



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2016: No. 86

IN THE MATTER OF THE LABOUR RELATIONS ACT 1975

AND IN THE MATTER OF ORDER 29 OF THE RULES OF THE SUPREME COURT,
1985

AND IN THE MATTER OF INTENDED INCITEMENT OF IRREGULAR INDUSTRIAL
ACTION RELATING TO A BILL ENTITLED THE BERMUDA IMMIGRATION AND
PROTECTION AMENDMENT ACT 2016 TABLED IN THE HOUSE OF ASSEMBLY ON
MONDAY 7TH MARCH 2016 (“PATHWAYS TO STATUS”)

BETWEEN:

THE MINISTER OF HOME AFFAIRS

Applicant

-v-

- (1) BERMUDA INDUSTRIAL UNION (“BIU”)
- (2) CHRIS FURBERT JP
- (3) CHRIS FURBERT, President, for and on behalf of the General Council of
the BIU, employees and shop stewards
- (4) NICHOLAS TWEED, for an on behalf of the People’s Campaign

Respondents

EX TEMPORE RULING

(in Chambers)

Date of hearing: March 11, 2016

Mr Gregory Howard and Mr Brian Myrie, Attorney-General’s Chambers, for the Applicant

1. This is an application in support of an anticipated Originating Summons a draft of which has been filed today and assigned a number: Civil Jurisdiction 2016: No.86. The proceedings are brought by the Minister of Home Affairs against Bermuda Industrial Union, Chris Furbert JP, Chris Furbert as President of the BIU and also against Nicholas Tweed on behalf of the People's Campaign.
2. The application seeks an Interim Injunction restraining the Intended Respondents from whether by themselves or their members, servants or agents or otherwise howsoever from *“inciting, commencing, encouraging, persuading or influencing any person to take part in, or otherwise act in furtherance of a strike or irregular industrial action short of a strike, contrary to and in violation of section 34 of the Labour Relations Act 1975 related to of connected with a Bill entitled The Bermuda Immigration and Protection Amendment Act 2016...”*
3. The application is supported by the draft Affidavit of Michael Fahy, the Minister of Home Affairs. And he deposes that the President of the BIU and Rev. Nicholas Tweed on behalf of the Peoples Campaign have both called on members of the public to engage in a work stoppage today to demonstrate their opposition to the proposed 'Pathways to Status' Immigration Bill which has recently been tabled in the House of Assembly. I take judicial notice of the fact that some form of demonstration has taken place today.
4. The evidential background is primarily supported in terms of the BIU and Mr. Furbert by a letter of March 8, 2016 from the Union threatening to call on *“all people”* to protest the proposed legislation by withdrawing their labour. It is supplemented by newspaper articles which suggest that, although initially on or about 9th March a call to action was withdrawn by both the Union and The People's Movement, the call to action was reinstated at some point yesterday. And in those circumstances it is argued that a breach of section 34 of the Labour Relations Act has already occurred. The crucial point made by Mr. Howard on behalf the Minister is that section 34 of the Act renders unlawful any, inter alia, strike or irregular industrial action short of a strike if:

“(a)it has any object other than or in addition to the furtherance of the labour dispute within the trade or industry in which the strikers, persons taking irregular industrial action short of a strike or employers locking-out, as the case may be, are engaged; or

(b) it is designed or calculated to coerce the Government either directly or by inflicting severe hardship upon the community,

and it is further declared that it is unlawful to commence or continue or apply any sums in furtherance or support of any such illegal lock-out, strike or irregular action short of a strike....”

5. The section then goes on to require a notice to be given of lawful strike action.
6. In this case I have been concerned to avoid granting an injunction to restrain action that might be construed to be civic and/or political action which falls without the scope of the Labour Relations Act. However, I am satisfied that the scope of relief sought is indeed narrowly focused and aimed to prevent the withdrawal of labour which, it seems to me to be very strongly arguable, constitutes a breach of section 34 of the Act in circumstances where it has no connection to a labour dispute. And although the inciting words complained of are not explicitly directed towards Union members alone, it seems clear that calling on persons to withdraw labour is very arguably contrary to the Act, whether the persons called upon to withdraw labour are unionized or not.
7. And in these circumstances I am satisfied that this is an appropriate case for granting the Interim Injunction sought.
8. I should just add that I accept that this is a case of urgency and that some attempts to give notice to the Respondents has been made, and, that it is appropriate to proceed on the basis that the Respondents are likely to be given an early return date of next week Thursday and would in any event be at liberty to apply on short notice to be heard.

Dated this 11th day of March, 2016 _____
IAN RC KAWALEY CJ