Original Printed Version (PDF)

[HOUSE OF LORDS]

STOCK RESPONDENT

AND

FRANK JONES (TIPTON) LTD. APPELLANTS

1977 Dec. 13; 1978 Feb. 2

Viscount Dilhorne, Lord Simon of Glaisdale, Lord Edmund-Davies, Lord Fraser of Tullybelton and Lord Scarman

Industrial Relations - Unfair dismissal - Strike - Employees on strike as result of dismissals - Two employees returning to work - Remainder of striking employees dismissed - Whether dismissal unfair - Trade Union and Labour Relations Act 1974 (c. 52), Sch. 1, para. 8 (2) (a)
Statute - Construction - Literal meaning - Plain language - Duty of court where meaning clear

The employee worked for a curtain manufacturing company which employed over 60 employees, 53 of whom joined a union. Following a dispute over union recognition between the employers and the union two employees were dismissed as a result of which a number of others, including the employee, went on strike. Two of the strikers returned to work but the other employees did not and were dismissed. The employee s claim for compensation for unfair dismissal was refused by an industrial tribunal, which held that paragraph 8 (2) (*a*) of Schedule 1 to the Trade Union and Labour Relations Act 1974[1] referred only to employees who were taking part in a strike at the date of another employee's dismissal, so that the fact that two employees who had been on strike but who had returned to work before the employee's dismissal, were not dismissed did not render the dismissal unfair. An appeal by the employee was allowed, Phillips J. holding that the tribunal had erred in departing from the ordinary and literal meaning of paragraph 8 (2) (*a*) of Schedule 1 to the Act of 1974 and that since the two employees who had returned to work before the employee's dismissal were employees "who also took part in" the strike within paragraph 8 and had not been dismissed, the employee's dismissal was unfair and she was entitled to compensation. The Court of Appeal affirmed the decision.

On the employers' appeal: -

Held, dismissing the appeal, that it was clear beyond doubt that the intention of Parliament in enacting paragraph 8 (2) of Schedule 1 to the Act of 1974 was that the dismissal of all who took part in strike action was not to be regarded as unfair, but discrimination between those who took part either

1 Trade Union and Labour Relations Act 1974, Sch. 1, para. 6: "(4) For the purposes of this Schedule the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee . . . (*b*) had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union, . . . (6) Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of subparagraph (4) . . . above is hereafter in this Schedule referred to as an inadmissible reason."

Para. 8 (2): "If the reason or principal reason for the dismissal was that the employee took part in the strike or other industrial action, the dismissal shall not be regarded as unfair unless it is shown - (*a*) that one or more employees of the same employer . . . who also took part in that action, were not dismissed for taking part in it . . . and that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal or not offered re-engagement was an inadmissible reason."

by not dismissing some of them or by re-engaging some who had been dismissed, but not the claimant for compensation, rendered the dismissal unfair, if it was for an inadmissible reason, and there was no justification for reading into paragraph 8 (2) (*a*) the words "at the date of the dismissal were taking part" (post, pp. 234C-D, 235B-C, 237H-238A,239E-F).

Per Viscount Dilhorne and Lord Fraser of Tullybelton. When the language of a statute is plain, then although it may appear that it might have been better drafted or that amendment of it might be less productive of anomalies, it is not open to the court to remedy the defect (post, pp. 234G, 238E).

Per Lord Simon of Glaisdale. A court may only depart from the plain words of a statute if (1) there is clear and gross balance of anomaly; (2) Parliament could not have envisaged it and could not have been prepared to accept it in the

interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to that legislative objective; (4) the language of the statute is susceptible to the modification required to obviate the anomaly (post, p. 237E-F).

Per Lord Edmund-Davies. Dislike of the effect of a statute is no reason for departing from its plain language (post, p. 238C).

Per Lord Scarman. If the study of a statute leads inexorably to the conclusion that Parliament has erred in its choice of words, the court must eliminate the error by interpretation but the error must be one of commission or omission which in its context defeats the intention of the Act (post, p. 239D-E).

Decision of the Court of Appeal [1977] 1 W.L.R. 1288; [1977] I.C.R. 976; [1978] 1 All E.R. 58 affirmed.

The following cases are referred to in their Lordships' opinions:

Brandling v. Barrington (1827) 6 B. & C. 467.
Heydon's Case (1584) 3 Co.Rep. 7a.
London (City of) v. Wood (1701) 12 Mod.Rep, 669.
Reg. v. Judge of the City of London Court [1892] 1 Q.B. 273, C.A.
River Wear Commissioners v. Adamson (1877) 2 App.Cas. 743, H.L.(E.).
Sutherland Publishing Co. Ltd. v. Caxton Publishing Co. Ltd. [1938] Ch. 174; [1937] 4 All E.R. 405, C.A.
Thompson v. Goold & Co. [1910] A.C. 409, H.L.(E.).
Vacher & Sons Ltd. v. London Society of Compositors [1913] A.C. 107, H.L.(E.).
Vickers, Sons & Maxim Ltd. v. Evans [1910] A.C. 444, H.L.(E.).

The following additional cases were cited to in argument:

Gallagher v. Wragg [1977] I.C.R. 174, E.A.T.
Nothman v. Barnet London Borough Council [1978] 1 W.L.R. 220, E.A.T.
Post Office v. Crouch [1974] 1 W.L.R. 89; [1974] I.C.R. 378; [1974] 1 All E.R. 229, H.L.(E.).
Thompson v. Eaton Ltd. [1976] I.C.R. 336; [1976] 3 All E.R. 384, E.A.T.

APPEAL from the Court of Appeal.

This was an appeal by leave of the Court of Appeal (Lord Denning M.R., Stephenson and Waller L.JJ.) against the order of that court dated February 2, 1977, dismissing the appeal of the present appellants, Frank Jones (Tipton) Ltd., from the order of Phillips J. on March 5, 1976, whereby he allowed the appeal of the present respondent, Miss C. Stock, from the unanimous decision of the industrial tribunal in Birmingham on

---

April 30, 1975. That decision dismissed her application for compensation from unfair dismissal.

The facts are set out in the opinion of Viscount Dilhorne.

Richard Yorke Q.C. and *John Fletcher* for the appellant company.
James Mitchell and *Andrew Hillier* for the respondent were not called on to argue.

Their Lordships took time for consideration.

Feb. 2, 1978. VISCOUNT DILHORNE. My Lords, in November 1974, 53 out of over 60 women employees of the appellants joined the Transport and General Workers Union. On November 21 the district officer of the union wrote to the appellants saying that 90 per cent. of their employees had joined it and asking for a meeting to discuss the setting up of a procedure agreement, negotiating rights and recognition of workers' representatives. This letter was answered by the appellants on November 28 in which it was said that action would not be taken without a full board meeting, that the chairman was away and that a meeting would be held as soon as possible after his return. The next day, November 29, two women who had been instrumental in the concerted move to join the union were dismissed.

As a result, on December 9 some 35 of the appellants' employees went on strike seeking the reinstatement of these two women. On January 13, 1975, the respondent was sent her cards and there is now no dispute that she was dismissed by the appellants.

Before her dismissal two women, or at least one, (there being some doubt about the second) who had taken part in the strike, decided to return to work and were allowed to do so. The respondent then claimed that she had been

unfairly dismissed and sought compensation under the Trade Union and Labour Relations Act 1974. The industrial tribunal found against her but on appeal Phillips J. did not. The appellants' appeal to the Court of Appeal was dismissed and the appellants now appeal to this House.

The matter is governed by paragraph 8 of Schedule 1 to that Act which, so far as material, reads as follows:

> "(1) The provisions of this paragraph shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer, where on the date of dismissal he was taking part in a strike or other industrial action. (2) If the reason or principal reason for the dismissal was that the employee took part in the strike or other industrial action, the dismissal shall not be regarded as unfair unless it is shown - (*a*) that one or more employees of the same employer (in this paragraph referred to as 'the original employer'), who also took part in that action, were not dismissed for taking part in it, or (*b*) that one or more such employees, who were dismissed for taking part in it, were offered re-engagement on the termination of the industrial action and that the employee was not offered such re-engagement, and that the reason (or, if more than one, the principal reason) for which an employee was selected for dismissal or not offered re-engagement was an inadmissible reason."

Paragraph 6 (4) and (6) provide that if the reason or principal reason for the dismissal was that the employee "had taken . . . part at any

---

appropriate time in the activities of an independent trade union,' that was an inadmissible reason.

Mr. Yorke, for the appellants, did not suggest that any other part of the Act threw any light on the meaning to be given to paragraph 8. That paragraph replaced without material amendment section 26 of the Industrial Relations Act 1971.

It was not disputed that the respondent was an employee who was covered by paragraph 8 (1). That sub-paragraph defines the class to whom paragraph 8 applies.

She claimed, and there is no dispute about this, that one or more of the appellants' employees who also took part in the strike were not dismissed for taking part in it, and that the reason for her dismissal was an inadmissible reason, namely, that she had taken part in the activities of an independent trade union. She thus claimed that the two conditions precedent stipulated in paragraph 8 (2) were satisfied and that her dismissal was consequently to be regarded as unfair.

The intention of Parliament when enacting section 26 of the Act of 1971 and re-enacting that in paragraph 8 is clear beyond all doubt from its terms. It was to prevent victimisation by an employer of persons who took part in a strike or other industrial action. The dismissal of all who took part in such action was not to be regarded as unfair, but discrimination between those who took part either by not dismissing some of those who took part or by re-engaging some, but not the claimant for compensation, of those who had been dismissed rendered the dismissal unfair if it was for an inadmissible reason.

The appellants contend that while they recognise that the intention of Parliament was to prevent victimisation, Parliament cannot have intended to render an employer guilty of unfair dismissal if he dismissed all those taking part in a strike or other industrial action at the time of dismissal, and did not dismiss at the same time all persons who had taken part but who had come back to work before the dismissals took place. Parliament cannot, it was urged, have meant that employers should be liable to pay compensation to all those taking part in a strike at the date of dismissal if they had allowed one person who had taken part to return to work. If that was the meaning, to avoid liability to pay compensation to those taking part in such action at the time of dismissal the employer would also have to dismiss those whom he had allowed to return to work and render himself liable to pay them compensation for unfair dismissal.

It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it "according to the intent of them that made it" (Coke 4 Inst. 330).

If it were the case that it appeared that an Act might have been better drafted, or that amendment to it might be less productive of anomalies, it is not open to the court to remedy the defect. That must be left to the Legislature.

The appellants contend that in view of the anomalies which they say would result from the interpretation the respondent seeks to have placed on the paragraph, to have paragraph 8 (2) read as if it said: "who also took part and at the date of the dismissal were taking part in that action." As Stephenson L.J. said in the Court of Appeal, the paragraph does not so provide.

"It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to

do" said Lord Mersey in *Thompson v. Goold & Co.* [1910] A.C. 409, 420. ". . . we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself" Said Lord Loreburn L.C. in *Vickers, Sons & Maxim Ltd. v. Evans* [1910] A.C. 444, 445.

I can see no justification for reading the words "and at the date of the dismissal were taking part" into paragraph 8 (2) (*a*). So to do would be to limit the scope of the protection against victimisation given by the paragraph. Its language is clear and unambiguous. Criticisms are not infrequently made of draftsmen. I can see no ground for criticising the drafting of this paragraph or for concluding that the use of the past tense in paragraph 8 (2) (*a*) was not deliberate and was an error in drafting.

Parliament might, if it had wished, have limited the protection against victimisation to those taking part in the strike or other industrial action, at the time of dismissal. It did not do so. Paragraph 8 (2) (*a*) extends to all who took part in such action.

Much weight was sought to be placed on the anomalies which it was said would result from giving effect to the words used by Parliament. I am by no means satisfied that all the anomalies lie on one side, nor am I satisfied that dismissal of those allowed to return to work before the others engaged in industrial action were dismissed would necessarily render an employer liable to pay compensation, for under paragraph 17 of the Schedule a tribunal can only make an award of compensation if it does not recommend reinstatement or re-engagement, or if it does so recommend and its recommendation is not complied with.

It was also said that it will be difficult for an employer to dismiss all who took part in such industrial action. Some whom he thought were absent through illness might have taken part. A similar difficulty may arise if the appellants' interpretation was correct though perhaps not to the same degree.

The existence of anomalies, if they exist, cannot limit the meaning to be attached to dear language in a statute.

In my opinion the Court of Appeal and Phillips J. came to the right decision in this case and this appeal should be dismissed.

LORD SIMON OF GLAISDALE. My Lords, I have had the privilege of reading in draft the speech just delivered by my noble and learned friend on the Woolsack. I agree with it, and I would therefore dismiss the appeal. I have also been privileged to read the speeches about to be delivered by my noble and learned friends, Lord Edmund-Davies and Lord Scarman. They have prompted me to add some additional observations of my own.

In his argument based on alleged anomaly counsel for the appellants was founding himself on the rider in what has come to be known as "Lord Wensleydale's golden rule" of statutory construction - namely, you are to apply statutory words and phrases according to their natural and ordinary meaning without addition or substraction, unless that meaning produces injustice, absurdity, anomaly or contradiction, in which case you may modify the natural and ordinary meaning so as to obviate such injustice etc. but no further. (Nowadays we should add to "natural and ordinary meaning" the words "in their context and according to the appropriate linguistic register.") Counsel for the appellants urged your Lordships, as he did the Court of Appeal, to modify the natural and ordinary meaning of the statutory language - in effect, to add words which are not in the

statute in order to obviate what he claimed were the absurd and anomalous consequences of taking the words literally.

The rider to "Lord Wensleydale's golden rule" may seem to be at variance with the citations of high authority contained in the speeches of my noble and learned friends. But this is not really so. The clue to their reconciliation is to be found in the frequently cited passage on statutory construction in Lord Blackburn's speech in *River Wear Commissioners v. Adamson* (1877) 2 App. Cas. 743, 763:

> "In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view."

Words and phrases of the English language have an extraordinary range of meaning. This has been a rich resource in English poetry (which makes fruitful use of the resonances, overtones and ambiguities), but it has a concomitant disadvantage in English law (which seeks unambiguous precision, with the aim that every citizen shall know, as exactly as possible, where he stands under the law). The first way, says Lord Blackburn, of eliminating legally irrelevant meanings is to look to the statutory objective. This is the well-known canon of construction referred to by my noble and learned friend on the Woolsack which goes by the name of "the rule in *Heydon's Case*" (1584) 3 Co.Rep. 7a. (Nowadays we speak of the "purposive" or "functional" construction of a statute.)

But it is essential to bear in mind what the court is doing. It is not declaring "Parliament has said X: but it obviously meant Y; so we will take Y as the effect of the statute." Nor is it declaring "Parliament has said X, having situation A in mind: but if Parliament had had our own forensic situation, B, in mind, the legislative objective indicates that it would have said Y, so we will take Y as the effect of the statute as regards B." What the court is declaring is "Parliament has used words which are capable of meaning either X or Y: although X may be the primary, natural and ordinary meaning of the words, the purpose of the provision shows that the secondary sense, Y, should be given to the words." So too when X produces injustice, absurdity, anomaly or contradiction. The final task of construction is still, as always, to ascertain the meaning of what the draftsman has said, rather than to ascertain what the draftsman meant to say. But if the draftsmanship is correct these should coincide. So if the words are capable of more than one meaning it is a perfectly legitimate intermediate step in construction to choose between potential meanings by various tests (statutory, objective, anomaly, etc.) which throw light on what the draftsman meant to say.

It is idle to debate whether, in so acting, the court is making law. As has been cogently observed, it depends on what you mean by "make" and "law" in this context. What is incontestible is that the court is a mediating influence between the executive and the legislature, on the one hand, and the citizen on the other. Nevertheless it is essential to the proper judicial function in the constitution to bear in mind: (1) modern legislation is a difficult and complicated process, in which, even before a bill is introduced in a House of Parliament, successive drafts are considered and their possible repercussions on all envisageable situations are weighed by people bringing to bear a very wide range of experience: the

---

judge cannot match such experience or envisage all such repercussions, either by training or by specific forensic aid; (2) the bill is liable to be modified in a Parliament dominated by a House of Commons whose members are answerable to the citizens who will be affected by the legislation: an English judge is not so answerable; (3) in a society living under the rule of law citizens are entitled to regulate their conduct according to what a statute has said, rather than by what it was meant to say or by what it would have otherwise said if a newly considered situation had been envisaged; (4) a stark contradistinction between the letter and the spirit of the law may be very well in the sphere of ethics, but in the forensic process St. John is a safer guide than St. Paul, the logos being the informing spirit; and it should be left to peoples' courts in totalitarian regimes to stretch the law to meet the forensic situation in response to a gut reaction; (5) Parliament may well be prepared to tolerate some anomaly in the interest of an overriding objective; (6) what strikes the lawyer as an injustice may well have seemed to the legislature as no more than the correction of a now unjustifiable privilege or as a particular misfortune necessarily or acceptably involved in the vindication of some supervening general social benefit; (7) the parliamentary draftsmen knows what objective the legislative promoter wishes to attain, and he will normally and desirably try to achieve that objective by using language of the appropriate register in its natural, ordinary and primary sense: to reject such an approach on the grounds that it gives rise to an anomaly is liable to encourage complication and anfractuosity in drafting; (8) Parliament is nowadays in continuous session, so that an unlooked for and unsupportable injustice or anomaly can be readily rectified by legislation: this is far preferable to judicial contortion of the law to meet apparently hard cases with the result that ordinary citizens and their advisers hardly know where they stand.

All this is not to advocate judicial supineness: it is merely respectfully to commend a self-knowledge of judicial limitations, both personal and constitutional. To apply it to the argument on behalf of the appellant based on anomaly, a court would only be justified in departing from the plain words of the statute were it satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly.

In the instant case I do not think that these conditions were satisfied. I respectfully agree with the judgments of Phillips J. and the members of the Court of Appeal, as well as with the speeches of my noble and learned friends.

LORD EDMUND-DAVIES. My Lords, despite the obvious care taken by the industrial tribunal and notwithstanding what Stephenson L.J. rightly described as the "powerful" submissions of Mr. Yorke, the decisions of Phillips J. and the Court of Appeal were so clearly right that this appeal, during the hearing of which your Lordships did not deem it necessary to call upon the respondent's counsel, was foredoomed to failure. As Stephenson L.J. put the matter [1977] 1 W.L.R. 1288, 1292-1293:

> ". . . the words of paragraph 8 (2) (*a*) of Schedule 1 . . . mean what they say. The draftsman of the sub-paragraph did not use the imperfect tense. He did not say 'who also took part in that action *and were still*

> *taking part in it at the date of dismissal*.' That is what he should have said if the paragraph were to mean what Mr. Yorke submits it means. . . . I agree with Phillips J. that it was not really a question of giving those words [of paragraph 8 (2) (*a*)] their strict meaning. The judge said in his judgment [1976] 1 W.L.R. 694, 698: 'That is not reading it in any very technical, restricted or tortured sense; it is just reading it in its ordinary, straightforward sense'.

Mr. Yorke put forward several points aimed at persuading your Lordships that to give the words of the sub-paragraph their obvious meaning would lead to results so anomalous that another interpretation should - and, indeed, must - be placed upon the statutory language. But, in my judgment, he did not succeed. To quote Stephenson L.J. again, at p. 1292:

> "The paragraph plainly prohibits selective dismissal or re-engagement: that is, discrimination or victimisation against strikers by giving favourable treatment to some of them."

It may be that not everyone favours such a prohibition. But dislike of the effect of a statute has never been an accepted reason for departing from its plain language. Holt C.J. said nearly three centuries ago, ". . . an Act of Parliament can do no wrong, though it may do several things that look pretty odd": see *City of London v. Wood* (1701) 12 Mod. Rep. 669, 687-688. Accordingly, even if one regarded the policy implicit in Schedule 1, paragraph 8 (2) (*a*) to the Trade Union and Labour Relations Act 1974 as open to criticism, the statutory language is clear beyond doubt and must prevail.

I therefore concur in holding that the appeal should be dismissed.

LORD FRASER OF TULLYBELTON. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Viscount Dilhorne. I entirely agree with it and for the reasons given by him I would dismiss this appeal.

LORD SCARMAN. My Lords, I also have had the advantage of reading in draft the speech of my noble and learned friend, Viscount Dilhorne. I agree with it. The words used by Parliament admit of no ambiguity, and, for the reasons given by him, I would dismissed this appeal.

I wish, however, to add a few words of my own on the "anomalies" argument. Mr. Yorke for the appellants sought to give the words a meaning other than their plain meaning by drawing attention to what he called the "anomalies" which would result from giving effect to the words used by Parliament. If the words used be plain, this is, I think, an illegitimate method of statutory interpretation unless it can be demonstrated that the anomalies are such that they produce an absurdity which Parliament could not have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act is designed to combat.

It is not enough that the words, though clear, lead to a "manifest absurdity": *per* Lord Esher M.R. in *Reg. v. Judge of the City of London Court* [1892] 1 Q.B. 273, 290. Lord Atkinson put the point starkly in *Vacher & Sons Ltd. v. London Society of Compositors* [1913] A.C. 107, 121:

> "If the language of a statute be plain, admitting of only one meaning, the legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted

must be enforced though it should lead to absurd or mischievous results."

The reason for the rule was given by Lord Tenterden C.J. in *Brandling v. Barrington* (1827) 6 B & C 467, 475 in a passage in which he was considering the so-called "equity of a statute": he commented

"that it is much safer and better to rely on and abide by the plain words, although the legislature might possibly have provided for other cases had their attention been directed to them."

As Lord Moulton said in *Vacher's* case [1913] A.C. 107, 130:

"The argument ab inconvenienti is one which requires to be used with great caution. There is a danger that it may degrade into mere judicial criticism of the propriety of the acts of the legislature."

If the words used by Parliament are plain, there is no room for the "anomalies" test, unless the consequences are so absurd that, without going outside the statute, one can see that Parliament must have made a drafting mistake. If words "have been inadvertently used," it is legitimate for the court to substitute what is apt to avoid the intention of the legislature being defeated: *per* MacKinnon L.J. in *Sutherland Publishing Co. Ltd. v. Caxton Publishing Co. Ltd.* [1938] Ch. 174, 201. This is an acceptable exception to the general rule that plain language excludes a consideration of anomalies, i.e. mischievous or absurd consequences. If a study of the statute as a whole leads inexorably to the conclusion that Parliament has erred in its choice of words, e.g. used "and" when "or" was clearly intended, the courts can, and must, eliminate the error by interpretation. But mere "manifest absurdity" is not enough: it must be an error (of commission or omission) which in its context defeats the intention of the Act.

Nothing of the sort has been demonstrated in this case. One may doubt whether the challenged paragraph 8 of Schedule 1 to the Act of 1974 has covered all possible consequences. I should be surprised if it has. But undeniably its plain terms are wholly consistent with the Act's intention to prevent victimisation of workers on strike: and it matters not that this purpose could have been fulfilled in other ways and with different consequences.

Appeal dismissed.

Solicitors: *Allan Jay & Co. for William F. Hatton & Co., Dudley; Pattinson & Brewer.*