

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 2488/97

BETWEEN

SOLOMON GABRIEL

Plaintiff

V

**EARL MANMOHAN
LENNOX GRANT
TRINIDAD EXPRESS NEWSPAPERS
LIMITED**

Defendants

Before the Honourable Justice P. Moosai

APPEARANCES:

Mr. Felix Durity for Plaintiff

Mr. Faarees Hosein for Defendants

REASONS

1. The Plaintiff commenced this action against the Defendants for damages for libel arising out of a newspaper publication of April 3, 1997 which suggested that the Industrial Court had upheld the dismissal of an Electricity Commission linesman (the Plaintiff) who allegedly accepted six hundred dollars (\$600.00) from a customer for electricity reconnection. Even though I have found that the words in the natural and ordinary meaning were prima facie defamatory, I hold that:

1. the defendants are entitled to rely on the defence of absolute privilege as the article is a fair and accurate report of the judgment of the Industrial Court;
2. the defendants are entitled to rely on the defence of qualified privilege as the article is a fair and accurate report of the judgment of the Industrial Court, and the plaintiff has failed to establish that the defendants, in publishing the words complained of, were actuated by express malice.

A. Introduction

2. The Plaintiff was on February 7, 1995 employed by the Trinidad and Tobago Electricity Commission ("T&TEC") as a Linesman "C". The Plaintiff was also at the material time a licensed electrician. As a T&TEC linesman and licensed electrician the Plaintiff was permitted by his contract of employment to do private work during his lunch hour period and after working hours.
3. The First Defendant was at the material time the labour reporter with the Trinidad Express newspaper.
4. On February 21, 1995 the Plaintiff was dismissed by T&TEC for gross misconduct that brought T&TEC's image into disrepute.
5. The Plaintiff's union, the Oilfield Workers' Trade Union ("OWTU"), challenged the Plaintiff's dismissal in the Industrial Court.
6. The trade dispute was heard by the Essential Services Division of the Industrial Court before their Honours Mrs. Gladys Gafoor and Mr. Vernon Ashby.

7. On March 13, 1997 Mr. Vernon Ashby read out his judgment upholding the dismissal of the Plaintiff. The First Defendant was present when the said judgment was read out.

8. Although the judgment was read out in court on March 13, 1997, the first Defendant was only able to obtain a written copy of the judgment about two weeks later, as the practice at that time was that the media would collect their copy at the Industrial Court Registry.

9. On April 3, 1997, approximately one week after receiving the judgment, the Defendants published a report of the judgment, written by the First Defendant, in the Trinidad Express newspaper.

10. The article, under the headline "Court upholds T&TEC dismissal," reads as follows (the paragraphs are numbered for ease of reference):

“[1]. The Industrial Court has upheld the dismissal of an Electricity Commission linesman who allegedly accepted \$600 from a customer for electricity re-connection.

[2]. The Trinidad and Tobago Electricity Commission (T&TEC) dismissed Solomon Gabriel on February 21, 1995 for alleged misconduct.

[3]. In its written evidence and arguments, the commission said on February 7, 1995 during working hours, while on duty as a member of a disconnection crew, Gabriel solicited and accepted the sum of \$600 from a customer to do private work which was in conflict with its interests.

[4]. Gabriel was a member of a four-man crew assigned and despatched with a commission van to disconnect the electricity supply of certain customers in arrears in the Diego Martin area, including 6 Golda Meir Gardens.

[5]. T&TEC, in presenting its evidence, said the electricity supply was re-connected to the premises and alleged that the worker had effected repairs to the meter base before the re-connection.

[6]. Witness for the commission, housewife Carol Ayoung, recalled that the foreman of the crew informed her of the disconnection for non-payment of the electricity bill. When the meter was removed, the foreman told her that it was "bad" and that he would have to get it fixed and that "a re-connection man" would have to come down and look at it and a "certified person would have to come and certify it".

[7]. Ayoung identified Gabriel in court as a member of the crew who allegedly then came up to her and told her that he was an electrical linesman and that he could fix it for the sum of \$600.00. She alleged that Gabriel told her he would do the job at lunch time and he returned as promised. When he had completed the work, she said he called her outside and she went and gave him the money. No other member of the crew was there at the time. Gabriel left and the crew came back and re-connected the electricity supply to the premises.

[8]. She told the court that she subsequently had her neighbour report the solicitation and receipt of payment by Gabriel to T&TEC.

[9]. Gabriel's dismissal was challenged by the Oilfield Workers Trade Union (OWTU) and the matter heard by the Essential Services Division of the Industrial Court chaired by Lady Justice Gladys Gafoor and Vernon Ashby, member.

[10]. In delivering judgment, Ashby said the court had great difficulty in accepting as plausible the proposition that a disconnection crew, assigned

the duty of imposing perhaps the ultimate punitive sanction against customers at the commission's disposal, was so service-oriented that they bent the rules, literally went out of their way, violated the commission's policy and the regulations of the electrical inspectorate, worked through their lunch period without claiming premium pay, donated spare parts and gave of their labour and technical knowledge on a totally gratuitous basis to a customer not known to any member of the crew.

[11]. Ashby said proven misconduct such as was disclosed in this case warranted dismissal even where a worker had completed his period of probation. ”

B. The complaint and the pleadings

11. By letter dated June 16, 1997 the Plaintiff complained that the words contained in the first paragraph of the said article were libellous of him in that he was never dismissed for what was alleged in the publication, which portrayed him to be a person involved in a corrupt practice.

12. On October 9, 1997 the Plaintiff commenced proceedings against the Defendants for damages for libel contending that the words in paragraphs 1 and 2 of the said article in their natural and ordinary meaning meant and were understood to mean:

(i) that the Plaintiff was a corrupt individual and engaged in a corrupt practice by accepting money unlawfully from a T&TEC customer to which he was not entitled;

(ii) that the Plaintiff reconnected a T&TEC customer unlawfully and is an individual who engaged in and/or engages in unlawful reconnection for payment to which he was not entitled;

(iii) that the Plaintiff by innuendo is the type of corrupt individual all right-thinking members of the society ought not to associate with or have

in their employ because he engages in criminal acts in breach of the laws of Trinidad and Tobago.

13. The Defendants denied that the words contained in the article or any of them bore or were understood to bear or were capable of bearing any of the meanings alleged in the Statement of Claim or any other meaning defamatory of the Plaintiff. Additionally the Defendants relied on the defences of absolute privilege pursuant to section 13 (1) of the Libel and Defamation Act, Chapter 11:16, and a qualified privilege, essentially contending that the Defendants published a fair and accurate report of a judgment delivered by the Industrial Court.

C. The issues

14. The issues germane to this case are therefore:

- (i) Were the words in their natural and ordinary meaning defamatory of the Plaintiff?
- (ii) If yes, are the Defendants entitled to rely on the defences of absolute and/or qualified privilege.

D. The natural and ordinary meaning

15. How does one arrive at the natural and ordinary meaning of words in a libel action? **Gatley 10th edn. para 3.24** summarises the court's approach by focusing attention on the ordinary person:

"The "ordinary reader" or "ordinary viewer" or "ordinary listener" against whom the court is to judge whether the words have the meanings contended for is something of an abstraction, for among the actual audience of the defamatory publication there will plainly be a great

variation in the way the words are understood, but there is only one standard recognised by the law. It therefore follows that in the case of a publication in the mass media the claimant may fail even though there is no doubt that as a matter of fact some of the audience (perhaps even a considerable proportion of the audience) will have understood the publication in a defamatory sense. Nevertheless the "ordinary reader" is a little closer to reality than the "reasonable man" of the law of negligence, for the courts are ready to recognise his weaknesses up to a point. He is a sort of half-way house between the unusually suspicious and the unusually naive. He is essentially fair-minded and reasonable but he may be guilty of a certain amount of loose thinking and does not read a sensational article with cautious and critical care. The court must be alive to the broad impression created by the publication, rather than indulge in meticulous analysis of what will have been read quite quickly by the public and a first impression may be lasting. The ordinary reader does not construe words as would a lawyer, for he is not inhibited by the rules of construction or of evidence and his capacity for implication or drawing inferences is greater than the lawyer's. 'The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely, and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.' One should not attribute to him charitable decency but neither is he avid for scandal."

E. Conclusion of meaning

16. The article does not purport to reproduce the entire judgment. As such it can only be a summary of the judgment. It is common ground that all the paragraphs of the article, save and except paragraph 1, are found in the judgment. Paragraph 1 in my view is a summarised account of the outcome of the action. Paragraph 1 stated that the misconduct alleged against him was that he accepted \$600 from a customer for electricity reconnection, an accusation which carries with it the defamatory imputation that the

Plaintiff was engaged in a corrupt practice by accepting money unlawfully from a T&TEC customer to which he was not entitled for the purpose of reconnecting her electricity supply.

17. Having determined that paragraph 1 contains that defamatory imputation, the onus would have been on the Defendants to establish that the imputation is substantially true, but the Defendants have not relied on the defence of justification. **Gatley ibid para 11.7** suggests that once it is established that an article contains defamatory statements of fact, a defendant, under a plea of justification, must prove that the statements of fact are true. I therefore hold that the words in their natural and ordinary meaning are prima facie defamatory. Having determined that the words in their natural and ordinary meaning are prima facie defamatory of the plaintiff, I must now consider whether the Defendants are entitled to rely on the defences of absolute and/or qualified privilege.

F. Privilege

F. (i) Absolute Privilege

18. There are certain occasions on which the law grants a type of privilege, either qualified or absolute, to words spoken or written. In so doing the law recognises that "it is for the public benefit that a person should be able to speak or write freely and that this should override or qualify the protection normally given to reputation by the law of defamation. In most cases the protection of privilege is qualified, that is, the defence is displaced by "malice", but there are certain occasions on which public policy and convenience require that a person should be wholly free from even the risk of responsibility for the publication of defamatory words and no action will therefore lie even though the defendant published the words with full knowledge of their falsity and even with the express intention of injuring the claimant": **Gatley ibid. para 13.1.**

19. In our jurisdiction section 13 (1) of the Libel and Defamation Act, Chapter 11: 16 provides as follows:

"13 (1) A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with the proceedings, be privileged, but nothing in this section shall authorise the publication of blasphemous or indecent matter."

20. Section 13 (1) has been held to confer an absolute privilege on a fair and accurate report in a newspaper of judicial proceedings, if published contemporaneously with the proceedings: **Mc Carey v Associated Newspapers Ltd [1964] 1 WLR 855**; **Learie Alleyne Forte v Trinidad Express Newspapers Ltd et al Civil Appeal No. 124 of 1999**; **Gatley ibid para 13.35**. While there was some argument as to whether the requirement as to contemporaneity pursuant to section 13 (1) of the Act was satisfied, I hold that the publication of the newspaper report some seven days after the written judgment became available to the reporter would be contemporaneous. Therefore the only issue that arises for consideration in relation to absolute privilege is whether the report is a fair and accurate report.

F.(ii) Qualified Privilege

21. Similarly the common law confers a qualified privilege on a fair and accurate report of judicial proceedings published without malice. The policy of the common law in this regard is that it is in the public interest that there is transparency in the administration of justice. In **Kimber v Press Association** [1893] 1 Q.B. 65 at 68 Lord Esther MR stated:

"The rule of law is that, where there are judicial proceedings before a properly constituted judicial tribunal exercising its jurisdiction in open court, then the publication without malice of a fair and accurate report of what takes place before that tribunal is privileged. Under certain circumstances that publication may be very hard upon that person to

whom it is made to apply, but public policy requires that some hardship should be suffered by individuals rather than that judicial proceedings should be held in secret. The common law, on the ground of public policy, recognises that there may be greater danger to the public in allowing judicial proceedings to be held in secret than in suffering persons for a time to rest under an unfounded charge or suggestion."

22. In relation to the common law defence of qualified privilege, I must therefore determine the same issue that arises when dealing with absolute privilege, namely, whether the report is a fair and accurate report.

F. (iii) Fair and accurate report

23. The onus of proving that the report is fair and accurate is on the defendants: **Gatley** **ibid para 15.4**. However a report in a daily newspaper is not to be judged by the same standard of accuracy which applies to a law report of a trained lawyer. In **Hope v Leng** (1907) 23 TLR 243 Collins MR at page 244 stated:

"The report was a report in a daily newspaper, and it was not to be judged by the same standard of accuracy which would be adopted if they were criticising a law report of a professional law reporter. It must be regarded from the standpoint of persons whose function it was to give the public a fair account of what had taken place in a Court of Justice. It would, he thought, be wrong to judge it by the exact standard of accuracy which would be expected in a report coming from the hand of a trained lawyer."

24. Although the report must be fair and accurate, it need not be verbatim; an abridged or condensed report will be privileged, provided it gives a correct and just impression of what took place in court. It is sufficient to publish a fair summarised account. In the first instance judgment in **Nationwide News Property Ltd v Rogers** [2002] NSWCA 171, the test was framed in this way, does it convey an impression that is substantially

different from the impression which would be gained if present in the court when judgment was given? Moreover the report need not be accurate in every detail. If the report be as a whole a substantially fair and accurate account of the proceedings, a few slight inaccuracies will not deprive it of protection, but where the inaccuracies are of a substantial kind, there would be no immunity: **Gatley ibid paras 13.37 and 15.4.**

25. Those are the general principles applicable. But I ought to mention two more cases. **MacDougall v Knight** (1886) 17 QBD 636 supports the proposition that you can publish a fair and accurate report of a judgment without dealing with the evidence given at the trial. The defendants had published in the form of a pamphlet **a report of the judgment** delivered in a former action which the plaintiff had brought against them. **The pamphlet contained no separate report of the evidence at trial, and contained passages in the judgment reflecting on the plaintiff's character.** The jury found that the pamphlet was **a fair, accurate and honest report of the judgment**, and was published bona fide and without malice. It was held that it was not necessary to ask the jury whether the pamphlet was **a fair report of the trial**, that the right questions had been left to the jury.

26. In **Duncan v Associated Scottish Newspaper Ltd** [1929] S. C. 14, a newspaper reported that the plaintiff had brought an action for damages for slander against Thomas C. Mann and had failed in the action. **It was held that where a report purports merely to be an accurate report of the result of the action, the newspaper could not be liable because it omitted to state the grounds on which the plaintiff failed**, namely that the occasion on which the slander was uttered was a privileged one. Lord Morrison, the Lord Ordinary, at pages 16 and 17 also made the point that one must look to see what the reports profess to report:

"But reports of judicial proceedings are issued by the newspapers to the general public and, **so long as they are fair and accurate reports of what they profess to report**, then, in my opinion, no action lies upon them...

It has to be kept in mind that here the newspaper professed only to give an account of the judgment as pronounced by the Sheriff and the Sheriff-substitute respectively, and it is not suggested that they were incorrectly set forth." [Emphasis added.]

27. In the instant case, as is clear from a comparison of the judgment with the article, the article professes to be a report of the findings of the Industrial Court. Even though it dealt with evidence, it dealt with the evidence which was accepted by the Industrial Court.

28. In determining whether the report is a fair and accurate report of the judgment, I propose to examine the judgment and see exactly what the Industrial Court found.

F. (iii) (a) Industrial Court Judgment

29. The Industrial Court referred to the trade dispute between the Plaintiff and T&TEC. Paragraph 1 sets out that the Plaintiff was dismissed on February 21, 1995 **for gross misconduct** that brought T&TEC's image into disrepute. It should be noted at the very outset that **what was alleged against the plaintiff was gross misconduct, that is, conduct which was "obviously or exceptionally culpable or wrong": Collins Concise Dictionary, 3rd.edn.**

30. Paragraph two sets out **the gross misconduct**, namely on February 7, 1995 during working hours, while on duty as a member of a disconnection crew, he solicited and accepted the sum of \$600 from Carol Ayoung a customer to do private work which was in conflict T&TEC's interests.

31. Paragraphs 3 and 4 set out the undisputed facts. Paragraph 3 sets out that on the day in question, the Plaintiff was a member of a four-member crew assigned and dispatched

with a company van to disconnect the electricity supply of certain customers, one of whom was Carol Ayoung, in the Diego Martin area whose accounts were in arrears.

32. Paragraph 4 sets out that the disconnection of electricity supply was, in keeping with standard procedure, at first effected at the meter base located on Carol Ayoung's premises. The procedure for reconnection required the arrears to be liquidated and a reconnection fee paid.

33. Paragraph 4 goes on to state that the meter base was found to be corroded and Carol Ayoung was informed that the electricity supply would have to be disconnected at the electricity pole and that before reconnection, T&TEC would require that the wiring of the entire premises ("the installation") be checked and repaired by a licensed electrician ("licensed wireman") and the work would have to be inspected, approved and a certification duly issued by the Electrical Inspectorate. This was the standard procedure.

34. Paragraph 4 then goes on to state that there was a conflict in the evidence as to what actually occurred after that, but that it was undisputed that later on that very same day the electricity supply was reconnected to Carol Ayoung's premises, and that the Plaintiff had effected repairs to the meter base before the reconnection.

35. Pausing there, and as is immediately apparent, the fact that the electricity supply was reconnected that very same day clearly suggest that the proper procedure of having the wiring of the entire premises repaired and checked by a licensed electrician, and the work inspected, approved and a certification duly issued by the Electrical Inspectorate was not followed. The Industrial Court then sought to analyse the conflicting testimony.

The conflicting testimony

36. Paragraphs 5 to 19 then deals with the testimony of the respective parties. Carol Ayoung and Trevor Huggins testified on behalf of T&TEC. The plaintiff, Richard Dhoray, Aloysius Joseph, George John, Neville Phillips and Hayden Mitchell testified on

behalf of the Oilfield Workers Trade Union (" OWTU"), the union representing the Plaintiff. Two points are worth making mention of at this stage. Firstly, the issue as to whether or not Carol Ayoung paid \$600 was one of the hotly contested issues. And secondly, as is apparent later on, at paragraph 21 the Industrial Court found the testimony of Carol Ayoung and Trevor Huggins to be credible and forthright.

37. Paragraphs 5 and 6 deal with Carol Ayoung's evidence. She testified that on that day the foreman of the disconnection crew informed her that they were going to disconnect the supply for non-payment of the electricity bill. When the meter base was removed, the foreman told her it was " bad" and that she would have to get it fixed and "a re-connection man" would have to come and look at it and a "certified person would have to come and certify it." Pausing there, it is worth remembering that the Industrial Court at paragraph 4 had already outlined the standard procedure to be followed in such a situation.

38. Continuing at paragraph 5 of the judgment, Carol Ayoung identified the Plaintiff in court as the member of that disconnection crew who then came up to her and told her that he was an electric linesman and that he could fix that meter base for the sum of \$600. The Plaintiff told her that he would do the job at lunchtime and he returned as promised. After completing the work, the Plaintiff called her outside and she went and gave him the money. No other member of the disconnection crew was present at that time. The Plaintiff then left and the disconnection crew came back and reconnected the electricity supply.

39. Paragraph 6 sets out that Carol Ayoung subsequently caused her neighbour to report on her behalf to T&TEC the solicitation and receipt of payment by the worker. In cross-examination, Carol Ayoung stated that a friend took a cheque for the outstanding electricity bills to T&TEC for her.

40. Paragraphs 7 and 8 of the Industrial Court judgment set out the testimony of Trevor Huggins, an Electrical Engineer, and the Area Manager. Paragraph 7 stated that in his

capacity as Area Superintendent, Northern Area, he was authorised to receive the report of this incident. He caused an investigation to be conducted, and had eventually taken disciplinary action, **dismissing both the Plaintiff and the foreman of the disconnection crew.** He went on to testify that OWTU had made representations to T&TEC seeking a review of the disciplinary action, and the dismissal of the foreman was rescinded and he was given a one-month suspension. T&TEC refused to alter its position on the Plaintiff's dismissal. As to why the Plaintiff and the foreman were treated differently, Trevor Huggins in cross-examination explained that he felt that the foreman "was not intimately involved in the transaction between the customer and [the Plaintiff]." **As is immediately apparent from the judgment, at an earlier stage of the proceedings T&TEC had considered their conduct to be so reprehensible that both the plaintiff and the foreman were dismissed.**

41. At paragraph 8 Trevor Huggins proceeded to give details of T&TEC's procedure. He agreed that while the meter base is part of a customer's installation, it would not be illegal if an employee of T&TEC were to clean corrosion from the meter base, as that could be described as "minor repairs." The Industrial Court then asked Huggins other specific questions. Trevor Huggins made it clear that what the Plaintiff had done in the instant case, namely the installation of new lugs in a meter base, could not be considered as part of cleaning corrosion. Trevor Huggins went on to explain that linesmen employed by T&TEC can and do engage in private work on their own time. What he considered wrong in the case of the Plaintiff's conduct was that he solicited private work during his hours of work. This he saw as a clear violation of Clause 16 "Outside Work" of the collective agreement which provides:

"CLAUSE 16 -- OUTSIDE WORK

During the course of their employment, workers shall not use their positions as employees of the Commission to obtain work which will conflict with the interests of the Commission."

Testimony on behalf of OWTU

42. Paragraph 9 of the judgment recites that the Plaintiff testified that on the day in question, the foreman informed Carol Ayoung that the premises needed the attention of a licensed electrician and, pointing to the Plaintiff, told her:

"Talk to that man. He is a licensed man."

43. And at paragraph 10, the Plaintiff testified that when the foreman said that, Carol Ayoung turned to him and he told her he could not help her until after 4 p.m.

44. Pausing there it is not disputed that the Plaintiff was also a licensed electrician at the material time. Further this part of the Plaintiff's testimony also conflicts with Carol Ayoung's testimony (whose testimony the Court accepted) **that it was the Plaintiff who came up to her and told her he was an electric linesman and he could fix the meter base for \$600.** Surprisingly OWTU also called the foreman as a witness. The foreman testified that it was the Plaintiff who told him that he (the Plaintiff) would talk to Carol Ayoung and would try and assist her, and he (the foreman) told the Plaintiff to go ahead and speak to her. The industrial Court therefore found that the plaintiff was not a credible witness.

45. Paragraph 11 continues with the Plaintiff's testimony. That part of the judgment recites that the Plaintiff had earlier testified that before the disconnection crew had set out to do its assigned work on that day, he had informed the foreman that he had an appointment in Port-of-Spain for 12:30 p.m. and he would not be able to work during his lunch hour. The foreman therefore instructed the driver of the crew's van to take the Plaintiff to Port-of-Spain for his midday appointment and the driver did so, the rest of the crew being on board.

46. When the Plaintiff's luncheon appointment proved abortive, the foreman told the Plaintiff that he was taking him back to Carol Ayoung's premises in Diego Martin so that he could repair the meter base. Those repairs required replacement of two corroded lugs by two solderless lugs. The Plaintiff had those lugs at his father's home in Diego Martin where he had done some electrical work on the previous weekend. The foreman once again asked the Plaintiff if he could do anything to assist Carol Ayoung. The foreman then instructed the driver to go to the home of the Plaintiff's father so the plaintiff could obtain the lugs. The Plaintiff was then taken back to Carol Ayoung's premises at about 12:50 p.m.

47. Pausing there, the Industrial Court in its judgment, at least by implication, considered all this part of an elaborate plan on the part of the disconnection crew.

48. Paragraph 12 sets out that Carol Ayoung thanked him for returning. He showed her the corroded part and she went indoors. He carried out the repairs in about five minutes and then went out to the main road to await the return of the van. When the van arrived, he got on board and was taken back to Carol Ayoung's premises with the rest of the crew. The foreman examined the repairs he had done and instructed the crew to reconnect the electricity supply from the electricity pole, and the disconnection crew reconnected same.

49. Pausing there, it is manifestly clear that the standard procedure where a customer's meter base was in need of repairs was not adhered to. Further, where a customer's meter base was in need of repairs, the inference can be drawn that the entire disconnection crew would have been familiar with the procedure for reconnection.

50. At paragraph 13 of the Plaintiff's testimony, the Plaintiff asserted that he carried out the repairs and supplied his own parts to the value of approximately six dollars (\$6.00) to assist Carol Ayoung. He maintained that he did not receive \$600 as alleged by Carol Ayoung, or any money at all, not even for the cost of the parts he supplied.

51. Pausing there, it is worth remembering that the Industrial Court found that Carol Ayoung paid the sum of \$600. Again the Plaintiff was found to be less than credible on this issue.

52. Paragraph 14 sets out that under cross-examination, the Plaintiff admitted that as a licensed electrician he was aware that when a customer was required to have his installation repaired and inspected by the Electrical Inspectorate, that job entailed work on the entire premises. He was also aware that the reason for this was to bring the installation into conformity with the electrical code, which was the standard required by the Inspectorate. He also knew that the purpose of the code was safety. Notwithstanding this awareness, he acted in violation of the prescribed procedure because his foreman told him that he (the foreman) had the authority to dispense with the required certificate.

53. Pausing there, **the Plaintiff was not only an electric linesman but a licensed electrician** so that he would have been fully aware of the procedure for reconnection in such a scenario. Obviously the Plaintiff, as the Court found, violated the prescribed procedure. It is manifestly clear that the violation of the prescribed procedure resulted in Carol Ayoung's electricity supply being reconnected on the very same day.

54. Paragraph 15 of the judgment refers to the testimony of another of the Union's witnesses, Hayden Mitchell, who was employed as a Disconnection Clerk at the material time. His testimony was that around lunch time on the day in question, **he had instructed the foreman by radio to reconnect Carol Ayoung's electricity supply as the required money had been paid.** The foreman replied that there was a problem with the reconnection of this customer which he would come in to T&TEC's yard and explain. Hayden Mitchell could not be of further assistance as that explanation had to be given to his supervisor.

55. Pausing there, at paragraph 6 of the judgment, Carol Ayoung had testified in cross-examination that a friend had taking a cheque for the outstanding electricity bills to T&TEC for her. Clearly by around lunch time of that day the bills had been paid in

consequence whereof Hayden Mitchell had instructed the foreman to reconnect Ayoung's electricity supply. But the foreman indicated that there was a problem with the reconnection which he would have to come in to the office and explain. This again suggests that there was some elaborate plan or scheme in train.

56. Paragraph 16 recites that another witness called by the Union, Richard Dhoray, a member of the crew on the day in question as a temporary linesman/C-Class, participated in the disconnection and reconnection of the premises, but did not hear any conversation between the foreman and the customer. Aloysius Joseph, the driver assigned to the crew, also was not privy to any conversation between the customer and the Plaintiff and/or the foreman.

57. Paragraph 18 sets out that Neville Phillips, a line foreman employed by T&TEC, testified that he had on occasion worked on meter bases that were part of the customer's installation rather than T&TEC's. The Industrial Court found that this was of no assistance to the Union's case.

58. Paragraph 19 deals with the testimony of the foreman, George John. The Court found that the foreman's testimony contradicted with the plaintiff's account of the way in which he (the plaintiff) came to undertake the repairs to Carol Ayoung's defective installation. In John's words, "Mr. Gabriel told me to let him talk to the customer, he will try to assist the customer, so I told him to go ahead". The foreman also testified that it was the plaintiff who took the initiative in getting the crew to go to his father's home where he obtained the lugs for the meter base. In cross-examination the foreman denied suggesting to the plaintiff that he should assist Carol Ayoung. The foreman maintained that it was part of the duty of the disconnection crew to clean corroded meter bases when they encountered them and even to change corroded lugs. The foreman conceded however that the Commission provides a standard issue of materials to such crews and lugs are not included.

59. Pausing there, the foreman was clearly seeking to distance himself from the events. On the issue of the changing of corroded lugs, the foreman by his concession was accepting that it could not have been part of the duty of a disconnection crew to change same.

60. After setting out the testimony, the judgment at paragraph 20 analyses the issue to be determined. Paragraph 20 recites that the question to be determined is whether T&TEC was justified in coming to the conclusion that the worker had been guilty of gross misconduct as alleged.

61. Pausing there, it would be remembered that paragraph 2 of the judgment had already set out the misconduct alleged namely, that on February 7, 1995 during working hours, while on duty as a member of a disconnection crew, the plaintiff solicited and accepted the sum of \$600 from a customer to do private work which was in conflict with T&TEC's interests.

62. Paragraph 20 of the judgment continues by stating that the Industrial Court had great difficulty in accepting as plausible the proposition that a disconnection crew, assigned the duty of imposing perhaps the ultimate punitive sanction against customers at T&TEC's disposal, was so service-oriented that they bent the rules, literally went out of their way, violated T&TEC's policy and the regulations of the Electoral Inspectorate, worked through their lunch period without claiming premium pay, donated spare parts and gave of their labour and technical knowledge on a totally gratuitous basis to a customer not known to any member of the crew.

63. Paragraph 20 of the judgment went on to state that even if it were possible to accept that proposition, there are two central questions to which no answer was provided. In the first place, why would the beneficiary of such altruism respond by making a complaint to the commission? In the second place, what could have motivated Carol Ayoung to fabricate charges against the plaintiff when both admittedly were strangers to each other?

64. Pausing there, after stating the issue to be determined namely, whether T&TEC was justified in coming to the conclusion that the plaintiff had been guilty of gross misconduct as alleged, the Court was in effect saying that to find for the plaintiff, it would have to accept that **the disconnection crew** was so service-oriented that they bent the rules, went out of their way, violated T&TEC's policy and the regulations of the Electrical Inspectorate, worked through their lunch period, donated spare parts and gave of their labour and technical knowledge on a totally gratuitous basis. In this paragraph the Industrial Court was setting out **what the disconnection crew, which included the plaintiff and the foreman, did**. Certainly by implication the Industrial Court found that the entire disconnection crew, or at the very least the plaintiff and the foreman, would have been acting in concert, would have been part and parcel of a sophisticated plan to reconnect the electricity supply to Carol Ayoung's premises.

65. Then at paragraph 21 of the judgment, the Industrial Court sets out that the testimonies of the Union's witnesses, John and the plaintiff, were mutually contradictory on important issues. The Court found the testimonies of the witnesses called by T&TEC to be credible and forthright. On the evidence before it, the Court rejected the Union's contention that the plaintiff's dismissal was harsh and oppressive and not in accordance with the principles of good industrial relations practice. Pausing there, the Court therefore accepted that Carol Ayoung paid the plaintiff the sum of \$600.

66. Finally at paragraph 22, the Court sets out one of the contentions of the Union, which was that the plaintiff was not on probation at the date of his dismissal. Having examined the documentary evidence the Court rejected the Union's contention. The Court in any event went on to find that proven misconduct such as was disclosed in this case warranted dismissal even where a worker had completed his period of probation.

67. In upholding the plaintiff's dismissal for gross misconduct as alleged, the Industrial Court had to examine the evidence and make certain findings. The Industrial Court found that Carol Ayoung paid the plaintiff the sum of \$600. The Industrial Court, at least by implication, found that not only did the plaintiff participate, but the foreman and the

disconnection crew participated in the reconnection of the electricity supply to Carol Ayoung. To achieve that objective of reconnecting the electricity supply, it was necessary for the plaintiff to go in T&TEC's vehicle to his father's home to collect two lugs to repair the meter base. After the meter base was repaired, and contrary to the standard procedure of having the wiring of the entire premises checked, inspected, approved and a certification duly issued, the electricity supply was reconnected.

F. (iii) (b) The newspaper article

68. The article does not purport to reproduce the entire judgment. As such it can only be a summary of the judgment. After the headline, "Court upholds T&TEC dismissal", paragraph 1 then sets out that the Industrial Court has upheld the dismissal of this Electricity Commission linesman who allegedly accepted \$600 from a customer for electricity reconnection. In its context paragraph 1 sets the tone of the article by purporting to summarise the effect of the judgment.

69. Paragraphs 2 to 9 then set out the history of the proceedings. Paragraph 2 sets out that on February 21, 1995 T&TEC dismissed the plaintiff for alleged misconduct. That the plaintiff was a member of a disconnection crew who went to disconnect the electricity supply of Carol Ayoung for non-payment of her electricity bill. That when her meter was removed, the foreman of the crew told her that it was in need of repair. That the foreman then advised her of the procedure to be followed. He told her she would have to get it fixed and that a reconnection man would have to come and look at it and a certified person would have to come and certify it.

70. The plaintiff then approached Carol Ayoung and told her he was an electric linesman and could fix it for \$600. The plaintiff indicated that he could do the job at lunchtime. The plaintiff returned at lunchtime by himself and completed the work and was paid \$600 by Carol Ayoung. The plaintiff then left and the crew came back and reconnected the electricity supply to the premises. Carol Ayoung subsequently had her neighbour report to T&TEC the solicitation and receipt of the payment by the plaintiff.

71. After setting out the history of the proceedings, paragraphs 10 and 11 of the article then set out the findings of the Industrial Court. The Court found that it could not believe that this disconnection crew charged with the responsibility of disconnecting consumers, was so service-oriented that it bent the rules, literally went out of their way, violated T&TEC's policy and the regulations of the Electrical Inspectorate, worked through their lunch period without claiming premium pay, donated spare parts and gave of their labour and technical knowledge on a totally gratuitous basis to a customer not known to any member of the crew.

72. The Court concluded by saying that proven misconduct such as was disclosed in this case warranted dismissal even where a worker had completed his period of probation.

F. (iv) Conclusion on privilege

73. Paragraph 1 of the article purports to summarise the effect of the judgment namely, that the industrial Court has upheld the dismissal of this linesman who allegedly accepted \$600 from a customer for electricity reconnection. No matter how one tries to dress it up, that was in effect what the Court found namely, that the plaintiff accepted \$600 from a customer and that the plaintiff and other members of the crew participated in the reconnection of the electricity supply to Carol Ayoung's premises in violation of the rules, regulations and policy existing in the industry. That amounted to gross misconduct warranting dismissal even where a worker had completed his period of probation.

74. It seems to me, applying the test propounded in **Nationwide News Property Ltd v Rogers** ante that the article would not convey an impression that is substantially different from the impression which would be gained if someone were present in the Industrial Court when judgment was given. I think the plaintiff attempts, mistakenly in my view, to confine his conduct to a literal interpretation of rule 16 without considering the real implications of the judgment.

75. I hold that the article is a fair and accurate report of the judgment of the Industrial Court and would enjoy an absolute privilege pursuant to section 13 (1) of the Libel and Defamation Act. Further the report is entitled to a qualified privilege at common law unless the plaintiff could establish that the defendants, in publishing the words complained of, were actuated by express malice.

76. It is for the defendants to establish that the occasion of publication is one of qualified privilege. To defeat that defence of qualified privilege, the plaintiff must then prove that the defendants, in publishing the words complained of, were actuated by express malice: **Halsbury's Laws of England fourth edition volume 28, para 109**. In reply to the defendants' assertion that the defendants honestly believed the contents of the said article to be true and published the same without malice, the plaintiff contended that the defendants did not and/or could not have honestly believed the contents of the article to be true and published same with malice. In **Horrocks v Lowe** [1975] A.C. 135 [HL] Lord Diplock analysed the law with respect to qualified privilege and express malice. He defined express malice at page 149 as:

"Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is generally a motive which the plaintiff sets out to prove. But to destroy the privilege the desire to injure must be the dominant motive for the defamatory publication; knowledge that it will have that effect is not enough if the defendant is nevertheless acting in accordance with a sense of duty or in bona fide protection of his own legitimate interest."

77. At page 150 Lord Diplock emphasized that what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published. In the instant case the author of the article testified that paragraph 1 was a true summary of the judgment. Having seen the witness, I hold that the author had a positive belief in the truth of what he published. In these circumstances the plaintiff has failed to satisfy me on a balance of probabilities that the defendants were actuated by

express malice. I also note that at one point in his testimony the author sought to embellish his evidence by trying to throw in, almost at the end of the cross examination, that he had included in his article what was set out at paragraph 8 of the judgment. At paragraph 8 Trevor Huggins had indicated that what he considered wrong in the case of the plaintiff's conduct was that he solicited private work during his hours of work which was a clear violation of clause 16. I rejected this aspect of the author's testimony. The defendants are therefore entitled to rely on the defence of qualified privilege.

G. Order of the Court

78. The order of the Court is that the plaintiff's action be dismissed. The costs of the action are to be paid by the plaintiff to the defendants to be taxed in default of agreement.

DATED this 10th day of December, 2004.

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PRAKASH MOOSAI
JUDGE