

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 11/06

BEFORE: THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A.

VALERIE JUGGAN-BROWN
AND
MARKSMAN LIMITED

V.

REGINA

Winston Spaulding, Q.C., and Garth McBean, instructed by Garth McBean and Co., for the appellants.

Miss Opal Smith and Mrs. Carla-Ann Harris-Roper, for the Crown.

December 13, 14 and 18, 2006

PANTON, J.A. (ORAL JUDGMENT)

1. Both appellants were convicted in the Corporate Area Resident Magistrate's Court of the offence of refusing to supply the Minister with information requested pursuant to Regulation 3(5) of The Labour Relations

And Industrial Disputes Regulations, 1975, contrary to Regulation 3(6) pursuant to section 27 of The Labour Relations And Industrial Disputes Act.

2. Regulation 3(5) states that the Minister may **also** require the applicant and **the employer on whom the claim was served** to produce within such period as the Minister may specify such books and other documents, and to give him such other information, as he thinks necessary for the purpose of verifying any information supplied to him pursuant to regulation 3 (1) or (3). Refusal to do so is punishable on summary conviction.

3. To better understand the nature of the offence, regard has to be paid to regulation 3 (1) which enables the Minister to cause a ballot to be taken under section 5 of The Labour Relations And Industrial Disputes Act. There are certain pre- conditions set out in regulation 3(1). The Minister may cause a ballot to be taken if, among other things:

- “1. a request in writing so to do is made to him by a trade union and a certificate in the form set out as Form No. 1 in the Schedule is supplied to him; and
2. **he is satisfied that a claim in the form set out as Form No. 2 in the Schedule was served on the employer** of the workers in relation to whom that request has been made.”

4. Regulation 3(3) provides that the Minister may, pursuant to paragraph (2), require the employer to supply him with information as the Minister thinks necessary in respect of the workers in relation to whom the request for the ballot has been made. It is on the back of all that, that regulation 3(5) provides for the Minister to make further requests of the **applicant and the employer on whom the claim was served**, to produce such books and other documents, and to give him such other information as he thinks necessary for the purpose of verifying any information supplied to him earlier.

5. A successful prosecution of a breach of regulation 3(5) requires proof that the employer was served a claim form, that is, Form No. 2. In determining the case, the learned Resident Magistrate identified two of the issues thus:

- “1. Did United Union of Jamaica ask the Minister’s intervention regarding a claim for bargaining rights in respect of security guards engaged by Marksman Limited?
2. Was such a claim served upon Marksman Limited? (page 48)”

Having identified the issues, she found that the union had asked for the Minister's intervention, and that the claim was served. In arriving at these findings, she relied on Exhibit 4 as also on the cross-examination of the female appellant.

6. The appellants have challenged this finding as to the service of Form No. 2. It is their first ground of appeal. Their contention is that the Minister had to be satisfied that the Form was **served** and that at the time he wrote to the appellants, he could not have been so satisfied as the letter from the union merely said that they had sent a letter with the claim to the employer. The appellants contend that the Minister had to be satisfied beyond reasonable doubt that a claim in the form set out as Form No. 2 was served. The Crown contends otherwise. Its position is that the Minister need only be satisfied on a balance of probabilities.

7. We are of the view that, whatever the level of satisfaction the Minister may be required to have, so far as proof of service of Form No. 2 is concerned, the Resident Magistrate had to be satisfied beyond reasonable doubt that the claim in the form of Form No. 2 had indeed been served on the appellants. In presenting its case, the prosecution was obliged to

produce evidence of actual service of Form No. 2. It is only on the basis of such evidence that the Court would then be in a position to go on to consider whether there had been a failure to supply the information requested by the Minister.

8. There was no such proof. That being so, the convictions have no base on which to stand. The correspondence between the Ministry and the appellants clearly demonstrated that the appellants were challenging every move by the Ministry every step of the way. In such a situation, the prosecution had a duty to ensure that it presented proof of every ingredient. The most basic ingredient was service of Form No. 2. In this regard, it failed.

9. In view of the conclusion at which we have arrived, the other grounds of appeal do not require consideration. We therefore allow the appeals, quash the convictions, set aside the sentences, and enter verdicts of acquittal.

10. Before parting with this matter, we are constrained to say that the correspondence also indicates that the appellants are not keen for this particular aspect of the legislation to work, and we regard this attitude as most unfortunate.