this may have important consequence for sympathetic strike action. The definition of 'industrial dispute' states that the dispute must relate *wholly or mainly* to one or more of four matters. In considering these four matters it should be noted that in the first, i.e terms and conditions of employment, the phrase 'any workers' is used, whereas this term is omitted in the paragraphs covering engagement of workers, allocation of work and procedure agreements.

Although there are, therefore, distinctions which can be drawn between the 'trade dispute' of the Act of 1906 and the 'industrial dispute' of the Act of 1971, the cases that sought to interpret the meaning of 'trade dispute' will doubtless be used in the interpretation of 'industrial dispute'. From these cases the following conclusions may be drawn:

An industrial dispute must be something more than a mere personal quarrel or a grumbling or an agitation. To come within the statutory definition there must not only be a dispute but an industrial dispute.

Conway v. Wade, [1906] A.C. 506. The defendant, without any authority from his union, induced the plaintiff's employers to dismiss the plaintiff by threatening that men would be called out on strike. The object of the defendant in doing this was to try to compel the plaintiff to pay an eight-year-old fine. The jury found that there was no evidence of a trade dispute (under the Act of 1906) existing or contemplated by the men. The House of Lords held that there was sufficient evidence to justify these findings.

Again, in ***Torquay Hotel Co. Ltd v Cousins*** (p.37) the Court of Appeal concluded that where trade union officials were furthering 'their own fury' there was no trade dispute.

It must not be assumed from these cases that a dispute cannot be an 'industrial dispute' if carried on with ill-will and spite. What the cases do mean is that there cannot be an industrial dispute if the dispute is a mere personal feud and nothing more.

Beetham v. Trinidad Cement Ltd., [1960] **A.C. 132**. Under a statute of Trinidad and Tobago, the Governor of the colony was authorized, where a trade dispute existed, to inquire into the causes of the dispute. A trade dispute

was defined in similar terms to that of the British Act of 1906. A union asked the company if it could represent two men who had been dismissed by the company. The company refused. The Privy Council held that a trade dispute existed whenever a 'difference' existed, and a difference could exist long before the parties became locked in combat – it was sufficient that they should be 'sparring for an opening'. The Governor was, therefore, authorized to inquire into the causes of the trade dispute.

***Bents Brewery Co. Ltd v. Hogan*, [1945] 2 All E.R. 570**. A trade union official sent out a questionnaire to members of the union, who were employed as managers of public houses, asking for information on the managers' expenses, takings, and wage bills. The particulars were required in order to have data ready for future wage negotiations. There was at the time no demand being made for better wages by the employees. *Held*, there was no trade dispute. 'A dispute cannot exist unless there is a difference of opinion between two parties as to some matter' – per Lynsky. J. , at p. 579.

We find again a definition of 'Industrial Dispute' at para. 724 of the **European Employment and Industrial Relations Glossary: United Kingdom by Michael Terry and Linda Dickens (1991)**.

> " A trade dispute was and is defined by **TULRA 1974** as a dispute between workers and employers which is "connected with" one or more of the following: **terms and conditions** of employment, engagement or non-engagement of workers, allocation of work, **discipline**, membership or non-membership of a union, union facilities, and management-union procedures. The statutory **immunities** depend on a trade dispute being contemplated or furthered by the action, the so-called " **golden formula**", and constitute the **right to strike** in Britain. This definition of

trade dispute was narrowed by the **Employment Act 1982**. This Act restricted the definition of a trade dispute to being a dispute between workers and their own employers and it must now "wholly relate" to the above list. These changes effectively excluded from the immunities disputes between workers and workers; action in support of other workers; and **industrial action** which might be "connected with" one of the areas listed but which does not "relate wholly or mainly to it". For example, a **strike** arising from a decision to privatize part of the **public sector** may be connected with fears of job loss but be held not to relate mainly to that but rather to be concerned to affect government policy, and thus fall outside the definition of trade dispute."

That the dispute must be in relation to employment is a sine qua non condition. In **Cronin and Grime's Labour Law (1970)** at Page 303, we read: " A modern illustration of the chasm that separates the common law from industrial relations practice in the case of ***J. T. Stratford & Sons, Ltd v. Lindley***. This was an action for damages for losses caused to the plaintiffs by industrial action organized by the defendant, a trade union official. The dispute arose when the plaintiffs, recognized another trade union. Before the House of Lords, one of the points at issue was whether the dispute could properly be regarded as a "trade dispute" within the meaning of the definition in the **Trade Disputes Act 1906**:

" any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person…"

It had been accepted in the case of *Beetham v. Trinidad Cement, Ltd* that a recognition dispute may be a trade dispute. This was not, indeed, denied by any member of the House in *Stratford's* case. Nevertheless they unanimously held that there was no trade dispute. **Viscount RADCLIFFE'S** reasons were these:

" As to the first point, I do not think that the respondents were acting in furtherance of a trade dispute. Of course, a Union can be a party to such a dispute. It can even bring about one and be the promoter of such a dispute, it can act on behalf of the employees or other workmen in starting or pursuing such a dispute; but, because it can, it does not follow that it always does. Has it got a dispute before it here? The only controversy that appears is between one union and another.

"In common law terms, this is unimpeachable. The dispute must be about employment. Employment is a question that can arise only between an employer and an individual workman."

We further note at Page 371,

" When a trade dispute exists or is apprehended, the Minister may, with the consent of both parties to the dispute, refer it to the court for settlement. "Trade dispute" is defined as in the Trade Disputes Act 1906, with one important variation. It includes "any dispute or *difference*". This would undoubtedly cover cases that would fall outside the Trade Disputes Acts, although, since the decision of the Privy Council in *Beetham v. Trinidat Cement, Ltd.,* that latter definition has been in this respect widened. Secondly, the court must give its advice to the Minister, if called upon, on " any matter relating to or arising out of a trade dispute, or trade disputes in general, or trade disputes of any class, or any other matter …The Minister, however, may not refer any matter to the court for settlement or advice until any existing voluntary conciliation system has failed."

The recent Supreme Court decision **(SCJ 169 of 2004)** on the definition of 'Industrial Dispute' sheds some more light regarding current and past employees.

'*Industrial dispute*' at the time that this case was decided by the respondent was defined in section 2 of the Act as follows:-

"industrial dispute" means a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to -

(a) *a contract of employment* or a procedure agreement;

(b) *the employment or non-engagement, or termination or* suspension of employment, of an employee; or

(c) *the allocation of work between employees or groups of employees" (*the underlining is ours).

It is quite clear from such a definition, that, as rightly submitted by learned Counsel for the Applicant, that the industrial dispute for the purposes of the Act can only refer to a dispute between a current employer and his present employees, not former ones who had been in retirement for a long time, as is the case with the co-respondents."

- ***Who can declare industrial dispute?***
  An employee or trade union of employees on the employee's side.

- ***Is the collective agreement enforceable at law?***
  'Collective agreement' means a procedure agreement, or an agreement which relates to terms and conditions of employment, made between a trade union of employees or a joint negotiating panel and an employer or a trade union of employers.

  'Joint negotiating panel' means the representative or 2 or more trade unions of employees authorized to participate in collective bargaining and to enter into a collective agreement.
  It is generally agreed that a collective agreement is not a commercial agreement. In Great Britain collective agreements between trade unions and employers remain unenforceable at law, unless an agreement states in writing that it is the intention of both the parties that it should be legally enforceable.

- ***Does either union forego its right to declare a trade dispute because the panel has signed the agreement?***

  The purpose of the setting up of a panel is to facilitate collective agreement in organization where more one union is recognized.

  The panel is not a legal entity. It therefore cannot take any legal or industrial action. Its sole purpose is as defined in the law's a 'joint negotiating panel.' If a trade dispute arises, it is up to the employees or the individual action to take action. If an employee can declare a trade dispute, a fortiori a trade union representing the same employee should be able to do it. It defeats the purpose of trade unionism if it is denied to the union what is recognized for the employee whom the union is legally constituted to defend.

The spirit of the Industrial Relations Act 1973 as amended is settlement of industrial disputes and maintaining of harmonious industrial relation. We fail to see how a most restricted view that only recognized trade unions can declare disputes would be an assault to the very definition and spirit of the Act. The Legislator stipulated that a trade union can declare a dispute and we find nothing that would constitute an assault on the orderly structures of the Act if a trade union, duly registered declares an industrial dispute in relation to a contract of employment.

"Registration was, and still is, voluntary, but no other form of legal establishment is permitted. It is simply effected. Seven or more members may do it by filling in the official Form A and submitting it with two printed copies of the rules, a list of the officers" and £1 to the Registrar. He has very little discretion. He must register the union unless any of its purposes arc unlawful, I or it does not come within the definition ; or its name is the same as

deceptively similar to that of a union already on the register; or he has reason to believe that his informants have not been authorised to register the union. There is also a sort of informal registration, whereby an unregistered union may obtain a certificate from the Registrar that it is a trade union within the statutory definition.

Once registered, a union is placed under a number of duties. It must file annual accounts and changes of officers and of rules at the registry. It must file a registered office and keep the Registrar informed of its whereabouts. These are essentially formalities. In addition it must have rules about certain important matters, although there is no control of what sort of rules it has. Finally, there are a few semi-public duties, such as the obligation to deliver a copy of the rules "to every person on demand on payment of a sum not exceeding one shilling". It must also, of course, comply with the requirements that affect all trade unions, registered and unregistered: it must carry out any political activities in accordance with the provisions of the Trade Union Act 1913.

The main benefit of registration is the protection afforded by the Act to union property. Although all unions must in practice use trustees to hold property, the 1871 Act not only specifically permits registered unions to own real and personal property, but vests that property in statutory trustees, and automatically in their successors on death or removal. The trustees are given statutory authority to take or defend any proceedings "touching or concerning the property, right, or claim to property of the trade union" in their own name on behalf of the union. Union treasurers must account to the trustees and may be sued by them for any deficiencies. Trustees of unregistered unions enjoy none of these procedural advantages.

There are a number of other advantages to registered trade unions and their members, all of a minor character.

Every registered trade union, and every unregistered trade union with a certificate of compliance with the *Acts*. is conclusively presumed for all purposes to be a trade union within the meaning of the Acts for so long as the certificate or the registration lasts. They last until withdrawn. The power of the Registrar to remove a union from the register and to withdraw a certificate is, therefore, of some importance." (**See Cronin & Grime. Labour Law by Butterworths page 401 of 1970)**.

We note however that in SULLIVAN V. UNION OF ARTISANS OF THE SUGAR INDUSTRY 1978 MR 20, it was held that an unregistered union has no legal entity and cannot sue or be sued as such.

Section 16 (1) of the Industrial Relations Act 1973 as amended reads as follows :

> "Subject to the other provisions of this Act, a registered trade union shall be a body corporate having perpetual succession and a common seal and shall have all the rights and powers of a natural person"

Since a registered Union is a corporate body, it is the more comforting to subscribe to the view that it can, without obtaining recognition, have the right to declare a dispute. What matters is the concept of interest in the dispute and however small a party can be, it is that interest that overrides it all. This liberty of disputes declaration, and the right to be represented at a hearing relating to a dispute or a matter before the Tribunal is manifested in Article 6 (2) of the second schedule to the Industrial Relations Act 1973 as amended under the heading "Practice and Procedure of Tribunal" and which reads:-

"The Tribunal may in relation to any dispute or other matter before it –

(a) order any person to be joined as a party to the proceedings who in the

opinion of the Tribunal –

(i) may be affected by an order or award; or

(ii) ought in the interests of justice to be joined as a party,

and to do so on such terms and conditions as the Tribunal may decide".

Counsel appearing for the Respondent concurs with that reasoning.

However we find the following provision in Section (80) subsection (1) paragraph (b) –

"The Minister can reject a dispute whether it is made by or on behalf of the party who is not entitled to be a party to an industrial dispute in relation to any of the issues or matters raised in the report."

Indeed the disputes in the present matter initially were –

"Whether the form as per annex should be removed or otherwise",

"*Whether the employees concerned should draw a monthly allowance of Rs 800.00",*

"Whether the job description of attendant should be respected",

and

"Whether the suspension without pay to apply to Mr Verny should be removed".

It is not disputed that there has been a procedure agreement between a joint panel of the employer. Article 2 states:

"The Corporation recognizes the panel as sole bargaining agents for all its employees except the post of Manager and Deputy General Manager for the purpose of collective bargaining with regard to rate of pay, wages, hours of work, terms and conditions of employment provided that such terms and conditions are not inconsistent with the Pay Research Bureau Report."

At a later stage, we find the Union to declare disputes in relation to crane allowances, allowances on D7 and D8 Tractors, Efficiency Bonus, and Milk Allowance.

These matters are related to terms and conditions of employment as stated under Article 2.

So these are disputes that would be precluded under section (80)(1) (b) of the Industrial Relations Act because there would be disputes made by or on behalf of a party who is not entitled to be a party to an industrial dispute in relation to any of the issues raised in view of that particular agreement.

The agreement provides for articles that deal with grievances and at page 6 we read –

"The voluntary arbitration or reporting dispute to the Minister, if not, agreement has been reached under section (2) above, that is, either -

(i) Both parties may agree to refer the matter for voluntary arbitration under section (70) of the Industrial Relations Act or

(ii) Either or both parties may report the dispute to the Minister under Section (79) of the Industrial Relations Act.

The parties to this agreement are on the one hand, the joint panel and, on the other, the employer. It is clear, therefore, that either a joint panel itself can refer the dispute or the employer.

We, therefore, conclude that in the present matter the Minister was perfectly entitled to reject the dispute under Section (80)(1) (b) of the Industrial Relations Act, 1973, as amended.

The appeal is accordingly dismissed.

R. Hossen
Acting President

S.C. Chan Wan Thuen
Member

B. Ramburn
Member

3 December 2004