CJ/LIB

IN OPEN COURT

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CASE NO. 7156/2000
SCA NO. 17/01
14-08-03

BETWEEN:

THE ATTORNEY GENERAL

Appellant

AND:

PADRAIC LINNANE

Respondent

APPEARANCES:
Counsel for the Appellant: Mr. André Mon Désir
Counsel for the Respondent: Mr. Jones, Q.C. and Mr. David McGrath of Quin & Hampson

Heard: 25th July 2003

JUDGMENT

This is an appeal from the judgment of the learned Magistrate in holding that there was no case to answer, on a charge of Failure to Comply with the Requirement of the Director of Labour to produce records and documents contrary to section 80(2) of the Labour Law (2000 Revision).

The particulars of the offence were that Padraic Linnane, having been required by the Director of Labour to produce to the said Director records and documents namely, the employee handbook and contracts of employment, pursuant to

section 71 (1) (d) of this Law failed to do so on the 5th day of December 2000 or at a reasonable time thereafter.

The learned Magistrate found that the document requested in the charge was not ones which were required to be kept by an employer under the law and consequently the failure to produce them did not result in any breach under section 80 of the Labour Law. Accordingly as one of the main ingredients of the charge was not proven she held a *prima facie* case was not made out and upheld the no case to answer.

Factual background

In November 2000, a complaint from one of the employee's of Beach Club was brought to the attention of the Director of Labour. As a result of this, the Director met with Mr. Linnane. During that meeting, the Director pointed out several breaches in the employee's contract. At the end of the meeting, Mr. Linnane promised to correct the contract and the Director requested that he be sent a copy of the corrected contract by November 29, 2000. This was apparently not done. As a result of several exchanges between the attorneys for the employer and the Director, the documents were once again requested. The Director testified that he believed that he suspected that there might have been other breaches and that these requested documents would assist in determining whether there in fact were. The documents were not produced and the employer, Mr. Linnane was charged as set out above.

The order of the learned Magistrate has been challenged on the following grounds:

1. The learned Magistrate erred in holding that there was no requirement in the *Labour Law* (2000 Revision) that an employer should maintain records of contracts of employment. This, was despite her explicit finding as to the clear intent of the provisions of the said law; and

2. The learned Magistrate erred in law by giving an unduly narrow and/or incorrect interpretation to the provisions of section 6 and the consequential provisions of the said Law.

Briefly put, the appellant argues:

1. That section 6 requires any contract to be reduced to writing as a statement of the working conditions and therefore implicitly it requires the Director to maintain a record of the contract.

2. They argued that the Magistrate unduly narrowly and incorrectly interpreted the sections of the Labour Law to make the resulting interpretation defeat the purpose of the legislature;

3. They further state that once there is duty to furnish to the employee, there must be a duty to maintain because one cannot furnish without maintaining and therefore, the fact that the word "maintain" is not specifically mentioned in section 6 still does not relieve the employer of the obligation to maintain;

4. They argued that the plain meaning must be given and that that plain meaning is that once a statement of working conditions must be supplied to the employee, it is implied that the employer must retain or maintain a copy of the contract;

5. That it is a common sense under the construction rule and that the draftsman need not necessarily specify the word 'maintain' for it to be implied in a section. As structured and presented the arguments of learned counsel for the Appellant sought to encompass grounds 1 and 2.

Counsel relied heavily on *Bennion* and submits to this Court that the clear intent of the legislature is that this particular document was to be

maintained under the law. It is perhaps useful before embarking on the Respondent's arguments in reply to deal with the various sections of the Labour Law (2000 Revision). The definition section, section (2) defines conditions of service as:

> "Conditions of service" or "conditions of employment" refers to the elements of hire and termination of employment, to the remuneration, hours of work, duties and the surroundings terms of employment and to all other factors related to the employment arrangement.

It then goes on to define contract of employment:

> 'Contract of employment means' any agreement, understanding or arrangement whatever, whether written or oral, express or implied, whereby it is agreed between an employee and an employer that the employee will be employed under a contract of service.

Section 6(1):

> Every employer who enters into a contract of employment with an employee other than a casual employee or a person employed as a household domestic shall, within ten working days of entering into such contract, furnish the employee with a written statement of this conditions of employment in accordance with subsection (2).

Subsection 3 also deals with furnishing of amended statement and subsection 4(d) deals with furnishing of statement pursuant to subsection 1 to 3 within seven days of being requested in writing by the employee. (It is perhaps convenient at this stage to note that there is no mention of providing the Director of Labour with a copy of the working conditions).

Section 71(1)

> The Director, Deputy Director and any labour inspector shall for the performance of their functions under this Law have power–
>
> (a) to enter any workplace without previous notice at any time during the working hours of that particular workplace;
>
> (b) to carry out any examination, test or inquiry which he may consider necessary to satisfy himself that this Law is being observed;
>
> (c) to question, alone or in the presence of witnesses, any employer or employee on any matters concerning the application of this Law; and
>
> (d) to require the production of any records or documents required to be maintained by this Law and to copy or make abstracts of any such records or documents.

Section 71 is the section that governs the supervisory capacity and the powers given to the Director of Labour under the Law. The intent of the legislature therefore has been covered not only by the Director being able to request written documents to be produced but also to have oral examination and on the spot inspections.

Section 80 (2)(a)(b)(c) and (d) are the sections under which the specific charges may be laid.

Section:

(a) speaks of delaying the Director, Deputy Director or an inspector in the due exercise of any power conferred on him by or under this Law;

(b) refuses to answer or falsely answers, any inquiry authorized by or under this Law;

(c) fails to produce any register, books, document or other record he is required by or under this Law to produce; and

(d) attempts to prevent, any person from appearing before or being examined by the Director, Deputy Director or an inspector, is guilty of an offense etc.

It is to be noted that during the course of the reading of this Law, there are several places in which the employer is required to maintain certain records. I regret that I am not persuaded by Crown Counsel's attractive argument that the document could not be furnished without being maintained by the employer or it would make non-sense of the intent of the legislature if the contract was not maintained as he argues. I am of the view that the Labour Law does not require an employer to maintain any of the documentation requested in this particular case and that in fact if the documentation was not maintained by the employer, it would still not defeat the purpose of the legislature. The Director of Labour is empowered to orally question the employee as to the working conditions or any other matter thereby keeping his supervising role in tact even though the record is not maintained. In reality it may well be that the employer keeps a copy of the working conditions but this is a penal statute and the accused is entitled to a fair and reasonable interpretation of the statute. The Appellant has not shown to my satisfaction that the learned Magistrate erred in finding that an employee is not required to maintain these contracts of employment. Section 6 is an offense

creating section and as such it must be interpreted narrowly and precisely. Implying obligations into a legislative scheme, which is penal, runs contrary to the most basic principles of statutory interpretation and I agree with learned counsel for the Respondent that there is no ambiguity in this legislation. The appeal is accordingly dismissed.

Dated this 14th day of August 2003

Justice P. Levers
Judge of the Grand Court

14/8/03 Costs to the Respondent to be agreed or taxed.