



Services Industrial Professional & Technical Union

Extracts from The Supreme Court in

H.A. O'NEIL LIMITED

-and-

UNITE THE UNION, PATRICK JAMES GOOLD, WILLIAM MANGAN AND DAMIAN JONES

Background



An appeal by Unite the Union against the decision of the High Court to grant an interlocutory injunction restraining a strike and other industrial action



Dispute concerned a travel allowance



The Union had conducted a pre-strike ballot in accordance with its rules, as prescribed by s.14 of the Industrial Relations Act 1990 – not disputed by employer



The Union had served the requisite strike notice on the employer – not disputed by employer

Background



Before the High Court the employer had impugned the strike on the basis that the Union had failed to exhaust a dispute resolution procedure prescribed by a Sectoral Employment Order by which both the employer and the Union were bound



The employer claimed that the strike and other industrial action taken by the union members constituted a breach of contract, for which no immunity was provided by Part II of the Industrial Relations Act 1990

Interlocutory Injunctions



***Campus Oil v. Minister
for Industry and
Commerce***



**Normally, there is a low
bar to be crossed**

Court should satisfy itself on whether there is a fair issue to be tried

Court considers whether the balance of convenience favours the grant or refusal of an interlocutory injunction

Whether the plaintiff would suffer damage which could not be compensated for by the award of damages if an injunction were not granted, and the plaintiff succeeded at trial



**The grant of an
interlocutory injunction
may not normally
prejudice the eventual
outcome of the case**



**In trade dispute cases
however, the grant of an
injunction preventing
picketing and other
forms of industrial
action inevitably leads
to the collapse of the
strike and there is no
point in pursuing the
matter to a full trial**

On Leave to appeal

O' Donnell C.J: "The panel found that this case raises important issues in respect of the law relating to the grant of injunctions in respect of industrial disputes, and in particular, "the interplay between s. 19(2) of the 1990 Act and the general equitable jurisdiction to grant injunctive relief, and regarding the issue of the nature of the ballot required of members of the trade union to satisfy the statutory test".

Overview

The appeal was heard before a five-judge division of the Supreme Court

The Supreme Court unanimously allowed the appeal

Extensive examination of previous case law concerning interlocutory injunctions and trade disputes

Extensive examination of history of 1990 Act – its origins etc

Examination of disputes in constitutional context

Judgements given by O'Donnell C.J, Hogan J, Murray J

Supreme Court

Central question for determination was whether the High Court should have granted the interlocutory injunction having regard to section 19(2) of the Industrial Relations Act 1990, which provides:

*Where a secret ballot has been held in accordance with the rules of a trade union as provided for in section 14, the outcome of which or, in the case of an aggregation of ballots, the outcome of the aggregated ballots, favours a strike or other industrial action and the trade union before engaging in the strike or other industrial action gives notice of not less than one week to the employer concerned of its intention to do so, **a court shall not grant an injunction restraining the strike or other industrial action where the respondent establishes a fair case that he was acting in contemplation or furtherance of a trade dispute.***

O' Donnell C.J: *"It is something of an irony that legislation which appears to be designed to remove industrial disputes so far as possible from courts has resulted in **an extraordinarily complex legal landscape**, and the necessity to resolve sometimes very difficult issues of fact and law often under considerable pressure of time. This case is a good illustration of the **difficulties involved** and the grant of leave to appeal to this Court provides **an opportunity to take a more measured and comprehensive survey of the applicable law** than may be possible in the course of an urgent application".*

SUPREME COURT

Supreme Court

The Court unanimously allowed the appeal, holding, in effect, that s.19(2) of the 1990 Act operates as an absolute bar to the grant of an **interlocutory injunction** in trade dispute cases where the **conditions precedent** to its operation are fulfilled



Conditions precedent to a ballot are:

It is held in accordance with the rules of the Union as provided for by s.14 of the Act which favours the proposed strike or industrial Action and,

The Union serves not less than one weeks' strike notice and,

The Union makes out a fair case that it is acting in contemplation or furtherance of a trade dispute



Chief Justice O' Donnell: *"In such circumstances, no matter what arguments might be made as to the strength of the employer's case, the urgency of the matter, or the damage which might be suffered, an interim injunction cannot be granted"*

O' Donnell C.J: *"In the course of argument, I asked [counsel] to refer to any case in the last decade or two in which an injunctions had been granted restraining picketing, where there had been a subsequent trial, irrespective of the result. He was unable to do so. The reason is a very practical one, quite apart from the natural reluctance to endanger union funds in respect of law costs. If an interlocutory injunction is granted, either at first instance or on appeal, by the time the trial takes place, however relatively short the interval may be, **the bloom has gone off the steel of industrial action; men give up – seek other jobs – go elsewhere for that purpose – emigrate. Worst of all, they may well settle for less than what are their true rights because, they think, however mistakenly, that the dice are loaded against them in the Law Courts...**"*

SUPREME COURT

Supreme Court

On the provisions of Article 40.6.1.iii^o of the Constitution



Hogan J: “It is arguably implicit in these provisions that the right to form trade unions implies in turn at least some – perhaps as yet undefined – zone of freedom for those unions to organise and campaign. The effet utile of this constitutional provision would otherwise be compromised”.



Murray J: “When interim or interlocutory prohibitory orders were granted, the industrial action was halted: the cases rarely, if ever, came to trial. The rights of the defendants in such claims – to assemble, to protest, to publicly and effectively express their opinions as to the matters giving rise to the dispute and to vitalise by collective industrial action the rights of association and to form unions provided for in Article 40.6.1(iii) of the Constitution, appear usually to have been given little weight or attention”.



Organising for Fairness at Work
and Justice in Society