

TRINIDAD AND TOBAGO

S.T. No.10 of 1985.

IN THE INDUSTRIAL COURT
BEFORE THE SPECIAL TRIBUNAL

Between

CHIEF PERSONNEL OFFICER - Party No. 1

And

TRINIDAD AND TOBAGO UNIFIED
TEACHERS' ASSOCIATION - Party No. 2

C O R A M:

His Honour Mr. F. L. Corbie	-	Chairman
His Honour Mr. C.E.E. Riley-Hayes	-	Member
His Honour Mr. U. Gittens	-	Member

APPEARANCES:

Mr. M. De Labastide,)	
Senior Counsel)	
) -	for Party No. 1
Mr. N. Bereaux,)	
Senior Counsel)	
Mr. A. Alexander,)	
Senior Counsel)	
)	
Mr. D. Mendes) -	for Party No. 2
Of Counsel)	
Ms. B. John)	
Of Counsel)	

DATE: JULY 9, 1986.

O R A L J U D G M E N T

Delivered by Her Honour Mrs. Cynthia E. E. Riley-Hayes

I will begin with the last sentence of the Judgment that has just been delivered:

“desirable as objectives may be they would not per se constitute a basis for unilateral variation of a condition of employment particularly in the face of legally recognised bargaining agent of the employees affected.”

This is the golden thread of Industrial Relations that terms and conditions of employment can be altered only by consultation and agreement between the employer and the employee or the representative of the employees.

But I would not view the issue within the narrow confines in which it has been viewed. The issue does not turn on the determination of the question –

“is school vacation teachers’ vacation”

so that on a finding that it is not, cadit caoso. In issue is the validity of the circulars which emanated from the Ministry. The questions therefore are:-

“Did they seek to unilaterally vary the terms and conditions of service of teachers – Did they seek to vary them without consultation and agreement with Trinidad and Tobago Unified Teachers’ Association. The recognised association representing teachers.”

And if they did –

Did the Minister have power so to do.

I would consider the last question first – The power of the Minister to prescribe the period of school vacation and as a corollary the period term. The Minister has a general power:

“to do all such things as may be expedient from time to time for carrying out his responsibilities for education and training.”

but the power to prescribe the period of school vacation is derived indirectly from Regulation 43 of the Teaching Service Regulation which defines’ school vacation thus –

“Any period prescribed as a vacation for public schools under Act”
and by S 86 of the Act.-

“The Minister may make regulations generally for the purpose of carrying the Act into effect and in particular for prescribing anything which this Act required to be prescribed”

Regulation 43 was made by the President under Statutory Power derived from S 85 (11) of the Act. The regulations therefore must be construed in the context of the Act – the enabling statute. Moreover they cannot be repugnant to any provisions of the statute. By S 63 of the Act as amended matters concerning terms and conditions of employment of teachers must be the subject matter of consultation and agreement between the Chief Personnel Officer and the appropriate recognised association of teachers. A regulation made under the enabling statute cannot vest in any one, therefore, power to unilaterally vary terms and conditions of employment of teachers. The Minister’s omnibus power under S 5 (9) and her power to prescribe the period of School Vacation (S 86 and Regulation 43) must be so construed.

I would now look at the question whether the Minister by the circulars sought to vary terms and conditions of employment of teachers. A power to prescribe the period of School Vacation is a power to prescribe that there shall be no School Vacation. How does this affect teachers. Let us look at the whole fabric that is the Teaching Profession. One enters the Teaching Profession with the knowledge that the school year, one’s working year is divided into periods designated “Term” and others designated “School Vacation.” During term children are required to attend school and teachers are therefore required to teach. During school vacation they are not so required and it is therefore for teachers, in its broadest sense, a non teaching period.

That is the work pattern of teachers. Any interference with that is an interference with terms and conditions of employment, so too is any extending or shrinking of one period vis a vis the other and so too is any variation of the concepts such as to make optional the attendance of children during part of the term.

I will now analyse the period school vacation and determine whether it is a period of Vacation Leave for teachers. Regulations 43 – 52 are embraced in a section of the regulations captioned –

“Leave passage Grants etc.”

The first thing mentioned thereunder is “School Vacation” – the definition of “School Vacation” and no where else in the Act nor the Regulations is “School Vacation” defined. It finds its definition nowhere but in that section of the regulations dealing with Leave, Passage Grants and other matters concerning Leave for teachers. The definition afore mentioned is followed by a definition of “Leave” and “Leave” is defined specifically to exclude Vacation Leave. It means –

“Occasional Leave, Special Leave, Sick Leave or Maternity Leave”

is the conclusion therefore, more so in the face of a universal declaration of human rights

“That everyone shall have the right to periodical holidays with pay”

is the conclusion that teachers are therefore not entitled to any vacation leave? or is it not that “School Vacation” is the period of Vacation Leave for teachers. That is the obvious nexus between School Vacation and leave for teachers. Regulation 44 makes the calling out of teachers during school vacation dependant on exigencies – the same contingency that occasions call out of worker from annual Vacation Leave or that occasions deferment of annual

vacation leave. There would be no necessity for this provision had school vacation been a period of work – teachers would be on duty. There would be no necessity to call out. Moreover the regulation recognises the need for compensation. It provides –

“.....he may be granted compensatory leave in compensation for the time during which he performed such duties.”

There would be no need for compensation optional as the Chief Personnel Officer would have us believe or not, had teachers not been on leave during the period of school vacation. And compensation is not optional. There is a clear obligation to compensate. The option relates to how you are to compensate. It relates to the type of compensation – it may be in the form of compensatory leave. Note the provision again –

“.....he may be granted compensatory leave in compensation.....”

“May” is annexed to the mode of compensation not to the fact of compensation.

The period of school vacation is therefore the period of vacation leave for teachers. This is not to say that it is a period of annual vacation leave in the Industrial Relations sense. It cannot be because implied in the term annual vacation leave is the fact that it is to be granted as far as possible at a date that suits the individual workers. Such a provision would be disruptive of the teaching service and therefore because of the nature of the teaching profession the vacation of teachers is made to coincide with the school vacation. The vacation of teachers is at fixed periods designated school vacation and this is a term and condition of their employment. The fact that school vacation is a period of vacation leave for teachers is reinforced by other provisions of the Act. By Regulation 45 teachers can be granted occasional leave

“To attend to urgent private affairs”

There is no provision for deduction of this from the period of vacation leave as is the case for example with Civil Servants and this because the periods of vacation for teachers are fixed periods during which the teachers would be on leave in any event. Regulation 51 recognises that a teacher may proceed out of the country during the school vacation just as he could when on leave as defined by the Act. Regulation 22 provides that teachers may be granted advances in salary when proceeding on vacation for periods of not less than fourteen (14) days. The Act therefore clearly recognises that teachers are entitled to vacation leave and on an interpretation of the leave provisions, Regulations 43 – 52, such leave is clearly intended to be the period of school vacation.

The clear meaning and intent of the statute cannot be thwarted by the application of the statute. One must not confuse the intent of the statute with the application of it. The fact that the application of the statute went counter to its intent does not vary the intent nor can the fact that changing social conditions occasioned difficulty in applying the statute as was intended. This gives rise to proposals for amendments not to an artificial interpretation of the existing provisions. The fact that so far as principals and vice principals are concerned the period of school vacation, given the realities of today, for example the high incidence of vandalism in schools, does not afford the period of rest and leisure that was intended, does not colour the meaning and intent of the statute. It is interesting to note that they sought initially compensatory leave under Regulation 44 but since the exigencies became facts of life they are now seeking to vary the regulations to make new provisions for vacation leave for themselves, that is principals and vice principals.

The circulars therefore clearly sought to unilaterally vary the terms and conditions of employment of teachers and are therefore invalid. Not only are they invalid in substance but also in form. Before I look at the form however I would like to mention that the good intentions of the person issuing the circular or the extent of the infringement on the negotiating rights of teachers are in no way material to the issue. If you put your toe on my boundry you trespass just as if you put your entire body.

Now let us look at the form of the circulars Section 86 of the Act. states-

“The Minister may make regulations generally for the purpose of carrying this Act into effect and in particular for prescribing anything that is by this Act required to be prescribed”

The period of School Vacation is required to be prescribed. This should be done by regulations and these regulations are then read with the enabling statute. They form part of the statute. The power to prescribe the period of School Vacation is a statutory power and statutory powers are exercisable by statutory instruments or statutory documents. The regulations should be so made. Circulars signed by officers of the Ministry are not regulations made by the Minister in the manner prescribed by the Act. They are therefore invalid in form. On the foregoing I uphold the Associations case.

The Chief Personiel Officer in the last paragraph of his statement of evidence and arguments draw the Courts’ attention to certain statements made in the press by the Association while the matter was pending before the Court.

The Association therein inter alia called on its members not to comply with the circulars in issue. This prompted a response from the Ministry of Information which while chastising the association advised teachers to comply with the stipulations of the circulars. The Association apologised in open Court for its misfeasance but I would like to advise that when matters are before the Court, the questions addressed by the association and by the Ministry of Information in their publications are within the jealous jurisdiction of the Court and no one else.

The foregoing is the skeleton. A detailed judgment setting out the facts, the submissions of parties and the authorities relied on will be delivered at a later date.

Ms. C. E. E. Riley-Hayes,
Member