The Court of Appeal for Bermuda

CIVIL APPEAL No. 2 of 2016

Between:

(1) BERMUDA INDUSTRIAL UNION ("BIU")

(2) BERMUDA PUBLIC SERVICE UNION ("BPSU")

(3) BERMUDA UNION OF TEACHERS ("BUT")

Appellants

-v-

THE MINISTER OF HOME AFFAIRS

Respondent

Before: **Baker, President**

Bell, JA

Bernard, JA

Appearances: Mr. Delroy B Duncan, Trott & Duncan Limited for the Appellants
Mr. Gregory Howard, Attorney-General's Chambers, for the Respondent

Date of Hearing **22 November 2016**

Date of Judgment **16 January 2017**

JUDGMENT

Labour dispute - relationship of contract law to labour legislation - meaning of s.9 of Labour Relations Act 1975 and s.19 of Labour Disputes Act 1992 - power of Court to grant declarations

BAKER, PRESIDENT

1. This is an appeal by three unions, the Bermuda Industrial Union ("BIU"), the Bermuda Public Service Union ("BPSU") and the Bermuda Union of Teachers ("BUT") against a decision of the Chief Justice made on 15 January 2016, granting two declarations to the Minister of Home Affairs (the respondent to the present appeal). The declarations were in the following terms:

> 1. That BIU, BPSU and Fire Officers' Association, as regards their divisions or units which are essential services, on or about 28 January 2015, acted unlawfully, contrary to section 9(1) of the Labour Relations Act 1975 in taking irregular industrial action short of a strike.
>
> 2. That BIU, BPSU and BUT acted unlawfully contrary to section 19 of the Labour Disputes Act 1992 in taking irregular action short of a strike.

The Fire Officers' Association were respondents in the court below but are not parties of this appeal.

Background

2. Faced with a very grave financial deficit, the Government of Bermuda sought the assistance of the Bermuda Trade Union Congress ("BTUC"). Following discussions with the three appellants, the Fire Officers' Association and the Prison Officers' Association, an agreement was reached on 26 June 2013 between the Government and the BTUC. The agreement was subsequently ratified and its terms set out in a Memorandum of Understanding ("MOU"). The agreement involved substantial concessions on the part of the unions to help reduce the deficit through cost cutting measures. It is unnecessary to set out all the terms of the MOU. Suffice it to say that from the date the MOU was signed (22 July 2013) all public officers agreed to take 12 unpaid and

unworked days per year, and there was a pay freeze until 31 March 2015, which was the date until which the MOU was to be effective. The unpaid days are known as furlough days. A Budget Reduction Working Group involving representatives of the unions, the private sector and Government was set up on 19 November 2014 to further tackle the problem. Phase 1, which aimed at finding a reduction of $67,000,000 or 5% in the cost of operating Government, was completed by 12 December 2014 in order to inform the development of the budget. It met on seven occasions, the last one being on 17 December 2014, and although progress was made, the Government failed to persuade the unions to extend furlough days beyond 31 March 2015.

The Chief Justice said at para 98 of his judgment:

> "The collaborative process (effectively focussed on preserving through other means the 5% salary saving achieved by furlough days) was vigorously pursued by the BTUC and half-heartedly by the Government side and the process drifted towards an open-ended conclusion. The Government side, for its part seemingly underestimating the importance of communicating with the unions in a matter befitting major stakeholders in the public sector finance reform issue, provoked through inelegant communications what one union newsletter described as the "occupy Cabinet Office" campaign."

3. What happened was that on 23 January 2015 the Finance Minister wrote to the Vice President of the BTUC, Mr. Furbert. The letter said it was imperative for the furlough to be continued in order for Bermuda's financial health to be improved in accordance with the Medium Term Expenditure Framework. The budget had to be debated and approved by both Houses of the Legislature and in order to meet the 31 March 2015 deadline, the budget development process had to be concluded immediately. The letter concluded by inviting BTUC to reconsider its position on the continuation of furlough, saying that if they were unable to agree the Government would be forced to take steps to achieve the necessary reductions in expenditure and this could include a reduction in salary of Government employees equal to the savings achieved by the furlough

in the current year. He asked for a decision by noon on Monday 26 January 2015. Since the letter was received at 1 pm on Friday 23, this was an impossible and unrealistic deadline if BTUC was to consult its members. Furthermore, the letter contained a threat that if the unions did not toe the Government's line, the line would be imposed anyway. As the Chief Justice said, the letter was on any detached and objective view a wholly surprising and disproportionately confrontational communication.

4. That afternoon the BTUC convened a meeting to be held on the Monday at 10:00 a.m. for all public service employees. At some point the Premier addressed the crowd in conciliatory fashion, suggesting reopening negotiations with a view to finding further cost savings to avoid further furlough days. A meeting was arranged for that afternoon, but the Government did not turn up and asked for it to be put off. A further general meeting was convened for 9:00 a.m. on Tuesday 27 January. BTUC's position changed from being prepared to negotiate to refusing to negotiate unless furlough days were taken off the table.

5. The Head of the Civil Service and Cabinet Secretary reported a labour dispute to the Department of Workforce Development. The respondent gave notice of a labour dispute under section 4 of the Labour Disputes Act 1992, which was published electronically in the Official Gazette and, on the following day, published in the Royal Gazette. At 6.21 pm on 27 January 2015 the Head of the Civil Service sent a copy of the section 4 notice to all public officers advising that pay would be deducted for any period in which they participated in an unlawful strike.

6. The respondent, on Wednesday 28 January, sought and obtained an ex parte injunction preventing the appellants and the other two unions from, in summary, engaging in any strike or irregular industrial action short of a strike arising from or connected with the labour dispute between them and the respondent.

7. Meanwhile, discussions continued and the dispute was resolved without furlough days being continued after 31 March 2015. On 24 March 2015 the respondent issued an originating summons against the appellants and the

other two unions. The substantive hearing took place before the Chief Justice on 24 – 26 November 2015 and the Chief Justice gave judgment on 15 January 2016. The respondent sought wide ranging relief including a permanent injunction and declarations, two of which are the subject of this appeal. The respondent succeeded only in obtaining the two declarations and it is unnecessary to go into any other aspects of the case.

The Labour Relations Act 1975

8. The first declaration is that the appellants acted unlawfully contrary to section 9(1) of the Labour Relations Act 1975. Section 9(1) which is headed "Restriction on strikes in an essential service", provides:

> 9 (1) A lock-out, strike or any irregular industrial action short of a strike in an essential service shall be unlawful unless there is a labour dispute within that service and –
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> (a) a report of the labour dispute has been made to the Director under section 3(1) as read with section 7; and
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> (b) thereafter valid notice of the intended lock-out, strike or irregular industrial action short of a strike has been given to the Director by the employer, or trade union on his behalf, or workmen, or trade union on their behalf, as the case may be, at least twenty-one days prior to the day upon which the lock-out, strike or irregular action short of a strike is to commence; and
>
> (c) the lock-out, strike or irregular industrial action short of a strike is the lock-out, strike or action specified in the notice (both as respects its nature and the persons participating) and, subject to subsection (4), commences on the day specified in the notice, or within twenty-four hours thereafter; and

(d) the dispute has not been referred for settlement to the Permanent Arbitration Tribunal under section 8.

9. Thus, in order for industrial actions within an essential service to be lawful the following conditions must be met:

- There must be a labour dispute within that service.
- A report of that labour dispute must have been made to the Director of Workforce Development.
- A valid notice of the industrial action in question must have been given to the Director by the relevant party or trade union on behalf of such party.
- Such notice must have been given at least 21 days prior to the date the contemplated industrial action is to commence.
- The contemplated industrial action must accord with the action specified in the notice.
- The contemplated industrial action must commence either on the date specified in the notice or within 24 hours of such date.
- The dispute must not have been referred for settlement to the Permanent Arbitration Tribunal.

10. There is no doubt that the units of the BIU and the BPSU in essential services engaged in a strike or industrial action short of a strike which was, at all material times, in furtherance of a labour dispute. The Minister's notice was, points out Mr. Howard for the respondent, a triggering event making any action thereafter in furtherance of industrial action contrary to section 19 of the Labour Disputes Act 1992. Other than a report of the dispute by the Head of

the Civil Service, none of the remaining requirements of section 9(1) was met. Accordingly, the BIU and the BUT were in breach of the legislation as regards essential services by calling for and participating in irregular industrial action and refusing to return to work on publication of the Minister's notice.

11. Mr. Delroy Duncan, who appeared for the appellants, submits that the Chief Justice should not, in the circumstances, have granted the declaration. His grounds of appeal are framed as follows:

> (a) The Judge rightly held at [81] that the letter from the Minister of Finance dated 23 January 2015 showed that the Government intended to break employees' contracts of employment at a future date and to the extent that he did that the Government was in anticipatory breach of their contracts;
>
> (b) The Judge erred, however, in failing to see the full consequences of that finding, alternatively in holding in a contradictory way that that the employees were not fully entitled to accept that breach and were not released from any obligation to work while the Government had made plain that it would not honour their contracts in full.
>
> (c) Moreover, the Government having been in anticipatory breach it was a wrong use of discretion for the learned judge to grant a declaration.

12. The Chief Justice concluded that the relevant issue was whether the appellants were in breach of this provision by calling for and participating in irregular industrial action and refusing to return to work upon the publication of the Minister's notice. Mr. Duncan submits that the Chief Justice was wrong. His argument, as I understand it, runs thus. The Finance Minister's letter of 23 January 2015 amounted to an anticipatory fundamental breach of the employees' contracts of employment because, in effect, it said it was imperative for furlough days to be continued beyond the end of the financial year (31 March 2015) and if the Unions did not agree, other measures would be taken which could include a reduction of salary of Government employees equal to

furlough savings. This relieved the employees from the obligation to work until such time as the Government confirmed that it intended to honour the existing contractual terms. Accordingly, an employee who stopped work in acceptance of that breach was not involved in a "concerted stoppage of work." In short there never was a strike or irregular industrial action short of one so as to engage section 9 of the Labour Disputes Act. The case he submits is decided by applying the principles of the law of contract rather than labour disputes legislation.

13. The Chief Justice summarised the authorities relied on by Mr. Duncan at paragraph 81 of his judgment and for convenience I repeat it:

> (a) *RF Hill Ltd.* [1981] IRLR 258: *"The obligation on an employer to pay remuneration is one of the fundamental terms of a contract. In our view, if an employer seeks to alter that contractual obligation in a fundamental way, such as he sought to do in this case, such an attempt is a breach going to (the) very root of the contract and is necessarily a repudiation"* (EAT, Browne-Wilkinson J, at paragraph 10);
>
> (b) the quoted passage from the *RF Hill Ltd* case was approved by the English Court of Appeal in *Cantor Fitzgerald International –v- Callaghan* [1999] I.C.R. 639 at 649;
>
> (c) *"In assessing whether there has been a breach, it seems clear that what is significant is the impact of the employer's behaviour on the employee rather than what the employer intended. Moreover, the impact will be assessed objectively" (Brown –v- Merchant Ferries Ltd.* [1998] IRLR 682 at paragraph 19 (Northern Ireland Court of Appeal) citing Lord Steyn in *Malik –v- Bank of Credit and Commerce* [1997] IRLR 462 at 468);
>
> (d) "*We should not be taken to be saying that all strikes are necessarily repudiatory, though usually they will be. For example, it could hardly be said that a strike of employees in opposition to demands by an employer in breach of contract by him would be*

repudiatory. But what may be called a 'real" strike in our judgment always will be" (Simmons –v- Hoover Ltd. [1977] Q.B. 284 at 299 (EAT, Phillips J));

(e) *"It is common ground that the unilateral imposition by an employer of a reduction in the agreed remuneration of an employee constitutes a fundamental and repudiatory breach of the contract of employment which, if accepted by the employee, would terminate forthwith" (Rigby –v- Ferodo Ltd* [1988] I.C.R. 29 (HL, per Lord Oliver, in a case where an ultimatum was given by an employer in financial difficulties to unionised employees several weeks before the salary deductions were unilaterally imposed. The unions threatened strike action when the ultimatum was initially received and entered into inconclusive negotiations before the deductions were unilaterally and unlawfully made).

14. The law relating to repudiation of contracts was comprehensively reviewed and clarified by the Supreme Court in *Societe Generale, London Branch v. Geys* [2012] UK SC 63. The question whether a contract of employment terminates automatically upon repudiation (the automatic theory) or whether the innocent party may elect to accept the repudiation (the elective theory) was firmly resolved in favour of the elective theory - see Lord Wilson at paragraph 93, who cited Templeman L.J. in *London Transport Executive -v- Clarke* [1981] 1CR 355, 366 -367:

> "Repudiation cannot determine a contract of service or any other contract where there exists a reason and an opportunity for the innocent party to affirm the contract."

As Lord Sumption observed at paragraph 118:

> "Subject to the intervention of statute, contracts of employment are governed by the same principles as other contracts, except in those cases where their subject matter gives rise to compelling policy considerations calling for a different approach."

15. Mr. Howard submits that the Minister of Finance in his letter of 23 January 2014 did not 'clearly and unambiguously' repudiate the employment contracts of public servants. The Chief Justice said at paragraph 82 that the crucial question was not whether that letter contained a contingent threat by Government to fundamentally breach the public workers' contracts by sending them home unpaid if they did not agree to extend furlough days; it clearly did. The real question was whether, bearing in mind the threatened unilateral alteration of the contracts of employment related to a date more than two months away, the appellants' decision to initiate industrial action on 26 January 2015 was at that point in time a legitimate response.

16. Mr. Howard also makes the point that the Cabinet Secretary's letter of 27 January, accompanying the copy of a Notice of Declaration of Labour Dispute, is inconsistent with a repudiation of the contracts of employment. The letter points out, inter alia, that public officers will be deducted pay for any time that they are not in attendance at work because they are participating in an illegal strike or industrial action short of a strike. The point is also made that employees were continuously employed and did not lose pay; neither did they accept any purported repudiation and sue for damages.

17. I think it is critical to look at the practicalities of the situation and what actually occurred. The precipitating factor was the ill-considered letter of the Minister of Finance of 23 January 2014. The letter plainly contained the threat that if the BTUC did not agree to continue the furlough after 31 March 2015, government employees' salaries were at risk to the same extent, or as the Chief Justice put it at paragraph 81, "the letter contained a contingent threat by Government to fundamentally break the public workers' contracts by sending them home unpaid if they did not agree to extend furlough days". Thus it is said there was a fundamental anticipatory breach by the Government of the employees' contracts. Assuming for present purposes that that is so, the question remains whether that repudiation was accepted, thus bringing the contracts of employment to an end. In my judgment it is at this point that Mr. Duncan's argument falls down. I cannot accept his submission that the threat

had an immediate direct consequence, and that once it had been made the obligation on the workers to continue to perform their contracts ceased.

18. The following matters are relevant. In the first place, 31 March 2015 was over two months away and the letter said that the steps the Government would (in the absence of a continuation of furlough days) be forced to take *could*, not would include a reduction in employees' salaries. Second, the letter was sent to the BTUC, the body which had been negotiating with the Government, rather than directly to all public employees. Its purpose, albeit provocatively written, was to bring the issue to a prompt conclusion by imposing an unrealistic deadline of the following Monday. The real deadline was 31 March 2015. I respectfully agree with the conclusion of the Chief Justice at paragraph 82(4) of his judgment.

> "Because the Unions' first response to the ultimatum January 23 2015 letter was to take industrial action over two months before the threatened unilateral change of contractual terms by the employer, it is impossible fairly to conclude that the letter <u>when sent</u> constituted a repudiatory breach. While an anticipatory breach might – where the breach was imminent – justify strike action designed to maintain the existing contractual terms, especially in the case of an employer , dealing with an individual employee, one ultimatum sent to battle-hardened union representatives who were already engaged in a negotiation process did not justify the response which occurred."

19. Mr. Duncan argues that there could be no clearer statement of election to accept the Government's repudiation of the contracts of employment than their refusal to negotiate until furlough days were taken off the table. I cannot agree. In my judgment the contracts of employment were still in force at the time the employees withdrew their labour. The withdrawal of labour was irregular industrial action and the provisions of section 9 of the Labour Relations Act 1975 applied.

20. Mr. Duncan next submits that the Chief Justice should, in any event, not have granted either declaration. The Court's power to grant declaratory relief is to be found in R.S.C. Order 15 rule 16. The Court of Appeal has all the powers and duties conferred on the Supreme Court (see sections 8 and 13 of the Court of Appeal Act 1964). Lord Collins, giving the judgment of the Privy Council in *Nilon Ltd & Anr v Royal Westminster Investments S.A. & Ors* [2015] UKPC 2 at paragraph 16 restated the well-established principles that in appeals from the exercise of a discretion an appellate court should not interfere with the decision of a lower court which has applied the correct principles and which has taken into account relevant matters and left out of account irrelevant matters, unless satisfied the decision is so plainly wrong that it must be regarded as outside the generous ambit of discretion entrusted to the court.

21. Aikens L.J. set out the principles for granting declaratory relief in the context of a labour dispute in *Rolls-Royce PLC v. Unite the Union* [2009] EWCA Civ 387, paragraph 120. Although these were stated in the course of a dissenting judgment, Mr. Duncan has not questioned them in the present appeal.

22. The Chief Justice concluded that the respondent was not entitled to injunctive relief and that decision is not the subject of appeal. He also concluded that it would be wrong to grant declaratory relief expressed as being against members of the appellants. In any event such relief was not ultimately sought by the respondent.

23. In my view the Chief Justice was entitled, and indeed correct, to make this declaration as to the rights of the parties. He made sure that the employees were not included in the declaration and noted that the Government had agreed that they could use their remaining furlough days for the period that they were absent during the industrial action. I agree with Mr. Howard's submission that both sides had a full opportunity to argue their cases and that the declarations were the most effective way to decide the issues where all Collective Agreements had expired and the Government had embarked on a policy of dealing with public debt and reducing the size of the public service.

There is no basis for interfering with the broad ambit of the Chief Justice's discretion.

The Labour Disputes Act 1992

24. The second declaration is that the first and second appellants acted unlawfully contrary to section 19 of the Labour Disputes Act 1992 in taking irregular action short of a strike.

Section 19, which is headed "Unlawful conduct", provides:

> 19 (1) At any time after the notice mentioned in section 4 is published or at any time after a labour dispute is referred to the Tribunal and the dispute in either case is not otherwise determined, a lock-out, strike or irregular industrial action short of a strike is unlawful.
>
> (2) It is unlawful to commence or continue or to apply any sums in furtherance or support of, any lock-out, strike or irregular industrial action short of a strike that is unlawful under subsection (1).
>
> (3) Any person who takes part in, incites or in any way encourages, persuades or influences any person to take part in, or otherwise acts in furtherance of, a lock-out, strike or irregular industrial action short of a strike that is unlawful under this section is guilty of an offence and is liable –
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> (a) on conviction on indictment to a fine of five thousand dollars or to imprisonment for two years, or both;
>
> (b) on summary conviction to a fine of one thousand dollars or to imprisonment for three months:
>
> Provided that no person shall commit an offence under this section by reason only of his having ceased work or refused to continue to work or accept employment.

25. Under section 19(1) the triggering factors for unlawful conduct are either publication of a section 4 notice or reference of a labour dispute to the Tribunal. Section 19(2) makes it unlawful to commence or continue etc. any lock-out, strike or irregular industrial action short of a strike that is unlawful under subsection (1).

26. Irregular industrial action short of a strike is defined in section 1(1) of the Labour Relations Act 1975 and means any concerted course of conduct (other than a strike) which, in contemplation or furtherance of a labour dispute –

> "(a)is carried on by a group of workmen with the intention of preventing, reducing or otherwise interfering with the production of goods or the provision of services; and
>
> (b) in the case of some or all of them, is carried on in breach of their contracts of employment or otherwise in breach of their terms and conditions of service."

By the same subsection a labour dispute means a dispute between –

> "(a) an employer, or trade union on his behalf, and one or more workmen or trade union on his or their behalf; or
>
> (b) workmen or trade union on their behalf, and workmen or a trade union on their behalf,

where the dispute relates wholly or mainly to one or more of the following –

> (i) terms or conditions of employment, or the physical conditions in which workmen are require to work; or
>
> ……."

27. Mr. Duncan's first point is the same as that taken with regard to the first declaration, namely that this legislation is not engaged at all because the employees' contracts had come to an end. His second point is that this is a penal provision which is wholly dependent on an effective notice having been given in compliance with section 4. Because section 19 is penal, the provision

of section 4, he argues, must be construed strictly and the notice in the present case was inadequate.

Section 4 1) of the Labour Disputes Act 1992 provides:

> "The Minister may by notice publish in the Gazette declare that a labour dispute exists or is apprehended."

28. Mr. Duncan's submission is that the detail in the notice given was inadequate because it did not give the necessary particulars. The notice, signed by the respondent and dated 27 January 2015, is headed Notice of Declaration of Labour Dispute and reads –

> "Pursuant to section 4 of the Labour Disputes Act 1992 I declare that a labour dispute exists between the Government of Bermuda and the following Government Departments and all Ministry Headquarters."

They are then listed below and the notice concludes with reference of the dispute to the Labour Disputes Tribunal.

29. No reference is made to the nature of the dispute, to the appellants, their members or the BTUC. Indeed the notice is drafted in such a way as to indicate that the dispute is with Government Departments and Ministry Headquarters rather than the employees. Does this make the notice inadequate so as not to amount to a notice under section 4? In my view it does not. It is true that the Labour Disputes Tribunal subsequently wrote complaining that it did not know what questions or matters it was being asked to consider and determine, but its requirements were rather different from the purpose of the declaration under section 4, which was simply to identify that a labour dispute either existed or was apprehended.

30. The purpose of section 19 it is to call a halt to industrial action whilst the dispute is looked into and hopefully resolved by a Labour Disputes Tribunal. The giving of a section 4 notice is the first step in the process. It should also be noted that anyone reading the Gazette on 28 January 2015 with the slightest interest in the subject would have been well aware of the nature of the dispute.

The next step after the notice is published is for the Minister to appoint a Labour Disputes Tribunal (see section 5). It has wide powers (see section 12) and it is not necessary to prove that a criminal offence has been committed before declaratory relief can be granted. Furthermore, this case was not concerned with criminal liability under section 19(3). The declaration in the present case concerned unlawful conduct under sections 19(1) and (2) and was directed to unions not individuals.

31. The notice was carried electronically in the Royal Gazette on the afternoon of 27 January 2015, and in the print edition of the same newspaper on the following day, 28 January 2015. The industrial action continued on 28 January 2015 i.e. on the day after the Minister's notice.

32. Section 4 prescribes no particular form for the notice. There is no ambiguity within the section. A similar point arose in *Wickland Holdings Ltd v Telchadder* [2012] EWCA Civ 635 concerning the adequacy of a notice under para 4(1) of Schedule 1 to the Mobile Homes Act 1983. Mummery L.J. in giving judgment with which the other members of the Court agreed said this at paragraph 54:

> "As I have already explained, there are no prescribed forms of notice, no prescribed contents of set timings or limits on the period of effectiveness. It is not for this court to prescribe detailed requirements when Parliament could have done so, but has decided not to. The court's function is to decide, on the particular facts of each case, whether the requirements of paragraph 4(a) are satisfied. In doing so it will adopt the normal course of interpreting any document relied on as a notice as a reasonable reader, with knowledge of all objective surrounding circumstances, would understand it."

In my view it would be obvious to the reasonable reader of the notice that the words "employees of" should be included before the words "the following Government Departments." The notice in my view contained sufficient particulars for the purposes of the section.

33. As to Mr. Duncan's argument that this is a penal statute and must be strictly construed, the penal provision in section 19(3), which in any event has no application to the facts of the present case, is some distance removed from the notice provision in section 4. The rule about construction of penal statues was described by Lord Esher in *Tuck & Sons v. Priester* (1887) 19 QBD 629 at 638:

> "If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for construction of penal sections."

34. There is nothing ambiguous about the meaning of section 4, which in any event is not the penal section. As the authors of the Third Edition of Cross on Statutory Interpretation make clear at p 72, the courts nowadays generally adopt a purposive approach even to the construction of penal statutes. For the most part, they seek the interpretation which makes sense of the statute and its purpose. The penal statute argument takes Mr. Duncan's case no further. The notice was a sufficient notice under section 4.

35. Mr. Duncan has a further point on the notice. By section 19(1) the notice bites after it is published. His argument is that it only becomes effective on the day after it is published, not on the day it is published. He referred to *Lester –v- Garland* [1808] 15 Ves 248 which was cited with approval by Lord Diplock in *Dodds –v- Walker* [1981] 2 All ER 609 at 610:

> "The general rule in cases in which a period is fixed with which a person must act or take the consequences is that the day of the act or event from which the period runs should not be counted against him."

Mr. Duncan also relied on *R (Zaporozhchenco) –v- Westminster Magistrates Court* [2011] EW HC (Admin), an extradition case.

36. In my judgment the present case is not concerned with a statutory provision that requires an act to be performed within a specified number of days. The *Dodds v. Walker* line of authority is therefore not in point. Time begins to run,

for the purposes of section 19, from the moment the section 4 notice is published. A more relevant authority is *Brantley & Ors –v- Constituency Boundary Commission & Ors* [2015] UK PC 21. The notice was published in the Gazette on 28 January 2015. Since the notice as signed by the Minister bore a stamp that is would be published in the Royal Gazette on 28 January, any earlier publication e.g. by email on 27 January is of no legal effect (see para 66 of the Chief Justice's judgment). Accordingly the appellants acted unlawfully by continuing irregular action from publication of the notice on 28 January 2015.

37. The same points applies with regard to discretion in granting this declaration as they do to the first declaration and I do not repeat them.

Conclusion

38. Essentially for the reasons given by the Chief Justice, I would dismiss the appeal against the grant of the declarations. Once the respondent gave notice declaring a labour dispute the case was taken out of the realms of contract law and into the Bermuda labour legislation as it appears in the Labour Disputes Act 1992 and the Labour Relations Act 1975. The unions, as named in the declarations, acted unlawfully, in the case of essential services pursuant to section 9 of the 1975 Act and more generally pursuant to section 19 of the 1992 Act. The Chief Justice was entitled in the exercise of his discretion to grant the two declarations and I would dismiss the appeals.

Signed

Baker, P

Signed

I agree Bell, JA

Signed

I agree Bernard, JA