

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civ. App. No. 77 of 2002

BETWEEN

**PETROLEUM COMPANY OF TRINIDAD
AND TOBAGO**

APPELLANT

AND

OILFIELD WORKERS' TRADE UNION

RESPONDENT

PANEL:

S. Sharma, C.J.
W.N. Kangaloo, J.A.
S. John, J.A.

APPEARANCES:

Mr. V. Kokaram for the Appellant
Mr. D. Alexander for the Respondent

DATE DELIVERED: 29th July 2004

I have read the judgment of Kangaloo J.A. and I agree with it.

S. Sharma
Chief Justice

I too have read the judgment of Kangaloo J.A. and agree with it.

S. John
Justice of Appeal

JUDGMENT

Delivered by W.N. Kangaloo, J.A.

1. At the heart of this appeal is whether the Industrial Court properly determined the meaning of the admittedly inelegantly worded clause:

'Incumbents to be placed either as craft foreman or [Supervisor] MPBU4 for those with supervisory responsibility or technical craftsman II for those with less than 5 years service and who have not attained the necessary proficiency etc.'

The original clause did not contain the bracketed supervisor. It was agreed to be inserted by consent at the start of the Industrial Court proceedings to make the clause less unintelligible and it was agreed that the acronym MPBU4 meant monthly paid bargaining unit 4.

2. It cannot be gainsaid that interpretation of the clause is a matter of law so that if I find that the clause was wrongly interpreted by the Industrial Court then the appeal could be successful. I say this because the respondent contends that the issues in the dispute before the Industrial Court and the findings of the Industrial Court are questions and points of facts which are not appealable because only findings or decisions of the Court which are erroneous in point of law are appealable [see s.18(2)(d) of the Industrial Relations Act ('the Act')].

3. The other contention of the respondent is that the Industrial Court exercised its powers in accordance with the principles set out in Section 10(3)(a) and 10(3)(b) of the Act which are points of fact and thus not appealable [see Texaco Trinidad Inc. v Oilfield Workers' Trade Union

(1981) 34 WIR 215 at pp. 224j to 225a]. For the appellant to be successful it must demonstrate that the principles and practices of good industrial relations are irrelevant to the issue of the interpretation of the clause set out in paragraph 1 above.

4. Although the interpretation of the impugned clause is a question of law, that interpretation must be made in the light of the evidence led in the Industrial Court. A critical issue for the interpretation of the clause was whether the worker Leroy Mason had ‘supervisory responsibility’. While this is question of fact which the Court decided in favour of the worker, the contention of the appellant is that the Industrial Court misunderstood the facts or misapplied the facts and thereby committed an error of law. The misapplication of the facts was that the Industrial Court looked narrowly at this question of whether the worker had supervisory responsibility and did not view it against the background of the quality of supervisory responsibility needed for someone to be promoted to a supervisor. The appellant contends that the Industrial Court ignored critical evidence given by its two witnesses of the length of time it took and the experience gained during that time, in the normal course of things for a worker to become a supervisor.

5. I am of the view that the contentions of the appellant are correct and that the appeal ought to be allowed as the Industrial Court committed an error of law in its application of the evidence before it. In **Watling v Williams Bird and Sons Limited (1976) 11 ITR 70 at pgs. 71-72** the Court held:

“An appellant (from an industrial tribunal) who claims that there is an error of law must establish one of three things: he must establish that the tribunal misdirected itself in law, or misunderstood the law or misapplied the law or secondly that the tribunal misunderstood the facts or misapplied the facts or thirdly that although the tribunal apparently directed themselves properly in law and did not misunderstand or misapply the facts, the decision was ‘perverse’ or that there was no evidence to justify the conclusion that was reached.”

6. Our local jurisprudence is to the same effect although McShine J.A. in **Fernandez Limited v TIWU (1968) 13 WIR 336 at 347G** was citing with approval Lord Radcliffe’s dicta in **Edwards v Bairstow (1955) 3 ALL ER 57**. It is:

“If the case contains anything ex facie which is bad law and which bears on the determination, it is obviously erroneous in point of law. But without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances too, the Court must intervene. It has no option but to assume that there has been some misconception

of the law, and that has been responsible for the determination. So too there has been error in point of law. I do not think it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination or as one in which the true and only reasonable conclusion contradicts the determination.” (emphasis mine)

7. Before proceeding to analyse the evidence before the Industrial Court it is probably helpful to set out the background which gave rise to the appeal. In 1983 one Leroy Mason (‘the worker’) was employed by the appellant’s predecessor Trintoc as a plant fitter. In 1985 there was a merger of two oil companies Trintoc and Texaco. In August 1991 the worker was promoted to the position of Engineering Technician II. In 1992 almost one year after his promotion, the respondent union entered into negotiations with the appellant in an attempt to align the similar jobs of both Trintoc and Texaco and to streamline the workers in the employ of the merged entity, the appellant.

8. The appellant and the Union arrived at several agreements. The first item of agreement was The Technical Craftsman proposal which was dated the 22nd October 1992 and agreed on the 25th October 1992. This contained a hierarchy of craftsmen ranging from ‘B’ Class Craftsman at the lowest tier to ‘A’ Class Craftsman to Technical Craftsman I to Technical Craftsman II to foreman at the highest level.

The second item of agreement was entitled ‘*Terms of Settlement*’ agreed on the 22nd December 1992 in which the appellant agreed that it would provide the respondent with ‘*a list of names of the workers who will be reclassified under the Technical Craft Programme and the document dated October 22 1992 as agreed between the Company and the Union.*’ This latter document was the technical craft programme.

The third item was also agreed on the 22nd December 1992. It is a junior staff job classification schedule. The schedule B is the critical document for it is there that the impugned clause is to be found. Because of its importance it is reproduced in its entirety.

TRINIDAD AND TOBAGO OIL COMPANY LIMITED
 RESTRUCTURING OF THE JUNIOR STAFF BARGAINING UNIT JOBS
 TO BE INCLUDED IN EX-TEXTRIN WEEKLY CLASSIFICATIONS

SCHEDULE 'B' JOBS WITHOUT EQUIVALENT CLASSIFICATIONS

JUNIOR STAFF JOB CLASSIFICATION	PROPOSED JOB CLASSIFICATIONS	PROPOSED GRADE	COMMENTS
----- MANUFACTURING DIVISION -----			
GRADE III			
SECRETARY – OPERATIONS MANAGER	SECRETARY-OPERATIONS MANAGER		AGREED – MP EXCL
TYPING POOL SUPERVISOR	TYPING POOL SUPERVISOR		AGREED MPBU GR 3
GRADE III ENGINEERING TECHNICIAN II			INCUMBENTS TO BE PLACED EITHER AS CRAFT FOREMAN OR MPBU 4 FOR THOSE WITH SUPERVISORY RESPONSIBILITY OR TECHNICAL CRAFTSMAN II FOR THOSE WITH LESS THAN 5 YEARS SERVICE AND WHO HAVE NOT ATTAINED THE NECESSARY PROFICIENCY ETC.

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The fourth item agreed was the Technical Craft Agreement reached on the 21st November 1994 for the implementation of the Technical Craft Programme which was earlier agreed in October 1992.

9. The appellant's case as is borne out by its evidence and arguments filed in the Industrial Court is that the Job Classification Schedule (the third item agreed in para. 8 above) referred to various junior staff job classifications which were to be reclassified. For example in Grade III Secretary- Operations Manager would remain the same in the reclassification and the same applied to Typing Pool Supervisor. However in Grade III when dealing with Engineering Technician II (of which the worker was one) the parties had actually not arrived at any final definitive post to which that job could be reclassified. Instead a formula was devised by the parties under the 'comments' heading in that document. The formula being the unhappily worded clause which called for interpretation. The Union's case is that the worker was denied reclassification in accordance with the terms of settlement in the 1990 to 1993 collective agreement as it affects the worker effective 27th October 1992. The basis of this claim was that the worker had 'supervisory responsibility'. The appellant's pleaded case was that the company did not promote the worker to the position of supervisor/foreman for two reasons: (1) he did not have five years service as Engineering Technician II and (2) there were no suitable vacant positions in the company's organisation because some Engineering Technician III who were carrying out supervisory responsibility were promoted to supervisory positions in the monthly paid bargaining unit or

to foreman in the junior staff bargaining unit. Suffice it to say that notwithstanding its pleaded case, the evidence called by the appellant focused on the length of service of the worker as an Engineering Technician II, whether he had supervisory responsibility and the quality of supervisory responsibility necessary for promotion to supervisor.

10. The Industrial Court's reasons for finding that the worker was denied reclassification are to be found at pgs. 16-17 of its judgment when the chairman said:

"I am satisfied that the Company, in deciding on the reclassification of the worker who was an incumbent Engineering Technician II, disregarded the specific criteria of 'supervisory responsibility' that it was enjoined by the 'reclassification agreement' to consider. The Company read into that agreement and/or used extraneous criteria such as the 'progression stream' for Engineering Technicians, the 'Technical Craftsman Programme' progression criteria and the worker's length of service as Engineering Technician. These criteria though perhaps relevant for normal progression or promotion exercises, were largely irrelevant considerations in relation to the reclassification exercise, circumscribed as it was by the 'reclassification agreement' and necessitated by the special circumstance of the merger of the Company's predecessors, and the imperative of bringing into alignment, similar jobs in the two predecessor companies.

To accept the Company's approach would lead the Court to the untenable and contradictory position of having on the one hand, to read the 'reclassification agreement' as though it required incumbent Engineering Technician II to have, more than 5 years as Engineering Technician II and to have successfully traversed the 'progression streams' for Engineering Technician from Grade 1 to Grade 4, in order to be considered for reclassification to Craft Foremen or MPBU 4. On the other hand the Court would also be supporting the position that Engineering Technicians II were inherently disqualified from being reclassified as Crafts Foreman or MPBU 4 although the 'reclassification agreement' clearly provided for such reclassification.

Such a position would be manifestly contradictory and absurd, and it must, at the very least be assumed, that the parties to the agreement (the Union and the Company) would not have willingly or consciously participated in the formation of an agreement that produced such a contradictory result.

I am satisfied from all the evidence, that the worker Leroy Mason carried out his duties as an Engineering Technician II to the complete satisfaction of the Company. This is evident from the two performance reports on the worker for the years 1992 and 1993, in which he was

described in part, as having ‘...all round ability, good all round performance...’ ‘...expanded his knowledge in the area...’ ‘...very successful with assigned tasks...’ ‘...dependable worker who turns out quality work...’

I am satisfied also that the worker’s duties included ‘supervisory responsibility’ which entitled him to be reclassified as Craft Foreman or Supervisor MPBU 4.”

11. From these reasons it will be seen that the chairman focused on the supervisory responsibilities of the worker as the sine qua non for the promotion to Supervisor of an Engineering Technician II according to the clause. He also decided in the Union’s favour because the appellant had given evidence of the length of time it takes to traverse the grades I to IV of Engineering Technician (about 10 years) and that the supervisors were chosen from the Engineering Technician IV category, which would have meant that no Engineering Technician II could have been made a supervisor. This the chairman found contradictory as the Union and the company could not have intended such a result. There is much force in the reasoning but it does not cater for the exceptional Engineering Technician II who though still in that grade may have had more supervisory responsibility and more than five years service but for some reason or the other (possibly lack of a vacancy) had not been progressed to a higher grade of Engineering Technician and so was permitted by the formula of the clause to be made a supervisor. Mr. Solomon, one of the witnesses for the appellant, did say that he was unaware of any Engineering Technician II who had been progressed to supervisor but one must remember that this is ex post facto the formula. At the time the Union and the appellant sat down and arrived at the formula in December 1992 it is perfectly plausible that they catered for Engineering Technicians II who might be promoted to supervisor but when the analysis of the workers was done none qualified.

12. The other reasons given by the chairman is that from the assessment reports on the worker in the year 1992 and 1993 he was a good worker. However with great respect that was never the issue. He may have been a good Engineering Technician II but the question was whether he had the supervisory responsibility and the necessary proficiency to be a crafts foreman or a supervisor. The Chairman excluded any examination of the latter. Additionally the Chairman made no reference to that part of the assessment report for the year 1993 which said that the worker ‘*should be exposed to supervisory training courses,*’ a clear indication that as at that time he did not have the required proficiency for a supervisor.

13. That level of proficiency is to be found in the evidence of Mr. Solomon who testified that there was a range of engineering technicians from I to IV, that it took about 4 ½ years in each grade to be competent to move to the next. Mr. Solomon also said that *'at Technician IV, that is really the holding bay in the industry as we put it, before somebody is promoted to supervisor. That is the next step. That person is really expected now to take up the full brunt of supervision... on average or better a Technician IV would have spent between ten and twelve years working at that level before they move onto supervisor level.'*

14. Another aspect of Mr. Solomon's evidence which was not dealt with by the Chairman was his response to the evidence given by the worker. It must be remembered that Mr. Solomon was the person to whom the worker reported sometimes. Mr. Solomon would have been in as good a position as any other to assess the work and to give evidence of the quality of the work of the worker. The worker had testified that he prepared contracts and supervised workers among other things. Mr. Solomon agrees that the worker would prepare contracts but small ones limited in value to \$20,000 and that he supervised workers but again he only supervised a small workforce of a few people (four at most) who were 'A' class and 'B' class workers, the lowest classified. The evidence led on behalf of the appellant with respect to the quality of supervision necessary for supervisors was that it included supervision of the engineering technicians. The worker gave no evidence that he supervised engineering technicians. Mr. Solomon also testified that the worker made no supervisory decisions.

15. Yet another bit of evidence which was not dealt with by the Chairman was that of Archeson Wells who testified on behalf of the appellant. Mr. Wells was part of the negotiating team for the appellant and his signature does appear on some of the agreements arrived at. Mr. Wells testified that the implementation of the Technical Craft Programme with incumbents being either Technical Craftsman I or II, at Pointe-A-Pierre was necessary for the alignment of jobs in the merged entity. Whereas in Trintoc (at Point Fortin) the gradations were Supervisor, Engineering Technicians IV, III, II and I and 'A' Class and 'B' Class Workers (in descending order), in Texaco (Pointe-A-Pierre), there were only 3 gradations Supervisor/Foreman, 'A' Class Craftsman, and 'B' Class Craftsman. The technical craft programme was therefore introduced to align the positions, the seven positions at Trintoc with the three at Texaco. This Technical Craft Programme according to Mr. Wells was designed to achieve progression to higher grades upon the meeting of the criteria of time, qualifications and proficiency.

16. The following excerpt is also taken from Mr. Wells Testimony:

“Q. Now, could you explain why Mr. Mason was not re-classified into a position of craft foreman or monthly paid bargaining Unit IV?”

A. The statement that is attached with this comment says that those positions were for those employees who had supervisory responsibilities. At the time Mr. Mason did not discharge any supervisory responsibilities.”

17. Mr. Wells also testified that the technical craft programme could not be implemented until the criteria for proficiency were agreed with the Union in November 1994 so that when the programme was eventually implemented the worker was first erroneously classified as Technical Craftsman I for about 3 months until he, Mr. Wells picked up the error and had him correctly classified as Technical Craftsman II in accordance with the formula agreed since December 1992.

18. Mr. Wells’ evidence was relevant to show how the technical craft programme dovetailed into all of the agreements entered into between the appellant and the union. It demonstrated why the worker was not reclassified before 1995. But probably most importantly the evidence showed the quality of the supervisory responsibility required in the formula before an Engineering Technician II could be progressed to a Supervisor. From Wells’ evidence it was most unlikely if not impossible (although he does not say so) that an Engineering Technician II would have the quality of the supervisory responsibility to be progressed to Supervisor so that all would have to go into the Technical Craft Programme which was introduced at Pointe-A-Pierre to align the jobs there with those at Point Fortin. It is most noteworthy that Mr. Wells was only cross-examined on why the worker was reclassified in the year 1995 when the agreements were in 1992. The rest of his evidence was apparently accepted.

19. In my view the Chairman misapprehended the factual background which was essential to the interpretation of the formula. Instead he chose to focus narrowly on the very ambiguous words used to the exclusion of all else. In so doing, it is my view he fell into error. In my view there was abundant compelling evidence to the effect that it was the quality of the supervisory responsibility which had to be taken into account and not the mere fact of supervisory responsibility. Whereas the worker on his own evidence asserts he had the latter, it is clear from the evidence he did not have the former.

20. The Chairman having found that the worker should have been reclassified as a Supervisor, decided that the appellant's action of reclassifying the worker with effect from July 1, 1992 instead of October 27 1992 was unfair, discriminatory and contrary to good industrial relations principles and practice. If his finding that the worker should have been reclassified as a Supervisor were to be upheld, then the appellant's action in reclassifying him as a Technical Craftsman II in 1995 would have been unfair, discriminatory and contrary to good industrial relations principles and practice and would not have been appealable under s.18(2)(b) of the Act. However from what I have said in the judgment the Chairman erred in law in his understanding and appreciation of the evidence and the worker was not entitled to be reclassified as a Supervisor but as a Technical Craftsman II which was the course adopted by the appellant. The evidence shows that the implementation of the Technical Craft Programme was only in 1995, such a position did not exist in October 1992 so that his reclassification could not be effective on that date as Mr. Wells explained in his evidence.

21. In the circumstances I find that there was no denial of reclassification of the worker in accordance with the terms of settlement in the 1990-1993 collective agreement. He was not entitled to be reclassified as a Supervisor or Craft foreman as at 27th October 1992. The appeal is therefore allowed with costs to the appellant.

W.N. Kangaloo
Justice of Appeal