Neutral Citation Number: [2008] IEHC 147

THE HIGH COURT

Record No : 2008 3184 P

BETWEEN

CHIEFTAIN CONSTRUCTION LIMITED AND MAYFAIR CONSTRUCTION LIMITED

PLAINTIFF

AND

JOHN RYAN, PADDY TREACY, EOIN BATEMAN, NOEL LYONS, DES HAYES, BERTIE FLAVIN, WILLIAM DUHAN, NOEL HOGAN, CONOR GALLIGAN, GERRY O'HALLORAN AND JAMES MEEHAN

DEFENDANTS

Judgment of Mr. Justice John Edwards delivered on 1st May, 2008.

1. This is an application by the plaintiff for injunctive relief on an interlocutory basis.

Background to the application

2. The plaintiffs are both building contractors who are engaged in house building and contracting, and are based primarily in Limerick.

3. The eleven defendants, respectively, are former employees of the plaintiffs (or one or other of them – no point is taken on that), and while so employed worked as general building operatives until they were purportedly made redundant by the plaintiffs on or about the 20th of December 2007. The eleven defendants were included among a somewhat larger group of general building operatives employed by the plaintiffs who were each served with a Form RP50 "Notification of Redundancy" dated the 22nd of November 2007 specifying a proposed date of termination of the 20th of December 2007. The RP50's specified, in each case, "lack of work" as the reason for redundancy.

4. Some of those purportedly made redundant accepted the situation and claimed redundancy payments. However, the defendants disputed that a general situation of redundancy existed, and consulted their trade union (S.I.P.T.U.) It is acknowledged at paragraph 10 of the affidavit of John Collins, sworn on behalf of the plaintiffs on the 23rd of April 2008 that S.I.P.T.U. disputed the plaintiffs' entitlement to make the defendants' redundant and that, in advance of expiration of redundancy notices in each case, a Mr Michael Kelly, Assistant Branch Organiser of S.I.P.T.U. Limerick Number 1 Branch requested the Labour Relations Commission ("the LRC") to intervene. The defendants' belief is that the stated "lack of work" was a mere pretext for making them redundant, and that the plaintiffs real reason for terminating their employment was a desire to replace them with less costly "agency workers".

5. The LRC duly intervened and it is sufficient for the purposes of this judgment to state that they were unsuccessful in securing a resolution of the dispute, notwithstanding the invocation of appropriate procedures and machinery for the resolution of industrial disputes within the construction industry.

6. It appears from Mr Collins's affidavit that the matter has now been referred to the Labour Court, and that the plaintiffs have requested an early hearing. I am told that the defendants, and each of them, are also still within time to pursue a claim for unfair dismissal before the Employment Appeals Tribunal, should all or any of them wish to do so.

7. On or about the 21st of April 2008, the defendants, their servants or agents, commenced picketing at the entrance to one of the plaintiff's building sites at Coolbawn, Castleconnell, Co Limerick and continued picketing there on the 22nd of April, 2008 and (it is understood) on subsequent days. It is also alleged that on the 22nd of April the fourth and sixth named defendants trespassed on to another construction site being operated by the plaintiffs at Gleantain, Castletroy, County Limerick and while there exerted pressure two of the plaintiffs' tradesmen to cease working. It is further alleged that on the morning of the 24th of April 2008 six of the defendants entered the site at Gleantain and again two plasterers were confronted. In addition it is alleged that later on the same date the two plasterers were confronted on a road within the site by "seven or eight" defendants, and that as a result of this the tradesmen in question left the site and will not work for the plaintiffs while picketing is on-going.

8. It is accepted by the plaintiffs that as of Monday the 28th of April, 2008 (i.e., the date of the hearing of the motion) the defendant's on-going activities were confined to peaceful picketing of the entrances to the two sites. However, the plaintiffs seek to characterise the defendants' on-going actions as watching and besetting, trespass and the creation and maintenance of a nuisance, and they seek interlocutory injunctive relief from the Court to restrain them. The defendants, however, say that their peaceful picketing is lawful by virtue of section 11(1) of the Industrial Relations Act, 1990.

Relevant legislation

9. The Industrial Relations Act 1990 is described in the long title thereto as

> "An Act to make further and better provision for promoting harmonious relations between workers and employers, and to amend the law relating to trade unions and for these and other purposes to amend the Industrial Relations Acts 1946 to 1976 and the Trade Union Acts, 1871 to 1982."

10. Section 2 of the Act provides:

> (1) This Act (other than Part II) and the Industrial Relations Acts, 1946 to 1976, may be cited together as the Industrial Relations Acts, 1946 to 1990, and shall be construed together as one Act.
>
> (2) Part II of this Act and the Trade Union Acts, 1871 to 1982, may be cited together as the Trade Union Acts, 1871 to 1990, and shall be construed together as one Act.

11. Section 11 of the Act appears in Part II of the Act which is entitled "Trade Union Law". Sections 8 to 19 inclusive appear in a sub-part of Part II subtitled "Trade Disputes"

12. Section 8 of the Act provides definitions for the purposes of Part II. Those relevant to the instant case are:

> "employer" means a person for whom one or more workers work or have worked or normally work or seek to work having previously worked for that person;
>
> "trade dispute" means any dispute between employers and workers which is connected with the employment or non-

employment, or the terms or conditions of or affecting the employment, of any person;

"trade union" means a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act, 1941 ;

"worker" means any person who is or was employed whether or not in the employment of the employer with whom a trade dispute arises, but does not include a member of the Defence Forces or of the Garda Síochána;

13. Section 11(1) is in the following terms:

"(1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union in contemplation or furtherance of a trade dispute, to attend at, or where that is not practicable, at the approaches to, a place where their employer works or carries on business, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working."

The general law relating to interlocutory injunctions

14. The Supreme Court in *Campus Oil v The Minister for Industry (No. 2)* [1983] I.R. 88 identified the principles to be applied by a court in the granting or withholding of interlocutory injunctive relief. Firstly, the court must be satisfied that the strength of the plaintiff's case meets a certain minimum threshold. In the case of a prohibitory injunction the plaintiff is required to satisfy the Court that there is a fair question or issue to be tried.

15. Secondly, the court must consider whether the plaintiff could in the event of being refused an injunction and succeeding in the action, be adequately compensated in damages. (There are two aspects to this. The first is whether damages would be an adequate remedy for the party seeking the injunction, if he was successful at the trial of the action; and the second is as to whether the defendants would be able to pay such damages such that the appropriate compensation could actually be realised). Thirdly, the court must consider whether the balance of convenience favours the grant or refusal of an injunction at the interlocutory stage.

16. With regard to the second criterion the defendants accept that damages would not be an adequate remedy. Accordingly in this particular case I have to consider whether or not there is a fair issue to be tied and if, and only if, I am so satisfied do I then go on to consider the question of the balance of convenience.

The factual and legal matters said to constitute the fair issue to be tried

17. The point in this case is a net one. The plaintiffs accept that they are not entitled to succeed if the defendants do come within the terms of section 11(1). It is accepted by the plaintiff that a trade dispute exists, albeit an unofficial one. Moreover, the plaintiffs do not dispute that they (the plaintiffs) are working or carrying on business at the sites in question. However, they say that they are not to be regarded as employers of the defendants. Their sole point is that the phrase "where their employer works or carries on business" is couched in the present tense and only embraces current employment as of the time of picketing. They acknowledge and accept that they were the defendants' employers up to the 21st of December 2007, but they say that that does not bring the defendants within the section. In support of their position they have cited and seek to rely upon a judgment of Ms Justice Laffoy in a case entitled "*G & T Crampton Limited v. Building and Allied Trades Union and others*, (unreported, High Court, Laffoy J, 20th November 1997.) In that case the defendants also sought to rely on section 11(1) and, as in this case, the plaintiffs were contending that the picketers were not their employees. The similarities end there, however. Based on the facts of that particular case Laffoy J held that there was a fair issue to be tried.

18. The defendants say that the meaning of section 11(1) is clear and unambiguous, and that, having regard to the definitions of "employer", "worker" and "trade dispute" in section 8, the phrase "their employer" embraces the "historic present". They contend that the facts of the present case are entirely distinguishable from those in the *G & T Crampton* case which in any event offered no judicial interpretation whatever of section 11(1). The defendants referred me to *Quigley v Beirne & Others* [1955] I.R. 62, which I consider might well be relevant in the context of considering the balance of convenience, if we get to that point, but which does not seem to me to be of relevance to the core issue which concerns the correct interpretation of section 11(1) of the 1990 Act and the application of it to the largely undisputed facts of this case.

19. Has then the plaintiff raised a fair issue to be tried?

What is meant by a "fair issue to be tried"?

20. In considering this question primary regard must be had to the judgments of the Supreme Court in *Campus Oil v The Minister for Industry (No. 2)* [1983] I.R. 88. In particular, the following passages from the judgments of O'Higgins C.J. and of Griffin J are of assistance.

21. Commencing at page 106 of the report, O'Higgins C. J stated:

"Mr. Fitzsimons, on behalf of those plaintiffs, argued that the existence of …. a probability test as a guide to the granting of interlocutory relief was recognised by the former Supreme Court in *Educational Company of Ireland Ltd. v. Fitzpatrick* [1961] I.R.323. In particular, he relied on the judgment of Lavery J. in that case. I must say at once that I do not agree. In my opinion, the judgments in that case do not support this argument. It is true that there is one reference to "probability" contained in an extract from Kerr on Injunctions (6th ed.) which was quoted by Lavery J. at p. 336 of the report. That reference, in its context, is of doubtful significance. However, at p. 337 of the report, Lavery J. clearly laid down what he regarded as the proper test when he said:—

"The plaintiffs have to establish that there is a fair question raised to be decided at the trial. The arguments, lasting three days in this Court, show I think that there is such a question to be determined."

In any event, I would regard the application of the suggested test as contrary to principle. As I have already mentioned, interlocutory relief is intended to keep matters in statu quo until the trial, and to do no more. No rights are determined nor are issues decided. I think that the principle is stated correctly in the following passage from Kerr on Injunctions (6th ed. p. 2), which was noted by Lavery J. in the *Educational Company* Case :—

"In interfering by interlocutory injunction, the Court does not in general profess to anticipate the determination of the right, but merely gives it as its opinion that there is a substantial question to be tried, and that till the question

is ripe for trial, a case has been made out for the preservation of the property in the meantime in *statu quo* ."

The application of the plaintiffs' criterion on a motion for interlocutory relief would involve the Court in a determination of an issue which properly arises for determination at the trial of the action. In my view, the test to be applied is whether a fair *bona fide* question has been raised by the person seeking the relief. If such a question has been raised, it is not for the Court to determine that question on an interlocutory application: that remains to be decided at the trial. Once a fair question has been raised, in the manner in which I have indicated, then the Court should consider the other matters which are appropriate to the exercise of its discretion to grant interlocutory relief. In this regard, I note the views expressed by Lord Diplock, with the concurrence of the other members of the House of Lords, at p. 407 of the report of *American Cyanamid v. Ethicon Ltd* [1975] A.C. 396. I merely say that I entirely agree with what he said."

22. In his judgment Griffin J also agreed with the passage from the judgment of Diplock J in *American Cyanamid* to which the Chief Justice had referred. He stated the following (commencing at page 110 of the report):

"The question was also considered by the House of Lords some ten years later in American Cyanamid v. Ethicon Ltd . It was there laid down that a court, in exercising its discretion to grant or to refuse an interlocutory injunction, ought not to weigh up the relative strengths of the parties' cases on the evidence available at the interlocutory stage - that evidence being then necessarily incomplete. Lord Diplock, with whose speech the other members of the House agreed, referred at p. 407 to what he called the supposed rule that the court is not entitled to take any account of the balance of convenience unless it has first been satisfied that if the case went to trial upon no other evidence than is before the court at the hearing of the application the plaintiff would be entitled to judgment for a permanent injunction in the same terms as the interlocutory injunction sought."

Lord Diplock then continued at pp. 407-8 of the report:— "Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expressions as 'a probability', 'a prima facie case', or 'a strong *prima facie* case' in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that 'it aided the court in doing that which was its great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing': (*Wakefield v. Duke of Buccleugh* (1865) 12 L.T. 628). So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

It was submitted on behalf of the plaintiffs that there are differences between the test applied in the American Cyanamid Case and those applied in the *Educational Company* Case and [*Esso Petroleum Co (Ir) Ltd v. Fogarty* [1965] I.R. 531] but any such differences are more apparent than real, as Mr. Justice Murphy noted in his judgment ruling the plaintiffs' application for an interlocutory injunction. The tests applied by Lavery J. ("that there is a fair question raised to be decided at the trial"), by Kingsmill Moore J. ("that a serious question of law arose"), by Mr. Justice Walsh ("that there is a substantial question to be tried") and by Lord Diplock ("that there is a serious question to be tried") are essentially the same. A similar view was taken by the President of the High Court in *Rex Pet Foods Ltd. v. Lamb Brothers (Dublin) Ltd* (unreported, High Court, 26th August, 1982) where he stated that the statement of principles contained in these decisions do not differ but that, to some extent, each complements the other in certain aspects of the questions raised.

It seems to me that the passage which I have cited from the speech of Lord Diplock has much to recommend it in logic, common sense and principle. I would respectfully adopt it as being a correct statement of the law to be applied in cases of this kind. In a number of cases in recent years this Court has applied, as the true test, the test of determining whether a fair or serious question has been raised for decision at the trial and, if so, whether the balance of convenience was in favour of granting or refusing the interlocutory injunction sought. The latest of these cases was *T.M.G. Group Ltd. v. Al Babtain Trading and Contracting Company* (unreported, Supreme Court, 28th March, 1980). By reason of their extremely urgent nature, in none of them was judgment reserved."

23. I have quoted so extensively from the judgments of O'Higgins C.J. and Griffin J with a view to extracting from them such assistance as I can on an issue which has been causing me some difficulty. The most common formulation of the test is couched in terms of whether there is "a fair question to be tried". O'Higgins C. J spoke of "a fair *bona fide* question" while Griffin J spoke of "a fair or serious question". As identified by Griffin J, other formulations of the test speak of "a fair question", "a substantial question" and "a serious question " and these are said to be essentially the same. But what precisely is meant? I would comment that one would not normally regard the concepts of fairness, substance and seriousness as being equivalent, or as representing the same thing, and yet their derived adjectives are used interchangably in the judgments to which I have referred.

24. Is the assessment to be confined to a question of substance in the narrow sense, namely in terms of its "utility" (ie the implications of the point for the outcome of the litigation in the event that it is upheld), or alternatively may the substance of the point be considered in the broad sense namely as encompassing both the utility and the strength of the point? I requested the assistance of Counsel on this question but they have not been able to refer me to any authorities beyond *Campus Oil* which are directly in point. It is clear from the judgments that the issue must not be frivilous or vexatious but does that in fact represent the minimum threshold? To pose the question another way, is a fair or substantial or serious question established once the moving party puts forward a stateable or arguable point however weak, as long as it is not frivilous or vexatious? This Court has a difficulty with the suggestion that that could be so, and I will return to this.

25. However, if that is indeed the case, then it raises the question as to whether the strength of the case can be taken into account at all by a judge in considering whether or not to exercise his discretion in favour of granting injunctive relief. The judgments of the Supreme Court in *Campus Oil* suggest strongly that he should not do so. For 21 years after *American Cyanamid v. Ethicon Ltd* that was also thought to be the case in England. However, in the words of David Bean Q.C., in his work entitled "Injunctions" (8th edition, at para 3.11) this placed "a weapon for injustice in the hands of claimants with weak but arguable cases." In England the view that the strength of the case can never be taken into account at all by a judge in considering whether or not to exercise his discretion in favour of granting injunctive relief was subjected to a detailed critical analysis by Laddie J in *Series 5 Software Ltd v. Clark and others* [1996] 1 All E.R. 853, and was rejected as erroneous. The judge held that where on an application for an interim injunction

(the label "interim" is frequently used in England to describe what we would understand as an "interlocutory" procedure) the court is able from reading the evidence to form a clear view as to the relative strengths of the parties'cases, it should take that view into account in deciding whether to grant or refuse the injunction. David Bean has commented:

> "On the face of it this judgment was revolutionary, even heretical. But in truth it represented what many judges were doing already, and since 1996 has stood the test of time."

26. Laddie J's reasoning in the *Series 5 Software* case is both provocative and seductive. While in this country the Supreme Court judgments in *Campus Oil* would appear to preclude, once it has been decided that the plaintiff has raised a fair issue to be tried, judicial consideration of the strength of the case, and the expression of any judicial views concerning the strength of the case, I would anticipate that at some future point the Supreme Court may be called upon to consider and rule upon a Series 5 Software type argument. However, I consider that unless and until the law is altered I am bound to apply the legal principles approved in *Campus Oil.*

27. I accept, of course, that the granting or withholding of injunctive relief is in every case a matter of discretion, that there are no absolute rules, and that the *Campus Oil* criteria only represent guidance, albeit guidance that should not be deviated from lightly. At least one judge in the High Court has taken the view that a degree of deviation from the general view may, if the particular circumstances of the case admit of it, be permissible. Thus in *B & S Ltd v. Irish Auto Trader Limited* [1995] 2 I.R. 142 McCracken J stated (at 145/146):

> "I now turn to whether on a balance of convenience an interlocutory injunction should be granted. The leading case on the test to be applied on this point are set out by Lord Diplock in *American Cyanamid v. Ethicon Ltd*. [1975] A.C. 396. These tests have been applied and approved many times in this jurisdiction, and can be summarised that if it is shown there is a serious issue to be tried then:—
>
> > 1. An interlocutory injunction should be refused if damages would adequately compensate the plaintiff for any loss suffered between the hearing of the interlocutory injunction and the trial of the action, provided the defendant would be in a position to pay such damages.
> >
> > 2. Should this test be answered in the negative, an interlocutory injunction should be granted if the plaintiff's undertaking as to damages would adequately compensate the defendant, should he be successful at the trial, in respect of any loss suffered by him due to the injunction being in force between the date of application for the interlocutory injunction and the trial, again assuming that the plaintiff would be in a position to pay such damages.
> >
> > 3. If damages would not fully compensate either party, then the court may consider all relevant matters in determining where the balance of convenience lies, but these will vary depending on the facts of each case.
> >
> > 4. It is normally a counsel of prudence, although not a fixed rule, that if all other matters are equally balanced, the court should preserve the status quo.
> >
> > 5. Again, where the arguments are finely balanced, the court may consider the relative strength of each party's case as revealed by the affidavit evidence adduced at the interlocutory stage where the strength of one party's case is disproportionate to that of the other."

28. Item No 5 on McCracken J's list of criteria clearly envisages that the strength of each party's case may be taken into account "where the arguments are finely balanced" and "where the strength of one party's case is disproportionate to that of the other". Now it has to be said that that case was a passing off case. It is certainly arguable that injunction cases involving intellectual property rights are perhaps in a special category in that very frequently the hearing of the interlocutory motion decides the case, and these cases rarely proceed to a full hearing. In this regard it is worth mentioning that Series 5 Software also involved intellectual property rights.

29. However, the general rule against judicial consideration of the strength of the case, and the expression of views, once it has been decided that the plaintiff has raised a fair issue to be tried, was again reiterated by the Supreme Court in *Westman Holdings Ltd v. McCormack* [1992] 1 I.R. 151. Moreover, although both the *B & S Ltd* case, and the *Series 5 Software* case, were cited to Laffoy J, and were referred to by her in her judgment, in a case of *Symonds Cider v. Showerings (Ireland) Limited* [1997] 1 I.L.R.M 481 (another case involving intellectual property rights), Laffoy J declined to engage in a consideration of the relative strengths of the parties cases, stating:

> "I am satisfied that, having regard to the decision of the Supreme Court in *Westman Holdings Ltd v. McCormack*, it is not open to this Court, assuming the plaintiff has established that there is a fair and *bona fide* question to be tried, to express any view on the strength of the contending submissions in this case. In any event, even if it were open to the court at this interlocutory stage to evaluate the likely outcome of the trial, in my view it would be impossible to do so in this matter, which is bristling with difficult issues of fact arising from conflicting affidavit evidence and difficult issues of law."

30. It is clear from the foregoing review of the authorities that Irish law precludes a judge in most cases from having regard to the strength of the case after it has been decided that the plaintiff has raised a fair or substantial or serious issue to be tried. However, I can divine no clear guidance from the judgments in *Campus Oil* as to whether or not regard can be had to the strength of the case in considering whether the plaintiff has in fact raised a fair or substantial or serious issue to be tried. The very looseness of the language used and the interchangeability of the adjectives employed suggests strongly to me that what is required is a consideration of the "substance" of the point raised in the broad sense that I have spoken about rather than in the narrow sense. In addition I find support for my view in the following statement of Diplock J in the *American Cyanamid* case (part of the larger quotation approved by the Supreme Court in *Campus Oil*):

> " … unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has *any real prospect* (my emphasis) of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

31. It seems to me that any evaluation of a plaintiff's prospects of success must necessarily involve a consideration of both the utility and the strength of the point in question. Moreover, the use of the adjective "real" imports a need to evaluate the "reality" of the prospects of success and that requires an examination, if it be possible, of the strength of a plaintiff's case.

32. The Court is cogniscent that one of the principal arguments against a judge engaging with any question of the strength of the case at the interlocutory stage is that in many cases the evidence is incomplete. There may be conflicts in the evidence that are incapable of resolution on affidavits alone, and which can only be resolved in the course of a plenary hearing where evidence is tested in the crucible of cross examination. That may be true in many cases but it is not true in every case, particularly where the issue concerns a net legal point such as, in the present case, a question of statutory interpretation. It seems to me that where there are serious conflicts in the affidavit evidence, or a serious uncertainty as to the law, a Court should face up to the fact that it is not possible to accurately evaluate the strength of the plaintiff's case and give the benefit of the uncertainty to the plaintiff. The very existence of such serious conflicts would suggest "a fair issue to be tried". However, it seems to me that in a marginal case involving little or no conflicting evidence, and concerned with a net issue of law, there is nothing in principle wrong with a judge bringing his critical and analytical skills to bear with respect to the strength or otherwise of the plaintiff's case and taking that into account in the consideration of whether or not there is a fair issue to be tried.

33. In the course of his judgment in *Series 5 Software* Laddie J said the following:

> "In my view Lord Diplock did not intend … to exclude consideration of the strength of the cases in most applications for interlocutory relief. It appears to me that what is intended is that the court should not attempt to resolve difficult issues of fact or law on an application for interlocutory relief. If, on the other hand, the court is able to come to a view as to the strength of the parties' cases on the credible evidence, then it can do so. In fact, as any lawyer who has experience of interlocutory proceedings will know, it is frequently the case that it is easy to determine who is most likely to win the trial on the basis of the affidavit evidence and any exhibited contemporaneous documents. If it is apparent from that material that one party's case is much stronger than the other's then that is a matter the court should not ignore."

34. In my view that general approach can, in an appropriate case, be applied to a consideration of the question as to whether or not a plaintiff has established that there is a fair or substantial or serious issue to be tried.

Has the plaintiff established that there is a fair issue to be tried?
35. In the present case there is no significant conflict in the evidence as to the present activities of the defendants. There are conflicts as to past actions but it is accepted by the plaintiffs that at the present time the defendants'activities are confined to peaceful picketing of the entrances to two construction sites being operated by the plaintiffs. The only point in the case is what is the correct interpretation of section 11(1) of the Industrial Relations Act, 1990. I am satisfied that the point raised by the plaintiffs has the requisite utility in that, if their interpretation is upheld, the plaintiff would be entitled to succeed at the trial. However, following a careful consideration of Industrial Relations Act, 1990 as a whole, and in particular Part II thereof, and with due regard to the canons for the construction of statutes generally, and section 5 (1) of the Interpretation Act, 2005 in particular, I regard the plaintiffs' prospects of success as remote. I am not to be taken as deciding the issue, that will be a matter for the Court of trial, but in considering the question as to whether or not the plaintiff has established a fair or substantial or serious issue to be tried I feel bound to take into account my view that the plaintiffs' case, though arguable, is weak. In all the circumstances of the case I am not satisfied that the plaintiffs' point has sufficient substance, in the broad sense, to persuade me that there is a fair or substantial or serious issue to be tried

Decision
36. In all the circumstances I must refuse the plaintiff's application for interlocutory injunctive relief. I will hear arguments as to costs.