[2011] UKPC 4
Privy Council Appeal No 0031 of 2010

JUDGMENT

Bahamas Hotel Maintenance & Allied Workers Union
v
(1) Bahamas Hotel Catering & Allied Workers Union
(2) West Bay Management Limited
(3) Attorney General of the Commonwealth of the Bahamas

From the Court of Appeal of the Commonwealth of the Bahamas

before

Lord Hope
Lord Rodger
Lord Walker
Lord Brown
Lord Clarke

JUDGMENT DELIVERED BY
Lord Walker
ON

23 February 2011

Heard on 15 December 2010

Appellant
Obie Ferguson

(Instructed by Obie Ferguson & Co)

1st and 2nd Respondents
Harvey O Tynes QC
Tanisha Tynes
Ferron J M Bethell
Paula Adderley

(Instructed by Blake Lapthorn LLP)

3rd Respondent
James Guthrie QC

(Instructed by Charles Russell LLP)

LORD WALKER:

Introductory

1. This appeal is concerned with a dispute between two trade unions with similar names, the Bahamas Hotel Catering and Allied Workers Union ("Catering") and Bahamas Hotel Maintenance and Allied Workers Union ("Maintenance"). The membership of both unions consisted (and no doubt still consists) of non-managerial employees working in hotels and similar or allied businesses in the Bahamas. Both unions wished to be recognised by the owners of the Sandals Royal Bahamian resort at Cable Beach, Nassau, namely West Bay Management Ltd ("Sandals"), as a bargaining agent for the purposes of Part III of the Industrial Relations Act 1970, Ch 321 ("the 1970 Act"). The differences between the unions might, had all parties shown some degree of common sense and goodwill, have been resolved without resort to litigation. Unfortunately, however, they have led to protracted, contentious and no doubt expensive litigation.

The legislation

2. Before addressing the facts it may be helpful to summarise the relevant provisions of the 1970 Act. Part I of the Act is preliminary. Part II (sections 5 to 40) deals with registration and control of trade unions. Part III (sections 41 to 45) deals with recognition of trade unions. Part IV (sections 46 to 53) deals with industrial agreements. Parts V, VI, VII and VIII do not call for further mention.

3. The most relevant sections in Part II are sections 5, 8, 10, 12, 13, 15 and 18. Section 5 provides for a register of trade unions to be kept and maintained by the Registrar of Trade Unions, an officer designated by the Minister (at the material time, the Minister for Immigration, Labour and Training). The register is to be open for public inspection. By section 8 the Registrar must refuse to register a union if satisfied that it is objectionable on one of several specified grounds, including (section 8(1)(c)) "that the union is seeking registration under a name identical with that under which an existing union has been registered or so nearly resembling that name as to be likely to deceive members of the public".

4. Section 10 provides as follows:

"(1) The Registrar shall not register any trade union under any name which, in his opinion –

(a) is deceptive or objectionable in that it contains a reference, direct or indirect, to any personage, practice or institution (whether imperial, national or of any other kind);

(b) is otherwise unsuitable as a name for a trade union.

"(2) Before registering any trade union, the Registrar shall publish a notice in the Gazette stating the name by which he proposes to register the union, and if, within such time (not being less than one month) as may be limited by such notice, any person files an objection to that name on any of the grounds mentioned in subsection (1), the Registrar shall take the same into consideration and, if he considers the objection to be well founded, he shall refuse to register the union under that name."

5. Section 12 provides as follows:

"The Registrar, upon registering a trade union under this Act, shall issue to the union a certificate of registration, which certificate, unless the registration of the union is proved to have been cancelled and subject to the provisions of section 13, shall be conclusive evidence that the provisions of this Act and of any regulations made thereunder with respect to registration have been complied with."

6. Section 13 provides as follows:

"Any person aggrieved –

(a) by any decision of the Registrar –

(i) not to register a trade union under this Act; or

(ii) to cancel the registration of a union; or

(iii) not to register an amendment of the constitution, or a change of name, of a trade union; or

(b) by the refusal of an officer of the Ministry to certify any ballot as having been properly taken,

may appeal in respect thereof to the Minister, who may, with effect from the date of the determination of the appeal, reverse the decision of the Registrar or officer or confirm it."

7. By section 15(1)(b)(i) the Registrar is required to cancel a registration on proof to his satisfaction "that the registration was obtained by fraud or mistake." Section 15(2) requires the Registrar to give not less than two months' written notice to a union before exercising any of his powers under section 15(1)(b). Section 18 provides that a union may change its name, subject to the provisions of subsections (3) and (4), which reproduce the effect of section 8(1)(c) and apply section 10 in relation to any change of name.

8. Part III begins with a general duty imposed on employers by section 41(1) to "recognise, as the bargaining agent for employees employed by him, a trade union of which more than 50 per centum of the employees in his employment, or in a bargaining unit [a category] of such employees, are members in good standing." Section 41(1) then refers to the provisions of section 42(5) and (6), under which a claim or rival claims to recognition are to be resolved (these are of central importance to the appeal and are considered in detail in the following paragraphs). The employer is bound to treat and enter into negotiations with a recognised trade union for the purposes of collective bargaining (subsection (1)) and the settlement of limited disputes (subsection (2)).

9. Section 42 contains a detailed code relating to the procedure for recognition. It imposes quite short time limits. By subsection (1) a union seeking recognition is to send a written claim to the employer, and serve a copy on the Minister. By subsection (2) the employer is to accept or reject the claim within 14 days, giving reasons for a rejection, and sending a copy of the notice of acceptance or rejection to the Minister. By subsection (3) a failure to accept a claim within 14 days is treated as a rejection. By subsection (4) the union, on an actual or deemed rejection, may within 14 days submit the matter to the

Minister for determination. Subsection (5) provides for the Minister to determine the matter if there is only one union claiming recognition.

10. Section 42(6) deals with the determination of rival claims. It provides, so far as relevant, as follows:

> "In the event of there being more than one union claiming to have as members in good standing more than 50 per centum of the employees concerned, then the Minister shall determine, as soon as may be after the receipt of a submission under subsection (4), whether the union making the claim or any other union is entitled to recognition as the bargaining agent for the employees concerned, and for that purpose the Minister shall have the following powers, that is to say –
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> . . .
>
> > (c) to determine whether more than 50 per centum of the employees concerned desire the union making the claim or any other union to be their bargaining agent; and, for the purpose of so determining, the Minister –
> >
> > (i) may require the union to submit the names of all the members of the union in good standing, employed by the employer concerned at the date of the union's application for recognition as a bargaining agent; and
> >
> > (ii) shall take a representational count by secret ballot in order to determine what union the employees desire to be their bargaining agent, and in the taking of such count the Minister may place on the ballot paper, in addition to the names of the unions making the claim, the name of the union recognised as the bargaining agent, if any."

11. Sections 43 and 44 contain detailed provisions as to when claims to recognition, or to the alteration or withdrawal of recognition, can be made. They depend on three factors: whether or not a union is for the time being enjoying recognition; if there is a union enjoying recognition, whether the union achieved it under section 42 (5) or (6) or simply by the employer's acceptance of its claim; and whether the recognised union had entered into an industrial agreement (a framework agreement for industrial relations provided

for in Part IV of the 1970 Act); Mr Ferguson (for Maintenance) made some submissions on sections 43 and 44 in the course of his reply, but it is not necessary to set out their provisions in detail.

The facts

12. Catering was registered as a trade union on 1 December 1958, long before the enactment of the 1970 Act. It was registered under Part III of the Trade Union and Industrial Conciliation Act 1958 (No 30 of 1958), the provisions of which were similar to the corresponding provisions in Part III of the 1970 Act except that the register was to be kept by the chief industrial officer. Counsel were unable to draw the Board's attention to any transitional provisions equating registration under the 1958 Act with registration under the 1970 Act, but it was common ground in the courts below that Catering was a registered trade union. The Board declined to hear submissions on an entirely new point, contradicting this common ground, that Mr Ferguson attempted to raise in limine.

13. Maintenance was registered as a trade union on 22 November 2001. On the following day its certificate of registration was sent to Mr Shavon Bethel, its acting President, by Mr Leslie Dean, who then held the office of Registrar. It is accepted that he had not complied with section 10(2) of the 1970 Act in that no notice of the proposed registration had been published in the Gazette. There is little evidence as to the reasons for the formation of Maintenance, or its members and activities after its registration. Mr Leo Douglas, the General Secretary of Catering, stated in an affidavit dated 31 May 2007 that Dr Thomas Bastian, the President of Catering until 2000, had for years been trying unsuccessfully to secure Sandals' recognition of Catering as the bargaining agent at the Sandals resort. The affidavit also stated that Dr Bastian was "an advisor or organiser" of Maintenance.

14. Mr Douglas stated in his affidavit that he first became aware of the existence of Maintenance on or about 20 October 2006. If Maintenance had for some time been in active competition with Catering for recognition it seems truly remarkable (especially in view of other points mentioned in paras 16 and 17 below) that the General Secretary of Catering, a large and active union, was (as he stated on oath) not aware of Maintenance's existence at a much earlier stage. But that is the basis on which the litigation has proceeded.

15. The documentary evidence of immediate relevance begins with a letter dated 4 July 2006 from Maintenance's attorneys to Mr Stephen Zadie, the General Manager of Sandals, applying for recognition of Maintenance "on the

basis that it has more than 50 per cent of the non-managerial workers as members in good standing." Sandals replied through its attorneys on 14 July 2006 asking for information, including the precise number of employees in the proposed bargaining unit who were members in good standing. The letter was copied to the Minister and to Mr Harcourt Brown, the Registrar (though he was described in the letter by reference to his other office, Director of Labour). Maintenance's attorneys replied on 20 July 2006 stating that Maintenance had in excess of 350 non-managerial employees of Sandals, and that it was treating Sandals' letter as a rejection of its claim.

16. On 2 August 2006 Sandals' attorneys wrote to the Minister stating that Maintenance's claim had not been rejected but that Sandals needed more information. The Minister was asked to help in obtaining this. It is not clear whether the Minister did so, but on 21 August Maintenance's attorneys sent the Minister a list of its members' names and employment categories. On 31 August the Registrar wrote to Mr Zadie of Sandals asking for a list of employees and their positions. The following day Mr Douglas of Catering wrote to Mr Zadie seeking recognition of Catering as the bargaining agent at the Sandals resort.

17. On 19 September 2006 Sandals' attorneys wrote to the Minister stating that Sandals had become a member of the Bahamas Hotel Employers' Association, and by reason of its membership had granted recognition to Catering as bargaining agent for all its non-managerial employees. The letter referred to Maintenance and stated Sandals' belief that "it would be difficult, if not impossible, to have a constructive working relationship with [Maintenance]." This letter was copied to Mr Douglas as well as to Mr Harcourt Brown. The evidence also included as an exhibit an advertisement published by Sandals in the Nassau Guardian on 29 September 2006 which referred to "the issue around the controversy of unionisation".

18. On 2 October 2006 Sandals' attorneys wrote to the Minister submitting that he had no power to act under section 42(6) of the 1970 Act on the ground that Catering had already been recognised by Sandals. On 20 October the Registrar notified the parties that a poll was to be held (pursuant to section 42(6)) on 7 November 2006. At this point Catering's attorneys became involved for the first time. On 23 October they wrote to the Registrar (under his alternative title of Director of Labour) objecting to the poll on the grounds that Maintenance's name was objectionable under section 8(1)(c) of the 1970 Act, and that section 10(2) had not been complied with.

19. Mr Harcourt Brown (in an affidavit sworn on 5 February 2007) acknowledged that he had read the letter of 24 October 2006 but made no

comment on it. On 1 November Miss Althea Albury, a senior official in the Labour Department, wrote on the Registrar's behalf to Mr Zadie informing him that pursuant to section 42(6)(c) (misstated as article 42(b)(c)) a ballot was to be held at specified premises in Nassau on 7 November 2006 between 9 am and 5 pm. There is no evidence that the Registrar made any response to the letter from Catering's attorneys. On 6 November Sandals and Catering made an ex parte application to Thompson J for leave to apply for judicial review and for an interim injunction restraining the Minister from holding a ballot as indicated in the letter of 1 November 2006. Thompson J gave leave and granted an injunction pending the determination of the application for judicial review.

20. That is how the matter came to Court, over four years ago. It is remarkable that the Registrar (whose affidavit was stated to be "generally in support of" the Attorney-General) seems not to have considered the possibility that the registration of Maintenance with a name so similar to that of Catering, when section 10(2) of the 1970 Act had not been complied with, was a registration obtained by mistake. Such a registration, although conclusive while it stood, could have been cancelled under section 15(1)(b) of the 1970 Act, after notice given to Maintenance under section 15(2). Realistically the outcome would probably have been that Maintenance would have taken the opportunity of the two months' period of notice to change its name to one more easily distinguishable from that of Catering. In the meantime the sensible course would have been for the ballot to be postponed.

21. The Board have already mentioned their difficulty in accepting that the very existence of Maintenance was not known to any responsible officer of Catering until near the end of October 2006. Sir Burton Hall CJ, who heard and decided the judicial review proceedings at first instance, took the view on the evidence before him that

> "Maintenance sought to hijack the goodwill that Catering had built up over more than 40 years by choosing a name that was calculated to mislead the members of the public whose mere casual interest in industrial relations would result in them missing the subtle difference between the names of the two unions."

The Board respectfully doubt that the evidence goes that far. Mr Harcourt Brown's affidavit gives no hint that he, the statutory office-holder, perceived a risk of union members being misled. The exhibited correspondence does seem to show that after Maintenance had made its claim for recognition at the Sandals resort, Sandals and Catering were actively engaged in making common cause to secure recognition for Catering in preference to Maintenance. But the clear object of Part III of the 1970 Act was to secure that where there were rival

claims, recognition should be decided democratically by the votes of union members in good standing.

The judicial review proceedings at first instance

22. The notice of application listed the decisions in respect of which relief was sought as (1) the Minister's decision, notified by the letter of 1 November 2006, to hold a ballot under section 42(6)(c) of the 1970 Act; and (2) the registration of Maintenance as a trade union, effected on 22 November 2001. The relief sought was (i) an order of prohibition against the Minister holding the ballot; (ii) an order of certiorari to quash the registration of Maintenance; and (iii) three declarations all concerned with the proposed ballot.

23. Judicial review proceedings are meant to be started promptly and pursued expeditiously. They are also meant to be conducted with cooperation and candour (many authorities illustrating this can be found in Fordham, Judicial Review Handbook, 5th ed. (2008) pp106-112). The proceedings in this case fell badly short of those objectives. Affidavits were sworn and filed which were argumentative and repetitive but failed to cast any light on the real issues (the Registrar's own affidavit is, regrettably, an instance of this). There were two brief hearings in January and February 2007 but no progress was made. At the third hearing on 26 March 2007 the Chief Justice said (at pp361-362 of the Record):

> "I adjourn the further hearing of this application to a date convenient to the parties on the indication that leave will be sought by counsel on behalf of [Sandals and Catering] . . . to [extend] the time in which an application should have been made and at such adjourned hearing, whether there is before the Court any proper party against whom the reliefs …… could be obtained."

24. The adjourned hearing took place on 6 June 2007. Astonishingly, after all the delay that had already occurred, and after the Chief Justice's clear observations, Sandals and Catering did not make their application for an extension of time until the very day of the adjourned hearing, and it does not seem to have been supported by any affidavit. There was a further hearing on 19 September 2007 at which counsel for Catering addressed the Chief Justice at length on the topics of delay and the proper parties to the application. When it became apparent that judgment was going to be reserved, Mr Ferguson (for Maintenance) made a last-minute application to discharge the injunction,

arguing that time was of the essence if justice was to be done, since his clients were, he said, disenfranchised in the meantime. The application was unsuccessful.

25. The Chief Justice gave his reserved judgment a year later, on 24 September 2008. As mentioned earlier, he expressed sympathy for Catering, which (he said) justifiably felt that a grave injustice had been done to it. But he felt obliged to hold that the application failed on the ground of delay. He observed in para 23 of his judgment:

> "In fine, while Catering would have had a strong case that leave to extend time should have been allowed as they only learnt of the Registrar's decision some five years after the fact, that they were out of time should have been so startlingly clear to them that leave to extend the time to [apply] for judicial review should have [been] sought simultaneously with the leave to move for judicial review. Not only did their attorneys fail to do that at that time but it was more than six months after this action was begun that the application for leave to extend time was made and it is settled law in this jurisdiction that the grant of leave to move for judicial review is a separate question from whether time should be extended. It was not until 26 March 2007 that counsel for the applicants appeared to appreciate that such an application was necessary and it was not in fact made until 6 June 2007."

In para 26 the Chief Justice seems to have regarded the Minister's decision taken in 2006 as the only decision he was asked to quash, but that challenge was, he said, founded on the flawed decision of the Registrar taken five years earlier. The Chief Justice made no ruling as to the proper parties to the application. He refused to grant any relief and discharged the injunction granted by Thompson J on 6 November 2006.

The proceedings before Adderley J

26. Catering and Sandals gave notices of appeal to the Court of Appeal, but neither took any effective action to have the interim injunction reinstated pending the appeal. This opened the way for Maintenance to make the next move in the battle between the unions. Immediately after the Chief Justice's judgment discharging the injunction, Maintenance applied to the Minister asking him to supervise and certify a poll to be held on 15 October 2008. On 26 October the Minister informed Maintenance that he was advised to await the outcome of the appeal, and on 30 October the Minister confirmed this decision

to the press. So Maintenance applied for orders of mandamus in two applications for judicial review (2008/PUB/JRV/00027 and 00028). The first respondents to the applications were Catering and Sandals respectively, and the Attorney-General was the second respondent to each.

27. The applications were heard by Adderley J at hearings on 30 April, 25 May and 9 July 2009. He gave judgment on 16 July 2009. He accepted the submission that the scheme of the 1970 Act required decisions to be taken quickly. The outcome of the appeal to the Court of Appeal was, he considered, simply not relevant to the issue of determining the wishes of the employees as to which union should be recognised. The Minister had in effect re-imposed the injunction on himself, with the effect of granting a stay which the Court had not granted.

28. Adderley J therefore granted an order of mandamus directing the Minister to conduct a poll as soon as possible, and in any event not later than 14 August 2009. The poll was held and (in the words of Longley JA in the Court of Appeal) Maintenance "won handily". The figures are not in evidence but the Board were told that the result was 252 votes for Maintenance and 18 votes for Catering.

29. There was no appeal against the order of Adderley J, nor was any other action taken to challenge the result of the poll.

The decision of the Court of Appeal

30. The Court of Appeal (Dame Joan Sawyer P and Longley and John JJA) heard argument on 15 September 2009 and gave judgment on 26 January 2010. The President (with whom John JA agreed) gave a judgment allowing the appeal. Longley JA dissented.

31. After summarising the facts the President expressed the view (paras 28 and 29) that it was unnecessary for the Registrar to have been made a party, once Maintenance had withdrawn its summons to have the Registrar joined. She quoted the Chief Justice's remarks about Catering suffering a "grave injustice" and expressed strong dissatisfaction with the conclusion that such an injustice could not be remedied. She stated that the Chief Justice had placed great weight on section 23 of the 1970 Act (as to the conclusiveness of a Registrar's certificate as to a union resolution; in fact the Chief Justice seems to have placed too little weight on section 12). After a lengthy survey of authority (some rather dated) on prerogative orders and nullity the President touched again on the topic of parties (paras 83 to 85) and concluded (para 87):

> "In the result I would allow the appeals of Sandals and Catering, extend the time for the filing [of] their application for judicial review to 6 November 2006. I therefore grant a declaration that the purported registration of Maintenance was void and of no effect from its inception because of the failure of the Registrar to publish notice of its application in the Gazette and to give Catering an opportunity to object. It necessarily follows from that declaration, that the purported registration of Maintenance is quashed and that any action taken subsequent to the purported registration is also void because such action would have been based on the invalid registration of Maintenance."

32. The dissenting judgment of Longley JA was, in the Board's view, very largely correct in its analysis of the issues. The Board do not summarise his judgment as a whole, but (as noted below) many of his conclusions are the same as those reached by the Board.

Section 12 of the 1970 Act

33. Section 12 of the 1970 Act provided that a certificate of registration of a trade union issued by the Registrar "unless the registration of the union is proved to have been cancelled and subject to the provisions of section 13, shall be conclusive evidence that the provisions of this Act and of any regulations made thereunder with respect to registration have been complied with" (section 13 is concerned with what might be called non-registration). Provisions such as section 12 are often included in legislation relating to official registers, because such registers cannot serve their purpose unless members of the public can safely rely on them. This object would be defeated if a certificate could be challenged years later, as was attempted in this case. In *R v Registrar of Companies Ex p Central Bank of India* [1986] QB 1114 the English Court of Appeal concluded after very full argument (which occupied nine days) in relation to a similar provision in the United Kingdom Companies Act 1948 that the conclusiveness of registration applied to a challenge by way of judicial review, as well as to other forms of challenge.

34. The correct course, as Longley JA perceived, would have been for Catering to request the Registrar to exercise his powers under section 15 of the 1970 Act to give notice to cancel Maintenance's registration, since its registration under such a similar name was made (and so "obtained" by Maintenance) by mistake. Had the Registrar refused, Catering could have challenged that refusal by way of judicial review, without any problem of delay (and without Maintenance's existence as a union since 2001 being brought into question). The Board express no view as to whether such an application would

have succeeded. The Chief Justice and the President evidently thought that it was a clear case of a misleading name having been chosen, but the poll conducted under the order of Adderley J seems to have been carried out without any confusion.

Parties

35. Judicial review is directed to official decision-making, and the official who took the relevant decision is the natural respondent to such proceedings. The Registrar (who happens to be a senior official in the Ministry, but holds a statutory office in his own right) would have been the proper respondent to a challenge to any decision of his in the exercise of his statutory powers (such as the registration of a union with an objectionable name, or a refusal to exercise his powers under section 15). The Minister was the proper respondent to any challenge to his decision, in exercise of his statutory powers, to order a ballot.

36. The Attorney-General was therefore correct in submitting to the Board, through Mr Guthrie QC, that he should not have been made a party. The President was in error in referring to section 12 of the Crown Proceedings Act, Ch 68, since proceedings by way of judicial review are not "civil proceedings" within the meaning of section 12 (see Lord Oliver of Aylmerton in *Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd* [1991] 1 WLR 550, 555, the corresponding restrictive definition being section 17 of the Crown Proceedings Act). The Attorney-General would therefore only very rarely be a proper respondent to judicial review proceedings, since most decisions taken by the Attorney-General himself are not amenable to judicial review (*Gouriet v Union of Post Office Workers* [1978] AC 435, 487-488).

37. The Attorney-General cannot however be said to have adopted a consistent course in these proceedings. He entered an appearance without objection, and took an active part in the proceedings (on 24 January 2007 he issued a notice of motion to strike out some of the applicants' evidence). He also failed to protest when Maintenance's summons to add the Registrar was withdrawn. The occasions when it is proper, and when it is not proper, to join the Attorney-General are not an easy matter for many litigants, and the Attorney-General should, if joined incorrectly, take active steps to rectify the position as quickly and inexpensively as possible.

The significance of the poll following the order of Adderley J

38. All three members of the Court of Appeal thought that the Chief Justice was in error in the ground of his decision, that is the delay in seeking an

extension of time. They took the view that the Chief Justice attached too much importance to what they saw as a technical difficulty. The Board are inclined to agree with that view, although it is understandable if the Chief Justice though it necessary to mark his disapproval of the applicants' almost contumelious failure to make an application between the warning that the Chief Justice gave on 26 March 2007, and the very day of the adjourned hearing on 6 June 2007.

39. In any event, as events have moved on mere delay has ceased to be a determinative issue in the matter. The unchallenged poll held following the unchallenged order of Adderley J has in the Board's view changed everything. The President was, with great respect, wrong to ignore these events and to take the view that everything that happened since the flawed registration of Maintenance in 2001, so far as it depended on that registration, could be treated as a nullity.

40. All relief granted by way of judicial review is discretionary, and the principles on which the Court's discretion must be exercised take account of the needs of good public administration. In *Caswell v Dairy Produce Quota Tribunal for England and Wales* [1990] 2 AC 738, 749, Lord Goff of Chieveley quoted Lord Diplock in *O'Reilly v Mackman* [1983] 2 AC 237, 280-281:

> "The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."

Lord Goff continued:

> "I do not consider that it would be wise to attempt to formulate any precise definition or description of what constitutes detriment to good administration. This is because applications for judicial review may occur in many different situations, and the need for finality may be greater in one context than in another. But it is of importance to observe that section 31(6) [of the Supreme Court Act 1981] recognises that there is an interest in good administration independently of hardship, or prejudice to the rights of third parties, and that the harm suffered by the applicant by reason of the decision which has been impugned is a matter

> which can be taken into account by the Court when deciding whether or not to exercise its discretion under section 31(6) to refuse the relief sought by the applicant. In asking the question whether the grant of such relief would be detrimental to good administration, the Court is at that stage looking at the interest in good administration independently of matters such as these. In the present context, that interest lies essentially in a regular flow of consistent decisions, made and published with reasonable dispatch; in citizens knowing where they stand, and how they can order their affairs in the light of the relevant decision."

Order 53 of the Supreme Court Rules is in rather different terms, but the same principle applies. The members of Maintenance are entitled to know where they stand, and for more than a year they have, on the strength of an unchallenged poll, been treated as members of a union recognised as a bargaining agent. Fairness and good administration requires that they should be confirmed in that position.

41. For these reasons the Board will humbly advise Her Majesty that the appeal should be allowed. The parties have 14 days in which to put in written submissions as to costs.

42. If Maintenance obtains an order for costs the taxing officer should consider reducing the costs to be allowed for the affidavit dated 2 February 2007 of Lynden Taylor filed on its behalf. That affidavit exhibits the affidavit dated 6 November 2006 of Stephen Zadie filed on behalf of Catering and all the exhibits to the latter affidavit. The result has been that some of the contemporaneous documents have been exhibited not once but twice, three times or even (in two cases) four times. Such an irregular practice is not merely unnecessary, pointless and wasteful. It also makes the appeal record extremely confusing. In the absence of any good explanation (and it is hard to think of one) there should be an appropriate disallowance of costs.